

Letter of Understanding

BETWEEN

HEABC

Health Employers Association
of British Columbia

AND

RDBC

Resident Doctors
of British Columbia

AND

UBC

The University of British Columbia

**Re: Administration of Employment Matters Affected by
Academic Decisions and Other Matters Referenced in this
LOU***

**This Letter of Understanding (colloquially referred to as the "Tri-Party LOU") is included herein for reference only and does not form part of the collective agreement.*

**LETTER OF UNDERSTANDING
BETWEEN**

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

("HEABC")

AND

RESIDENT DOCTORS OF BRITISH COLUMBIA

("RDBC")

AND

THE UNIVERSITY OF BRITISH COLUMBIA

("UNIVERSITY")

(also, collectively referred to as the "**Parties**")

Re: Administration of Employment Matters Affected by Academic Decisions and Other Matters Referenced in this LOU

WHEREAS the Parties acknowledge that decisions made by the University in furtherance of Academic goals and objectives may also affect the terms and conditions of employment of Residents; and

WHEREAS the University is not a party to the collective agreement between HEABC, on behalf of certain HEABC members (collectively, the "Employers" and singularly, an "Employer"), and RDBC (the "Collective Agreement") that sets out the terms and conditions of employment of the Residents; and

WHEREAS HEABC, RDBC and the University wish to accurately describe and define the relationships that exist amongst them concerning the Residents and wish to provide a mechanism for coordinating administration of those University "Academic Decisions" (as defined herein) and other matters referenced in this LOU that also affect the terms and conditions of employment of the Residents.

THEREFORE HEABC, RDBC and the University agree as follows:

1. The definitions in this Letter of Understanding will be as provided in the Collective Agreement unless otherwise defined in this Letter of Understanding.
2. Nothing in this Letter of Understanding can or should be construed as creating an employment relationship between the Residents and the University. The Parties agree that neither this Letter of Understanding, nor any activities carried out in furtherance of the terms of this Letter of Understanding, will be referred to or relied upon as evidence of an

employment relationship between the Residents and the University in any proceedings involving any or all of the Parties.

3. As long as this Letter of Understanding is in effect RDBC and HEABC agree that the Articles of the Collective Agreement and other matters set out in Appendix A ("Appendix A") will be administered in accordance with the terms of this Letter of Understanding.
4. RDBC and HEABC will continue to bargain collectively for the successive renewal of the Collective Agreement pursuant to its terms which include those matters in Appendix A.
5. The University will provide RDBC with a list of new Residents, where possible, prior to April 1 of each year, and with the information enumerated in article 2.05 of the Collective Agreement.

Academic Matters

6. **Definition.** "Academic Decision", as that term is used in this Letter of Understanding, shall mean a decision made by the University in furtherance of Academic objectives including those related to meeting Royal College of Physicians and Surgeons of Canada ("RCPS") or College of Family Physicians of Canada ("CFPC") requirements. For clarity, the definition of "Academic" in s. 1 of the Collective Agreement is incorporated into the definition of "Academic Decision".
7. **Assignment.** Assignment of Residents to rotations in an Employer's facilities is a matter wholly within the jurisdiction of the University. An Employer cannot provide employment to a Resident who has not been assigned to an Employer's facilities by the University.
8. **Evaluation.** The University in its sole discretion determines whether a Resident has met the attendance requirements to permit Academic evaluation in any given rotation in a Residency Program.
9. **Scheduling and related functions.** The University, through the Program Directors and/or Chief (Administrative) Residents, is responsible for scheduling Residents, both for their regular duty hours and for call, and, except as provided for in this Letter of Understanding or as required to meet Academic requirements, agrees to schedule Residents in accordance with the applicable matters in Appendix A. Scheduling includes granting of leaves of absence and vacation, granting of flex days and days in lieu of statutory holidays. The scheduling responsibility also includes liaising with the Employer and the long term disability provider respecting their administration of long term disability. The University will direct payroll with regards to Resident eligibility for allowances and stipends under Article 22 (mileage and Chief Resident positions).
10. **Academic Decisions.** Where the University makes an Academic Decision that a strict application of any of Appendix A Articles 7, 8, 11, 12, 13, 19 or 20 conflicts with the academic requirements of a Resident, or a Residency Program, the University may decide to vary the application to the Resident of the applicable matter(s) in Appendix A. The University agrees that such variances will only be made where necessary to comply with

its policies and in furtherance of Academic objectives including but not limited to those related to meeting RCPS and CFPC requirements. The University agrees that, where it is necessary to vary the application to the Resident of the applicable matter(s) in Appendix A, it will vary the application to the minimum extent necessary to achieve compliance with its policies and to further Academic objectives relating to RCPS and CFPC requirements.

11. **Disputes regarding Academic Decisions.** A decision made by the University that is an Academic Decision is not subject to the dispute resolution process set out in this Letter of Understanding or under any process available in the Collective Agreement, but a Resident may avail themselves of the provisions of Section 12 and 13 of this Letter of Understanding. The University acknowledges that RDBC may provide advice and support to the Resident regarding decisions made by the University under Section 10 of this Letter of Understanding and that RDBC, at the Resident's request, may attend meetings solely to provide such advice and support.
12. **Review of Academic Decisions.** If the Resident is unable to resolve any dispute with the Program Director related to an Academic Decision made by the University under Section 10 of this Letter of Understanding, then the Resident may refer the matter to the Associate Dean, Postgraduate Medical Education (the "Associate Dean") for further discussion. The University acknowledges that RDBC may provide advice and support to the Resident regarding this process and that RDBC, at the Resident's request, may attend any meetings with the Associate Dean, to discuss the dispute arising under Section 10 of this Letter of Understanding, solely to provide such advice and support.
13. **Arbitration of whether a decision is an Academic Decision.** Where the Associate Dean confirms the decision to vary the strict application of the Appendix A Article(s) in question pursuant to Section 12 above, RDBC may refer the matter to an arbitrator appointed under Section 22 of this Letter of Understanding. RDBC's challenge to the decision to vary will be limited to whether or not the University's decision was an Academic Decision. Where the arbitrator concludes that the decision was an Academic Decision, then the matter is not arbitrable. Where the arbitrator concludes that the decision was not an Academic Decision, then the dispute on the variance is arbitrable and the arbitrator has jurisdiction to fashion an appropriate remedy for the failure to adhere to the applicable Article(s) of the Collective Agreement.
14. **Decisions regarding Academic performance.** For clarity, RDBC acknowledges that any dispute arising from an Academic Decision by the University that a Resident's performance is not meeting Academic standards such that remediation and/or probation and/or dismissal from the Program may be warranted will not be resolved pursuant to the dispute resolution processes outlined in this Letter of Understanding or under the Collective Agreement. The University agrees that RDBC may, at the request of the Resident, attend meetings regarding remediation, probation or dismissal solely for the purpose of providing support and advice to the Resident.
15. **University policies.** The University will disclose to RDBC and to HEABC any University policies (as amended from time to time) which may have an impact on scheduling, or the

granting of vacation or other leaves, and which may be the basis for scheduling- or leave-granting decisions that vary the application of the applicable Article(s) and MOUs listed in Appendix A.

Joint Committee

16. The Parties will establish a Joint Committee consisting of three representatives from each of the University, the Employers and RDBC. One of the representatives from RDBC may be a Resident. Each of the Parties will advise the others of the identity of its nominees to the Joint Committee within two months of the date of renewal of this Letter of Understanding and will advise promptly of any changes to the Joint Committee's membership.
17. The Joint Committee will address issues arising from the administration of the Article(s) and other matters listed in Appendix A to this Letter of Understanding.
18. The Joint Committee will meet if:
 - i. two or more of the Parties request a meeting; or
 - ii. one party requests a meeting to discuss an issue(s) with broad policy implications;

but will in any event meet not less than four (4) times in each year of this Letter of Understanding. Meetings may be convened by conference call if necessary.
19. The Joint Committee may consider proposals for:
 - (a) Varying the application of the scheduling, rounding, on-call and shift work in the applicable Articles based on clinical services requirements.
20. The Joint Committee may develop, by consensus, its own processes for considering and making decisions with respect to variances.

Dispute Resolution

21. Except as otherwise provided in this Letter of Understanding, disputes with regard to the administration of the applicable Article(s) and other matters in Appendix A will be referred to the Joint Committee for discussion. Any of the Parties may bring such a dispute before the Joint Committee.
22. If the Joint Committee fails to reach a consensus, and thus resolve the issues in dispute, the dispute may be referred to the next designated arbitrator listed in Article 4 of the Collective Agreement who will hear the matter on an expedited basis in accordance with the following:

- i. Hearings will be scheduled as promptly as possible and must, in any event, be scheduled within sixty calendar days of the referral.
 - ii. RDBC will represent the Resident at the hearing and any of the Parties may retain legal counsel to present their cases to the arbitrator. Prior to rendering a decision, the arbitrator may assist the parties in mediating a resolution to the matter.
 - iii. The arbitrator will hear the matter and will render a decision within ten (10) working days of the conclusion of such hearings. No written reasons for the decision will be provided beyond that which the arbitrator deems appropriate to convey the decision.
 - iv. All decisions of the arbitrator are to be limited in application to the particular dispute and are without precedent or prejudice. Decisions will be used by the Parties to inform the next round of collective bargaining.
 - v. The parties agree that decisions of the arbitrator will not be appealed on the merits; however, section 99(a) of the *Labour Relations Code* applies to such decisions.
 - vi. The Parties will equally share the cost of the fees and expenses of the arbitrator.
 - vii. The arbitrator will have the powers of an arbitration board under Part 8 of the *Labour Relations Code*.
23. HEABC and RDBC agree that the grievance procedure and arbitration provisions in the Collective Agreement will remain intact for resolution of all disputes arising under the Collective Agreement other than those disputes related to the applicable Articles and other matters in Appendix A for which provision is made in this Letter of Understanding. The grievance procedure and arbitration provisions under the Collective Agreement will not apply to the Articles and other matters identified in Appendix A.
24. While this Letter of Understanding is in effect, RDBC and HEABC agree that Article 19.02 of the Collective Agreement is inoperative.

Notice to End Letter of Understanding

25. This Letter of Understanding may be terminated by HEABC, the University or RDBC on provision of six (6) months written notice to each of the other parties.
26. In the event that this Letter of Understanding is terminated, RDBC and HEABC agree that at the end of the six (6) months notice the Article(s) and other matters listed in Appendix A will no longer be administered according to the terms of this Letter of Understanding and will be administered under the Collective Agreement and Article 19.02 will become operative.

Signed by the parties on the dates set out below:

E. Swift

HEABC

February 11, 2021

Date

Hanny Gray

RDBC

February 11, 2021

Date

R. Sidhu

UBC

February 11, 2021

Date

Appendix A

1. Article 2.05 – List of New Residents
2. Article 7 - Compassionate Leave
3. Article 8 - Educational Leave
4. Article 9 – Maternity/Parental/Adoption Leave
5. Article 10 – Sick and Accident Leave and Medical Examinations
6. Article 11 - Statutory Holidays
7. Article 12 - Unpaid Leave
8. Article 13 - Vacation Leave
9. Article 19 - Scheduling
10. Article 20 – Call Shifts
12. Article 22 – Allowances and Stipends
13. MOU Re Workload During Pregnancy
14. MOU Re Distributed Training Locations