

Page 01 to/à Page 02

Withheld pursuant to/removed as

s.21;s.13;s.17

**Pedro, Jodi HLTH:EX**

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**From:** XT:Harvey, Anne HLTH:JN  
**Sent:** Thursday, April 9, 2015 10:13 AM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** FW: NBA Transition Agreement.pptx  
**Attachments:** NBA Transition Agreement.pptx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI

Warm Regards  
Anne Harvey

VP - Employee Engagement - VCH

*- driving best practice for patients and employees -*

**From:** Harvey, Anne [CORP]  
**Sent:** Wednesday, April 08, 2015 1:37 PM  
**To:** (alee@phsa.ca); (David.Williams@northernhealth.ca); (John.Johnston@interiorhealth.ca); (Sharon.fraser@fraserhealth.ca); (FHA) Strugnell, Wendy (Wendy.Strugnell@fraserhealth.ca); 'Bjola, Sandra'; Board Liaison (PH); Bulandus, Bee [CORP]; CarolIrving (Carol.Irving@interiorhealth.ca); Harvey, Anne [CORP]; Jane.Lindstrom@northernhealth.ca; Kim Kerrone (kim.kerrone@viha.ca); Lara Barley (lbarley@phsa.ca); Liz.roden@northernhealth.ca (Liz.roden@northernhealth.ca); Sachedina, Zulie (PH); Sherry McKay (sherry.mckay@viha.ca); Cc: 'Tony Collins'; Matt Prescott (MattP@heabc.bc.ca); (eharris@harrisco.com); (FHA) Mason, Jane; (IHA) Phillips, Erica; (NHA) Morris, Betty; (PHSA) Krystal, Arden; Alannah Fox (alannahf@heabc.bc.ca); Gail Craig; Graeme Norton; Heppell, Leanne (PH); Jennifer Lamont; Lawrie, Barb [CORP]; Macduff, Kevin [VCH]; Provost, Sharon [VA] (Sharon.Provost@vch.ca)  
**Subject:** NBA Transition Agreement.pptx

Hello Everyone,

In a spirit of sharing (which hopefully will save us all some work over the next few months) I'm sending you the ppt I took to our Senior Team on Tuesday morning.

The last 3 slides are particular to VCH but most of the rest is directly copied from the wording of the HEABC agreement.

Warm Regards  
Anne Harvey

VP - Employee Engagement - VCH

*- driving best practice for patients and employees -*

# **NBA Transition Agreement**

**Anne Harvey**

**VP Employee Engagement**

**April 2015**

# Scope and Term of Agreement

- Resolves 2000 – 3000 staff replacement grievances
- Establishes provincial funding of \$10m
- Lays out measure to support future compliance
- Establishes a provincial committee chaired by deputy minister and HA committees to manage and monitor replacement staffing initiatives
- Introduces Notice of Complaint and Notice of Dispute mechanisms for individual nurses and the union
- Retains a three person arbitration panel with regular dates to resolve complaints and disputes
- Continues until the nurses provincial collective agreement is negotiated

# Settles Grievances on MOUs

Appendix OO - MOU re: Acute Care/Long Term Care Staff Replacement - Long Term Absences

## Vacation Leaves

In Acute and Long-Term Care, employees on vacation will be replaced, except where service levels are reduced. All reasonable efforts will be made to use regular relief/float positions to replace vacation leaves.

## Long-Term Leaves

In Acute and Long-Term Care, employees on long-term leaves will be replaced. All reasonable efforts will be made to use regular relief/float positions or temporary postings to replace.

## 20 or more beds

In Acute and Long-Term Care facilities with 20 or more beds, employees away on short-term absences will be replaced unless the nurse in charge and the manager agree that patient care needs can be met with available nurses.

## Less than 20 beds

In Acute and Long-Term Care facilities with less than 20 beds, the Employer will make all reasonable efforts to replace employees away on short-term absences unless the nurse in charge and the manager agree that patient care needs can be met with available nurses.

Where patient demand exceeds the normal capacity of a facility or unit, the Employer will call in additional nurses as necessary to meet patient care need

Appendix QQ - MOU re: Additional Patient Demand

Appendix SS - MOU re: Community Replacement of Absences

Appendix TT - MOU re: Regularization of Hours

Community nurses will be replaced for at least two weeks of vacation each year. All reasonable efforts will be made to use regular relief/float positions to replace these vacation leaves.

The Parties will jointly review overtime hours, casual hours, agency nurse hours and hours worked by part-time employees above their normal FTE every 6 months. Where possible, these hours will be added to or converted into regular positions where they are consistent and recurring.

## **Financial Support from MoH**

- **\$2m to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.**
- **\$5m for specialty nurse training**
- **\$2m to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment**
- **\$1m to support increasing complement of the RN staffing**

## **PNSSC: Provincial Nurse Settlement Steering Committee**

- Co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates
- Composed of
  - two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority



# Role of PNSSC

- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the PCA and this Agreement
- Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
- Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with Protocol MOUs
- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through N/HACs
- Address issues and disputes referred to it by a N/HACs.

# **Nursing Health Authority Committee**

- A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
- One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.

# Role of NHAC

N/HAC will meet monthly or more frequently by agreement:

- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
- Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
- Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
- Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training.;
- Report monthly on compliance and challenges with compliance with this agreement;
- All decisions of a N/HAC must be by consensus.

# Individual or Group Disputes

- **Notice of Complaint**

- A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC
- Has to be discussed with manager first
- BCNU may bring to NHAC as a **Notice of Dispute**

# NHAC Dispute Resolution

- Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs
- N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
  - Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement

# PNSSC Dispute Resolution

- Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC
- The PNSSC may:
  - Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.
- If PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board within fifteen calendar (15) days of the Notice of Dispute.

# Arbitration Board Dispute Resolution

- The Board will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute
- The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
- The Chair or the Board may conduct a hearing by telephone, or by written submissions.
- Hearing dates scheduled
  - The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
  - If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute from N/HACs.
  - The parties may jointly request that the Chair schedule more frequent hearing dates.

# Hearings of the Arbitration Board

- The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters
- Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.



# Decisions of Arbitration Board

- The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
- In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
- The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
- A decision must not amend the language of one of the Protocol MOUs.

# Measures to Support Future Compliance: Specialty Education

Health Authorities, PHC and the BCNU will:

- Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. The parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- Follow the VCHA specialty education selection process

# Details of \$5m Specialty

## Education

- The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC)
- By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement

## **Measures to Support Future Compliance: Vacation Relief Acute & Residential**

- HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

# Measures to Support Future Compliance: Expedited Hiring

- Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012- 2014 collective agreement.
- In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.
- Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

# Measures to Support Future Compliance: Community

- HAs and PHC will fully implement the community replacement of absences MOU
- HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding underspending against requirements will be referred to the Panel for resolution.
- A provincial joint working group with a majority membership of community nurses will be formed within a six week time frame for the purpose of making recommendations to the PNSSC on appropriate use of the short form (RAI) assessment.

# **Measures to Support Future Compliance: Scheduling Technology**

## **Automated Vacation Planning and Automated Call Out**

- HEABC and Island Health will provide the NBA with the results of the electronic auto shift callout technology pilot and the annual vacation request and approval pilot currently underway. The evaluations will be discussed at the PNSSC with a view to implementing them provincially.

## **Preparation Time lines**

- Both parties will appoint its members of a N/HACs no later than April 15, 2015
- MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015



## HA Individual Commitments

- **HAs and PHC will bring forward additional HA and PHC specific measures** to further support continued compliance with the Protocol MOUs
- **The proposed measures will be reviewed by the appropriate NHAWC in May** and brought forward to the PNSSC for final approval.
- **All approved specific measures will be implemented during the June to December term** of this Settlement Agreement

# Immediate Next Steps

- Establish cross CoC working group of
  - COOs
    - Senior operation director from each CoC
    - Financial planner from each CoC
  - CFO
    - Executive Director Finance
  - VP EE
    - Director Scheduling
    - Director Employee Relations
    - Meet in April, May and then only to monitor disputes
- Determine 3 VCH reps for NHAC
  - Recommendation Anne Harvey, Sharon Provost and Wayne Balshin

## Major Work Initiatives

- Revise forecast for Specialty Nursing including ERNT(s) for specialty nursing
- Review vacancies and RNF in community and implementation of vacation relief
- Review casual hours, part time hours, overtime and RNF stats in acute and residential to determine where more vacation relief or ERNTs are appropriate

## Other Local VCH Initiatives

- Decide who will be the VCH representative on community short form and technology working group
- Expedite staffing service reorganization
- Gather data on churn of temporary hires in long term leaves and propose hiring new grads on condition they serve the whole long term leave to the union

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Page 001 to/à Page 034

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s.21;s.13;s.17



**Pedro, Jodi HLTH:EX**

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**From:** Patterson, Ted HLTH:EX  
**Sent:** Thursday, April 2, 2015 7:41 AM  
**To:** Howatson, Evan HLTH:EX  
**Subject:** FW: Final Settlement Agreement  
**Attachments:** April 1- 15 BCNUv3 - Final Settlement Agreement - 415 pm.docx

Confidential – but here is where we landed

Ted Patterson  
Assistant Deputy Minister  
Health Sector Workforce Division  
Ministry of Health  
(250) 952-3465  
(250) 514-5455

**From:** Matt Prescott [<mailto:MattP@heabc.bc.ca>]  
**Sent:** Wednesday, April 1, 2015 4:28 PM  
**To:** Brown, Stephen R HLTH:EX; Patterson, Ted HLTH:EX; Tony Collins  
**Subject:** Final Settlement Agreement

Here is the final version in word, unsigned.

Matt

Matt Prescott  
Executive Director, Legal Services & Strategic Labour Relations  
HEALTH EMPLOYERS ASSOCIATION OF BC  
604.714.2295  
[MattP@heabc.bc.ca](mailto:MattP@heabc.bc.ca)

## **SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

### **Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 - 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
    - MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
    - MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
    - Additional Patient Demand

- MOU re: Regularization of Hours
  - MOU re: Community Nurse Replacement
  - Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
  4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
  5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

#### **Part 2 - Monetary settlement of past grievances**

6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

#### **Part 3 - Financial support for labour market development:**

10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following

in respect of issues regarding the Protocol MOUs that arose during the 2012 - 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and [c] will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

#### **Part 4 - Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

#### **Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;.
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;.

- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:
- two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority
18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.
19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.
20. The PNSSC will:
- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
  - It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
  - Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
  - Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

## **Part 5 - Special dispute resolution process**

### **Notice of Dispute**

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC.
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

### **Dispute resolution by a N/HACs**

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

Hearing dates scheduled

35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

#### Decisions

41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
45. A decision must not amend the language of one of the Protocol MOUs.



**Part 6 - Duration**

51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

\_\_\_\_\_  
Stephen Brown  
Deputy Minister of Health

\_\_\_\_\_  
Gary Fane  
Nurses' Bargaining Association

\_\_\_\_\_  
Tony Collins  
A/President and CEO HEABC

\_\_\_\_\_  
Gayle Duteil  
British Columbia Nurses' Union

## **APPENDIX A MEASURES TO SUPPORT COONTINUED COMPLIANCE WITH THE PROTOCOL MOUs**

### **Common Commitments of all Health Authorities and PHC**

#### **1. Specialty Education**

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### **2. Expedited Recruitment to Vacancies**

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- b. Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.

- c. Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- d. A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

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- a. HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- b. HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

### **4. Community Nursing**

- a. HAs and PHC will fully implement the community replacement of absences MOU
- b. HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding underspending against requirements will be referred to the Panel for resolution.
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### **HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS**

- 1. HAs and PHC will bring forward additional HA and PHC specific measures to further support continued compliance with the Protocol MOUs.
- 2. The proposed measures will be reviewed by the appropriate NHAWC in May and brought forward to the PNSSC for final approval.
- 3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.



**Pedro, Jodi HLTH:EX**

---

**From:** Eileen Pindral <Eileenp@heabc.bc.ca>  
**Sent:** Thursday, April 2, 2015 8:16 AM  
**To:** XT:Harvey, Anne HLTH:IN; XT:Barley, Lara HLTH:IN; XT:HLTH Krystal, Arden; bgrant@providencehealth.ca; Gail Craig; Jane Lindstrom; XT:HLTH Ulrich, Cathy; XT:Johnston, John HLTH:IN; John Bevanda; Jane Mason; XT:Kerrone, Kim HLTH:IN; Matt Prescott; Wayne Balshin; XT:Strugnell, Wendy HLTH:IN; Patterson, Ted HLTH:EX; Erica Phillips; 'sbarr@providencehealth.ca'; XT:HLTH Marchbank, Michael; Jennifer Perry; Graeme Norton; XT:Thorpe, Roy HLTH:IN  
**Cc:** 'tonyc@heabc.bc.ca'  
**Subject:** Conference Call: Thursday, April 2, 2015 (12:15 p.m.)  
**Attachments:** Final Settlement Agreement.pdf

Further to Tony's email from yesterday evening, attached is the document that will be discussed at today's conference call.

PLEASE NOTE: This document is confidential and is not to be distributed at this time.



The conference call details are as follows:

s.15

Please contact me if you have any questions, Eileen

Eileen Pindral  
Executive Assistant  
**HEALTH EMPLOYERS ASSOCIATION OF BC**  
604.742.2580

[heabc.bc.ca](http://heabc.bc.ca)  HEABC Twitter  HEABC LinkedIn

[BCHealthCareAwards.ca](http://BCHealthCareAwards.ca)  Excellence in BC Health Care Awards Twitter  Excellence in BC Health Care Awards Facebook   
Excellence in BC Health Care Awards YouTube

Save the date – HEABC's annual general meeting & the *BC Health Care Awards* luncheon are on Monday, June 22.

*Confidentiality notice: The information contained in this email is confidential and may be privileged. It is intended solely for the use of the designated addressee(s). Any unauthorized viewing, disclosure, copying, distribution or use of the information contained in this email is prohibited and may be unlawful. If you have received this email in error, please reply to the sender immediately to inform them that you are not the intended recipient and delete the email from your computer system. Thank you.*

## **SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

### **Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 – 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
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    - MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
    - Additional Patient Demand

- MOU re: Regularization of Hours
  - MOU re: Community Nurse Replacement
  - Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
  4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
  5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

#### **Part 2 - Monetary settlement of past grievances**

6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

#### **Part 3 - Financial support for labour market development:**

10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following

in respect of issues regarding the Protocol MOUs that arose during the 2012 – 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and (c) will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

**Part 4 - Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

**Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;



- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:
- two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority
18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.
19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.
20. The PNSSC will:
- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
  - It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
  - Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
  - Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

#### Part 5 - Special dispute resolution process

##### Notice of Dispute

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC.
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

##### Dispute resolution by a N/HACs

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

##### Appointment and joint training and N/HACs members

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

Hearing dates scheduled

35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

#### Decisions

41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
45. A decision must not amend the language of one of the Protocol MOUs.

**Part 6 - Duration**

51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

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Stephen Brown  
Deputy Minister of Health

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Gary Fane  
Nurses' Bargaining Association

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Tony Collins  
A/President and CEO HEABC

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Gayle Duteil  
British Columbia Nurses' Union

## APPENDIX A MEASURES TO SUPPORT CONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

#### 1. Specialty Education

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### 2. Expedited Recruitment to Vacancies

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
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**Pedro, Jodi HLTH:EX**

---

**From:** Matt Prescott <MattP@heabc.bc.ca>  
**Sent:** Friday, April 10, 2015 10:57 AM  
**To:** Patterson, Ted HLTH:EX  
**Cc:** Tony Collins  
**Subject:** RE: Final Settlement Agreement  
**Attachments:** 20150402144051630.pdf; April 1- 15 BCNUv3 - Final Settlement Agreement - 415 typo fix.docx

Hi Ted,

I've attached the signed agreement.

I've also attached a word version with some typos corrected in the Appendix. BCNU has agreed that we may correct these typos in the version that we will send out to our members today.

Matt

**Matt Prescott**

Executive Director, Legal Services & Strategic Labour Relations

HEALTH EMPLOYERS ASSOCIATION OF BC

604.714.2295

[MattP@heabc.bc.ca](mailto:MattP@heabc.bc.ca)

[heabc.bc.ca](http://heabc.bc.ca)  HEABC Twitter  HEABC LinkedIn

[BCHealthCareAwards.ca](http://BCHealthCareAwards.ca)  BC Health Care Awards Twitter  BC Health Care Awards Facebook  BC Health Care Awards YouTube

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**From:** Ted Patterson  
**Sent:** April-10-15 10:45 AM  
**To:** Matt Prescott  
**Cc:** Tony Collins  
**Subject:** RE: Final Settlement Agreement

Hi Matt,

Could you kindly send me final/signed version of this document?

T

**From:** Matt Prescott [<mailto:MattP@heabc.bc.ca>]  
**Sent:** Wednesday, April 1, 2015 4:28 PM  
**To:** Brown, Stephen R HLTH:EX; Patterson, Ted HLTH:EX; Tony Collins  
**Subject:** Final Settlement Agreement

Here is the final version in word, unsigned.

Matt

Matt Prescott  
Executive Director, Legal Services & Strategic Labour Relations  
HEALTH EMPLOYERS ASSOCIATION OF BC  
604.734.2295  
[MattP@heabc.bc.ca](mailto:MattP@heabc.bc.ca)

Final

**SETTLEMENT AGREEMENT**

Between:

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("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

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  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

##### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

Hearing dates scheduled



- 35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
- 36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
- 37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

- 38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
- 39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
- 40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

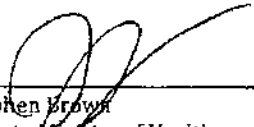
#### Decisions

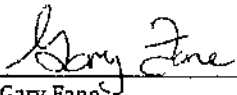
- 41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
- 42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
- 43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
- 44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
- 45. A decision must not amend the language of one of the Protocol MOUs.

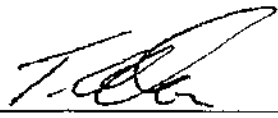
**Part 6 - Duration**


51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

  
 Stephen Brown  
 Deputy Minister of Health

  
 Gary Fane  
 Nurses' Bargaining Association

  
 Tony Collins  
 A/President and CEO HEABC

  
 Gayle Duteil  
 British Columbia Nurses' Union

## APPENDIX A MEASURES TO SUPPORT COONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

#### 1. Specialty Education

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### 2. Expedited Recruitment to Vacancies

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- b. Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.

- c. Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- d. A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

### 3. Regularization of Relief

- a. HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- b. HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

### 4. Community Nursing

- a. HAs and PHC will fully implement the community replacement of absences MOU
- b. HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding underspending against requirements will be referred to the Panel for resolution.
- c. A provincial joint working group with a majority membership of community nurses will be formed within a six week time frame for the purpose of making recommendations to the PNSSC on appropriate use of the short form (RAI) assessment.

### 5. Automated Call Out and Vacation Planning

- a. HEABC and Island Health will provide the NBA with the results of the electronic auto shift callout technology pilot and the annual vacation request and approval pilot currently underway. The evaluations will be discussed at the PNSSC with a view to implementing them provincially.

### HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS

- 1. HAs and PHC will bring forward additional HA and PHC specific measures to further support continued compliance with the Protocol MOUs.
- 2. The proposed measures will be reviewed by the appropriate NHAWC in May and brought forward to the PNSSC for final approval.
- 3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.



## **SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

### **Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 – 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
    - MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
    - MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
    - Additional Patient Demand

- MOU re: Regularization of Hours
  - MOU re: Community Nurse Replacement
- Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
- 3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
- 4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
- 5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

#### **Part 2 - Monetary settlement of past grievances**

- 6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
- 7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
- 8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
- 9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

#### **Part 3 - Financial support for labour market development:**

- 10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following

in respect of issues regarding the Protocol MOUs that arose during the 2012 - 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and (c) will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

**Part 4 – Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

**Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;



- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:
- two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority
18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.
19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.
20. The PNSSC will;
- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
  - It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
  - Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
  - Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

#### **Part 5 - Special dispute resolution process**

##### **Notice of Dispute**

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC.
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

##### **Dispute resolution by a N/HACs**

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

##### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
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Hearing dates scheduled

35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
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39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
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#### Decisions

41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
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Stephen Brown  
Deputy Minister of Health

\_\_\_\_\_  
Gary Fane  
Nurses' Bargaining Association

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Tony Collins  
A/President and CEO HEABC

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Gayle Duteil  
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## APPENDIX A MEASURES TO SUPPORT CONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

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- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

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### HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS

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- 2. The proposed measures will be reviewed by the appropriate N/HAWCs in May and brought forward to the PNSSC for final approval.
- 3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.





**Pedro, Jodi HLTH:EX**

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**From:** Tony Collins <TonyC@heabc.bc.ca>  
**Sent:** Friday, April 10, 2015 11:37 AM  
**To:** Brown, Stephen R HLTH:EX; Patterson, Ted HLTH:EX  
**Cc:** Tony Collins  
**Subject:** Agreement With NBA - Guidelines for Payment of Funds

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Part 11 of the settlement agreement references the parties developing guidelines for the allocation of the \$8M. You may recall employers would like to ensure that there are no complications accessing the funds from the BCNU for their intended purpose.

Does the Ministry have draft guidelines we can review and send to the BCNU for feedback? I expect they would be similar to those applicable to the FBA education fund.

Thanks,

Tony

**Pedro, Jodi HLTH:EX**

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**From:** Matt Prescott <MattP@heabc.bc.ca>  
**Sent:** Sunday, April 12, 2015 6:09 PM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** Fwd: Nurses CIU #199 - April 1, 2015 settlement agreement  
**Attachments:** CIU 199 Nurses settlement agreement.pdf

Hi Ted,

Here is our CIU on the settlement agreement that was sent out to members on Friday, FYI.

M

Matt Prescott  
Executive Director, Legal Services & Strategic Labour Relations  
HEALTH EMPLOYERS ASSOCIATION OF BC  
604.714.2295  
[MattP@heabc.bc.ca](mailto:MattP@heabc.bc.ca)  
Sent from my mobile device.

----- Original message -----

**From:** Inside HEABC  
**Date:** 10/04/2015 11:56 AM (GMT-08:00)  
**To:** All Staff  
**Subject:** Nurses CIU #199 - April 1, 2015 settlement agreement

The attached CIU will be sent to all members with nurses certification this afternoon. If you have any questions about this CIU, please contact Jen P. (Ext. 397)

## Contract Interpretation Update Nurses' Sector

**Date:** April 10, 2015

**CIU #:** NP-199

**RE:** April 1, 2015 settlement agreement

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**This CIU contains information directed only to the attention of:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> All members with Nurses' certification | <input type="checkbox"/> HEU Nurses' certification only   |
| <input type="checkbox"/> BCNU Nurses' certification only                   | <input type="checkbox"/> HSA Nurses' certification only   |
| <input type="checkbox"/> BCGEU Nurses' certification only                  | <input type="checkbox"/> UPN Nurses' certification only   |
| <input type="checkbox"/> CLAC Nurses' certification only                   | <input type="checkbox"/> Members (specify member type/s): |

**Summary:**

HEABC, the Nurses' Bargaining Association (NBA) and the Ministry of Health (MoH) have reached a settlement agreement to resolve several issues concerning the implementation of the 2012-2014 collective agreement. The settlement agreement was the result of a cooperative effort to resolve grievances filed by the BC Nurses' Union (BCNU) and to establish a collaborative approach to resolving staffing level and nurse replacement issues going forward. The settlement agreement is transitional and will remain in effect until the parties agree to a new collective agreement.

**Action required:**

The province's six health authorities and Providence Health Care (PHC) must implement the measures identified in the settlement agreement (the Agreement) to support continued compliance with the collective agreement going forward and engage in the collaborative process set out in the Agreement.

A summary of the action items and timelines applicable to the health authorities and PHC is attached to this Contract Interpretation Update (CIU). A copy of the Agreement is also attached.

**Discussion:**

Following the ratification of the 2012-2014 collective agreement, BCNU filed Single Employer Policy Dispute (SEPD) grievances at each health authority and PHC alleging the failure to comply with or implement new staffing language in the collective agreement. Several of the grievances were scheduled for arbitration.

In early 2015, BCNU launched a "grievalanche"\* campaign resulting in thousands of additional grievances concerning the alleged failure to replace absent nurses or to call in additional nurses in overcapacity situations, contrary to the collective agreement.

Discussions between MoH, HEABC and NBA resulted in a shared recognition that the issues in dispute had become impediments to constructive bargaining for a new collective agreement and that the parties would benefit from an alternative process to assist the parties in resolving them. The parties agreed to a protocol agreement for this process on March 12, 2015 and that process began in mid-March and concluded with the April 1, 2015 Agreement.

#### **The protocol**

The protocol agreement was intended to address implementation issues arising from the following Memoranda of Understanding (the Protocol MOUs):

- MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
- MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
- Additional Patient Demand
- MOU re: Regularization of Hours
- MOU re: Community Nurse Replacement

A three-person panel (the Board) was appointed to provide a non-binding interpretation of the disputed language and to identify the risks to each party if the issues remain unresolved. Each party made written and oral submissions to the Board and identified their respective challenges with implementation. The Board issued its report on March 26, 2015 (attached). Using the Board's interpretation of the language and its risk analysis as a guide, the parties engaged in further discussions pursuant to the protocol resulting in a monetary settlement and measures to support future compliance.

#### **Monetary settlement**

All grievances filed on or before March 31, 2015 are resolved on the following basis:

1. HEABC will provide \$2,000,000 to BCNU as damages to BCNU members who may have been affected by breaches of the collective agreement to **settle all outstanding grievances filed up to and including March 31, 2015 alleging a violation of one or more of the Protocol MOUs.**
2. BCNU will not file any further grievances under Article 9 with respect to the Protocol MOUs.
3. Future disputes will be managed through a new cooperative dispute resolution process described in the Agreement.
4. In recognition of the labour market challenges that health employers faced in complying with their obligations under the Protocol MOUs, MoH agreed to provide funding as follows:
  - (a) \$5,000,000 for specialty nurse training.
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increased Registered Nurse (RN) staffing.

These funds will be provided to BCNU by April 29, 2015 and will be allocated according to guidelines agreed to by the parties.

\* "Grievalanche" is a portmanteau of "grievance" and "avalanche" used by BCNU during this campaign.

#### **Future compliance**

The Agreement describes several cooperative measures the parties will use to support future compliance. Each health authority and PHC will establish a joint Nursing/Health Authority Committee (N/HAC) with BCNU consisting of three representatives from the employer and union. Members of the N/HAC must be appointed on or before April 15, 2015. The N/HAC will meet at least once a month to share information and collaborate to resolve staffing issues arising under the Protocol MOUs. Appendix "A" of the Agreement describes measures to be implemented by all health authorities and PHC regarding the following:

- Speciality education
- Expedited recruitment to vacancies
- Regularization of relief
- Community nursing
- Automated call out and vacation planning

The health authorities and PHC must comply with specific timelines for each of these measures, which are also set out in Appendix "A" of the Agreement and are listed in the chart attached to this CIU identifying action items and deadlines.

Appendix "A" also requires each health authority and PHC to bring forward specific individual commitments to support compliance that will be reviewed in May 2015 and implemented between June and December 2015.

#### **New dispute resolution process**

The Agreement also provides for a new dispute resolution process starting with the referral of complaints regarding alleged non-compliance with a staffing MOU to the N/HAC. Disputes that are not resolved by the N/HAC may then be referred by either party to a Provincial Nursing Settlement Steering Committee (PNSSC) comprised of senior representatives from BCNU, MoH, HEABC and the health authorities. If the PNSSC cannot resolve the dispute, the matter may be referred to the panel described in the Agreement for a binding decision. This process will be used in lieu of the grievance process described in Article 9 of the collective agreement for issues arising from the Protocol MOUs. The Agreement provides additional detail about the hearing process and the jurisdiction of the panel.

See the following page for the above-mentioned chart that outlines the activities of the N/HAC and applicable deadlines.

*Attachments (2)*

| Action item  | Responsibility  | Deadline  |
|--|---|---|
| Appoint three representatives, including one from executive level, to Nursing/Health Authority Committee (N/HAC)   | Health authorities & PHC  | April 15, 2015  |
| Participate in joint training session for all members of N/HAC   | All N/HAC representatives appointed by health authorities and PHC | No later than April 30, 2015  |
| Add another 20 seats for emergency speciality education  | Health authorities/PHC/MoH  | Spring 2015   |
| Add additional speciality education seats  | Health authorities/PHC/MoH  | Fall/winter 2015  |
| Conduct joint process to regularize hours  | Health authorities & PHC  | May 2015 and October 2015   |
| Complete all required analysis and approval process to implement regular relief positions where there are 10 or more baseline FTEs in the same job and required competencies | Health authorities & PHC  | Required: January 2016<br><br>Where possible: starting June 2015  |
| Report out on compliance to PNSSC regarding community vacation replacement   | Health authorities & PHC  | September 30, 2015 (for April 1 - August 31, 2015)<br><br>January 31, 2016 (for September 1, 2015 - January 31, 2016) |
| Appoint representatives for provincial joint working group to make recommendations on the appropriate use of short form (RAI) assessment                                     | Health authorities & NBA  | Within six weeks of April 1, 2015   |
| Bring forward individual measures to further support continued compliance with the Protocol MOUs   | Health authorities & PHC  | Before May 1, 2015  |
| Review specific measures to support continued compliance proposed and bring forward to PNSSC for final approval  | N/HACs  | May 2015  |
| Implement specific measures approved by PNSSC  | Health authorities & PHC  | June 2015 - December 2015   |
| Provide NBA with results of electronic auto shift callout technology pilot and annual vacation request and approval pilot currently underway                                 | Island Health & HEABC   | TBD   |
| Work in collaboration with BCNU to utilize forecasting model to identify short-term gaps in specialty nurse education and develop plan to start closing gap 2015/16          | Health authorities & PHC  | Plan developed by April 30, 2015  |

Final

**SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

**Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 – 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
    - MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
    - MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
    - Additional Patient Demand

- MOU re: Regularization of Hours
  - MOU re: Community Nurse Replacement
- Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
- 3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
- 4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
- 5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

**Part 2 - Monetary settlement of past grievances**

- 6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
- 7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
- 8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
- 9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

**Part 3 - Financial support for labour market development:**

- 10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following



in respect of issues regarding the Protocol MOUs that arose during the 2012 – 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and [c] will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

**Part 4 – Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

**Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;

- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:

- two senior representatives from the BCNU;
- one senior representative from MOH;
- one senior representative from HEABC; and,
- one CEO from a designated Health Authority

18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.

19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.

20. The PNSSC will:

- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
- It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
- Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
- Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

#### **Part 5 - Special dispute resolution process**

##### **Notice of Dispute**

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC .
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

##### **Dispute resolution by a N/HACs**

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

##### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

Hearing dates scheduled

- 35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
- 36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
- 37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

- 38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
- 39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
- 40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

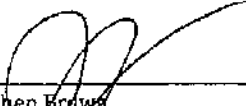
#### Decisions

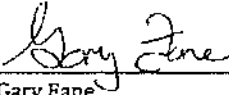
- 41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
- 42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
- 43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
- 44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
- 45. A decision must not amend the language of one of the Protocol MOUs.

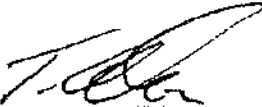
**Part 6 - Duration**


51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

  
 Stephen Brown  
 Deputy Minister of Health

  
 Gary Fane  
 Nurses' Bargaining Association

  
 Tony Collins  
 A/President and CEO HEABC

  
 Gayle Duteil  
 British Columbia Nurses' Union

## APPENDIX A MEASURES TO SUPPORT CONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

#### 1. Specialty Education

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### 2. Expedited Recruitment to Vacancies

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- b. Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.

- c. Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- d. A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

### **3. Regularization of Relief**

- a. HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- b. HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

### **4. Community Nursing**

- a. HAs and PHC will fully implement the community replacement of absences MOU
- b. HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding under spending against requirements will be referred to the Panel for resolution.
- c. A provincial joint working group with a majority membership of community nurses will be formed within a six week time frame for the purpose of making recommendations to the PNSSC on appropriate use of the short form (RAI) assessment.

### **5. Automated Call Out and Vacation Planning**

- a. HEABC and Island Health will provide the NBA with the results of the electronic auto shift callout technology pilot and the annual vacation request and approval pilot currently underway. The evaluations will be discussed at the PNSSC with a view to implementing them provincially.

### **HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS**

1. HAs and PHC will bring forward additional HA and PHC specific measures to further support continued compliance with the Protocol MOUs.
2. The proposed measures will be reviewed by the appropriate N/HACs in May and brought forward to the PNSSC for final approval.
3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.





Page 100 to/à Page 148

Withheld pursuant to/removed as

s.21;s.13;s.17

**Pedro, Jodi HLTH:EX**

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**From:** Patterson, Ted HLTH:EX  
**Sent:** Friday, December 12, 2014 10:29 AM  
**To:** Stevenson, Lynn HLTH:EX; Brown, Stephen R HLTH:EX; Feulgen, Sabine HLTH:EX  
**Cc:** Howatson, Evan HLTH:EX; Hughes, Doug J HLTH:EX; XT:HLTH Marchbank, Michael  
**Subject:** RE: Nursing Discussions.docx

Thanks Lynn. s.13,s.17  
s.13,s.17

Ted Patterson  
Assistant Deputy Minister  
Health Sector Workforce Division

---

**From:** Stevenson, Lynn HLTH:EX  
**Sent:** Friday, December 12, 2014 10:22 AM  
**To:** Patterson, Ted HLTH:EX; Brown, Stephen R HLTH:EX; Feulgen, Sabine HLTH:EX  
**Cc:** Howatson, Evan HLTH:EX; Hughes, Doug J HLTH:EX; XT:HLTH Marchbank, Michael  
**Subject:** RE: Nursing Discussions.docx

Thanks for this Ted, I have a couple of comments that I put in the document.. s.13,s.17  
s.13,s.17

---

**From:** Patterson, Ted HLTH:EX  
**Sent:** Friday, December 12, 2014 10:02 AM  
**To:** Brown, Stephen R HLTH:EX; Stevenson, Lynn HLTH:EX; Feulgen, Sabine HLTH:EX  
**Cc:** Howatson, Evan HLTH:EX; Hughes, Doug J HLTH:EX; XT:HLTH Marchbank, Michael  
**Subject:** RE: Nursing Discussions.docx  
**Importance:** High

Hi everyone,

Michael's comments incorporated – any other comments? We need to get BCNU something by end of day today.

T

Ted Patterson  
Assistant Deputy Minister  
Health Sector Workforce Division  
Ministry of Health  
(250) 952-3465  
(250) 514-5455

---

**From:** Michael Marchbank [<mailto:MichaelM@heabc.bc.ca>]  
**Sent:** Wednesday, December 10, 2014 9:49 AM  
**To:** Patterson, Ted HLTH:EX; Brown, Stephen R HLTH:EX; Stevenson, Lynn HLTH:EX; Feulgen, Sabine HLTH:EX; Hughes, Doug J HLTH:EX; XT:HLTH Marchbank, Michael  
**Cc:** Howatson, Evan HLTH:EX  
**Subject:** RE: Nursing Discussions.docx

Ted,

s.13,s.17

1.

/

2.

3.

re

4.

Hope this helps, Michael.

**From:** Ted Patterson

**Sent:** December-09-14 9:01 PM

**To:** Brown, Stephen R HLTH:EX; Stevenson, Lynn HLTH:EX; Feulgen, Sabine HLTH:EX; Hughes, Doug J HLTH:EX; Michael Marchbank

**Cc:** Howatson, Evan HLTH:EX

**Subject:** Nursing Discussions.docx

**Importance:** High

Hi all,

I promised some bullets on potential areas for collaboration with BCNU in the months ahead. A couple of comments:

- s.13,s.17

- 

- 

- 

Anyway, have a look – appreciate your comments. We need to get them something short and simple by end of day Friday.

T

Page 151 to/à Page 154

Withheld pursuant to/removed as

s.13;s.17

## **Pedro, Jodi HLTH:EX**

---

**From:** Matt Prescott <MattP@heabc.bc.ca>  
**Sent:** Wednesday, February 18, 2015 4:34 PM  
**To:** Patterson, Ted HLTH:EX; Howatson, Evan HLTH:EX  
**Subject:** FW: HEABC issues note - BCNU grievances - 18Feb2015  
**Attachments:** HEABC BN - BCNU Grievances - 18Feb2015\_final.docx

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Ted and Evan,

Attached please find an updated issues note on BCNU grievances concerning the replacement and capacity MOUs.

As you will see (and as mentioned to Ted yesterday) this provides some background and current status information that you may find helpful, however it does not include an analysis of the interpretive issues in dispute, a risk assessment or options/strategy for resolving the disputes. Please let me know if you have any questions or you would like us to prepare an analysis.

Matt

### **Matt Prescott**

Executive Director, Legal Services & Strategic Labour Relations

HEALTH EMPLOYERS ASSOCIATION OF BC

604.714.2295

[MattP@heabc.bc.ca](mailto:MattP@heabc.bc.ca)

[heabc.bc.ca](http://heabc.bc.ca)  HEABC Twitter  HEABC LinkedIn

[BCHealthCareAwards.ca](http://BCHealthCareAwards.ca)  BC Health Care Awards Twitter  BC Health Care Awards Facebook  BC Health Care Awards YouTube

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---

**From:** Roy Thorpe-Dorward  
**Sent:** February-18-15 3:31 PM  
**To:** Jabs, Ryan GCPE:EX; Kristy Anderson ([Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)); MacDougall, Cindy GCPE:EX; Kindree Draper  
**Cc:** Matt Prescott  
**Subject:** HEABC issues note - BCNU grievances - 18Feb2015

Hi Kristy, Ryan, Cindy and Kindree:

FYI, I am attaching an updated issues note regarding recent grievances filed by the BCNU, some of which have been referred to arbitration. Please let me know if you have any questions.

Roy Thorpe-Dorward  
Executive Director, Communications  
HEALTH EMPLOYERS ASSOCIATION OF BC  
604.714.2285

[RoyT@heabc.bc.ca](mailto:RoyT@heabc.bc.ca)

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[BCHealthCareAwards.ca](http://BCHealthCareAwards.ca)  BC Health Care Awards Twitter  BC Health Care Awards Facebook  BC Health Care Awards  
YouTube

**Reward bright ideas in health care** – submit a 2015 *BC Health Care Awards* nomination! Nominate online at [BCHealthCareAwards.ca](http://BCHealthCareAwards.ca) until February 27, 2015.

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## **Murray, Heather HLTH:EX**

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**From:** Tony Collins <TonyC@heabc.bc.ca>  
**Sent:** Monday, March 16, 2015 10:40 AM  
**To:** Brown, Stephen R HLTH:EX; Patterson, Ted HLTH:EX; Feulgen, Sabine HLTH:EX  
**Cc:** Matt Prescott; Tony Collins  
**Subject:** Confidential - Not for Distribution DRAFT HEABC Written Submission  
**Attachments:** 2015-03-18 HEABC Written Submission DRAFT v11.docx

**Importance:** High

Here is a most recent draft of our submission for your review. I would like to send this to the NBA later today, assuming their submission is ready to send to us at that time.

Tony

Tony Collins  
Interim President & Chief Executive  
**HEALTH EMPLOYERS ASSOCIATION OF BC**  
Direct: 604.714.2280  
Cell: 778.389.9280  
Web: [www.heabc.bc.ca](http://www.heabc.bc.ca)

Save the date – HEABC's annual general meeting & the *BC Health Care Awards* luncheon are on Monday, June 22.

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Page 158 to/à Page 928

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s.21;s.13;s.17

Page 929 to/à Page 940

Withheld pursuant to/removed as

s.13;s.17

Page 001 to/à Page 138

Withheld pursuant to/removed as

s.14

**Pedro, Jodi HLTH:EX**

---

**From:** Patterson, Ted HLTH:EX  
**Sent:** Wednesday, January 28, 2015 9:34 PM  
**To:** Brown, Stephen R HLTH:EX  
**Cc:** Feulgen, Sabine HLTH:EX; Howatson, Evan HLTH:EX  
**Subject:** BCNU

Stephen,

Just a couple notes following my call with Tony Collins and Christina Zacharuk. I don't think this information should be used tomorrow, however I do think it should inform any further discussions with Gayle and Gary that may happen next week.

s.13,s.17

**Pedro, Jodi HLTH:EX**

---

**From:** Patterson, Ted HLTH:EX  
**Sent:** Friday, December 12, 2014 4:08 PM  
**To:** Stevenson, Lynn HLTH:EX; Howatson, Evan HLTH:EX; Feulgen, Sabine HLTH:EX; XT:HLTH  
Marchbank, Michael  
**Subject:** FW: Nursing Discussions v2  
**Attachments:** Nursing Discussions v2.pdf

Hi all,

This is what went in after speaking with Stephen – s.13,s.17  
s.13,s.17

T

Ted Patterson  
Assistant Deputy Minister  
Health Sector Workforce Division  
Ministry of Health  
(250) 952-3465  
(250) 514-5455

---

**From:** Patterson, Ted HLTH:EX  
**Sent:** Friday, December 12, 2014 4:04 PM  
**To:** Gayle Duteil  
**Cc:** Brown, Stephen R HLTH:EX  
**Subject:** Nursing Discussions v2

Hi Gayle,

Please find attached our thinking thus far on potential for some collaboration around the issues we discussed at our meeting on November 26. Please note these are ideas, and of course, subject to discussion and change. I understand you will be pacing yourself in terms of sending us your materials, which is perfectly fine.

Once we have your info, we will arrange a meeting in early January to discuss and further shape up our thinking.

In the interim, please don't hesitate to call if you have any questions .

T

Ted Patterson  
Assistant Deputy Minister  
Health Sector Workforce Division  
Ministry of Health  
(250) 952-3465  
(250) 514-5455

Page 03 to/à Page 06

Withheld pursuant to/removed as

s.13;s.17

**Pedro, Jodi HLTH:EX**

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**From:** Patterson, Ted HLTH:EX  
**Sent:** Tuesday, February 24, 2015 7:39 AM  
**To:** Howatson, Evan HLTH:EX  
**Attachments:** FW: s.13,s.17

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Pedro, Jodi HLTH:EX**

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**From:** Patterson, Ted HLTH:EX  
**Sent:** Tuesday, February 24, 2015 7:30 AM  
**To:** Howatson, Evan HLTH:EX  
**Subject:** FW: Letter to BCNU  
**Attachments:** Letter to BCNU.docx

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI and Confidential

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**From:** Patterson, Ted HLTH:EX  
**Sent:** Monday, February 23, 2015 6:02 PM  
**To:** Brown, Stephen R HLTH:EX  
**Subject:** Letter to BCNU  
**Importance:** High



Page 09 to/à Page 10

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s.13;s.17

Page 11 to/à Page 16

Withheld pursuant to/removed as

s.14

Page 17 to/à Page 19

Withheld pursuant to/removed as

s.13;s.17

**Murray, Heather HLTH:EX**

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**From:** XT:Johnston, John HLTH:IN  
**Sent:** Wednesday, March 4, 2015 10:37 AM  
**To:** Patterson, Ted HLTH:EX  
**Cc:** XT:HLTH Halpenny, Robert  
**Subject:** RE: NBA Relief Data

Ted

s.22 Have reviewed the table below-not certain what question was asked or what data was  
reported by each HA.  
s.13,s.17

John G. Johnston • VP People & Clinical Services • Interior Health Authority  
Cell: 778.214.1552 • Office: 250.862.4301 • IH Quick Dial: 8+100+4219

---

**From:** Patterson, Ted HLTH:EX [<mailto:Ted.Patterson@gov.bc.ca>]  
**Sent:** Tuesday, March 03, 2015 10:01 AM  
**To:** Roy, Carl [PHSA]; Ulrich, Cathy [NHA]; Halpenny, Robert; XT:Dr. Brendan Carr HLTH:IN; XT:HLTH Marchbank, Michael; XT:HLTH Ackenhusen, Mary  
**Cc:** Johnston, John; XT:Mackay, Catherine HLTH:IN; Lindstrom, Jane [NHA]; Barley, Lara [PHSA]; XT:Harvey, Anne HLTH:IN; XT:Strugnelli, Wendy HLTH:IN  
**Subject:** RE: NBA Relief Data  
**Importance:** High

Good morning everyone,

Thank you to you and your staff for pulling together information on the community nurse replacement last week. As discussed at Leadership Council, we met with BCNU yesterday to determine whether we could come to an understanding regarding this issue and a number of other issues outstanding from the 2012 round. We meet again this afternoon and I will leave it to Stephen to provide you with an update.

s.13,s.17

Kindest regards,

Page 21 to/à Page 30

Withheld pursuant to/removed as

s.13;s.17

**Pedro, Jodi HLTH:EX**

---

**From:** Patterson, Ted HLTH:EX  
**Sent:** Sunday, April 12, 2015 5:22 PM  
**To:** XT:HLTH Halpenny, Robert; XT:HLTH Ackenhusen, Mary; XT:HLTH Marchbank, Michael;  
XT:HLTH Ulrich, Cathy; XT:Roy, Carl EHS:IN; XT:Dr. Brendan Carr HLTH:IN  
**Cc:** XT:Kerrone, Kim HLTH:IN; XT:Sachedina, Zulie HLTH:IN; XT:Harvey, Anne HLTH:IN;  
XT:Strugnell, Wendy HLTH:IN; XT:Johnston, John HLTH:IN;  
Jane.Lindstrom@northernhealth.ca; XT:Barley, Lara HLTH:IN; Tony Collins; Brown,  
Stephen R HLTH:EX; Howatson, Evan HLTH:EX  
**Subject:** NBA Settlement - N/HACs  
**Attachments:** 20150402144051630.pdf  
**Importance:** High

Good afternoon,

We will be spending some time at Leadership Council this week discussing next steps with respect to the NBA Settlement Agreement (attached). However, membership for each of the local Nursing/Health Authority Committees (N/HAC) must be identified by each HA (and PHC) and the BCNU/NBA by April 15.

If you can kindly send me the names of your appointees I will then pass them along to the BCNU/NBA. I will ensure we receive the names of BCNU/NBA appointees to each committee.

Thank you,

T

**Pedro, Jodi HLTH:EX**

---

**From:** Howatson, Evan HLTH:EX  
**Sent:** Friday, April 10, 2015 1:44 PM  
**To:** Sall, Neela HLTH:EX; Murray, Heather HLTH:EX  
**Subject:** RE: BC Nurses' Union Grievances

Perfect, thanks!

---

**From:** Sall, Neela HLTH:EX  
**Sent:** Friday, April 10, 2015 1:30 PM  
**To:** Howatson, Evan HLTH:EX; Murray, Heather HLTH:EX  
**Subject:** RE: BC Nurses' Union Grievances

This one right?

---

**From:** Howatson, Evan HLTH:EX  
**Sent:** Friday, April 10, 2015 1:27 PM  
**To:** Sall, Neela HLTH:EX; Murray, Heather HLTH:EX  
**Subject:** Re: BC Nurses' Union Grievances

No its the same as this one but nurses.

---

**From:** Sall, Neela HLTH:EX  
**Sent:** Friday, April 10, 2015 1:14 PM  
**To:** Howatson, Evan HLTH:EX; Murray, Heather HLTH:EX  
**Subject:** RE: BC Nurses' Union Grievances

Is this the one?

---

**From:** Howatson, Evan HLTH:EX  
**Sent:** Friday, April 10, 2015 1:04 PM  
**To:** Murray, Heather HLTH:EX; Sall, Neela HLTH:EX  
**Subject:** Re: BC Nurses' Union Grievances

Thanks Neela! Could you also send me the NBA bargaining fact sheet? I can find you the exact name if you need it, I forgot there were two fs that would need updating

---

**From:** Murray, Heather HLTH:EX  
**Sent:** Friday, April 10, 2015 12:26 PM  
**To:** Sall, Neela HLTH:EX; Howatson, Evan HLTH:EX  
**Subject:** RE: BC Nurses' Union Grievances

Thanks Neela!

---

**From:** Sall, Neela HLTH:EX  
**Sent:** Friday, April 10, 2015 12:21 PM  
**To:** Murray, Heather HLTH:EX; Howatson, Evan HLTH:EX  
**Subject:** RE: BC Nurses' Union Grievances

Hello, yes this is the most recent version.

**From:** Murray, Heather HLTH:EX  
**Sent:** Friday, April 10, 2015 12:09 PM  
**To:** Howatson, Evan HLTH:EX  
**Cc:** Sall, Neela HLTH:EX  
**Subject:** BC Nurses' Union Grievances

As discussed, is this the FS you needed to update?

Neela – are you able to confirm that this is the most recent version for Evan to make his updates to? It was signed off on Feb. 22/15 by Ted so assume so. Thx, H

**Heather Murray**–Executive Coordinator–Assistant Deputy Minister's Office  
Health Sector Workforce Division–BC Ministry of Health  
250-952-2879–BB 250-415-5856–<mailto:heather.murray@gov.bc.ca>

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Final

**SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

**Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 – 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
    - MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
    - MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
    - Additional Patient Demand

- MOU re: Regularization of Hours
    - MOU re: Community Nurse Replacement
  - Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
  4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
  5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

#### **Part 2 - Monetary settlement of past grievances**

6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

#### **Part 3 – Financial support for labour market development:**

10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following

in respect of issues regarding the Protocol MOUs that arose during the 2012 – 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and [c] will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

#### **Part 4 – Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

#### **Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;

- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:
- two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority
18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.
19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.
20. The PNSSC will:
- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
  - It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
  - Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
  - Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

### **Part 5 - Special dispute resolution process**

#### **Notice of Dispute**

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC .
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

#### **Dispute resolution by a N/HACs**

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

#### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

#### Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

#### Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

#### Hearing dates scheduled

35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

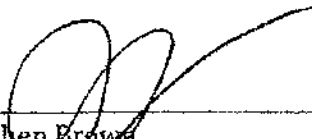
#### Decisions

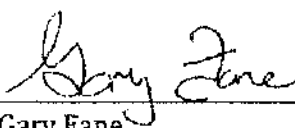
41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
45. A decision must not amend the language of one of the Protocol MOUs.


**Part 6 - Duration**


51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

  
 Stephen Brown  
 Deputy Minister of Health

  
 Gary Fane  
 Nurses' Bargaining Association

  
 Tony Collins  
 A/President and CEO HEABC

  
 Gayle Duteil  
 British Columbia Nurses' Union



## APPENDIX A MEASURES TO SUPPORT COONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

#### 1. Specialty Education

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### 2. Expedited Recruitment to Vacancies

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- b. Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.

- c. Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- d. A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

### **3. Regularization of Relief**

- a. HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- b. HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

### **4. Community Nursing**

- a. HAs and PHC will fully implement the community replacement of absences MOU
- b. HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding underspending against requirements will be referred to the Panel for resolution.
- c. A provincial joint working group with a majority membership of community nurses will be formed within a six week time frame for the purpose of making recommendations to the PNSSC on appropriate use of the short form (RAI) assessment.

### **5. Automated Call Out and Vacation Planning**

- a. HEABC and Island Health will provide the NBA with the results of the electronic auto shift callout technology pilot and the annual vacation request and approval pilot currently underway. The evaluations will be discussed at the PNSSC with a view to implementing them provincially.

### **HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS**

- 1. HAs and PHC will bring forward additional HA and PHC specific measures to further support continued compliance with the Protocol MOUs.
- 2. The proposed measures will be reviewed by the appropriate NHAWC in May and brought forward to the PNSSC for final approval.
- 3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.



**Pedro, Jodi HLTH:EX**

---

**From:** Lindstrom, Jane M HLTH:EX  
**Sent:** Tuesday, April 14, 2015 8:25 AM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** RE: NBA Settlement question

The document commits the payment by April 30<sup>th</sup>. Short turnaround.  
Jane

**From:** Patterson, Ted HLTH:EX  
**Sent:** Monday, April 13, 2015 4:58 PM  
**To:** Lindstrom, Jane M HLTH:EX  
**Subject:** RE: NBA Settlement question

I think this one is going to be tricky – will discuss with Manjit to see how he has set this up. I think funds have already flowed to HAS for 14/15, and HEABC will need to invoice HAS and then pay BCNU directly. Will double check though.

**From:** Lindstrom, Jane M HLTH:EX  
**Sent:** Monday, April 13, 2015 4:46 PM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** NBA Settlement question

I have the first draft of the NBA Settlement workplan almost completed, but don't know who will be sending the \$8M to BCNU – is this also being sent by HEABC via the MOH, or is there a different payer? I didn't know if anything was flowing via the HAS.

Thanks. Jane

**Murray, Heather HLTH:EX**

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**From:** Anderson, Karen HLTH:EX  
**Sent:** Wednesday, April 15, 2015 3:13 PM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** FW: DRAFT NBA WORKPLAN  
**Attachments:** DRAFT NBA WORKPLAN.docx

FYI printed and in your folder for tomorrow

Karen Anderson  
*Executive Assistant to*  
Ted Patterson, Assistant Deputy Minister  
Health Sector Workforce Division  
3-1, 1515 Blanshard Street  
Victoria BC V8W 3C8  
250 952 3166 office  
250 952 3131 fax

**From:** Weiss, Cheryl HLTH:EX  
**Sent:** Wednesday, April 15, 2015 3:10 PM  
**To:** Obee, Sarah F HLTH:EX; Anderson, Karen HLTH:EX  
**Cc:** Lindstrom, Jane M HLTH:EX  
**Subject:** DRAFT NBA WORKPLAN

Sarah/Karen. Jane asked that I send this document to you for the DM/Ted.

Cheryl

Page 47 to/à Page 64

Withheld pursuant to/removed as

s.21;s.13;s.17

Page 65 to/à Page 67

Withheld pursuant to/removed as

s.13;s.17

**Pedro, Jodi HLTH:EX**

---

**From:** Jabs, Ryan GCPE:EX  
**Sent:** Thursday, April 2, 2015 4:36 PM  
**To:** Loiacono, Sabrina JTST:EX; Marsh, Kyle HLTH:EX; Brown, Stephen R HLTH:EX; Patterson, Ted HLTH:EX  
**Cc:** Wallace-Deering, Eric MEM:EX; O'Brien, Kellie HLTH:EX; MacDougall, Cindy GCPE:EX; Heinze, Laura R GCPE:EX  
**Subject:** HEABC/BCNU settlement - IN and HEABC bulletin  
**Attachments:** IN\_settlement agreement\_nurse backfill\_BCNU\_Apr 2 2015\_FINAL.DOCX; Member Bulletin - Nurses Settlement Agreement - April 2, 2015.docx

Hi Sabrina and Kyle,

Please share the attached with the minister if you feel appropriate... HEABC and BCNU have communicated it to their members this afternoon that they have reached an settlement regarding to address issues from the previous collective agreement, so word could get out to the media over the weekend.

We've prepped the IN in case media call.

Take care,

Ryan  
250-413-7121



## ADVICE TO MINISTER

|  |   |
|--|---|
| <p><b>CONFIDENTIAL<br/>ISSUES NOTE</b></p> <p>Ministry: Health<br/>Date: Apr. 2, 2015<br/>Minister Responsible: Terry Lake</p> | <p><b>Settlement with BCNU re:<br/>short-term leave<br/>backfill/replacement<br/>grievances</b></p> |
|--|---|

### BACKGROUND REGARDING THE ISSUE:

- The Ministry of Health and the Health Employers Association of B.C. have reached a settlement agreement with the Nurses Bargaining Association regarding a series of grievances filed by the BC Nurses Union on behalf of the bargaining association.
- The grievances dealt with a number of collective agreement provisions related to leave back-fill and nurse staffing levels negotiated as part of the 2012-2014 NBA Provincial Collective Agreement.
- The 2012 to 2014 Provincial Collective Agreement between the bargaining association and the ministry and HEABC detailed that appropriate backfill of both short- and long-term nursing vacancies (vacation leave, sick leave, etc.) would be backfilled.
- The collective agreement also included memoranda of understanding about nursing hires in the case of additional patient demand, community nurse replacement, and the regularization of hours.

s.17

- The settlement agreement includes monetary settlements of \$10 million to the BC Nurses Union on behalf of the bargaining association, including:
  - \$2 million to the nurses union as damages union to members who may have been affected by the breaches of the collective agreement, and to settle all outstanding union grievances filed up to and including March 31, 2015;
  - The Ministry of Health will provide \$5 million to the union to pay for specialty nurse training, including tuition, book, wages, etc., with a goal of 20 spaces for emergency department training at BCIT in Spring 2015, and additional spaces for the fall semester;
  - The ministry will also provide \$2 million to support community nurses, potentially including purchase of new technology and equipment;
  - Finally, the ministry will provide \$1 million to support increasing staffing levels of registered nurses provincewide.
- The settlement agreement includes a time-limited governance/committee structure to ensure improvements are made connected to the issues that were grieved, with nursing/health advisory committees at each health authority, and a provincial nursing settlement steering committee as well.
- The health authority committees will work to implement the agreement at the health authority level, and to resolve disputes; the provincial steering committee will work to

keep all health authorities accountable to the settlement agreement, while sharing solutions across health authorities and establish standard practices to enhance compliance provincewide.

- The steering committee and its chair will also hear disputes that could not be solved at the health authority committee level.
- Decisions at all committees will be made by consensus.

#### **DISCUSSION/ADVICE:**

- The nurses union is informing its members of the settlement agreement by member update today, as is HEABC with its members.

#### **ADVICE AND RECOMMENDED RESPONSE:**

- **The Ministry of Health and the Health Employers Association of B.C. have reached an agreement with the BC Nurses Union and the Nurses Bargaining Association regarding backfilling nurses on leave.**
- **In the last collective agreement, we committed to making sure health authorities ensured appropriate backfill for vacation and short- and long-term leave.**
- **However, meeting that commitment was far more challenging for the health authorities than any of us thought it was going to be.**
- **We simply did not have enough community and specialty nurses to backfill positions when the regular staff went on vacation or other forms of leave.**
- **Both the health care system and the nurses union identified we had a problem, and we have worked together to try to successfully solve it.**
- **We all focussed on putting money where it is needed to improve patient care, rather than on a costly and drawn-out arbitration process.**
- **The ministry will be spending about \$8 million on that solution, with a major focus of training more nurses for specialty positions, such as emergency room, operating room, obstetric and neonatal nurses.**
- **I thank the nurses union, the bargaining association, the health authorities and the health employers association for working together and keeping patient needs as the priority.**
- **This is an example of how we plan to work with the nurses union in our current collective agreement negotiations.**

Communications Contact: Cindy MacDougall      Reviewer:  
 Program Area Contact: Ted Patterson  
 File Created: Apr. 2, 2015  
 File Updated:

| Minister's Office | Program Area | Deputy | HLTH Communications |
|-------------------|--------------|--------|---------------------|
|                   |              |        |                     |

## ADVICE TO MINISTER



## Member bulletin

April 2, 2015

### **Nurses' union and employers reach agreement on contract implementation issues**

HEABC, the Nurses' Bargaining Association (NBA) and the Ministry of Health have reached a settlement agreement that resolves all outstanding grievances related to the implementation of Memorandums of Understanding (MOUs) regarding staffing levels and nurse replacements that formed part of the 2012-2014 Nurses' Bargaining Association Provincial Collective Agreement.

The settlement agreement also provides for financial support to assist with labour market issues that have created staffing challenges for employers in some instances, outlines specific steps to support employer compliance with the MOUs going forward, and establishes a cooperative process for resolving any further disputes.

Representatives from HEABC, BC's six health authorities and Providence Health Care (PHC), the BC Nurses' Union (BCNU) and the Ministry of Health started meeting in mid-March after recognizing that outstanding grievances related to the implementation of several MOUs that formed part of the 2012-2014 collective agreement had become impediments to constructive bargaining for a new collective agreement. The current Nurses' collective agreement expired March 31, 2014.

A settlement agreement was reached between the parties on April 1, 2015 that outlines a collaborative approach to implementing the parts of the collective agreement that were subject to dispute and sets the stage for productive bargaining to commence in the coming months.

Further details about the settlement agreement will be shared with members in a Contract Implementation Update to be issued by HEABC shortly.

Highlights of the settlement agreement include:

- Settlement of all outstanding grievances related to five MOUs contained in the 2012-2014 collective agreement relating to staffing levels, nurse replacements and regularization of nursing hours. Settlement includes a \$2 million payment to be made to BCNU to provide compensation to nurses who may have been affected by any alleged breaches of the collective agreement.
- BCNU will not file any further grievances with respect to these MOUs and any future disputes will be resolved through a new cooperative approach, which is referenced in further detail below.
- Financial support from the BC government for labour market development to help alleviate labour market challenges that have created or contributed to staffing challenges, particularly in specialty nursing areas.
- Joint union/employer measures to support continued compliance with the nurse replacement and staffing level MOUs.
- A dispute resolution process starting with local joint union/employer (health authorities and PHC) committees that will refer unresolved disputes to a Provincial Nursing Settlement Steering Committee.

### **HEABC communications contact**

Roy Thorpe-Dorward  
Executive Director, Communications  
604.714.2285 [RoyT@heabc.bc.ca](mailto:RoyT@heabc.bc.ca)

Page 01 to/à Page 31

Withheld pursuant to/removed as

s.13;s.17

**Murray, Heather HLTH:EX**

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**From:** Lindstrom, Jane M HLTH:EX  
**Sent:** Tuesday, April 14, 2015 10:08 AM  
**To:** Patterson, Ted HLTH:EX  
**Subject:** FW: Emailing: NP-199.pdf  
**Attachments:** NP-199.pdf

HEABC sent this out to the HAS on Friday. I don't know if your office has received this.

I have a call into Tony as the schedule doesn't mention the PNSSC, nor is the shared leadership clear on a few items, and it doesn't address the \$8M in the way Manjeet described (I expect HEABC sent this out without being aware the funds had been sent to the HAS.)

I assume Tony will be at Leadership Council as well.

Most urgent for Thursday will be having the PNSSC membership agreed by the 15<sup>th</sup>, clarity on the dollar flow, and the date/location set for the education session we need CEOs to ensure the N/HACs attend.

I will send you clarifying information after I speak with Tony.

Jane

**From:** Williams, David [<mailto:David.Williams@northernhealth.ca>]  
**Sent:** Tuesday, April 14, 2015 8:54 AM  
**To:** Lindstrom, Jane M HLTH:EX  
**Subject:** Emailing: NP-199.pdf

## Contract Interpretation Update Nurses' Sector

**Date:** April 10, 2015

**CIU #:** NP-199

**RE:** April 1, 2015 settlement agreement

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**This CIU contains information directed only to the attention of:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> All members with Nurses' certification | <input type="checkbox"/> HEU Nurses' certification only   |
| <input type="checkbox"/> BCNU Nurses' certification only                   | <input type="checkbox"/> HSA Nurses' certification only   |
| <input type="checkbox"/> BCGEU Nurses' certification only                  | <input type="checkbox"/> UPN Nurses' certification only   |
| <input type="checkbox"/> CLAC Nurses' certification only                   | <input type="checkbox"/> Members (specify member type/s): |

**Summary:**

*HEABC, the Nurses' Bargaining Association (NBA) and the Ministry of Health (MoH) have reached a settlement agreement to resolve several issues concerning the implementation of the 2012-2014 collective agreement. The settlement agreement was the result of a cooperative effort to resolve grievances filed by the BC Nurses' Union (BCNU) and to establish a collaborative approach to resolving staffing level and nurse replacement issues going forward. The settlement agreement is transitional and will remain in effect until the parties agree to a new collective agreement.*

**Action required:**

The province's six health authorities and Providence Health Care (PHC) must implement the measures identified in the settlement agreement (the Agreement) to support continued compliance with the collective agreement going forward and engage in the collaborative process set out in the Agreement.

A summary of the action items and timelines applicable to the health authorities and PHC is attached to this Contract Interpretation Update (CIU). A copy of the Agreement is also attached.

**Discussion:**

Following the ratification of the 2012-2014 collective agreement, BCNU filed Single Employer Policy Dispute (SEPD) grievances at each health authority and PHC alleging the failure to comply with or implement new staffing language in the collective agreement. Several of the grievances were scheduled for arbitration.

In early 2015, BCNU launched a "grievalanche"\* campaign resulting in thousands of additional grievances concerning the alleged failure to replace absent nurses or to call in additional nurses in overcapacity situations, contrary to the collective agreement.

Discussions between MoH, HEABC and NBA resulted in a shared recognition that the issues in dispute had become impediments to constructive bargaining for a new collective agreement and that the parties would benefit from an alternative process to assist the parties in resolving them. The parties agreed to a protocol agreement for this process on March 12, 2015 and that process began in mid-March and concluded with the April 1, 2015 Agreement.

#### **The protocol**

The protocol agreement was intended to address implementation issues arising from the following Memoranda of Understanding (the Protocol MOUs):

- MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
- MOU re: Acute Care/Long Term Care Staff Replacement – Short Term Absences
- Additional Patient Demand
- MOU re: Regularization of Hours
- MOU re: Community Nurse Replacement

A three-person panel (the Board) was appointed to provide a non-binding interpretation of the disputed language and to identify the risks to each party if the issues remain unresolved. Each party made written and oral submissions to the Board and identified their respective challenges with implementation. The Board issued its report on March 26, 2015 (attached). Using the Board's interpretation of the language and its risk analysis as a guide, the parties engaged in further discussions pursuant to the protocol resulting in a monetary settlement and measures to support future compliance.

#### **Monetary settlement**

All grievances filed on or before March 31, 2015 are resolved on the following basis:

1. HEABC will provide \$2,000,000 to BCNU as damages to BCNU members who may have been affected by breaches of the collective agreement to **settle all outstanding grievances filed up to and including March 31, 2015 alleging a violation of one or more of the Protocol MOUs.**
2. BCNU will not file any further grievances under Article 9 with respect to the Protocol MOUs.
3. Future disputes will be managed through a new cooperative dispute resolution process described in the Agreement.
4. In recognition of the labour market challenges that health employers faced in complying with their obligations under the Protocol MOUs, MoH agreed to provide funding as follows:
  - (a) \$5,000,000 for specialty nurse training.
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increased Registered Nurse (RN) staffing.

These funds will be provided to BCNU by April 29, 2015 and will be allocated according to guidelines agreed to by the parties.

\* "Grievalanche" is a portmanteau of "grievance" and "avalanche" used by BCNU during this campaign.



#### **Future compliance**

The Agreement describes several cooperative measures the parties will use to support future compliance. Each health authority and PHC will establish a joint Nursing/Health Authority Committee (N/HAC) with BCNU consisting of three representatives from the employer and union. Members of the N/HAC must be appointed on or before April 15, 2015. The N/HAC will meet at least once a month to share information and collaborate to resolve staffing issues arising under the Protocol MOUs. Appendix "A" of the Agreement describes measures to be implemented by all health authorities and PHC regarding the following:

- Specialty education
- Expedited recruitment to vacancies
- Regularization of relief
- Community nursing
- Automated call out and vacation planning

The health authorities and PHC must comply with specific timelines for each of these measures, which are also set out in Appendix "A" of the Agreement and are listed in the chart attached to this CIU identifying action items and deadlines.

Appendix "A" also requires each health authority and PHC to bring forward specific individual commitments to support compliance that will be reviewed in May 2015 and implemented between June and December 2015.

#### **New dispute resolution process**

The Agreement also provides for a new dispute resolution process starting with the referral of complaints regarding alleged non-compliance with a staffing MOU to the N/HAC. Disputes that are not resolved by the N/HAC may then be referred by either party to a Provincial Nursing Settlement Steering Committee (PNSSC) comprised of senior representatives from BCNU, MoH, HEABC and the health authorities. If the PNSSC cannot resolve the dispute, the matter may be referred to the panel described in the Agreement for a binding decision. This process will be used in lieu of the grievance process described in Article 9 of the collective agreement for issues arising from the Protocol MOUs. The Agreement provides additional detail about the hearing process and the jurisdiction of the panel.

See the following page for the above-mentioned chart that outlines the activities of the N/HAC and applicable deadlines.

*Attachments (2)*

| Action Item  | Responsibility  | Deadline  |
|--|---|---|
| Appoint three representatives, including one from executive level, to Nursing/Health Authority Committee (N/HAC)   | Health authorities & PHC  | April 15, 2015  |
| Participate in joint training session for all members of N/HAC   | All N/HAC representatives appointed by health authorities and PHC | No later than April 30, 2015  |
| Add another 20 seats for emergency speciality education  | Health authorities/PHC/MoH  | Spring 2015   |
| Add additional speciality education seats  | Health authorities/PHC/MoH  | Fall/winter 2015  |
| Conduct joint process to regularize hours  | Health authorities & PHC  | May 2015 and October 2015   |
| Complete all required analysis and approval process to implement regular relief positions where there are 10 or more baseline FTEs in the same job and required competencies | Health authorities & PHC  | Required: January 2016<br>Where possible: starting June 2015  |
| Report out on compliance to PNSSC regarding community vacation replacement   | Health authorities & PHC  | September 30, 2015 (for April 1 - August 31, 2015)<br>January 31, 2016 (for September 1, 2015 - January 31, 2016) |
| Appoint representatives for provincial joint working group to make recommendations on the appropriate use of short form (RAI) assessment                                     | Health authorities & NBA  | Within six weeks of April 1, 2015   |
| Bring forward individual measures to further support continued compliance with the Protocol MOUs   | Health authorities & PHC  | Before May 1, 2015  |
| Review specific measures to support continued compliance proposed and bring forward to PNSSC for final approval  | N/HACs  | May 2015  |
| Implement specific measures approved by PNSSC  | Health authorities & PHC  | June 2015 - December 2015   |
| Provide NBA with results of electronic auto shift callout technology pilot and annual vacation request and approval pilot currently underway                                 | Island Health & HEABC   | TBD   |
| Work in collaboration with BCNU to utilize forecasting model to identify short-term gaps in specialty nurse education and develop plan to start closing gap 2015/16          | Health authorities & PHC  | Plan developed by April 30, 2015  |

Final

**SETTLEMENT AGREEMENT**

Between:

**MINISTRY OF HEALTH**

("MOH")

**HEALTH EMPLOYERS OF BC**

("HEABC")

And:

**NURSES' BARGAINING ASSOCIATION**

("NBA")

**Re: REPLACEMENT GRIEVANCE SETTLEMENT AND FUTURE  
IMPLEMENTATION**

**Part 1 - Context**

1. MOH, HEABC and the BCNU recognized that disputes between them over implementation of a number of Memoranda of Understanding entered into as part of the 2012 - 2014 PCA had become impediments to constructive collective bargaining for renewal of the PCA.
2. MOH, HEABC and the BCNU established a two-part Protocol to address these disputes. The Protocol:
  - Established a three-person Board to provide an interpretation of the relevant language to guide the parties going forward and to frame out potential breaches based on the grievances raised by the BCNU;
  - Required the Board to identify the risks facing each party if the past issues remain unresolved and subject to the ordinary grievance and arbitration process;
  - Established a process to develop mechanisms to improve future compliance with the following MOUs in the 2012-2014 Provincial Collective Agreement identified in the Protocol Agreement ("the Protocol MOUs"):
    - o MOU re: Acute Care/Long Term Care Staff Replacement (Vacation/Long Term Leaves)
    - o MOU re: Acute Care/Long Term Care Staff Replacement - Short Term Absences
    - o Additional Patient Demand

- o MOU re: Regularization of Hours
  - o MOU re: Community Nurse Replacement
  - Established that the Chair of the Board or (when specified) the entire Board to adjudicate any continuing problems in the future administration of the relevant MOUs through a specialized dispute resolution process.
3. The parties agreed that if an agreement is reached under Parts 1 and 2 of the Protocol, all current grievances regarding the relevant MOUs would be deemed to be resolved, and that any future disputes over compliance with the relevant MOUs would be addressed through a specialized dispute resolution process developed under Part 2 of the protocol.
  4. The Board issued its report on March 26, 2015 setting out its analysis of the relevant collective agreement language and the risks to each party of not reaching a settlement through the Protocol. The Board also made recommendations for means to ensure future compliance.
  5. The parties agree with the recommendations set out in the March 26, 2015 report for interpretation of the Protocol MOUs. The parties agree the recommendations will not be used in any third party proceeding other than the Dispute Resolution Process set out in Part 5 of this Agreement.

**Part 2 - Monetary settlement of past grievances**

6. Based on the report and recommendations of the Board, HEABC will provide \$2,000,000 to the BCNU as damages to BCNU members who may have been affected by breaches of the Protocol MOUs and to settle all outstanding BCNU grievances filed up to and including March 31, 2015.
7. The BCNU will be responsible for making payments to nurses as it determines, including any statutory withholding required.
8. The BCNU will provide a report to HEABC on the distribution of this money by April 15, 2016.
9. The BCNU will not file any further grievances under Article 9 in respect of the Protocol MOUs and all future disputes will be managed through the dispute resolution process set out below.

**Part 3 - Financial support for labour market development:**

10. Considering the report and recommendations of the Board, HEABC and the BCNU, supported by the Ministry of Health, recognize that health employers faced labour market challenges in complying with their obligations under the Protocol MOUs. To that end, the Ministry of Health will provide the following

in respect of issues regarding the Protocol MOUs that arose during the 2012 – 2014 Provincial Collective Agreement:

- (a) \$5,000,000 for specialty nurse training
  - (b) \$2,000,000 to support the application of the Protocol MOUs to community nurses which may include technology applications or equipment.
  - (c) \$1,000,000 to support increasing complement of the RN staffing.
11. The money identified under 10 (a),(b), and (c) will be provided to the BCNU for labour market issues respecting the 2012-2014 Provincial Collective Agreement and will be allocated according to guidelines to be developed by the parties. Failing agreement on the guidelines, the parties will submit their differences to the Board for final resolution. Monies will be provided to the BCNU as soon as is possible but not later than 28 days following the execution of this agreement.

**Part 4 – Measures to support continued compliance**

12. The parties agree on specific measures to support continued compliance with the Protocol MOUs as set out in Appendix A.

**Nursing/Health Authority Committee**

13. A joint committee ("N/HAC") will be established for each of the health authorities and Providence Health Care ("PHC") composed of three persons appointed by each of the health authorities and PHC and by the BCNU.
14. One of the employer appointees will be at the Executive Level. The BCNU appointees will include a Coordinator and an elected member of the Provincial Council.
15. A N/HAC will meet monthly or more frequently by agreement:
- Collect, share and review standardized data as agreed to by the Provincial Nursing Committee and may utilize other resources including stewards to collect data;
  - Collaborate in developing, implementing and measuring the specific health authority/PHC commitments as set out in Appendix A;
  - Problem solve issues and disputes in relation to compliance with specific Protocol MOUs;
  - Identify at least three priority units to work together to resolve systemic staffing issues, including access to specialty training;

- Report monthly on compliance and challenges with compliance with this agreement;
- Either party may refer disputes to the PNSSC or directly to dispute resolution under Part 5 of this agreement; and
- Where the PNSSC reaches a consensus decision with regards to any referred dispute, the N/HAC will abide by and implement all such decisions. In the event a N/HAC is unable to implement a decision the matter will be referred to the Chair of the dispute resolution process under Part 5 of this agreement.

16. All decisions of a N/HAC must be by consensus.

Provincial Nursing Settlement Steering Committee ("PNSSC")

17. MOH, HEABC, and BCNU will establish a Provincial Nursing Settlement Steering Committee ("PNSSC") comprised of:
- two senior representatives from the BCNU;
  - one senior representative from MOH;
  - one senior representative from HEABC; and,
  - one CEO from a designated Health Authority
18. The PNSSC will be co-chaired by the Deputy Minister of MOH and the Executive Director of the BCNU or their respective delegates.
19. The PNSSC will monitor compliance with the Protocol MOUs and provide direction regarding measures that are required to enhance compliance.
20. The PNSSC will:
- Actively review all HA/PHC staffing actions arising from this Settlement Agreement to ensure that HAs/PHC are held accountable for staffing as close as possible to baseline and adding additional regular nurses per the relevant provisions of the Provincial Collective Agreement and this Agreement to those staffing actions.
  - It is understood the Health Authorities and PHC will not utilize staffing difficulties to decrease established baseline staffing levels from those baseline staffing levels that are in place as of March 31, 2015.
  - Jointly problem-solve system-wide and by consensus decision any other significant unit or site specific staffing challenges related to the Protocol MOUs
  - Approve a standardized format for data reports at the provincial and health authority/PHC level relating to compliance with the Protocol MOUs

- Share effective solutions across health authorities and PHC and by consensus establish standardized practices or solutions to enhance compliance with the Protocol MOUs to be implemented through the N/HACs
- Address issues and disputes referred to it by a N/HACs.

#### **Part 5 - Special dispute resolution process**

##### **Notice of Dispute**

21. A nurse or group of nurses, or the BCNU on their behalf, or a health authority/PHC may file a 'Notice of Complaint' alleging a breach of one of the staffing provisions of the Provincial Collective Agreement through to their BCNU representative on N/HAC .
22. Before filing a Notice of Complaint, a nurse or group of nurses shall discuss the issue with their local managers in an effort to resolve any differences.
23. The BCNU may bring forward a Notice of Complaint through a Notice of Dispute to the N/HAC. A "Notice of Dispute" must:
  - Identify the MOU that is alleged to have been breached
  - The date or dates on which the MOU is alleged to have been breached
  - The nature of the alleged breach.

##### **Dispute resolution by a N/HACs**

24. A N/HACs may:
  - Determine whether a Notice of Dispute has merit or should be dismissed, and
  - Where it finds merit, establish an appropriate remedy or resolution for the Notice of Dispute.
25. All decisions of an N/HACs must be made by consensus.

##### **Appointment and joint training and N/HACs members**

26. Both parties will appoint its members of a N/HACs no later than April 15, 2015.
27. MOH, HEABC and the BCNU will conduct a joint training session for all members of a N/HACs no later than April 30, 2015.

28. Any Notice of Dispute filed during April 2015 will be referred to the next scheduled meeting of the N/HACs.

Referral of Disputes to the PNSSC

29. Any Dispute that is unresolved at a N/HACs may be referred by either party to the PNSSC.
30. The PNSSC may:
- Adopt a finding and/or remedy proposed by either party at the PNSSC, or
  - Determine on its own whether a Dispute has merit or should be dismissed, and
  - Where it finds that there is merit in a Notice of Dispute, establish an appropriate remedy or resolution
  - Either party to the PNSSC may refer any alleged violation of the Provincial Collective Agreement related to staffing to the Board or Chair as the case may be.

Referral of unresolved Notices of Dispute to the Chair of the Board

31. If the PNSSC is unable to reach agreement on a Notice of Dispute, it may refer the difference in writing to the Chair of the Board established under the Protocol within fifteen calendar (15) days of receipt of the Notice of Dispute.
32. The Board appointed under the Protocol ("the Board") will hear all Notices of Dispute referred to the Chair until December 31, 2015. Thereafter, the Chair alone will hear any referred Notice of Dispute unless the Chair, at his sole discretion, determines that the Board should hear any particular Notice of Dispute.
33. The Board or the Chair, as the case may be, must conduct a hearing into the merits of an issue brought before it and may determine its or his own processes for the conduct of a hearing including acting as a mediator/arbitrator.
34. The Chair or the Board may conduct a hearing by telephone, or by written submissions, or as otherwise determined by the Chair or Board.

Hearing dates scheduled



35. The Board will schedule two days of hearing for each month from June 2015 to December 31, 2015 in order to hear any Notice of Dispute referred to the Chair by the N/HACs during that period.
36. If necessary, the Chair will schedule at least two days every two months commencing January 1, 2016, to hear Notices of Dispute referred by N/HACs.
37. The parties may jointly request that the Chair schedule more frequent hearing dates.

#### Conduct of hearings

38. The Board and the Chair will issue guidelines to the parties respecting length and format of submission, timelines for submissions and other relevant matters.
39. If a party seeks to call oral evidence at a hearing, it must apply to the Chair no less than seven (7) days in advance of the date scheduled for hearing the Notice of Dispute.
40. Only a person employed by the BCNU, HEABC or a health authority may participate in a hearing into a Notice of Dispute, except as set out in 38 above.

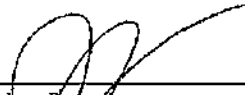
#### Decisions

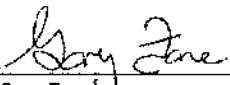
41. The Chair or the Board as the case may be must issue a final and binding decision on the Notice of Dispute within fifteen (15) working days of conducting a hearing into a Notice of Dispute.
42. In making a decision, the Board or the Chair may apply any remedy consistent with this Agreement, and the Provincial Collective Agreement. An award of a monetary remedy is not precluded.
43. The Chair or the Board, after consultation with the PNSSC, may vary the application of a provision of a collective agreement on a without prejudice and time-limited basis to better facilitate compliance with any Protocol MOU.
44. A decision of the Chair or the Board in respect of a Notice of Dispute is final and binding.
45. A decision must not amend the language of one of the Protocol MOUs.


**Part 6 - Duration**


51. This Settlement Agreement and the various measures agreed to by the parties pursuant to it ("the measures") are intended to provide a transition to the renewal of the Provincial Collective Agreement. This does not preclude the parties from agreeing to continue any aspects of this settlement agreement or measures in the renewal of the Provincial Collective Agreement.

All of which is agreed to this day of April 1, 2015

  
\_\_\_\_\_  
Stephen Brown  
Deputy Minister of Health

  
\_\_\_\_\_  
Gary Fane  
Nurses' Bargaining Association

  
\_\_\_\_\_  
Tony Collins  
A/President and CEO HEABC

  
\_\_\_\_\_  
Gayle Duteil  
British Columbia Nurses' Union

## APPENDIX A MEASURES TO SUPPORT CONTINUED COMPLIANCE WITH THE PROTOCOL MOUs

### Common Commitments of all Health Authorities and PHC

#### 1. Specialty Education

The Health Authorities, PHC and the BCNU will work in collaboration to:

- a. Collect, share and review relevant data for key shortage areas for specialty trained nurses in: Critical Care, Emergency Department, Operating Room, Obstetrics, Neonatal, Renal.
- b. Utilize a forecasting model to identify the short-term gaps in specialty nurse education and develop a plan by April 30, 2015 to start closing the gap in 2015/16. By working with the BCNU to optimize the spending of an additional \$5 million for provincial specialty nurse education, the parties will conclude a strategic plan. For clarity, the BCNU's \$5 million will be used to fund clinical placement (wages, travel, tuition fees and books). The \$5 million expenditure is seed money to resolve the serious shortage, and the parties commit to negotiating long-term funding for specialty nursing education, clinical placements and hiring for the term of the next collective agreement.
- c. The first priority against the additional \$5M will be to work with BCIT to add another 20 seats for Emergency specialty education in Spring 2015. Additional specialty education seats will be added in the Fall and Winter 2015 (such specialty areas to be determined by the PNSSC).
- d. The specialty education provided under this agreement will meet the requirements for qualification differential pursuant to Article 53.01.
- e. Follow the VCHA specialty education selection process
- f. Nurses selected to participate in specialty education will be replaced pursuant to the relevant provisions of the Protocol MOUs and the 2012-2014 collective agreement.

#### 2. Expedited Recruitment to Vacancies

- a. In compliance with Appendix TT of the Collective Agreement, the parties will conduct a joint process to regularize hours in both May and October 2015.
- b. Any positions created through regularization will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC.

- c. Any vacancies created through specialty education will be posted per the Provincial Collective Agreement. The parties may agree on an alternate process at the PNSSC
- d. A key focus of the parties will be to optimize regular employment opportunities for new graduating nurses and the PNSSC will look for opportunities to increase hiring throughout the term of this Settlement Agreement

### **3. Regularization of Relief**

- a. HAs/PHC will complete all required analysis and approval processes to implement regular vacation relief positions at a unit or program level where there are 10 or more baseline FTEs in the same job and required competencies to commence implementation January 2016.
- b. HAs/PHC where possible may implement regular vacation relief positions as set out above starting June 2015

### **4. Community Nursing**

- a. HAs and PHC will fully implement the community replacement of absences MOU
- b. HAs and PHC will report out on compliance to the PNSSC for the periods April 1 – August 31 by September 30 2015 and September 1 – December 31 by January 31 2016. Any dispute regarding under spending against requirements will be referred to the Panel for resolution.
- c. A provincial joint working group with a majority membership of community nurses will be formed within a six week time frame for the purpose of making recommendations to the PNSSC on appropriate use of the short form (RAI) assessment.

### **5. Automated Call Out and Vacation Planning**

- a. HEABC and Island Health will provide the NBA with the results of the electronic auto shift callout technology pilot and the annual vacation request and approval pilot currently underway. The evaluations will be discussed at the PNSSC with a view to implementing them provincially.

### **HEALTH AUTHORITY/PHC INDIVIDUAL COMMITMENTS**

- 1. HAs and PHC will bring forward additional HA and PHC specific measures to further support continued compliance with the Protocol MOUs.
- 2. The proposed measures will be reviewed by the appropriate N/HACs in May and brought forward to the PNSSC for final approval.
- 3. All approved specific measures will be implemented during the June to December term of this Settlement Agreement.



**IN THE MATTER OF AN ARBITRATION**

BETWEEN

**NURSES' BARGAINING ASSOCIATION**

(hereinafter referred to as the "Union")

AND

**HEALTH EMPLOYERS ASSOCIATION OF BC**

(hereinafter referred to as the "Employer")

(Preliminary Views – Protocol Agreement – Part 1)

**Arbitration Board:**

Tom Hodges, Chair  
Peter Cameron, Employer Nominee  
Frank Morgan, Union Nominee

**For the British Columbia Nurses' Union:**

Gayle Duteil, President BCNU  
Gary Fane,  
Jessica Bowering,  
Umar Sheikh,  
Donna Bouzan,  
Len Rose,  
Carolyn Bleich

**For the Health Employers Association of BC:**

Tony Collins, Interim President & Chief Executive Officer, HEABC  
Matt Prescott, Executive Director, Legal Services & Strategic Labour Relations, HEABC  
Jennifer Perry, Legal Counsel, HEABC  
Graeme Norton, Industry Lead, HEABC

**Dates and Place of Hearing:**

March 19 and 20, 2015  
Vancouver, BC

### Background

1. As a result of various discussions that took place between Stephen Brown, Deputy Minister of Health, the Employer, CEOs from the various health authorities, and the Union, the Deputy Minister wrote a letter to the President of the British Columbia Nurses Union (BCNU), on February 23, 2015. In the letter the Deputy Minister acknowledged that there had been "shortcomings in the implementation of some of the agreements" entered into as part of the 2012-2014 Collective Agreement.
2. The BCNU had filed over 1600 grievances, in either individual form or through single employer policy disputes. These grievances encompassed over 10,000 unfilled shifts. The grievances were the basis of the various discussions and the Deputy Minister's letter. There were also discussions regarding 95,616 shifts which the Union claimed had not been filled in accordance with the new collective agreement provisions.
3. The Deputy Minister of Health proposed an approach to a number of outstanding problems and resolution of the grievances that would create a constructive environment for the current collective bargaining between HEABC and the NBA.
4. The approach was set out in a Protocol Agreement between the Employer and the Union. The Protocol Agreement was executed by the parties on March 12, 2015.
5. The specific Memorandums of Understanding (MOUs) or agreements covered by the Protocol Agreement were identified by the parties as follows:
  - o Community nurses replacement
  - o Additional patient demand
  - o Regularization of Hours
  - o Acute care/long term care staff replacement
  - o Acute care/long term care staff replacement – short term absences.
6. Under Part 1 of the Protocol Agreement, the parties agree that the outstanding grievances and arbitrations on the specified MOUs or agreements are to be held in abeyance while the process set out in the Protocol Agreement is underway.
7. Pursuant to the Protocol Agreement, this arbitration board (Board) was constituted.
8. The Protocol Agreement provides that the Board will assist the parties to reach an agreement that resolves the outstanding grievances.

#### **Power and Jurisdiction of the Board**

9. The power and jurisdiction of the Board are set out in the Protocol Agreement. Under the Protocol Agreement, the Board:

- a. can determine its own processes;
- b. will provide its views of the interpretation of the language in question and the risks for each party in respect of available remedies; and
- c. will assist the parties to reach an agreement that resolves all outstanding grievances.

10. The jurisdiction of the Board is limited to the specific MOUs or agreements identified in the Protocol Agreement and set out above at paragraph 4.

11. The Protocol Agreement was entered into on a without prejudice basis.

#### **Written Submissions of the Parties and the Oral Hearing**

12. Prior to the oral hearing, the parties exchanged comprehensive written submissions and extensive case law.

13. Oral submissions were delivered by the parties on March 19 and 20, 2015.

14. During the two day hearing, the parties called no witnesses to testify and no oral evidence formed part of the record.

15. The Board spent a significant amount of time reviewing and discussing the parties' submissions and the jurisprudence.

16. Numerous plenary and caucus sessions were also held with the parties.

17. After the hearing, the parties worked with the Board in providing additional and extensive information, as well as conducting research in determining the extent to which the MOUs were being complied with by the health authorities and in determining the impact on the bargaining unit.

#### **Board's Views of the Interpretation of the Language of the MOUs**

18. As noted in the Union submissions, the principles used in interpreting a collective agreement in British Columbia were recently summarized by Arbitrator Lanyon in *Re Mill and Timber Products Ltd. and USW, Local 2009 (Article XXXIV)*, ("Mill and Timber"):

- 1. The object of interpretation is to discover the mutual intention of the parties.
- 2. The primary resource for an interpretation is the collective agreement.
- 3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective itself) is only helpful when it reveals the mutual intention.
- 4. Extrinsic evidence may clarify but not contradict a collective agreement.
- 5. A very important promise is likely to be clearly and unequivocally expressed.



6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.

7. All clauses and words in a collective agreement should be given meaning, if possible.

8. Where an agreement uses different words one presumes that the parties intended different meanings.

9. Ordinarily words in a collective agreement should be given their plain meaning.

10. Parties are presumed to know about relevant jurisprudence.

*CarswellBC 223Re Mill and Timber Products Ltd. and USW, Local 2009 (Article XXXIV); 2015*

19. The employer argues that the general principles of Collective Agreement interpretation are set out in *Brown & Beatty, Canadian Labour Arbitration*, as follows:

When faced with a choice between two linguistically permissible interpretations, however, arbitrators have been guided by the purpose of the particular provision, the reasonableness of each possible interpretation, administrative feasibility, and whether one of the possible interpretations would give rise to anomalies. (at para. 4:2100)

20. When considering competing interpretations of the collective agreement, the Employer submits that arbitrators may also be guided by the practical labour relations implications of each interpretation, and the inherent unlikelihood that the parties would agree to language leading to unreasonable results. In that regard it relies on *Health Employers Association of B.C. v. Hospital Employees' Union*, [1998] B.C.C.A.A. No. 15 (Gordon), para. 36:

The interpretive task is to discover the mutual intention of the parties as expressed in the words they have agreed to in the collective agreement. The principles applicable to this task are reviewed in *Brown and Beatty, Canadian Labour Arbitration*, supra at pages 4-29 to 4-49. When faced with a choice between two linguistically permissible interpretations, arbitrators may be guided by the reasonableness and/or practical labour relations implications of each possible interpretation. As a guide to the proper interpretation of a provision, arbitrators may search for its purpose and will view the language in its normal and ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense. The context in which disputed words are found is a primary source of their meaning.

21. The position of the Employer, as set out in *British Columbia Hydro & Power Authority - and- International Brotherhood of Electrical Workers Local 258, February 7, 1986 (Munroe)*, p. 25 is that arbitrators will infer that an interpretation leading to an absurd result is not the interpretation intended by the parties:

If one interpretation of a provision of a collective agreement would lead to an absurd result, and another interpretation would not, an arbitrator is entitled to infer that the latter interpretation was the one intended by the parties, subject always to the caveat that the language in contention must be capable of bearing a meaning that is different from the one which produces the absurdity.

22. While not expressly addressed in the cases cited, it is trite law that the language of any individual clause must be interpreted in the context of the provision and the collective agreement as a whole.

**Bargaining Context and the Provisions of the NBA Collective Agreement**

23. The fundamental issue, which is at the heart of this matter, is staffing of nurses.
24. Staffing was an issue for both parties in the 2012-2014 round of bargaining.
25. In previous rounds the Union had devoted its efforts in addressing workload and patient safety, but this was particularly true in the last round (2012-2014) of bargaining.
26. In the last round, the Union put forward a comprehensive package of proposals dealing with workload and patient safety. Those proposals were built on baseline staffing, which is set by the employer as part of its management rights.
27. The 2012-2014 collective agreement takes a balanced approach in dealing with staffing, encompassing both workload of the members, and management's right to set baseline staffing.
28. Unlike other collective agreements, ratios are not mentioned. For example, other industries focus on the number of pilots per plane and distance travelled; the number of flight attendants to passengers; the number of train crew to type of work performed; and the number of skilled trades based on project size.
29. Staffing in the Union's collective agreement is built on a baseline. By way of determining baseline staffing, management establishes the number of nurses required to staff a unit. Because of the importance of this determination, the parties agreed to a special provision (Appendix LL) that requires the employers to provide the union with the information about baseline staffing levels, and to address Union's questions or concerns about those levels.
30. The Board notes there are a number of specific provisions in the 2012-2014 collective agreement that focus on staffing:

**a. APPENDIX LL – BASELINE STAFFING INFORMATION**

The Employer will provide the union with copies of the baseline staffing levels, the regular FTEs and total causal hours for all units/wards/programs by March 31, 2013. This data shall also be provided on an annual basis thereafter.

If the Union has questions or concerns regarding the baseline staffing levels, the appropriate senior staff from the Employer will meet with the appropriate senior officers of the Union to discuss the issues.

**b. APPENDIX MM – MAINTENANCE OF STRAIGHT TIME PAID HOURS OF NURSES**

HEABC will provide the NBA with the total number of straight-time paid hours, of the nurses in the health sector for the calendar year 2012, 2013, 2014 and 2015. This information will be provided to the NBA for each calendar year by July of the following year.

For the term of the Collective Agreement, the total number of straight-time paid hours of nurses in the health sector will be no less than the total number of straight-time paid hours of nurses in 2012. HEABC will also provide the NBA with the number of FTEs broken down by FT PT and casual, and the number of overtime hours, of nurses in the health sector for the calendar year 2012, 2013, 2014, and 2015.

**c. APPENDIX NN – ADDITIONAL NURSE FTE'S**

Notwithstanding the term of the agreement the parties agree that the total number of straight time paid hours of RN/RPNs in the health sector will be increased from the December 31, 2012 hours by at least 4,149,887.5 straight time paid hours (2125 FTE) by March 31, 2016.

Those increases will be distributed relatively evenly over this period although the increases in the first year may be less. A strong majority of these FTEs will be regular positions.

The new nurse FTEs will be in Surgical Service, in Hospital Medical, Residential, Long Term Care, Hospital Services, ICU Services, Home Care Nursing, Emergency Medicine, Obstetrics, Hospitalization, Mental Health and Addiction, among other areas.

**d. APPENDIX OO – ACUTE CARE/LONG TERM CARE STAFF REPLACEMENT – LONG TERM LEAVES**

Employees on vacation will be replaced except where the service levels are reduced (e.g. clinic closure, operating room closure operating room slow down). The employer will make all reasonable efforts to replace vacation leaves using regular relief/float positions, where possible.

Employees on long-term leaves (e.g. maternity leave, LTD) will be replaced. The employer will make all reasonable efforts to replace those long-term leaves using regular relief/float positions or temporary positions.

**e. APPENDIX PP – ACUTE CARE/LONG TERM CARE STAFF REPLACEMENT – SHORT TERM ABSENCES**

**Acute Care/Long Term Care Facilities with 20 or More Beds**

Where there are vacancies due to short term absences in acute/long term care facilities of 20 beds or more the Employer will replace those vacancies.

On some occasions a nurse on a short term absence may not be replaced if the nurse in charge and the manager agree that patient care needs can be met with scheduled and available nurses.

"Patient care needs" includes, but is not limited to an assessment of number of patients, patient acuity, anticipated rate of patient turn-over, patient dependency and staff skill mix.

The Employer will replace absences using the following:

- Casuals
- Regular part time
- Float pools
- Redeployment of other nurses if circumstances permit
- Regular full-time

#### **Acute/Long Term Care Facilities with less than 20 beds**

Where there are vacancies due to short term Absences in acute/long term care facilities of less than 20 beds, the Employer will make all reasonable efforts to replace those vacancies.

On some occasions the Employer may not be required to make all reasonable efforts to replace those vacancies if the nurse in charge and the manager agree that patient care needs can be met with scheduled and available nurses.

"Patient care needs" includes, but is not limited to an assessment of number of patients, patient acuity, anticipated rate of patient turn-over, patient dependency and staff skill mix.

The Employer will make all reasonable efforts to replace absences using the following:

- Casuals
- Regular part time
- Float pools
- Redeployment of other nurses if circumstances permit
- Regular full-time

#### **f. APPENDIX QQ – ADDITIONAL PATIENT DEMAND**

The parties agree that in instances where patient demand exceeds the normal capacity of a facility or a unit within a facility, the Employer will call in additional nurses as necessary to meet patient care needs. Patient care needs will be determined jointly by the manager and nurse in charge of the unit in question.

"Patient care needs" includes, but is not limited to, an assessment of number of patients, patient acuity, anticipated rate of patient turn-over, patient dependency and staff skill mix.

Additional nurses will be called in using the following:

- (a) Casuals
- (b) Regular part time
- (c) Float pools
- (d) Redeployment of other nurses if circumstances permit
- (e) Regular full-time

**g. APPENDIX RR – IN CHARGE NURSES**

The parties agree that it is desirable to develop provincial educational standards for in-charge nurses in order for them to provide consistent, supported front-line leadership at the worksite. Such educational standards would include but not be limited to:

- Facilitating the effective utilization of staff;
- Monitoring overall patient care needs;
- Assessing whether circumstances require calling in staff;
- Providing leadership on the unit and utilizing available resources for support.

To that end, the parties agree to jointly develop program(s) to implement such educational standards at the local level. This will begin within 90 days of ratification of the Collective Agreement and the program will be ready for rollout within 12 months thereafter.

With respect to program development, each party will be responsible for paying their own costs related to this endeavour.

**h. APPENDIX SS – COMMUNITY – REPLACEMENT OF ABSENCES**

Effective January 1, 2013, community nurses will be replaced for at least two weeks of vacation each year. The Employer will make all reasonable efforts to replace those vacation leaves using regular relief/float positions.

**i. APPENDIX TT – REGULARIZATION OF HOURS**

The parties agree that overtime hours, hours worked by casual employees, hours worked by part-time employees above their normal FTE and hours worked by agency nurses will be jointly reviewed every 6 months and wherever possible where the hours are consistent and recurring, will be converted into, or added to, regular positions.

31. All of the above noted provisions follow the increased hours of work provision set out in Appendix KK.

32. It was submitted by the Union that Appendix KK (Transition to the 37.5 Hour Work Week) resulted in an increase in nursing hours into the system equivalent to approximately 800 FTEs.

33. The Union's stated position was that the comprehensive package, contained in Appendices LL through TT, regarding workload and safe patient care was a trade-off for increasing from a 36 hour work week to the 37.5 hour work week.

34. The Union also submitted that part of the trade-off for increased staffing was the Pharmacare tie-in.

#### **Board interpretation of the Meaning of the Word "Will"**

35. The Protocol specifically requires that the Board give its interpretation of the language in question.

36. During the parties' oral submissions, there was much said about the meaning of the word "will" as used in Appendix PP – Acute Care/Long Term Care Staff Replacement – Short Term Absences.

37. As to the 20 beds or more provision in Appendix PP, the Board notes it includes two specific references to "will" in that the Appendix provides that the "Employer will replace those vacancies" and the "Employer will replace absences using the following ...".

38. In contrast, the less than 20 beds provision of Appendix PP provides that the "Employer will make all reasonable efforts to replace those vacancies".

39. The difference in wording between the 20 beds or more clause and the less than 20 beds clause in Appendix PP connotes a different meaning, and imposes a different standard on the part of the Employer.

40. It is the opinion of the Board that the parties agreed to a higher standard in choosing the word "will" as it relates to staffing at acute and long term care facilities with 20 beds or more. The Employer's obligation is that it "will" replace absent nurses unless the exception applies. The higher standard is consistent with the package of staffing commitments included in the NBA collective agreement.

41. Under the exception that applies to facilities with 20 beds or more, the Employer need not replace absent nurses if the nurse in charge and the manager agree that patient care needs can be met with scheduled and available nurses. The Board recognizes that there is a seasonal pattern to bed occupancy, for example, increased occupancy and therefore capacity during flu season. The Board also recognizes that bed occupancy may move up and down depending on the circumstances.

42. In relying on the exception, the Employer must have scheduled staff to baseline in the first place and meaningful consultation must take place between the manager and nurse in

charge in assessing "patient care needs" as that phrase is defined in the NBA collective agreement.

43. The intention of the parties, reflected in their bargaining history, is that the existing gap between vacant positions and filling them was (and, as of today, still is) unacceptably large, and the employers are required to narrow that gap significantly. The language in the Appendices should be interpreted accordingly. In Phase 2 of this process, the parties should determine the concrete steps that must be taken by each Health Authority. Stage 2 should also establish clear and measurable goals, and set out the consequences of failure to achieve them.

44. The Board is of the view that there is an incentive on the part of the Employer to replace absent nurses. It is both good for patient care and is less costly for the Employer to fill shifts at straight time as opposed to overtime. In reviewing the submissions of the parties on this issue, the shortcomings referenced by the Deputy Minister in his letter, while very evident, did not lend the Board to conclude the presence of bad faith on the part of health employers.

#### **Community Nurses**

45. As to Appendix SS (Community – Replacement of Absences), the parties also used the word "will". The second sentence of Appendix SS states that the "Employer will make all reasonable efforts to replace those vacation leaves using regular relief/float positions".

46. Community nurses were historically not replaced. This is a significant issue between the parties.

47. The parties entered into a settlement agreement in September 2013. It confirmed that the Employer agreed to replace community nurses for at least two weeks of vacation each year. It also added certain exceptions and recognized that Public Health Nurses are included under the provisions.

48. The Union submits that, in 2013 and 2014, the Employer not only breached Appendix SS but also breached the settlement agreement.

49. Based on the submissions, it appears that the Union has *prima facie* evidence of numerous breaches by the Employer. The Board is of the view that further information is required in order to properly assess the magnitude of the breach.

#### **Board's Views on Risks of Each Party in Respect of Remedies**

50. The Authorities provided to the Board on this issue are extensive. It is apparent from a review by the Board that each party has a different view as to what an arbitrator would award, should the vast number of grievances proceed to full arbitration.

51. For example, with respect to Appendix PP (Replacement), there is risk that an arbitrator will find that such grievances are akin to cases in which the employer has failed to call in an employee, such as the decision *Blouin Drywall Contractors Ltd. v. C.J.A. Local 2486* (1973), 4 L.A.C. (2<sup>nd</sup>) 254 (O'Shea). In such cases, arbitrators tend to award lost pay or in-kind remedies. In some cases, arbitrators have ordered the employer to provide equivalent time off with pay.

52. The same type of remedy (lost pay or in-kind remedies) might be awarded by an arbitrator with respect Appendix QQ (Additional Patient Demand).

53. There is a risk however that with respect to Appendix RR (In-charge Nurses) and Appendix TT (Regularization) an arbitrator would limit the remedy to declaratory relief plus nominal damages.

54. The Employer relied on the Frequently Asked Questions (Tab 2 of the NBA's Book of Documents) in submitting that the Union stated that the purpose of Appendix PP (Replacement) was *not* "to achieve a financial remedy for individual nurses". The Board notes however that the interpretations set out in the Frequently Asked Questions were provided on a without prejudice basis.

55. The Employer also submitted that there was no evidentiary basis for a remedy at this time as no breach has been proven. The Board is of the view an arbitrator would find that at least some of the absences identified by the Union in its grievances are *prima facie* evidence of a breach, thereby shifting the onus of proof onto the Employer to disprove the breaches.

56. With no case directly on point, there is uncertainty for both parties should the grievances proceed to arbitration.

57. While the Board is of the view that there has been no bad faith on the part of either party in implementing the MOUs, arbitrators have awarded monetary damages for reputational damage in some circumstances. For example, in *UFCW, Local 401 v. Westfair Foods* (2009), the arbitrator awarded \$20,000 for damage to the Union's reputation and ability to represent its members.

58. If the parties were to litigate each of the policy grievances, decisions on the matters will not be rendered for quite some time, given the volume of grievances and the evidence that would be led in respect thereof. While the parties were waiting to litigate the numerous disputes, it seems likely that the Union would continue with its filing of grievances (often referred to as the "grievavalanche") in proving the Employer has breached the NBA collective agreement. This, of course, would be disruptive to the Employer.



59. Given the large number of grievances, the uncertainty, risk and potential exposure for both parties, the Board encourages the parties to conclude resolution of the outstanding grievances as contemplated under the Protocol Agreement.

#### **Recommendations for Solutions Going Forward**

60. The Board has focussed on giving meaning to the language in the NBA collective agreement bargained by the parties and now turns to recommendations.

61. In resolving the outstanding grievances the parties should focus on staff enhancement in accordance with the staffing provisions in the NBA collective agreement. While significant argument was put forward by the Union regarding damages, the foundation of its efforts is focused on proper staffing through replacement of nurses to ensure safe patient care. This is important given the unacceptable number of unfilled nursing vacancies. Such a gap needs to be reduced to ensure greater compliance with the NBA collective agreement.

62. The Board recognizes the staffing challenges that the employers face in the rural and remote areas of the province. The Board encourages the parties to consider measures that support the recruitment of skilled nursing staff for those harder to fill positions.

63. In filling vacancies and maintaining baseline staffing in units where specialized training and skills are required (such as maternity, obstetrics, ER, OR, and intensive care units) the employers must provide nurses with proper specialty training through accredited educational institutions. To meet this obligation, the employers must take steps in securing spots at those accredited institutions to support the training needs.

64. It was apparent that there is an overdue need to develop and implement proper technology for use in calling out staff, which would support employers' best practices. The selection of the proper type of technology should be made in consultation with the Union. Implementing such technology is in the interest of both parties, as it will get people who want to work to work, will reduce costs, and will provide for a better work force. In the short term, the employer should utilize currently available technology, such as email and text messaging. In the mid-term, the parties should include in the next round of bargaining provisions that support moving towards the implementation of appropriate staffing technology. In the longer term, the parties should implement up-to-date staffing technology.

65. In support of Part 2 of the Protocol, and over the next three months, the Employer and Union may wish to consider establishing of a Best Practice Committee. The purpose of the Best Practice Committee would be to problem-solve and finalize a best practices protocol. Best practices cannot be ignored. The members of the Best Practices Committee should include

regional shift schedulers and stewards with a similar aptitude. Success can only be achieved if there is meaningful consultation on the part of the parties, including a commitment to share all relevant data.

66. Training of in-charge nurses (as contemplated by Appendix RR) and managers appears to have been inconsistent. For the success of consultative processes under the various staffing appendices it is critical that this training proceed as soon as practicable.

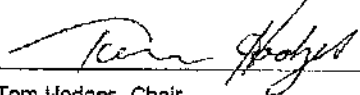
67. The Employer should make a monetary payment to the BCNU as damages, a portion of which may be provided by the BCNU to individual grievors or members who have been impacted by the dispute.

68. The intent of these solutions is to focus on the relationships between the Employer and the Union, and between employers and their employees. It was evident to the Board that the trust relationship between the parties, while not broken, has been severely damaged. The purpose of the solutions recommended by the Board is to repair the trust that has been damaged and to create a constructive environment for moving forward in the next round of collective bargaining.

69. As set out in the Protocol Agreement, this decision of the Board is for the purpose of providing the Board's views on the interpretation of the language in question, the risks for each party in respect to available remedies and to assist the parties in reaching a settlement agreement. The interpretation of the collective agreement language provided herein should serve as the foundation of any interpretation in the arbitration process to be established in Part 2 of the Protocol agreement.

70. All of which is respectfully submitted.

DATED AT VANCOUVER, BC, this 26<sup>th</sup> day of March 2015.

  
Tom Hodges, Chair

  
Peter Cameron, Employer Nominee

  
Frank Morgan, Union Nominee

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