

February 9, 2025

Via email to: hcmo.info@oha.oregon.gov

Dr. Sejal Hathi, MD, MBA
Director
Oregon Health Authority
500 Summer Street, NE, E-20
Salem, OR 97301-1097

Re: OHSU-Legacy Health Merger (HCMOP-039)

Dear Dr. Hathi:

Talk about bad timing. On January, 26, 2025, OHSU's interim president submitted its earnest closing argument in favor of the Legacy merger to you. And less than a week later, OHSU sent 74,000 of its UnitedHealthcare-insured patients (including me) a letter that powerfully demonstrates why this merger is not in the public interest under ORS 415.501. That letter also inspires me to share additional concerns about various representations OHSU has made in connection with its HCMOP filing.

Below, I discuss:

- OHSU-UnitedHealthcare dispute and its relevance to the HCMOP review;
- OHSU's recent shambolic senior management history and associated lack of credibility; and
- OHSU's status as Oregon's least publicly accountable unit of government.

1. OHSU-UnitedHealthcare dispute

In an undated, late January 2025 letter, OHSU informed its UnitedHealthcare-insured patients that they may not be able to receive care at OHSU on and after April 1, 2025, due to a contract dispute (see attached copy). And OHSU's website currently states that OHSU is no longer making new appointments for UnitedHealthcare-insured patients for any date after March 31, 2025.¹ In other words, OHSU already has started down a path to increase – not decrease – the underserved healthcare populations of Oregonians such as the elderly.

¹ <https://www.ohsu.edu/health/unitedhealthcare-changes>.

As is common in commercial disputes like this one, OHSU and UnitedHealthcare point fingers at each other as to who is to blame for this impasse. But OHSU has not contested (to my knowledge) UnitedHealthcare's claim that OHSU has demanded two-year increases totaling 36% for commercial plans and 15% for Medicare Advantage plans.² It is extremely difficult for me to reconcile these demands with OHSU's "commitment" to limit its "average annual cost growth" to 4.6% (a number that already exceeds Oregon's established target of 3.4%). See OHSU public comment at 8.

Note that OHSU is making these staggering demands at a time when OHSU's patients still have an option to seek alternative care at a Legacy facility. If this merger with Legacy goes forward, that option will not be available in the case of a future OHSU dispute with an insurer.³ Significant portions of OHSU's and OHSU-Legacy's patients will not then be able to squeeze into Providence's facilities. And in the case of at least two specialty areas now offered by both OHSU and Legacy, complex ophthalmology and complex pediatrics, neither Providence nor any other Oregon provider will be able to provide comparable care.

You don't need a PhD in economics to know that OHSU's bargaining power with insurers will dramatically increase if it takes over Legacy. The ensuing costs to Oregon's medical care consumers (those not on Medicaid) will rise commensurately.

Historically, OHSU has exhibited little expenditure discipline. Generous union contracts and lavish pay for senior management seem to be the norm – not the exception. Once any market-related cost constraints are removed, ballooning medical expenses for Oregonians seem inevitable, even if OHSU expresses good intentions now.

I expect (or at least hope) that OHSU and UnitedHealthcare will timely resolve their current issues. But this dispute exposes the dangers to the public interest posed by this pending merger.

2. OHSU's chaotic recent senior management history

As you know, hospital mergers typically lead to higher prices and no improvement in health outcomes. OHSU, of course, claims that it is different. But to overcome that national trend and the laws of economics especially present in this case, OHSU would have to deploy an

² <https://www.uhc.com/ohsu>.

³ UnitedHealthcare suggests its insured OHSU patients seek care at Legacy and other provider facilities. <https://www.uhc.com/ohsu/faqs>. For its part, OHSU suggests that patients try to change their insurance carrier mid-policy year. For Medicare Advantage insureds, OHSU suggests using an open enrollment option to change Medicare Advantage plans. <https://www.ohsu.edu/health/unitedhealthcare-changes>. Unfortunately, OHSU fails to advise that this option is not available to the thousands of its patients who are insured through a group UnitedHealthcare Medicare Advantage plan such as the one offered by the PERS Health Insurance Program.

exceptionally capable and credible management team. Sadly, OHSU cannot do so, at least on a long-term basis.

When OHSU first announced its plans to explore a Legacy merger 21 months ago, it was led by president Danny Jacobs, board chair Wayne Monfries, and eight (!) executive vice-presidents (EVPs).⁴ Since then, president Jacobs abruptly resigned for “personal reasons.”⁵ Chair Monfries’ board term expired, and the board has a new chair (Monfries is apparently hanging on as a regular board member until his replacement is confirmed). OHSU’s “Chief People Officer” and EVP departed with a healthy severance package and surrendered “potential claims” against OHSU.⁶ The former Medical School dean and EVP (managing a large chunk of OHSU including clinical care) was demoted and is now suing OHSU (and Dr. Jacobs and the former Chief People Officer) for \$6.2 million.⁷ And the CEO of OHSU Health Systems (another EVP who apparently supervises the hospital system) resigned, was replaced by an interim CEO, who was replaced by another interim CEO, who then abruptly left after five weeks, and is now replaced by another interim CEO.⁸ OHSU is currently led by an interim president and engaged in a nationwide search for a permanent president.⁹

In brief, most of the key leaders who initially concocted this merger are gone. It is uncertain whether any of their replacements would have thought it was a good idea at the time. And no one knows who will lead OHSU once the dust finally settles. By itself, this chaos in OHSU’s senior management ranks should cast significant doubt on any representations that OHSU now makes to drag this merger across the finish line. Moreover, many of those promises

⁴ <https://www.oregonlive.com/health/2024/11/ohsu-board-names-interim-president-will-launch-national-search-for-long-term-leader.html>

⁵ <https://www.wweek.com/news/health/2024/10/24/ohsu-president-danny-jacobs-resigns-after-fraught-tenure-citing-personal-reasons/>

⁶ <https://www.wweek.com/news/health/2024/06/17/departed-ohsu-exec-could-collect-550000-salary-until-june-2025/>

⁷ <https://www.oregonlive.com/portland/2024/10/former-med-school-dean-sues-ohsu-for-62-million.html>

⁸ <https://www.kgw.com/article/money/business/ohsu-health-ceo-steps-down-legacy-health-merger/283-d3b3c8ca-cb6b-45b7-b112-323bf299fb6b;>
[https://www.wweek.com/news/2025/01/14/interim-head-of-ohsu-health-leaves-after-just-five-weeks/;](https://www.wweek.com/news/2025/01/14/interim-head-of-ohsu-health-leaves-after-just-five-weeks/)
[https://www.wweek.com/news/2025/01/15/ohsu-appoints-new-interim-head-of-hospitals-and-clinics/.](https://www.wweek.com/news/2025/01/15/ohsu-appoints-new-interim-head-of-hospitals-and-clinics/)

⁹ <https://www.oregonlive.com/health/2024/11/ohsu-board-names-interim-president-will-launch-national-search-for-long-term-leader.html>. Also during this period, OHSU handed out \$15 million in bonuses that were unrelated to individual performance to 2000 managers. And with its impeccably bad timing, OHSU followed that bonus spree with layoffs or position eliminations of up to 500 employees. [https://www.wweek.com/news/state/2024/01/22/ohsu-loses-money-as-bonuses-to-non-union-workers-new-nurses-contract-boost-costs/#:~:text=Among%20the%20wage%20pressures%3A%20%2415,they%20would%20cost%20%2412.5%20million.](https://www.wweek.com/news/state/2024/01/22/ohsu-loses-money-as-bonuses-to-non-union-workers-new-nurses-contract-boost-costs/#:~:text=Among%20the%20wage%20pressures%3A%20%2415,they%20would%20cost%20%2412.5%20million.;); [https://www.opb.org/article/2024/06/07/oregon-health-science-university-plans-hundreds-of-layoffs/.](https://www.opb.org/article/2024/06/07/oregon-health-science-university-plans-hundreds-of-layoffs/)

seem unenforceable in the long run, but nevertheless are called “binding commitments” by OHSU.

3. OHSU is Oregon’s least publicly accountable unit of government.

Finally, I offer some comments about OHSU’s claims of public accountability in support of this merger. In its HCMOP filing, OHSU asserts, “This transaction is warranted in large part because OHSU is a public entity with principles of ‘public accountability’ and ‘fundamental public policy.’” HCMO-1 at 11. Contrary to OHSU’s closing argument, the fact that Governor Kotek had to encourage the OHSU board to conduct a national search for Dr. Jacobs’ permanent replacement is not a testament to OHSU’s public accountability. Instead, it follows a pattern of unaccountability and general OHSU mismanagement. No board heads rolled for this narrowly averted disaster. Neither did any roll for other recent actual board blunders. These include the former board chair unilaterally giving Dr. Jacobs a \$350,000 annual retirement pay increase without even performing a performance review,¹⁰ and the board paying an extremely expensive Washington, D.C., law firm \$6.5 million for a personnel investigation and 51-page report (eight of which were cover pages).¹¹

The sad truth is that OHSU is a self-perpetuating, almost entirely self-funded public corporation.¹² As such, it routinely evades any meaningful public oversight or accountability. Accordingly, if public accountability is the cornerstone of this proposed merger, then it should be rejected outright.

<https://www.wweek.com/news/2024/05/22/ohsu-president-gets-350000-annual-boost-to-retirement-while-seeking-cost-cuts-elsewhere/>. This retirement pay bump took Dr. Jacobs’ total compensation package well above \$2 million per year. Not bad for “government” work.

¹¹ <https://www.opb.org/article/2021/12/09/investigation-ohsu-failed-to-support-diversity-accountability/>.

¹² Note that OHSU is designated by statute as an “independent public corporation” (ORS 353.020) that carries out “its missions as a public corporation” (ORS 353.030). While the term “university” is found in its name, OHSU is not a “public university” as that term is used in Oregon statutes. In fact, the only statutory “public universities of the State of Oregon” are those listed in ORS 352.002 (UO, OSU, PSU, SOU, WOU, EOU, and OIT). Moreover, for purposes of many statutes that apply to public bodies, those “public universities” are classified as “special government bodies.” ORS 174.117(1)(i). Tellingly, OHSU isn’t even subject to that series of statutes that classifies Oregon public bodies. See ORS 174.108(3).

Presumably to help cloak this commercial merger with a patina of educational respectability, however, OHSU refers to itself as operating a “public university health system” 89 times in its HCMOP Notice. While “public corporation health system” doesn’t sound quite as selfless, it is the statutorily accurate way to describe the OHSU functions under review in this matter.

a. A majority of the OHSU board is not publicly accountable through a potential loss of office.

It is true that the Governor appoints 10 out of the 11 members of the OHSU board, and the Oregon Senate confirms those nominations. ORS 353.040(1). The board itself picks the eleventh member, the OHSU president. ORS 353.040(3) and 353.060.

But the Governor cannot remove any OHSU board member except “for cause” and after a public hearing. ORS 353.040(8). And most importantly, she cannot remove more than three of those members in any four-year period, unless corruption is involved. *Id.* In other words, after their appointment, a majority of the OHSU board is never accountable to the people of Oregon through a potential loss of office, either directly to the voters or to anyone the voters elected.

Moreover, the board is essentially self-perpetuating. By statute, the board itself is charged with nominating new members to the Governor. ORS 353.040(2)(c). The only possible exception to this insiders-only game is for a student member, who may also be nominated by the OHSU student government. *Id.* Astonishingly, the OHSU-Legacy merger documents cynically commit the OHSU board to keep nominating persons recommended by the Legacy Foundation board until the Governor appoints three such persons to the OHSU board. See OHSU-Legacy Governance Matters Agreement; May 30, 2024; section 1.1.¹³

b. OHSU enjoys sweeping exemptions from Oregon’s Public Meetings and Public Records Laws.

¹³ OHSU has agreed in pertinent part:

Conditioned on the Closing having occurred, for the shorter of (i) ten (10) years following Closing or (ii) such time when three (3) nominees of the Foundation governing body (“Foundation Board”) have been appointed and confirmed to sit on the OHSU Board (collectively, the “Recommended Nominee Period”), as vacancies following the Closing arise on the OHSU Board from seats appointed by the Governor (and not reserved to the OHSU President, an OHSU faculty member, staff member or student), OHSU shall include in its list of potential nominees recommended to the Governor to fill such vacancies Foundation Nominees representing at least two thirds (2/3rds) of all individuals included on such list of potential nominations unless the Foundation Board determines to provide less than such number of Foundation Nominees for a particular vacancy.

<https://www.ohsu.edu/sites/default/files/2024-07/Governance-Matters-Agreement-OHSU-and-Legacy-Health.pdf>. There is a significant question as to whether the OHSU board can delegate part of its statutory board vacancy nomination duties to a private party such as the Legacy Foundation board. See *Corvallis Lodge No. 1411 Loyal Order of Moose v. Oregon Liquor Control Com’n*, 67 Or App 15 (1984) (delegation of government authority to private individuals without procedural safeguards held unlawful).

In its HCMOP filing, OHSU suggests that it is an open book:

The public also has access to OHSU records pursuant to the Public Records Act, and the public may participate in OHSU's governance pursuant to the Public Meetings Law.

HCMO-1 at 11-12. And OHSU's January 26, 2025, public comment states: "OHSU is subject to Oregon public meetings and public records laws, just like state and local agencies." Public comment at 10. Let's start first with its Public Meetings Law claim.

OHSU is nominally subject to ORS chapter 192, the home of the Public Meetings and Public Records Laws. ORS 353.100(1). But OHSU uniquely enjoys a complete subject matter exemption from the Public Meetings Law that is big enough to drive a truck through.

Specifically, the OHSU board is allowed to meet in undeclared secret sessions to discuss the types of the things that most interest the public. These include matters such as this proposed merger, health system strategies, and hiring a new president to replace the recently departed Dr. Jacobs. ORS 192.690 provides in part:

(1) [The Public Meetings Law does] not apply to any of the following:

* * *

(k) Meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies.

Note that this complete exemption significantly varies from the "executive session" statute, ORS 192.660, that other Oregon public bodies operate under.

Under the regular "executive session" statute, Oregon public bodies can meet in executive session to discuss certain sensitive matters. But those public bodies must publicly announce when they are holding such a meeting, identify the statute that authorizes the executive session, and permit members of the press to attend (but not report on) the executive session. This helps to keep those public bodies honest.

By contrast, OHSU escapes even these minimal public accountability safeguards. The net result is that it is very difficult for members of the public to know whether the OHSU board is cheating, let alone know what important matters they are discussing.

As for the Public Records Law, OHSU enjoys similar broad exemptions under that law. ORS 192.355 provides in part:

The following public records are exempt from disclosure under [the Public Records Law]:

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

In brief, there may be good reasons to keep certain OHSU records secret. But let's not fool ourselves. While many parts (or even most) of OHSU are noble, much of it is simply a business enterprise engaged in grubby competition (otherwise, why the secrecy?).

I agree that OHSU is marginally more publicly accessible and accountable than any other health system in Oregon (except perhaps for the hospital district at the coast). But don't confuse OHSU's largely opaque operations with your local city council or school board in terms of public access or accountability.

4. Conclusion

OHSU's recent action vis-à-vis its UnitedHealthcare-insured patients and its ramifications speaks volumes. On balance, this proposed merger is bad for Oregon and Oregonians and accordingly not in the public interest. OHSU has great educators, researchers, and medical care providers. OHSU should focus on supporting them and OHSU's current patients – not on becoming a monopolistic hospital system.

Thank you for considering these comments.¹⁴

Sincerely,



Joseph T. McNaught
5400 SW Wichita Street
Tualatin, OR 97062

Attached: OHSU letter to patients

¹⁴ I am not an active member of the Oregon State Bar. Nothing in this letter should be considered legal advice. HCMOP, OHSU, and Legacy should all consult with their own attorneys if they have any legal questions about any aspect of these comments.



Dear OHSU patient,

As of April 1, 2025, OHSU may no longer be in-network with UnitedHealthcare.

OHSU is committed to making sure all Oregonians have access to the best care possible. Unfortunately, OHSU's clinics and hospitals may no longer be participating providers in UnitedHealthcare's network starting in 2025.

OHSU and UnitedHealthcare have been working on the renewal of our contract. At this point, we haven't reached a fair agreement. Our current contract expires on April 1, 2025.

This change may affect your access to all OHSU clinics and hospitals, including OHSU Doernbecher Children's Hospital.

OHSU will keep working with UnitedHealthcare in the hope of reaching a fair agreement. **OHSU believes it is vital for all Oregonians to have insurance covering the advanced, high-quality care offered at the state's only academic health center and its system hospitals.**

For more information, go to www.ohsu.edu/insurance-changes. We will always post the latest information on that website. You can also call us at 844-712-7796 if you can't find the answer to your question on the website.

Thank you for trusting OHSU with your care.

Sincerely,

Renee Edwards, M.D., M.B.A.
Chief Medical Officer, OHSU Health

Why am I receiving this letter?

We are sending this letter to OHSU patients we believe are also UnitedHealthcare members.

Can I still see my OHSU doctor?

Until March 31, your benefits will be the same at OHSU. For care after that date, call UnitedHealthcare to ask if you can keep your OHSU providers and appointments.

How do I reach UnitedHealthcare to ask questions?

You will find the customer service phone number on the back of your member ID card.

- 1-866-633-2446
- TTY 711
- UHC.com