

THE MANITOBA NURSES UNION,

(the “Union”),

-and-

SHARED HEALTH INC.,

(the “Employing Authority”),

MEMORANDUM OF AGREEMENT

WHEREAS THE EMPLOYING AUTHORITY AND THE UNION entered into a Memorandum of Agreement and a Joint Statement related to COVID-19 and Personal Protective Equipment (“PPE”) in July 2020 (the “July MOA”) that settled a number of issues in grievances that were scheduled for arbitration with Arbitrator Arne Peltz on June 8-10, 2020;

AND WHEREAS THE EMPLOYING AUTHORITY has determined standards for PPE relating to COVID-19 for its Nurses and as requirements for other health care employers in the Province of Manitoba to follow (the “PPE Requirements”);

AND WHEREAS THE EMPLOYING AUTHORITY co-chairs unified incident command for the COVID-19 response, and represents to the Union that, through this role it has the authority to issue directives that require other health care employers to comply with directives of the Employing Authority in relation to the COVID-19 response;

AND WHEREAS THE UNION referred a number of issues arising under the July MOA directly to Arbitrator Arne Peltz for determination pursuant to the terms thereof, which issues fell into two broad categories: (1) the Employing Authority’s PPE Requirements must be immediately amended as a matter of health and safety standards to provide higher respiratory protection for Nurses; and (2) the Employing Authority is in violation of the MOA;

AND WHEREAS THE EMPLOYING AUTHORITY AND THE UNION scheduled a binding mediation before Arbitrator Arne Peltz for November 17, 18, and 21, 2020;

THE PARTIES HERETO AGREE AS FOLLOWS:

Amendments to the PPE Guidelines

1. The Employing Authority agrees to amend its PPE Requirements and any necessarily related documentation to provide as follows:
 - a. Employers are required to provide a fit tested N95 respirator, or equivalent or higher PPE (hereafter, "N95") to Nurses, in the following circumstances:
 - i. Nurses providing direct patient care to Orange or Red zone patients;
 - ii. Nurses performing a nasopharyngeal swab test;
 - iii. Nurses present in a room where an aerosol generating medical procedure ("AGMP") is being performed on a Green zone patient in the first fourteen (14) days;
 - iv. Nurses providing direct patient care to undifferentiated patients;
 - v. Nurses in Emergency Departments and Urgent Care, except those Nurses in a designated area for lower acuity patients that have been screened for COVID-19 at Triage and designated Green;
 - vi. Nurses present during labour and delivery, except where the patient has tested negative for COVID-19 on the same day or the previous day.
 - b. A Nurse is not required to conduct a point-of-care risk assessment ("PCRA") prior to being provided a N95 in the circumstances set out in paragraph 1(a) herein.
 - c. A Nurse may decline to wear a N95 in the circumstances set out in paragraph 1(a) herein, following the exercise of the Nurse's professional judgment based on a PCRA, except where the Nurse is performing or present for an AGMP in which case the Nurse is required to wear an N95.
 - d. Should a Nurse determine, based on a PCRA, that circumstances exist that justify a N95 other than those set out in paragraph 1(a) herein, the Nurse shall be

provided with a N95. Such circumstances include, but are not limited to, circumstances in which a Nurse is unable to maintain six (6) feet of distance to screen for COVID-19.

- ~~2.~~ The amended PPE Requirements will be released forthwith after fit testing for N95s of front-line healthcare workers, including Nurses, is substantially completed throughout the Province, but no later than January 6, 2021, whichever date is earlier. The Employing Authority agrees to use its best efforts to substantially complete fit testing for all front-line healthcare workers by January 4, 2021.
3. In the event of a dispute about the progress of fit testing and/or whether fit testing of front-line healthcare workers, including Nurses, is substantially completed throughout the Province, the parties agree that the issue may be referred directly to Arbitrator Arne Peltz, who shall have jurisdiction to adjudicate the issue, including to determine the date the amended PPE Requirements shall be released.
4. The Employing Authority shall provide the Union an update on the status of fit testing bi-weekly. The updates shall include updated fit testing schedules and areas/sites where fit testing is completed. The Employing Authority agrees that the Union may share the information contained in the fit testing updates with its staff.
5. The Employing Authority agrees that fit testing is considered paid work and shall be compensated in accordance with the applicable collective agreement, as follows:
 - a. If full-time Nurses are required to fit test on their day off, it shall be considered a call in and compensated in accordance with the applicable collective agreement.
 - b. Fit testing for part-time Nurses shall be done during their shift or contiguous to their shift. Any part-time Nurses required to fit test contiguous with their shift shall be paid in accordance with the applicable collective agreement.

6. The Employing Authority shall require the health sector employers within each of the employers organizations not party to this Memorandum of Agreement to comply with paragraph 5 herein, including but not limited to issuing a directive through unified incident command.
7. The Employing Authority shall provide a draft of the amended PPE Requirements to the Union for review prior to their release and no later than December 22, 2020.

Interim Measures

8. The parties agree that in the interim, before the PPE Requirements are amended, fit tested Nurses shall continue to have reasonable access to a fit tested N95 in accordance with the standards agreed to in the Joint Statement attached to the July MOA.
9. The Employing Authority has issued a memorandum to front line managers and directors in all service delivery organizations directing that a Nurse who requests a N95 for an Orange” or Red zone patient shall not be asked to explain or justify their request. Where a Nurse requests a N95 for a Green zone patient based on a PCRA, the Nurse should be prepared to indicate circumstances identified in the PCRA that justify a higher level of PPE, but respect shall be shown to the Nurse’s professional judgment and a N95 shall not be unreasonably denied.
10. The Employing Authority shall ensure that a sufficient supply of N95s has been delivered to workplaces and testing sites throughout the Province to meet the anticipated need of health care workers, including Nurses, once fit testing for N95s is concluded and the amended PPE Requirements are released. The Employing Authority further understands and agrees that an immediate interim supply of N95s is required to accommodate any increased requests by Nurses for access to N95s in accordance with their access rights under the Joint Statement attached to the July MOA.

Enforcement of the PPE Guidelines

11. The Employing Authority shall not exercise influence to dissuade Nurses from wearing a N95 in accordance with the amended PPE Requirements, or otherwise encourage Nurses to refuse a N95 based on a PCRA. The Employing Authority shall require other health care employers within each of the employers organizations not party to this Memorandum of Agreement to comply with this commitment, including through issuing a directive from unified incident command.

12. Further to the Employing Authority's commitment in paragraph 11 herein, the Employing Authority agrees to issue a written communication, together with the Chief Executive Officers of the other regional health authorities, about the right to access a N95 in accordance with the amended PPE Requirements and the importance of respecting the independent, professional decision making by Nurses who choose to decline a N95 based on a PCRA. This will be in the form of a letter to health care employers and health care workers, which will be provided to the Union in draft for review by December 22, 2020. The letter shall be posted on the Employing Authority's website and shall be sent to health care employers with the direction that it be posted publicly in the workplace and be sent to the co-chairs of all safety and health committees. The Union shall forward a copy to all local presidents.

13. In the event of an incident of non-compliance with the commitment in paragraph 11 herein by the Employing Authority and/or by another health care employer not party to this Memorandum of Agreement, the Union shall provide notice to the Employing Authority and, if applicable, the health care employer, and give them an opportunity to correct the incident of non-compliance within forty-eight (48) hours. Correcting the incident of non-compliance may include, but is not limited to, issuing an apology to the affected Nurse, and communicating an acknowledgement of non-compliance with the PPE Requirements to the affected Nurse and the Union.

14. In the event of multiple incidents of non-compliance that would reasonably lead the Union to conclude that Nurses continue to be influenced or dissuaded from wearing a N95, or are being encouraged to refuse a N95 based on a PCRA, the Union may refer the issue directly to Arbitrator Peltz to determine, *inter alia*, whether it is appropriate for the Employing Authority to amend its PPE Requirements to use more prescriptive language, such as “Nurses are required to wear a N95” in specified circumstances, without having the option to decline based on a PCRA.
15. If the Union refers the issue of appropriate PPE Requirements to Arbitrator Arne Peltz as a result of multiple incidents of non-compliance in accordance with paragraph 14 herein, the Employing Authority shall pay the reasonable legal fees of the Union incurred as a result of the referral.

Medical Masks

16. The Employing Authority agrees that only Level 3 standard medical/procedure masks will be provided for use by health care workers, including Nurses, and further agrees that it shall post a communication to staff and employers stating the same on its website by December 23, 2020.
17. The parties agree that Level 1 and 2 standard medical/procedure masks are not required to be removed from work sites as they may be used for patients. Moreover, Nurses may decline to use a Level 3 mask and choose to wear a Level 1 or 2 mask, if in that Nurse’s professional judgment it is appropriate to do so.

Precision ADM/Elastomeric Masks

18. The Employing Authority agrees to advise the PPE Committee and the Union of the cleaning protocol it determines shall be used for Precision ADM masks and elastomeric masks, and to provide the PPE Committee and the Union with a copy of the related

education materials, no later than 7 days following the approval by Workplace Safety and Health Branch.

19. The Employing Authority agrees that it will provide as much advance notice to the PPE Committee and the Union as reasonably possible regarding where and when Precision ADM or elastomeric masks will be distributed to Nurses for use in the workplace.

Home Care and Public Health

20. The Employing Authority agrees that Home Care and Public Health Nurses are entitled to be issued two N95s to keep with them during a shift. These Nurses shall document their use of N95s in the Home Care record, client intake form, or distribution log or record, as applicable, in accordance with the PPE Requirements. If a Home Care or Public Health Nurse requires an additional N95, in accordance with the PPE Guidelines, the Nurse shall be provided with a N95.
21. For Home Care and Public Health Nurses who have been fit tested, issuance of two N95s per shift shall commence immediately.
22. The Employing Authority will require other health care employers not party to this Memorandum of Agreement who provide Home Care and Public Health services to issue their Home Care and Public Health Nurses two N95s to keep on them during a shift in accordance with this Memorandum of Agreement, including through issuing a direction through unified incident command.

Access Centres and Community Health Offices

23. The Employing Authority agrees that all access centres and community health offices shall ensure that remote and/or physically distanced screening of patients can be done where reasonably possible, and that the Employing Authority will require other health care

employers not party to this Memorandum of Agreement to comply with this requirement, including through issuing a direction through unified incident command.

Reprocessing of N95s

24. The Employing Authority has advised the Union that N95s are being collected for possible sterilization and reprocessing, however, the parties agree that sterilized and reprocessed N95s shall only be distributed for use by Nurses as a measure of last resort, in circumstances in which all other options to source and distribute N95s have been exhausted. The Employing Authority will require other health care employers not party to this Memorandum of Agreement to comply with this agreement, including through issuing a direction through unified incident command.
25. The Employing Authority agrees that it will provide as much advance notice to the PPE Committee and the Union as reasonably possible before any decision is made to distribute reprocessed N95s to Nurses for use in the workplace and, in the event of a dispute about the use of reprocessed N95s, either party may refer the dispute directly to Arbitrator Peltz for determination.

Expired N95s and Medical Masks

26. The parties agree that N95s and medical/procedure masks that have passed the expiry date indicated by the manufacturer shall only be distributed for use by Nurses in circumstances in which all other options to source and distribute N95s and medical/procedure masks have been exhausted, except that N95s that have passed the expiry date indicated by the manufacturer shall be distributed before sterilized and reprocessed N95s would be distributed. The Employing Authority will require other health care employers not party to this Memorandum of Agreement to comply with this agreement, including through issuing a direction through unified incident command.

27. The Employing Authority agrees that it will provide as much advance notice to the PPE Committee and the Union as reasonably possible before any decision is made to distribute N95s and/or medical/procedure masks that have passed the expiry date indicated by the manufacturer to Nurses for use in the workplace and, in the event of a dispute about the use of expired N95s and/or medical/procedure masks, either party may refer the dispute directly to Arbitrator Peltz for determination.

Notice to the Union of COVID-19 Positive Nurses

28. The Employing Authority undertakes to review its current investigation and reporting procedures in order to ensure by no later than January 1, 2021 that it can satisfy its obligation under the MOA to make immediate disclosure to the PPE Committee and the Union should any Nurse in the Province of Manitoba test positive for COVID-19, without identifying the Nurse personally without their consent, and to provide disclosure, as it becomes available, of the circumstances of Nurses who test positive for COVID-19, in order to understand possible reasons for their exposure including the adequacy of PPE the Nurse was utilizing when exposed.

29. The Union agrees to disclose information that comes to its attention respecting COVID-19 positive Nurses, without identifying the Nurses personally without their consent, to Lanette Siragusa, in her capacity as co-chair of the PPE Committee.

30. The Employing Authority agrees to take all reasonable steps necessary so that all Nurses being investigated as COVID-19 positive cases shall be asked to consent to the disclosure of their identity to the Union, and the Employing Authority shall identify to the following Union representatives those Nurses who give their consent: Tom Henderson, the applicable Local Union President, and the assigned Labour Relations Officer.

Miscellaneous

31. The Employing Authority shall make every reasonable effort to ensure that the standards and requirements set out in this Memorandum of Agreement are communicated to managers/directors throughout worksites. This includes, but is not limited to, Nurses being entitled to be provided with N95s in the circumstances set out herein.
32. The parties' obligations in this Memorandum of Agreement are enforceable. Either party may submit directly to Arbitrator Peltz an issue for determination relating to an allegation that the other party has not fulfilled its obligations herein.
33. Where any issue under this Memorandum of Agreement is the subject of a direct referral to Arbitrator Peltz for determination, it does not require a grievance to be filed. The parties recognize the need for an expeditious determination of any such issue referred to Arbitrator Peltz, and agree to take all necessary steps to have the grievance heard in as expeditious a timeline as possible (i.e. within 30 days or less). In the event that Arbitrator Peltz's availability does not permit him to hear the issue in this timeline, the parties agree to make reasonable inquiries of other arbitrators and to agree upon another arbitrator with the necessary availability to hear the issue expeditiously (i.e. within 30 days or less).
34. This Memorandum is made on a without prejudice and without precedent basis and may only be referred to in relation to the enforcement hereof.

All of this is agreed to in the City of Winnipeg, in the Province of Manitoba, this 23rd day of December, 2020.

MANITOBA NURSES UNION



PER: Mike Sutherland
Director of Labour Relations

SHARED HEALTH INC.



PER: Beth Beaupre
Provincial Lead, Health Workforce

