



## FIRE DEPARTMENT

130 W. ST. PAUL AVENUE  
WAUKESHA, WISCONSIN 53188-5172  
TELEPHONE: (262) 524-3649 FAX: (262) 524-3670

Steven Howard, Acting Chief  
showard@ci.waukesha.wi.us

January 6, 2015

Mr. Joe Pieper, Chairman  
Finance Committee  
1011 W. Glenn Drive  
Waukesha, WI 53188

**SUBJECT: APPROVAL OF THE CONTRACT BETWEEN THE CITY OF WAUKESHA  
AND DR. MARK POLENTINI, M.D. SC FOR MEDICAL DIRECTOR SERVICES**

Dear Chairman Pieper:

The Department is requesting approval from the Finance Committee and the Common Council to enter into a contract with Dr. Mark Polentini to provide services as Medical Director for the City of Waukesha Fire Department. In order to provide emergency medical services to the community, the Department must have a physician designated as our Medical Director in accordance with State administrative rules and regulations governing emergency medical services.

As part of the 2015 adopted budget, funds were included to compensate our Medical Director, who is an independent contractor. The proposed two-year contract establishes the responsibilities of both the Medical Director and the Fire Department, and provides compensation of \$1,000 per month for these services.

The attached contract was drafted and has been reviewed by Assistant City Attorney Julie Gay. Fire Department staff will be in attendance at the Finance Committee Meeting to answer any questions and provide additional information regarding this matter.

If you have any questions, please do not hesitate to contact me at (262) 524-3649.

Sincerely,

Acting Chief Steve Howard

attachment



## **Agreement for Emergency Services and Medical Direction**

This Agreement is made and entered into by and between the City of Waukesha, a Wisconsin Municipal Corporation, with offices at 201 Delafield Street, Waukesha, WI 53188, referred to as the "City" and Mark Polentini MD SC, 1129, Colonial Dr., Hartland, WI 53029 referred to as the "Medical Director," having offices located at Waukesha Memorial Hospital, 725 American Avenue, Waukesha, WI 53188, referred to as the "Hospital." Together, the City and Medical Director are referred to as the Parties.

### **Recitals**

The City provides emergency medical services (EMS) as defined in DHS 110.04(22), Wisconsin Administrative Code.

The City desires to engage the services of the Medical Director to furnish professional and technical assistance in connection with Emergency Medical Services and Medical Direction.

The Medical Director is willing to furnish professional and technical services to the City.

Now, therefore, in consideration of the mutual promises, agreements, understandings and undertakings hereinafter set forth and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Services Provided By Medical Director.** The Medical Director agrees to perform personally, or through his designees, in a professional manner and in accordance with applicable Wisconsin State Statutes and Administrative Code provisions, the following services:
  - a. Serve as the City's emergency services Medical Director, as defined in §256.01(11), Wis. Stats., and DHS 110.04(42), Wisconsin Administrative Code; and perform the duties set forth in Chapter 256, Wis. Stats., and in Chapters DHS-110 through DHS-112, Wisconsin Administrative Code.
  - b. Provide EMS medical direction to the City and pre-hospital medical services personnel approved to function within City's Emergency Medical Services System.
  - c. Assist in the coordination of Emergency Medical Services with the City's Fire Chief, Fire Department staff, and EMS Instructors and staff.
  - d. Provide the services of licensed medical doctors who are board certified or board eligible in the specialty of emergency medicine and are active members of the Hospital's medical staff, to serve as "Medical Control Physicians". The Medical Director shall ensure that a Medical Control Physician is available twenty-four (24) hours a day, seven days a week, to respond promptly to ambulance service requests for radio and telephone medical guidance, protocols, assistance, advice or command to field personnel, during the term of this Agreement.
  - e. Prescribe, review and approve all protocols used by the City's Emergency Medical Technician (EMT), Intermediate Technician/Advanced EMT, Intermediate and Paramedic personnel in providing medical services contemplated under this Agreement.

f. Provide ambulance service personnel opportunities for evaluation and continuing education at the Hospital, Fire Department, or an appropriate designated training center. The City shall ensure personnel participation. The Medical Director shall provide at least three educational opportunities per shift, per year.

g. Ensure that the physicians providing services under this Agreement, including but not limited to those physicians serving as Medical Control Physicians, receive adequate orientation to perform the services contemplated by this Agreement.

h. Perform periodic review and critique of cases handled by personnel from the City ambulance service in cooperation with Medical Control Physicians and the Hospital EMS Coordinator, for the primary purpose of improving medical care and operations. This review shall be performed in conjunction with the City's Quality Assurance Program and staff.

i. Ensure that all Medical Control Physicians issue transportation instructions and hospital assignments based solely on objective analysis of patient needs, facility capability and physician referrals, and that no effort will be made to obtain institutional or commercial advantage through the use of such transportation instructions.

j. Participate in "Paramedic Meetings" that are scheduled on a quarterly basis (four times per year).

k. Provide input to the City to assist in the development and review of policies and procedures that relate to providing Emergency Medical Services.

l. Assist the City in planning and budgeting activities related to maintaining and enhancing the Emergency Medical Services provided to the community.

m. The Medical Director agrees on his behalf as well as the behalf of medical control physicians or other staff under his direction, to maintain the confidentiality of all medical records and personally-identifiable information of patients in accordance with the provisions of HIPAA and shall ensure that said information is not disclosed or utilized except as necessary for the discharge of the Medical Director's responsibilities under this Agreement or for the rendering of medical treatment.

**2. Services Provided By City.** In the event that any information, data, surveys, reports, photographs, records and maps are available and useful for the provision of services by the Medical Director, the City shall promptly furnish copies of these materials upon request to the Medical Director for use during the contract period. The City designates the Fire Chief or a designee to act as its representative with respect to the services to be performed under this Agreement, and such person shall have authority to transmit instructions, receive information, interpret and define the City's policies and provide decisions in a timely manner unless and until the Medical Director has been advised in writing by the City that such authority has been revoked. The City shall also:

a. Meet all requirements mandated by Section 256.15, Wis. Stats., and Chapter DFS 110 of the Wisconsin Administrative Code, with respect to ambulance service providers.

b. Provide the Medical Director with access to all medical records, including computerized medical records, data base of medical records and system operations as it pertains to the delivery of EMS for the City.

c. Subject to approval of the Fire Chief, provide non-financial support for research activities dealing with pre-hospital emergency care conducted by the Medical Director.

d. In conjunction with the Medical Director, develop and implement quality assurance measures and keep the City's EMS Plan current as required by Section 256.15, Wis. Stats.

e. Comply with all requirements established by an EMS Operational Plan approved by the Wisconsin Department of Health & Social Services in the provision for Emergency on-line medical control.

**3. Compensation for Services.** The Medical Director shall be paid a fee of \$1,000.00 per month by the City as compensation for services provided as an independent contractor under the agreement.

**4. Term of Agreement.** This Agreement shall be effective upon approval and execution by the Medical Director and the City for the period of February 1, 2015, through December 31, 2017, unless otherwise terminated as provided herein. This Agreement and all of its terms and conditions will be extended from year-to-year unless otherwise terminated as provided herein.

**5. Insurance.** The Medical Director shall procure health care liability coverage as required by Section 256.12(7), Wis. Stats., and provide evidence of coverage to the City. Failure on the part of the Medical Director to procure or maintain policies providing the required coverage shall constitute a material breach of contract upon which City may immediately terminate this Agreement. The Medical Director shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance.

**6. Indemnification.** The Medical Director shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, or actions made or asserted for any damage to person or property occasioned by the acts or omissions of Medical Director or its physicians arising out of or in any way connected with the performance of services under this Agreement. The Medical Director's obligation to indemnify pursuant to this paragraph, and to provide any extended insurance coverage where applicable, shall survive the completion of the scope of services, and shall survive the termination of this Agreement.

**7. Termination.** Either party shall have the right to terminate this Agreement subject to the procedure specified in subparagraph 7.a, for any reason, by giving ninety (90) days advance written notice to the other party. Termination shall not relieve either of the parties from obligations already incurred.

a. In the event either party should fail to fulfill in a timely and proper manner its obligation under this Agreement, the non-breaching party shall thereupon give written notice of said breach to the breaching party requiring that the breach be cured to the satisfaction of the non-breaching party within ten (10) days of their receipt of said notice. In the event that the breach is not cured, the non-breaching party shall thereafter have the

right to terminate this Agreement by giving a thirty (30) day written notice to the breaching party of such termination and specifying the date of the termination.

b. This Agreement shall be deemed terminated should the Medical Director be unwilling or unable to personally provide the services specified herein upon the date such determination is made by the City.

c. The Medical Director shall perform no new or additional work after receipt of notice of termination without advance written permission of the City.

## 8. General Terms and Conditions.

a. **Assignability or Subcontracting.** Any assignment, transfer or subcontracting of this Agreement is prohibited, unless written consent is obtained from the City.

b. **Governing Law, Jurisdiction and Venue.** This Agreement has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Wisconsin. Venue for any civil action relating to this Agreement shall be in Waukesha County, Wisconsin. Both parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

c. **Compliance with Laws, Licenses and Permits.** The Medical Director shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. In addition, the Medical Director shall be responsible for obtaining all licenses and permits necessary to perform the scope of services, at the Medical Director's expense, unless specifically stated otherwise in this Agreement. The Medical Director shall make every reasonable effort to fully comply with all applicable Federal, State and local laws as well as rules and regulations governing emergency medical services.

d. **No Waiver of Rights.** The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No express waiver shall affect any event or default other than the event of default specified in such waiver and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

e. **Dispute Resolution.** The City and Medical Director shall endeavor to resolve all disputes first through direct negotiations between the parties' informed and authorized representatives, then through mediation. If mediation fails to fully resolve all disputes, either party may pursue any remedy it deems appropriate under the circumstances.

f. **Independent Contractor.** The Medical Director is an independent contractor. All personnel assigned by The Medical Director to perform work under the terms of this Agreement shall be and remain at all times employees of the Medical Director, the Hospital or employees of their respective employers for all purposes.

**g. Notices.** Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses as follows:

To City: Attn Fire Chief  
Waukesha Fire Department  
130 West St. Paul Avenue  
Waukesha, Wisconsin 53188

To Medical Director: Mark Polentini MD SC  
1129 Colonial Drive  
Hartland, WI 53029

**h. Extent of Agreement/Severability.** This Agreement represents the entire and integrated Agreement between the City and the Medical Director and supersedes all prior negotiations, representations or Agreements, either written or oral. Any amendments must be in writing and be signed by both the City and the Medical Director. If any portion of this Agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the parties that the remaining portions of this Agreement shall be of full force and effect.

**i. Amendments.** The City may, from time to time, require or request modifications in the scope of or deadline for services of the Medical Director to be performed hereunder. Such modifications, including any appropriate increase or decrease in the amount of compensation which are mutually agreed upon by and between the City and the Medical Director, shall be incorporated in written amendments to this Agreement, which shall be deemed part of this Agreement as if fully set forth herein.

**j. No Third-Party Beneficiaries.** This Agreement is intended to be solely between the Parties. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits, or privileges of any third party or parties including, but not limited to, employees of either of the Parties.

**k. Nondiscrimination.** In the performance of work under this Agreement, the Medical Director agrees not to discriminate against any employee or applicant for employment, contrary to any Federal, State or local law, rule or regulation because of race, religion, marital status, age, creed, color, sex, handicap, national origin or ancestry, sexual orientation, income level or source of income, arrest or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Services are to be provided in accordance with the Federal Americans with Disabilities Act.

This Agreement shall take effect once the authorized representative of each Party has signed and dated the document below.

**City of Waukesha**

**Medical Director**

\_\_\_\_\_  
By Shawn N. Reilly, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
[print name] \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Gina Kozlik, City Clerk