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## Nurse Staffing Report

Facility Name: Kaiser Sunnyside Medical Center  
Report Publication Date: February 23, 2024

DISCLAIMER: This report was provided to the hospital administrator, chief nursing officer, and both co-chairs of the nurse staffing committee prior to publication. It has also been provided to the union(s) representing the complainant(s), if applicable.

For each violation cited in the report, OHA shall:

- Issue a warning for the first violation in a four-year period
- Impose a civil penalty of \$1,750 for the second violation of the same provision in a four-year period
- Impose a civil penalty of \$2,500 for the third violation of the same provision in a four-year period
- Impose of a civil penalty of \$5,000 for the fourth and subsequent violations of the same provision in a four-year period

The enforcement notice issued to the hospital is included at the end of this report.

NOTE: Any violations listed in ORS 441.792 found before June 1, 2025, will not be relied upon for determining the applicable sanction on or after June 1, 2025, the date OHA can begin issuing civil penalties. 2023 Oregon Laws, Chapter 507, Section 29(4). The sanction for a violation of the same provision after June 1, 2025 will be a warning letter.

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**Hospital:** Kaiser Foundation Hospitals **DBA Kaiser Sunnyside Medical Center**

**Complaint #s:** OR45184, OR45189, OR45214, OR45844, and OR45804

## **HOSPITAL STAFFING COMPLAINT INVESTIGATION REPORT**

The Oregon Health Authority, Health Care Regulation and Quality Improvement Program (OHA) is responsible for processing complaints concerning compliance with certain hospital staffing laws. ORS 441.791. OHA can only investigate valid complaints filed within 60 days from the date of the violation alleged in the complaint. ORS 441.791(1), (6). A valid complaint means a complaint containing an allegation that if assumed to be true is a violation listed in ORS 441.792.

**Summary of Report Findings:** Based on its investigation and the findings of fact set out below, OHA finds:

- Five violations of ORS 441.792(2)(d), as alleged in Complaints OR45184, OR45189, OR45214, OR45844.
- One violation of ORS 441.792(2)(c) as identified in investigation of Complaint OR45804.
- No violations of ORS 441.792(2)(d) as alleged in the complaint numbered OR45804.

## **I. Summary of Complaints**

In September 2023, OHA received three complaints alleging that Kaiser Foundation Hospitals DBA Kaiser Sunnyside Medical Center (“Kaiser Sunnyside Medical Center”) failed to comply with the staffing level in the Cardiovascular Intensive Care Unit (CVICU) Nurse Staffing Plan (NSP) on four different shifts in September 2023. In October 2023, OHA received two complaints alleging that Kaiser Sunnyside Medical Center failed to comply with staffing levels. One of the complaints alleged failure to comply with the CVICU NSP on one shift, and the other complaint alleged failure to comply with the 2 North NSP on one shift. OHA determined that each of the five complaints (“the complaints”) were valid. The five complaints were investigated at the same time. The written report for each of the complaints are consolidated into this report.

### **A. Complaint #OR45184**

On 09/18/2023, OHA received complaint #OR45184 alleging that Kaiser Sunnyside Medical Center failed to comply with the certified nursing assistant (CNA), registered nurse (RN), and charge nurse staffing levels in the CVICU NSP on 09/15/2023, 09/16/2023, and 09/17/2023 night shifts, violations of ORS 441.792(2)(d). After determining the complaint was timely and valid, OHA opened its investigation on 11/16/2023.

### **B. Complaint #OR45189**

On 09/18/2023, OHA received complaint #OR45189 alleging that Kaiser Sunnyside Medical Center failed to comply with the RN staffing level in the CVICU NSP on 09/17/2023 night shift, a violation of ORS 441.792(2)(d). After determining the complaint was timely and valid, OHA opened its investigation on 11/16/2023.

### **C. Complaint #OR45214**

On 09/25/2023, OHA received complaint #OR45214 alleging that Kaiser Sunnyside Medical Center failed to comply with the CNA staffing level in the CVICU NSP on 09/25/2023 night shift, a violation of ORS 441.792(2)(d). After determining the complaint was timely and valid, OHA opened its investigation on 11/16/2023.

### **D. Complaint #OR45844**

On 10/19/2023, OHA received complaint #OR45844 alleging that Kaiser Sunnyside Medical Center failed to comply with the CNA and RN staffing levels in the CVICU NSP on 10/19/2023 night shift, violations of ORS 441.792(2)(d). After determining the complaint was timely and valid, OHA opened its investigation on 11/16/2023.

### **E. Complaint #OR45804**

On 10/15/2023, OHA received complaint #OR45804 alleging that Kaiser Sunnyside Medical Center failed to comply with the CNA staffing level in the 2 North NSP on 10/15/2023 day shift, a violation of ORS 441.792(2)(d). After determining the complaint was timely and valid, OHA opened its investigation on 11/16/2023.

## II. Findings and Facts

### A. CVICU NSP

The NSP applicable to complaints #OR45184, OR45189, OR45214, and OR45844 is a two-page document titled, “KSMC HNRP 2023”, which is referred to as the “CVICU NSP” in this report. The CVICU NSP establishes staffing requirements related to CNAs, RNs, and charge RNs.

As it relates to CNA staffing levels, the CVICU NSP states that “1 CNA will be provided to the unit when podding”. The CVICU NSP defines a “POD” as “grouping 3 progressive care patients together for 1 nurse.”

As it relates to RN staffing levels, the CVICU NSP includes a chart indicating the minimum numbers of RNs required for a given number of patients on the unit (“patient census”), as shown below. The “Meals & Breaks” section of the NSP also reflects, “Nurses will be used to cover meals and breaks when it does not result in dropping below minimum staffing numbers,” indicating that minimum numbers will be maintained during breaks.

| Minimum Numbers of Staff                                                                                                                |    | Meals & Breaks                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Charge RN without patient assignment (is part of Code Blue team and back-up for RRT and should be available as resource on the unit)    |    | <b>Meal/break coverage plan:</b><br><br>Staff will be fully relieved of duties during meals and rest breaks. Nurses will be used to cover meals and breaks when it does not result in dropping below minimum staffing numbers. Charge nurses will ensure documentation of meals and breaks per designated daily break form<br>Charge nurses will schedule lunches, including their own, to be available to respond to codes, MTPs & provide RRT backup as needed. |
| <b>Minimum Staffing Numbers for All Shifts</b>                                                                                          |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Patient Census                                                                                                                          | RN |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1                                                                                                                                       | 2  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2                                                                                                                                       | 2  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 3                                                                                                                                       | 2  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 4                                                                                                                                       | 2  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 5                                                                                                                                       | 3  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 6                                                                                                                                       | 3  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 7                                                                                                                                       | 4  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 8                                                                                                                                       | 4  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 9                                                                                                                                       | 5  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 10                                                                                                                                      | 5  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 11                                                                                                                                      | 6  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 12                                                                                                                                      | 6  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 13                                                                                                                                      | 6  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 14                                                                                                                                      | 6  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 15                                                                                                                                      | 6  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 16                                                                                                                                      | 7  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 17                                                                                                                                      | 7  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 18                                                                                                                                      | 7  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 19                                                                                                                                      | 8  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 20                                                                                                                                      | 8  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| The above #s reflect adding in pods beginning at a census of 13. Range of 2-4 pods as census increases as per our normal unit workflow. |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

As it relates to charge RN staffing levels, the CVICU NSP states in the “Minimum Numbers of Staff” column that: “Charge RN without patient assignment (is part of Code Blue team and back-up for RRT and should be available as resource on the unit).”

Based on the language in the CVICU NSP, the NSP sets three standards: that one CNA will be staffed for shifts when podding occurs; that shifts must be staffed, including during breaks, with the minimum number RNs required based on the number of patients present; and that minimum staffing requires a charge nurse without a patient assignment. Because the CVICU NSP identifies that the charge RN will be “available as resource on the unit”, and because the NSP does not prohibit the charge RN from acting as a resource by providing meal and rest break coverage, OHA concludes that charge RNs can be counted towards the minimum number of RNs when providing coverage for a single RN during a meal or rest break.

## **B. 2 North NSP**

Documentation provided by the hospital to OHA admitted that the 2 North Unit did not have a NSP approved by nurse staffing committee (NSC) at the time of the complaint allegation.

## **C. Staffing during the shifts**

### **1. Complaint #OR45184:**

Review of staffing documentation for the CVICU 09/15/2023 night shift reflected:

- There were as many as 19 patients on the unit at any time over the course of the shift.
- There was at least one pod on the unit.
- No CNAs were staffed on the unit.
- There were a total of eight to ten RNs working on the unit throughout the shift, including times where the charge RN acted as a resource by covering another RN’s break.
- One charge RN was staffed without patient assignment for the shift.
- No deviation from the CVICU NSP for the 09/15/2023 night shift was reported to the NSC within 10 days.

Review of staffing documentation for the CVICU 09/16/2023 night shift reflected:

- There were as many as 16 patients on the unit at any time over the course of the shift.
- There were two pods on the unit.
- No CNAs were staffed on the unit.
- There were a total of seven RNs working on the unit throughout the shift, including times where the charge RN acted as a resource by covering another RN’s break.
- One charge RN was staffed for the shift and did not have a patient assignment.
- No deviation from the CVICU NSP for the 09/16/2023 night shift was reported to the NSC within 10 days.

Review of staffing documentation for the CVICU 09/17/2023 night shift reflected:

- There were as many as 13 and as few as 12 patients on the unit at any time over the course of the shift.
- There were two pods on the unit.
- No CNAs were staffed on the unit.
- There were a total of five to six RNs working throughout the shift, including times where the charge RN acted as a resource by covering another RN's break.
- One charge RN was staffed for the shift and did not have a patient assignment.
- No deviation from the CVICU NSP for the 09/17/2023 night shift was reported to the NSC within 10 days.

## **2. Complaint #OR45189:**

Refer to Complaint #OR45184 (Part C.1. above) as it relates to RN staffing levels for CVICU 09/17/2023 night shift.

## **3. Complaint #OR45214:**

Review of staffing documentation for the CVICU 09/25/2023 night shift reflected:

- There were at least three pods on the unit at 1900.
- No CNAs were staffed on the unit from 1845 to 2300.
- No deviation from the CVICU NSP for the 09/25/2023 night shift was reported to the NSC within 10 days.

## **4. Complaint #OR45844:**

Review of staffing documentation for the CVICU 10/19/2023 night shift reflected:

- There were as many as 16 patients on the unit at any time over the course of the shift.
- There were three pods on the unit at 1900.
- No CNAs were staffed on the unit from 1845 to 2300.
- There were a total of seven to ten RNs working throughout the shift, including times where the charge RN acted as a resource by covering another RN's break.
- One charge RN was staffed for the shift and did not have a patient assignment.
- No deviation from the CVICU night shift for the 10/19/2023 night shift was reported to the NSC within 10 days.

## **5. Complaint #OR45804:**

This complaint alleged that the hospital failed to comply with the CNA staffing levels in the 2 North NSP. Because 2 North did not have an approved NSP to establish a minimum or required staffing level for CNAs, staffing levels during the shift identified in this complaint are irrelevant and not included in this report.

### III. Analysis of Alleged Violations

#### A. Complaint #OR45184

This complaint included allegations related to CNA, RN, and charge RN staffing levels on 09/15/2023, 09/16/2023, and 09/17/2023 night shifts.

##### 09/15/2023 Night Shift

As it relates to CNA staffing levels on the 09/15/2023 night shift, the CVICU NSP requires a CNA when there is podding on the unit. The CVICU had at least one pod on the 09/15/2023 night shift, but there were no CNAs on the unit during the shift.

As it relates to RN staffing levels on the 09/15/2023 night shift, the CVICU NSP requires at least eight RNs when there are 19 patients on the unit. There were a total of eight to ten RNs working on the unit throughout the shift, including times where the charge RN acted as a resource by covering another RN's break. Staffing on 09/15/2023 for the CVICU night shift met the minimum of eight RNs and therefore did not fail to comply with the CVICU NSP.

As it relates to the charge RN staffing level on the 09/15/2023 night shift, the CVICU NSP requires a charge RN without a patient assignment. There was one charge RN without a patient assignment assigned to the unit. Staffing on 09/15/2023 for the CVICU night shift met the minimum requirement for a charge RN without a patient assignment and therefore did not fail to comply with the charge RN staffing requirement.

The hospital failed to follow the CNA staffing requirement set forth in the nurse staffing plan on 09/15/2023 night shift. The failure to comply was not an allowed deviation under ORS 441.765(6) because the unit manager did not notify the hospital NSC within 10 days of any deviations on 09/15/2023 night shift.

There is one substantiated violation of ORS 441.792(2)(d), failure to follow the nurse staffing plan.

##### 09/16/2023 Night Shift

As it relates to CNA staffing levels on 09/16/2023 night shift, the CVICU NSP requires a CNA when there is podding on the unit. The CVICU had two pods on the 09/16/2023 night shift but there were no CNAs on the unit during the shift.

As it relates to RN staffing levels on 09/16/2023 night shift, the CVICU NSP requires at least seven RNs when there are 16 patients on the unit. There were a total of seven RNs working on the unit throughout the shift, including times where the charge RN acted as a resource by covering another RN's break. Staffing on 09/16/2023 for the CVICU night shift met the minimum of seven RNs and therefore did not fail to comply with the CVICU NSP.

As it relates to the charge RN staffing level on 09/16/2023 night shift, the CVICU NSP requires a charge RN without a patient assignment. There was one charge RN without a patient assignment assigned to the unit. Staffing on 09/16/2023 for the CVICU night shift met the minimum requirement for a charge RN without a patient assignment and therefore did not fail to comply with the charge RN staffing requirement.

The hospital failed to follow the CNA staffing requirement set forth in the nurse staffing plan on 09/16/2023 night shift. The failure to comply was not an allowed deviation under ORS 441.765(6) because the unit manager did not notify the hospital NSC within 10 days of any deviations on 09/16/2023 night shift.

There is one substantiated violation of ORS 441.792(2)(d), failure to follow the nurse staffing plan.

#### 09/17/2023 Night Shift

As it relates to CNA staffing levels on 09/17/2023 night shift, the CVICU NSP requires a CNA when there is podding on the unit. The CVICU had two pods on the unit during the 09/17/2023 night shift but there were no CNAs assigned to the unit for that shift.

As it relates to RN staffing levels on 09/17/2023 night shift, the CVICU NSP requires at least six RNs when there are 12 patients on the unit. There were at least 12 patients on the CVICU Unit at all times during the 09/17/2023 night shift. There were periods during the 09/17/2023 night shift when the total RNs working on the unit dropped to 5 RNs. Staffing on 09/17/2023 therefore failed to comply with the CVICU NSP.

As it relates to the charge RN staffing level on 09/17/2023 night shift, the CVICU NSP requires a charge RN without a patient assignment. There was one charge RN without a patient assignment assigned to the unit. Staffing on 09/17/2023 for the CVICU night shift met the minimum requirement of a charge RN without a patient assignment and therefore did not fail to comply with the charge RN staffing requirement.

The hospital failed to follow the CNA staffing requirement and RN staffing requirement set forth in the nurse staffing plan on 09/17/2023 night shift. The failure to comply was not an allowed deviation under ORS 441.765(6) because the unit manager did not notify the hospital NSC within 10 days of any deviations on 09/17/2023 night shift.

There is one substantiated violation of ORS 441.792(2)(d), failure to follow the nurse staffing plan.

#### Summary of all violations for Complaint #OR45184

There are three substantiated violations of ORS 441.792(2)(d) under the facts presented by Complaint #OR45184.



## **B. Complaint #OR45189**

The allegations and facts for this complaint were identical to the allegations and facts as they relate to RN staffing levels during the 09/17/2023 night shift addressed by Complaint #OR45184 in Part III.A above. OHA incorporates the same findings from Part III.A above regarding the 9/17/2023 night shift as they relate to RN staffing levels. Because Part III.A above recognizes a substantiated violation of ORS 441.792(2)(d) for the same conduct in this complaint, OHA does not find an additional substantiated violation for this complaint.

## **C. Complaint #OR45214**

On the 09/25/2023 night shift, the CVICU was staffed with three pods at 1900 and the CVICU NSP therefore required one CNA be staffed. The CVICU was not staffed with a CNA until 2300, leaving the unit without a CNA for the first four hours of the shift. Staffing on 09/25/2023 for the CVICU night shift therefore failed to comply with the CVICU NSP.

The hospital failed to follow the CNA staffing requirement set forth in the nurse staffing plan on 09/25/2023 night shift. The failure to comply was not an allowed deviation under ORS 441.765(6) because the unit manager did not notify the hospital NSC within 10 days of any deviations on 09/25/2023 night shift.

There is one substantiated violation of ORS 441.792(2)(d), failure to follow the nurse staffing plan.

## **D. Complaint #OR45844**

As it relates to CNA staffing levels on 10/19/2023 night shift, the CVICU NSP requires a CNA when there is podding on the unit. The CVICU had three pods during the entirety of 10/19/2023 night shift, and the CVICU night shift lacked a CNA until 2300 and therefore failed to comply with the CVICU NSP.

As it relates to RN staffing levels on 10/19/2023 night shift, the CVICU NSP requires at least seven RNs when there are 16 patients on the unit. There were a total of seven to ten RNs working throughout the shift, including times where the charge RN acted as a resource by covering another RN's break. Staffing on 10/19/2023 for the CVICU night shift met the minimum of seven RNs and therefore did not fail to comply with the CVICU NSP.

The hospital failed to follow the CNA staffing requirement set forth in the nurse staffing plan on 10/19/2023 night shift. The failure to comply was not an allowed deviation under ORS 441.765(6) because the unit manager did not notify the hospital NSC within 10 days of any deviations on 10/19/2023 night shift.

There is one substantiated violation of ORS 441.792(2)(d), failure to follow the nurse staffing plan.

#### **E. Complaint #OR45804**

This complaint alleged a violation of CNA staffing level for on the 2 North Unit on 10/15/2023 day shift. The 2 North Unit is an inpatient direct care unit. The hospital did not have a NSP approved by nurse staffing committee (NSC) for the 2 North Unit at the time of the complaint allegation. Because there are no adopted staffing levels to violate, CNA staffing cannot be found noncompliant for this shift.

There is no violation of ORS 441.792(2)(d) under the facts presented by Complaint #OR45804.

The 2 North Unit is a hospital unit which requires a NSP. On 10/15/2023, Kaiser Sunnyside Medical Center failed to comply with the requirement that the 2 North Unit adopt a NSP by agreement or after binding arbitration.

There is one violation of ORS 441.792(2)(c) under the facts presented by Complaint #OR45804.

#### **IV. Conclusion**

Based on its investigation, OHA concludes there were five substantiated violations of ORS 441.792(2)(d) as alleged in complaints #OR45184, OR45189, OR45214, and OR45844. The violation occurring on 09/15/2023 night shift is Kaiser Sunnyside Medical Center's first violation of ORS 441.792(2)(d) and a warning will be issued to Kaiser Sunnyside Medical Center as indicated by ORS 441.792(1)(a). OHA will not take any other action regarding the four additional violations of ORS 441.792(2)(d) found in complaints OR45184, OR45214, and OR45844 per Oregon Laws, 2023, Section 29(4).

Based on its investigation, OHA concludes there was one violation of ORS 441.792(2)(c) identified during investigation of complaint #OR45804. This is the first violation of ORS 441.792(2)(c) by Kaiser Sunnyside Medical Center, and a warning will be issued to Kaiser Sunnyside Medical Center as indicated by ORS 441.792(1)(a).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 5, 2024, I directed to be served the **HOSPITAL STAFFING COMPLAINT INVESTIGATION REPORT for complaints # OR45454, OR45456, OR45476 and OR45500** upon the individuals or entities and by the method indicated below:

- ☐ by US First Class and US Certified Mail
- ☐ by Hand-Delivery
- ☐ Via Fax
- ☒ Via E-mail

  
\_\_\_\_\_  
Kimberly N. Voelker, MPH  
Hospital Staffing Policy Analyst

**STATE OF OREGON HEALTH AUTHORITY  
PUBLIC HEALTH DIVISION  
Health Facility Licensing and Certification**

|                                                                                                           |                                                                                                           |
|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| In the Matter of<br><br>Kaiser Foundation Hospitals<br>dba Kaiser Sunnyside Medical Center,<br>Respondent | Notice of Intent to Issue Warnings;<br>Opportunity to Request a Hearing<br><br>Case No: OR45184 & OR45804 |
|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|

The Oregon Health Authority, Health Care Regulation and Quality Improvement Program (OHA) is responsible for processing complaints concerning compliance with certain hospital staffing laws. ORS 441.791. This is a Notice of Intent to Issue Warnings ("Notice") to the Kaiser Foundation Hospitals dba Kaiser Sunnyside Medical Center ("Kaiser Sunnyside Medical Center") for violation of its nurse staffing plan on September 15, 2023 and for failure to adopt a nurse staffing plan on October 15, 2023, at its hospital located at 10180 SE Sunnyside Road, Clackamas, Oregon.

This notification is issued pursuant to Oregon Revised Statute ("ORS") Chapter 183, 441.760 through 441.795.<sup>1</sup>

## **II. Background**

State law directs OHA to impose sanctions against a hospital for failing to adopt a nurse staffing plan by agreement or after binding arbitration. ORS 441.792(2)(c).

State law further directs OHA to impose sanctions against a hospital for failing comply with the staffing level in the nurse staffing plan and the failure to comply is not an allowed deviation described in ORS 441.765(6). ORS 441.792(2)(d). A hospital must comply with its nurse staffing plan, but it may deviate from a nurse staffing plan "within a period of 12 consecutive hours, no more than six times during a rolling 30-day period, without being in violation of the nurse staffing plan." ORS 441.765(6). "The unit manager must notify the hospital nurse staffing committee no later than 10 days after each deviation." ORS 441.765(6); OAR 333-503-0005(2).

OHA is required by law to issue a warning for the first violation in a four-year period. ORS 441.792(1)(a).

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<sup>1</sup> This Notice relies on the definitions in ORS 441.760 and in OAR 333-503-0005.

On September 18, 2023, OHA received complaint #OR45184 alleging that Kaiser Sunnyside Medical Center failed to comply with several staffing levels in the Cardiovascular Intensive Care Unit (CVICU) Nurse Staffing Plan (CVICU NSP), including required certified nursing assistant (CNA) staffing levels on the September 15, 2023 night shift. After determining the complaint was timely and valid, OHA timely opened its investigation on November 16, 2023.

On October 15, 2023, OHA received complaint #OR45804 alleging that Kaiser Sunnyside Medical Center failed to comply with the CNA staffing level in 2 North Nurse Staffing Plan (2 North NSP) on the October 15, 2023 day shift. After determining the complaint was timely and valid, OHA timely opened its investigation on November 16, 2023.

OHA completed its investigation and issued a Hospital Staffing Investigation Report ("investigation report") on February 5, 2024 to the Kaiser Sunnyside Medical Center hospital administrator, the chief nursing officer, the hospital nurse staffing committee co-chairs, and the exclusive representative of the complainant, as required by ORS 441.791(2)(d).

Based on OHA's investigation, OHA issues this Notice of Intent to Issue Warnings for a violation of ORS 441.792(2)(d) and a violation of ORS 441.792(2)(c), as described below.

### **III. Violation: Failure to comply with the nurse staffing plan**

#### **1. Nurse Staffing Plan (NSP)**

The NSP applicable to complaint OR45184 was approved by the nurse staffing committee (NSC), and is referred to as the "CVICU NSP" in this Notice.

| Minimum Numbers of Staff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Meals & Breaks                          |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--|----------------|----|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|---|----|---|----|---|----|---|----|---|----|---|----|---|----|---|----|---|----|---|----|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Charge RN without patient assignment (is part of Code Blue team and back-up for RRT and should be available as resource on the unit)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Meal/break coverage plan:               |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <table><tr><th colspan="2">Minimum Staffing Numbers for All Shifts</th></tr><tr><th>Patient Census</th><th>RN</th></tr><tr><td>1</td><td>2</td></tr><tr><td>2</td><td>2</td></tr><tr><td>3</td><td>2</td></tr><tr><td>4</td><td>2</td></tr><tr><td>5</td><td>3</td></tr><tr><td>6</td><td>3</td></tr><tr><td>7</td><td>4</td></tr><tr><td>8</td><td>4</td></tr><tr><td>9</td><td>5</td></tr><tr><td>10</td><td>5</td></tr><tr><td>11</td><td>6</td></tr><tr><td>12</td><td>6</td></tr><tr><td>13</td><td>6</td></tr><tr><td>14</td><td>6</td></tr><tr><td>15</td><td>6</td></tr><tr><td>16</td><td>7</td></tr><tr><td>17</td><td>7</td></tr><tr><td>18</td><td>7</td></tr><tr><td>19</td><td>8</td></tr><tr><td>20</td><td>8</td></tr></table> | Minimum Staffing Numbers for All Shifts |  | Patient Census | RN | 1 | 2 | 2 | 2 | 3 | 2 | 4 | 2 | 5 | 3 | 6 | 3 | 7 | 4 | 8 | 4 | 9 | 5 | 10 | 5 | 11 | 6 | 12 | 6 | 13 | 6 | 14 | 6 | 15 | 6 | 16 | 7 | 17 | 7 | 18 | 7 | 19 | 8 | 20 | 8 | Staff will be fully relieved of duties during meals and rest breaks. Nurses will be used to cover meals and breaks when it does not result in dropping below minimum staffing numbers. Charge nurses will ensure documentation of meals and breaks per designated daily break form<br><br>Charge nurses will schedule lunches, including their own, to be available to respond to codes, MTPs & provide RRT backup as needed. |
| Minimum Staffing Numbers for All Shifts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                         |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Patient Census                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | RN                                      |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 3                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 3                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 5                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 5                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 6                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 6                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 6                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 6                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 6                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 7                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 7                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 7                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 8                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 8                                       |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| The above #'s reflect adding in pods beginning at a census of 13. Range of 2-4 pods as census increases as per our normal unit workflow.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                         |  |                |    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |    |   |                                                                                                                                                                                                                                                                                                                                                                                                                               |

The CVICU NSP states that “1 CNA will be provided to the unit when podding”. The CVICU NSP defines a “POD” as “grouping 3 progressive care patients together for 1 nurse.”

Based on the language in the CVICU NSP, the NSP sets a minimum standard that one CNA will be staffed on the unit when podding.

## 2. Staffing on September 15, 2023

During the September 15, 2023 night shift, there was at least one pod on the unit. However, no CNAs were staffed on the unit.

## 3. Violation Finding

Kaiser Sunnyside Medical Center did not comply with the staffing level required in its CVICU NSP during the night shift on September 15, 2023. On the September 15, 2023 night shift, the CVICU had at least one pod on the unit and no CNAs on the unit during the shift. The CVICU NSP required a CNA when there is podding on the unit.

In addition, the failure to comply was not an allowed deviation under ORS 441.765(6) because it was not timely reported. The September 15, 2023 deviation was not reported to the NSC within 10 days of the deviation. ORS 441.765(6); OAR 333-503-0005(2).

Kaiser Sunnyside Medical Center failed to comply with the staffing level in the CVICU NSP on September 15, 2023, the deviation was not an allowed deviation, and Kaiser Sunnyside Medical Center therefore committed one violation of ORS 441.792(2)(d). This is Kaiser Sunnyside Medical Center's first violation of ORS 441.792(2)(d) in a four-year period. OHA therefore proposes to issue a warning for this violation. ORS 441.792(1)(a).

#### **IV. Violation: Failure to adopt a nurse staffing plan**

##### **1. Nurse Staffing Plan**

Documentation provided by the hospital to OHA reflected that the 2 North Unit did not have a NSP approved by the NSC at the time of the complaint allegation.

##### **2. Violation Finding**

Kaiser Sunnyside Medical Center did not have a NSP approved by the NSC for the 2 North Unit at the time of the complaint allegation. The 2 North Unit is an inpatient direct care unit which requires a NSP. On October 15, 2023, Kaiser Sunnyside Medical Center failed to comply with the requirement that the 2 North Unit adopt a NSP by agreement or after binding arbitration. Kaiser Sunnyside Medical Center therefore committed one violation of ORS 441.792(2)(c) and OHA proposes to issue a warning for this violation. ORS 441.792(1)(a).

#### **V. PENALTY SCHEDULE**

The violations described above are Kaiser Sunnyside Medical Center's first violations of ORS 441.792(2)(d) and ORS 441.792(2)(c) in a four-year period. OHA therefore proposes to issue a warning for each violation. ORS 441.792(1)(a).

**NOTE:** Any violations listed in ORS 441.792(2) found before June 1, 2025, will not be relied upon for determining the applicable sanction on or after June 1, 2025, the date OHA can begin issuing civil penalties. 2023 Oregon Laws, Chapter 507, Section 29(4). The sanction for the first violation of the same provision after June 1, 2025, will be a warning letter and subsequent violations may be subject to civil penalty in accordance with ORS 441.792(1).

#### **VI. NOTICE OF HEARING RIGHTS**

Pursuant to the Administrative Procedures Act (ORS Chapter 183), Kaiser Sunnyside Medical Center (Respondent) has the right to a contested case hearing in this matter. To request a hearing, the request must be submitted in writing to the Oregon Health Authority's Health Facility Licensing and Certification Program within 20 days of the date OHA mailed the Notice. The hearing would be held before an administrative law judge pursuant to the Administrative

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Procedures Act described in the contested case procedures (ORS 183.310 through 183.550), the Attorney General's Model Rules of Procedure for Contested Cases (OAR 137-003-0501 through 137-003-0700).

If a hearing is requested, OHA will provide notify the request of the time and place of the hearing. Respondent will also be given information on the procedures, right of representation, and other rights of parties related to the conduct of the hearing before commencement of the hearing. Requests for a hearing may be mailed to:

Oregon Health Authority  
Health Facility Licensing and Certification Program  
ATTN: Hospital Staffing Team  
800 NE Oregon Street, Suite 465  
Portland, OR 97232

Requests may also be faxed to (971) 673-1556 or e-mailed to [mailbox.nursestaffing@odhsoha.oregon.gov](mailto:mailbox.nursestaffing@odhsoha.oregon.gov).

**Faxed requests for hearing must be received by OHA by 5:00 p.m. PST, within 20 calendar days from the date this Notice was mailed. E-mailed requests for hearing must be received by OHA by 5:00 p.m. PST, within 20 calendar days from the date this Notice was mailed.**

If Respondent does not request a hearing within 20 days of the mailing of this Notice, Respondent will have waived its right to hearing and OHA may issue a final order by default and issue the warning. If Respondent waives its right to a hearing, withdraws a hearing request, notifies OHA or the Administrative Law Judge that it will not appear at the hearing as scheduled, OHA may also issue a final order by default and issue the warning. OHA has designated the relevant portion of its files on this matter, including all materials that Respondent has submitted relating to this matter, as the record in this case for the purposes of proving a prima facie case upon default.

Respondent may be represented by legal counsel at the hearing. Legal aid organizations may be able to assist those with limited financial resources. Per ORS 413.041, a party that is not a natural person may be represented by an attorney or by any officer or authorized agent or employee of the party. Parties are often represented by an attorney. OHA will be represented by an Assistant Attorney General. Respondent will be provided information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

**Notice to Active Duty Service members.** Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through

Notice of Intent to Issue Warnings; Opportunity to Request a Hearing

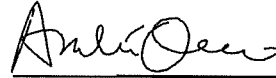
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<http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

Dated: 2/21/2023



André Ourso, JD  
Administrator  
Center for Health Protection  
Public Health Division  
Oregon Health Authority

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 22 day of February, 2024, I directed to be served the NOTICE OF INTENT TO ISSUE WARNINGS; OPPORTUNITY TO REQUEST A HEARING upon the parties and by the method indicated below:

Adam Van Den Avyle  
Authorized Representative & Hospital Administrator  
adam.m.vandenvyle@kp.org  
Kaiser Sunnyside Medical Center  
10180 SE Sunnyside Road  
Clackamas, OR 97015

The Prentice-Hall Corporation System, Inc.,  
Registered Agent for Kaiser Foundation Hospitals  
1127 Broadway Street NE STE 310  
Salem, OR 97301

- ✓ by US First Class and US Certified Mail
- by Hand-Delivery
- Via Fax
- ✓ Via E-mail

Copies by email and US First Class mail to:

Kathryn Vandewalle  
Chief Nursing Officer  
Kaiser Sunnyside Medical Center  
kathryn.e.vandewalle@kp.org  
10180 SE Sunnyside Road

Clackamas, OR 97015

Elaine Vetter  
Nurse Staffing Committee Co-chair  
Kaiser Sunnyside Medical Center  
elaine.x.vetter@kp.org  
10180 SE Sunnyside Road  
Clackamas, OR 97015

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Portland, OR 97202

Jonathon Baker  
Oregon Federation of Nurses & Health Professionals  
jbaker@ofnhp.org  
11560 SW 67<sup>th</sup> Ave  
Tigard, OR 97223

Service performed by:

  
\_\_\_\_\_  
Jane Gardner