Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System

The Honourable Eileen E. Gillese
Commissioner

Commission d'enquête publique sur la sécurité des résidents des foyers de soins de longue durée

L'honorable Eileen E. Gillese
Commissaire

In the matter of the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, pursuant to the Order in Council 1549/2017 and the *Public Inquiries Act, 2009*

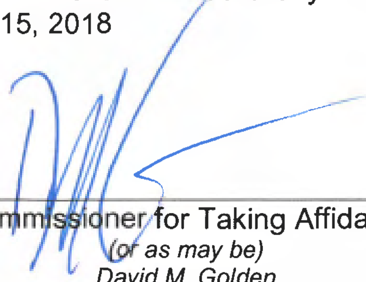
I, Wanda Sanginesi, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a witness to the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System (the "Long-Term Care Homes Inquiry"). I have firsthand knowledge of the matters to which I hereinafter depose. Where I do not have firsthand knowledge, I have identified the source of my information and belief and I verily believe to be true.

2. Attached hereto and marked as Exhibit "A" to this my Affidavit is a copy of my witness summary prepared for the purposes of this Inquiry, the contents of which and the documents referred to therein, I hereby adopt as part of this my Affidavit.

3. I swear this affidavit as a witness in the Long-Term Care Homes Inquiry and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, on June 15, 2018

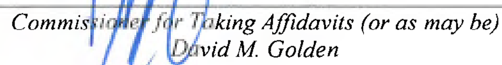


Commissioner for Taking Affidavits
(or as may be)
David M. Golden

WANDA SANGINESI

RCP-E 4D (July 1, 2007)

This is Exhibit "A" referred to in the Affidavit of Wanda Sanginesi
sworn June 15, 2018



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WITNESS SUMMARY OF WANDA SANGINESI

BACKGROUND

1. I started with Caressant Care Nursing and Retirement Homes Ltd. on October 24th, 2012 and officially took over as Vice President of Human Resources on January 1st, 2013.

2. I am based at the Caressant Care corporate office in Woodstock, Ontario. I have worked in the field of labour relations and human resources management for 37 years. During this time, I had served as a general human resources practitioner, labour relations specialist, operations manager, union representative and grievance mediator with the Ontario Ministry of Labour.

3. With respect to labour relations, I have negotiated over 100 collective agreements (without a strike or lockout), resolved thousands of grievances, participated in numerous proceedings before boards of arbitration, Labour Relations Boards and other employment tribunals.

MY DUTIES AND RESPONSIBILITIES

4. The main focus of the Human Resources ("HR") function at Caressant Care is labour relations. HR is also responsible for disability management and benefits administration. I have some involvement in other areas of HR management specifically recruitment strategy and advertising, but the main focus of the HR Department at Caressant Care is labour relations. This includes collective bargaining, grievance handling, representing Caressant Care at interest and rights arbitration, disposition of complaints under various employment legislation, advising the senior leadership team regarding labour relations issues, developments and trends and providing advice and guidance to Caressant Care's Administrators and other managers about labour relations issues.

5. Responsibility for policies that relate to other aspects of HR management, such as staff development, staff orientation, performance appraisal, succession planning,

records management and recruitment, is with the Operations Department and is in the purview of Carol Hepting, Vice President, Operations. The policies that I am involved with relate to labour relations matters such as Caressant Care's policy on harassment, human rights, policies that relate to disability management.

6. Caressant Care has a very basic and quite limited policy that relates to disciplinary action because its operations are unionized and so disciplinary matters are dealt with under Collective Agreements and more broadly through the labour relations framework.

7. Employee files are kept on-site in the long-term care homes.

8. Managers at each home are required to consult with me about staff-related issues that might result in disciplinary action, as well as interpretation of Collective Agreements, and issues that may engage a Collective Agreement, staff-related policy or employment law.

9. With respect to managers at Caressant Care Woodstock, my interaction was primarily through phone calls or in person visits because their offices were in close proximity to the Caressant Care corporate office.

10. I may have made very brief notes of my conversations with Ms. Van Quaethem or Mrs. Crombez. These would consist of bullet points on a note pad. No detailed notes were kept as this was impractical and unnecessary. I did not keep files about the employees who were the subject of these discussions. A file would be created for grievances, harassment investigations and other matters where a formal complaint process was initiated. Two grievance files were created in relation to Elizabeth Wettlaufer; one concerning a suspension grievance filed in April 2013 and another concerning the suspension and termination grievances filed in 2014.

UNIONS AT CARESSANT CARE

11. Caressant Care has approximately 2000 employees, 7 unions, and 33 collective agreements. Approximately 1800 of those 2000 employees are union members.

12. Employees at the Caressant Care nursing home in Woodstock are represented by two unions. The Ontario Nurses' Association represents Registered Nurses. ONA was certified as bargaining agent for this bargaining unit in 1990. Unifor represents RPNs, PSWs, Housekeeping, Dietary, and Activities staff as well as students. This bargaining unit was initially represented by CLAC. In 2000 CLAC was displaced by the Canadian Auto Workers Union which is now known as Unifor. CLAC represents employees at the Caressant Care Woodstock Retirement Home which is located on the same site as the nursing home.

13. The ONA collective agreement provides, at Article 6, for two types of on-site union representatives: a Bargaining Unit President and an "employee representative". Each have specific duties, referenced elsewhere in the collective agreement, but are involved in representing RNs in disciplinary meetings and grievance meetings.

14. It appears that Karen Routledge acted at Bargaining Unit President and/or employee representative until the end of April 2013. She signed Elizabeth Wettlaufer's grievance of April 23, 2013 as "authorized ONA representative" [LTCI00072544]

15. Thereafter Mina Ghadiri became Bargaining Unit President. When Ms. Ghadiri went on leave of absence from August to October 2013, Karen Routledge filled in until Mr. Ghadiri's return. Ms. Ghadiri then continued on as Bargaining Unit President until the end of 2013.

16. Karen Routledge continued to attend disciplinary and investigative meetings with RNs into 2014. She was present at the investigative interview with Elizabeth Wettlaufer on March 26, 2014.

17. In addition to on-site representatives, ONA Labour Relations Officers (LRO") would attend various meetings concerning RNs and had contact with RNs during this period.

18. During 2013 and 2014, I had extensive discussions with ONA LRO's about issues involving another RN at the Woodstock nursing home, whose issues were more complex and required more attention from the management of the home and from myself than did Elizabeth Wettlaufer's issues.

19. Jayne Holmes wrote to me on July 30, 2013 to advise that Elizabeth Wettlaufer's grievance of April 23, 2013 (about her first 5 day suspension) was being withdrawn at EW's request. The letter indicates that EW did not wish to pursue the grievance [LTCI00072546].

20. LRO Jill Allingham attended Elizabeth Wettlaufer's termination meeting on March 31, 2014. Following a meeting of this kind the LRO is permitted to meet on site with the terminated employee. Following this meeting she met privately with Elizabeth Wettlaufer for some period of time.

21. The above is based on emails between the LRO's and myself during this period and on my own recollections.

22. When a discipline or dismissal grievance is filed ONA, typically requests a copy of the Grievor's personnel file by sending an email request along with an authorization form signed by the Grievor

23. I received a request for Elizabeth Wettlaufer's personnel file from Jill Allingham on February 11, 2014, following Elizabeth Wettlaufer's 5 day suspension in January 2014. On March 14, 2014 I sent a copy of the contents of Elizabeth Wettlaufer's personnel file to Jill. This included disciplinary notices from February 8, 2011 to the 5 day suspension notice issued on January 28, 2014 [LTCI00072053].

24. Personnel files are kept on site at the nursing home. This is a requirement of the Long Term Care Homs Act. I believe that I obtained a copy of Elizabeth Wettlaufer's file by requesting it from Brenda Van Quaethem. I had become aware that some of our managers kept documents in personnel files that did not belong there, and so I advise managers, when making these requests, that they are to retain only the documents listed in our Policy on Employee Files and that

any investigation notes, grievances, sunsetted disciplinary notices, emails between managers and corporate office staff must be removed. I believe that I conveyed this to Brenda.

25. Investigation notes and other documents connected to disciplinary action and grievances are not provided to the union until a referral to arbitration is made and a production order is received from the arbitrator. These notes often contain sensitive information about residents, their health, including diagnoses, treatments and medications as well as interview notes containing the names and contact information of family members and other witnesses or complainants.

26. The union can however, request information verbally, about the conduct of investigations, as well as findings and conclusions reached, during grievance procedure meetings.

THE HIRING OF REGISTERED STAFF

27. Hiring of Registered staff is handled at the Home level, although there may be some differences in practices among the different Homes. Unionized positions are first posted internally within the applicable bargaining unit. If a vacancy is not filled through the internal posting process, it can be advertised externally. The typical process is that the Administrator alerts my office of any need for external recruitment and advertising and my department posts the position on various recruitment web sites. However, the screening of applications, short listing of applicants, interviewing of applicants and hiring decisions are handled by departmental managers with varying degrees of consultation with the Administrator. So, on occasion at the Woodstock Home the Director of Nursing would be the person who would be responsible for the hiring process for RNs.

28. In terms of the hiring process at Caressant Care, generally positions that aren't filled internally are filled externally. Prior to 2013, job vacancies were advertised in local newspapers by Administrators. After 2013, Ads are placed on various online recruitment sites. Applications are submitted electronically through a browser-

based applicant tracking system. Hiring managers are provided with access to the system and they then review applications and contact applicants for interviews. My office has no further involvement in the recruitment and selection process.

29. If an applicant is qualified, the hiring manager arranges an interview and, if the interview goes well, does a reference check. Applicants are asked to provide contact information for 2 to 3 references and to sign an authorization form permitting Caressant Care to contact them. It is not essential that applicants provide their current manager as a contact if they can provide a managerial reference from a former employer within the past few years. Some applicants do not want their current employer to know that they are seeking employment elsewhere. My advice to hiring managers is that they talk to people who have direct knowledge of the applicant's work and workplace behaviour. This would normally be a former manager or supervisor. References from work colleagues are of limited value as co-workers are not able to provide objective assessments on these subjects. Typically, job applicants don't provide contact information for managers who are likely to provide unfavourable assessments or negative comments.

30. Proof of required credentials, certifications and licences must be provided before an offer of employment is finalized. Beginning in or about 2013, Registered Nurses' registration status has been verified using the "Find a Nurse" feature on the College of Nurses of Ontario website. Prior to this, RNs would provide proof of registration and licensure in paper form.

31. Criminal record checks and vulnerable sector checks are completed before an offer of employment is finalized and before a new hire is permitted to commence work.

32. Current employees are required to sign an Annual Declaration, attesting that in the previous 12 months they have not been arrested, charged or convicted of any offenses under the Criminal Code. Employees have an ongoing obligation to

under the LTCHA to advise their manager promptly if they are charged with an offence under the Criminal Code or of the disposition of any pending charges.

33. All employees receive education about resident abuse, initially during their orientation period and thereafter on an annual basis. I understood that staff education records were kept in the home.

34. There is currently, and has been for some time, a pronounced shortage of RNs in the long term care sector. This is due in part to the retirement of large numbers of RNs who entered the profession in the 1970's and 80's at a time when nursing was a career of choice for women. Nursing is no longer a career of choice and consequently insufficient numbers of people are entering the profession to replace those who are retiring. This is driven by a number of factors including more extensive education requirements (since 2005 nursing requires a 4 year university program versus the previous 2 year community college program), increased workload pressures, increased responsibility and the physical and emotional demands of working in long term care. Higher pay and more lucrative premiums offered by hospitals and the absence of pension portability from HOOPP (Hospitals of Ontario Pension Plan) to NHRIPP (Nursing Homes and Related Industries Pension Plan) also impeded movement of RNs from acute care to long term care positions.

35. The nursing shortage exacerbates problems with staffing as long term care sector employers struggle to find coverage for shifts that are vacant due to resignations, leaves of absence, vacations, sick time and so forth. RNs have generous entitlements to time off under their collective agreements. When filling vacant shifts managers are dependent on the willingness of RNs to pick up shifts and work additional hours. Employees cannot be compelled to work overtime (this is prohibited under the *Employment Standards Act*). Nor can they be compelled to work on their scheduled days off.

36. If sufficient takers are not available for vacant shifts, the employer's only option is to use agency staff or, if agency staff are not available, to call in managers who

are licenced to practice as RNs. Under the *LTCHA*, nursing homes are required to maintain around the clock RN coverage.

37. Part-time work, both among RNs and PSWs, is the norm within the sector. Part-time employees often have two jobs with two different employers. This further diminishes their availability for additional shifts. An offshoot of this phenomenon is that, in the event of an outbreak at one home, the employee who works at two facilities must choose to work at one or the other. Scheduling conflicts between two employers is another factor that diminishes employees' availability for shifts and contributes to absenteeism.

38. These factors tend to drive absenteeism in the sector. Healthcare employees have increased exposure to illness and are, therefore, more prone to becoming ill. Employees with contagious illnesses must be symptom-free for a specified period of time (i.e., 48 hours) before returning to work.

EMPLOYER'S ACCESS TO HEALTH-RELATED INFORMATION ABOUT EMPLOYEES

39. Employers are prohibited, under the *Human Rights Code*, from making enquiries about job applicants' health, including mental health issues and addiction issues. Pre-employment medicals are not permitted nor are pre-employment drug tests. Random testing for drugs and alcohol during employment is not permitted unless certain conditions are met (i.e., there is evidence of widespread usage in safety sensitive positions).

40. Psychological testing is controversial, and questions abound as its reliability, validity and potential for bias. The Human Rights Commission warns employers about the use of psychological and psychometric testing and cautions that these should be used for purposes of determining job-related skills only and not to explore job applicants' characteristics and traits.

41. These same restrictions apply once an applicant is hired and throughout the course of their employment. Employers are not entitled to information about employees' health, including diagnoses, prognoses (except in relation to

anticipated return to work), medication or courses of treatment. In the case of an employee whose work performance is affected by a medical condition, employers are entitled only to information about work accommodation. An employee who requires accommodation must make the employer aware of this.

42. The Human Rights Commission's Policy on Medical Information encourages employers to accept employees' physicians' notes in good faith and to avoid second-guessing or doubting these notes.

Philosophy Around Medication Errors

43. My understanding is that medication errors should be addressed with employees as they occur. Initially a discussion often referred to as "education" or "counselling" would be held with an employee. This is a non-disciplinary discussion which should be documented in a brief memo to the employee and copied to the employee's personnel file. If errors continue, the progressive discipline system should be engaged.

44. I am not aware of any specific education or guidance that would be provided to the employees to prevent such errors in the future.

45. The managers at the Woodstock site had, historically, followed a CNO directive that encouraged nurse managers to use non-disciplinary means to address medication errors. The directive, which I recall reading online, but which no longer appears to be available, stated that disciplinary action was not recommended as it would discourage self-reporting of medication errors.

Caressant Care's Progressive Discipline Process

46. All of Caressant Care's Homes are unionized. Therefore, if disciplinary sanctions are contemplated with respect to an employee who is a bargaining unit member Department Managers are expected to follow the progressive discipline process. Where they begin in terms of the specific type of discipline imposed will vary depending on the nature of the problem.

47. For any situations where the disciplinary sanction contemplated is at the more advanced end of the progressive spectrum – suspension or termination - managers are expected to consult with me.

48. For verbal warnings and written warnings, managers have somewhat more latitude. I have recommended that managers consult with me if they are uncertain as to the appropriateness of the sanction they are considering, or whether there is sufficient factual support for a finding of misconduct, or if they are expecting resistance or a grievance, or if they are expecting that desired improvement will not occur.

49. Progressive discipline is an approach to addressing work performance and workplace misconduct. This approach and its application in unionized workplaces has evolved from labour arbitration case law and is practiced widely in unionized workplaces, including at Caressant Care. Generally, the concept is that before employees can be dismissed, the employer needs to ensure that they are aware of what is expected of them, and of the consequences of not meeting expectations. Employees need to be given opportunities to improve and to make the employer aware of any barriers to improved work performance or mitigating circumstances related to misconduct. If work performance does not improve or misconduct reoccurs, employees are subject to an escalating series of warnings, then suspensions and finally, termination of employment.

50. Collective agreements provide that the employer must have "just cause" to discipline or dismiss an employee. Disciplinary sanctions, including dismissal, can be challenged through the grievance and arbitration procedures. Disciplinary sanctions are often grieved. Dismissals are virtually always grieved. At arbitration, the onus of proof of just cause is on the employer who must establish that (a) the poor work performance or misconduct actually occurred and if so, (b) that it is culpable and if so, (c) that the punishment fit the crime, and (d) that there are no reasons why the arbitrator should reduce the penalty. The progressive discipline process is used by employers to establish just cause.

51. The requirement that Caressant Care have just cause for disciplinary action, including dismissal, is found at Article 3.01(c) and 8.08 of the collective agreement [LTCI00070533].

52. Where the employer is not successful in establishing just cause, an Arbitrator will reduce or rescind the disciplinary sanctions. In dismissal cases, failure to establish just cause normally means that the employee will be reinstated with back pay. Arbitration decisions are final and binding. There is no recourse to appeal.

53. In a discipline or dismissal case, the Arbitrator's jurisdiction is to determine whether the employer had just cause to discipline or dismiss the employee for the reasons that it did. The Arbitration decision does not address issues such as the employee's suitability for the work, fitness to practice and so forth. The impact of the employee's reinstatement on co-workers, supervisors or clients is not a consideration in the decision, except in a narrow range of circumstances.

54. While progressive discipline may sound like a straightforward linear process, it is often not that way in practice. In reality it rarely works that efficiently or in a linear pattern.

55. The case law informs employers that the purpose of this process is corrective rather than punitive and that employers must take a flexible and measured approach when engaging the process. There are no set number of warnings or suspensions that are needed before an employee can be dismissed for just cause. The circumstances of each incident or occurrence must be considered, including any mitigating factors or circumstances beyond the employee's control. In general, an employee may need to be warned a number of times before an employer can move to a suspension that will withstand a grievance.

56. Employers are expected to be flexible. Even at the advanced stages specific circumstances and mitigating factors must be considered. These include the specific nature of the incident or occurrence, whether some improvement has occurred, the employee's intent, the presence or absence of remorse, openness to

feedback, the presence of any health issues or circumstances beyond the employee's control, and consistency of the discipline with that imposed on other staff in similar circumstances.

57. At times, the progressive process may appear to take on a zigzagging or meandering pattern.

58. This often occurs where different kinds of issues are occurring in relation to the same employee. For example, if the employer is addressing instances of poor attendance, inappropriate behaviour and poor work performance, it is not appropriate to treat each of these different issues as another step up the ladder in the same progression.

59. Managers often find themselves dealing with parallel ladders of progressive discipline for the same employee For instance; an employee has been frequently late for work and has received multiple warnings and suspensions for lateness. The last suspension notice warned that further lateness would result in termination of employment. The employee finally stops coming in late but a few weeks later, makes a medication error. It is unlikely that the error will give the employer just cause for termination. It is more likely, assuming this is a first occurrence, that a warning will be more appropriate and defensible.

60. For these reasons, the employer's application of the progressive discipline process may, on the surface, look inconsistent.

61. In a unionized workplace, managers often find themselves having to deal with multiple and varied types of staff issues and it is not unusual to have multiple ladders and different processes engaged concurrently. For example, attendance issues fall into two categories: culpable and non-culpable absenteeism. Culpable absenteeism is addressed through progressive discipline. Non-culpable absenteeism is addressed through the non-disciplinary multi-step attendance management program. This process can eventually lead to dismissal for "frustration of contract"; a non-disciplinary termination. Hence an employer, who

is managing an employee with attendance and work performance problems, will have disciplinary notices for work performance issues, a separate course of progressive discipline for culpable absenteeism and a series of non-disciplinary letters for non-culpable absenteeism.

62. The progressive discipline process operates in the same manner regardless of an employee's occupation or industry. There is no special process or accelerated process for health care employees. However, depending upon the nature of the incident it may move through the process more expeditiously. Some types of misconduct are considered to be more serious than others (i.e. resident abuse, insubordination, workplace violence, theft).

63. In terms of dealing with Elizabeth Wettlaufer, the progressive discipline process was followed. During 2013 it was followed fairly aggressively. Quite often it takes more than a year to get from warnings to termination with someone who is having work performance problems that involve a range of different issues and occur sporadically.

64. The corrective nature of the progressive system is emphasized to managers. An important aspect of managers' functions is to help employees succeed in their work. Employees who demonstrate satisfactory work performance for periods of time following a warning or suspension are generally considered to have turned a corner. Proceeding too aggressively through the progressive system can lead to accusations of bad faith which can result in disciplinary action being rescinded at arbitration.

65. In 2010, Caressant Care issued a Policy on Progressive Discipline. This Policy provides a simple overview and flow chart of the process. The Policy does not provide guidance as to the level of disciplinary action that may be appropriate in any given situation and managers are expected to consult with me about this [LTCI00017050].

66. With or without a policy on progressive discipline, Caressant Care must follow this process to be able to successfully defend disciplinary decisions if these are challenged through the grievance procedure.

67. In grievance and arbitration proceedings about disciplinary grievances, unions typically take the position that the employer was required to follow progressive discipline or moved too quickly from one stage to the next.

68. Article 10.03 of the collective agreement provides *that "Letters of discipline shall be removed from an employee's file eighteen (18) months following the receipt of such letters provided that the employee's disciplinary record has remained discipline free over the eighteen (18) month period. Leaves of absence in excess of thirty (30) continuous calendar days will not count towards the eighteen (18) months period noted above."* "Discipline-free" means that an employee must not incur disciplinary notices *of any kind* during the 18 month period.

<u>Elizabeth Wettlaufer's Employment</u>

69. I recall that the first time that Ms. Van Quaethem spoke to me about Elizabeth Wettlaufer would have been in early 2013. I had just come on board and was in the process of getting out and meeting with all of the Administrators to get a sense of what sort of HR and labour relations issues they were experiencing.

70. Ms. Van Quaethem discussed a number of staff with me who were having various issues with either work performance or behaviour, misconduct and so on. In terms of Elizabeth Wettlaufer, Ms. Van Quaethem described an employee who was experiencing sporadic occurrences where she was neglecting to complete various tasks, forgetting to do things that were fairly routine in terms of her work. Ms. Van Quaethem had attempted to address these in the previous year. She and Ms. Crombez had provided non-disciplinary counselling and issued a number of verbal warnings and written warnings to Elizabeth Wettlaufer about these. She was uncertain of what to do because there was no particular pattern to these

occurrences. They would happen and then sometimes months would pass where there were no problems.

71. Ms. Van Quaethem characterized Elizabeth Wettlaufer as over-all a good employee, someone who seemed to have quite a good way with residents, was receptive to feedback, didn't deny these occurrences when they were brought to her attention and seemed quite concerned about them. There had recently been yet another occurrence and Ms. Van Quaethem was seeking advice as to what she should do. Should she continue giving Elizabeth Wettlaufer warnings? At what point could she progress beyond warnings? Ms. Van Quaethem stated that most of the previous warnings were followed by periods of satisfactory work performance, such that she and Ms. Crombez had hoped that things had turned around but after a time problems would happen again.

72. We talked about a number of things. One was that they wanted to see if they could understand what was causing these problems and so they talked about whether it was possible that there was some sort of a skill deficit. That didn't seem to be the case because the occurrences all involved different things. They talked about whether Elizabeth Wettlaufer had indicated anything that might suggest a substance abuse problem.

73. I asked Ms. Van Quaethem some general questions, about Elizabeth Wettlalufer; the kinds of errors that Elizabeth Wettlaufer was making, when these were occurring, whether on specific shifts or days, or around similar events. . Ms. Van Quaethem responded was that the issues were sporadic and there was no particular pattern.

74. I asked Ms. Van Quaethem how Elizabeth Wettlaufer would respond when these issues were discussed with her. Ms. Van Quaethem's response was that Elizabeth Wettlaufer was professional, she appeared concerned, that she would acknowledge the error and say things like "Oh God, I must have gotten distracted". She did not deny, deflect or blame others for her errors. She was not hostile or confrontational.

75. In her discussions with Ms. Van Quaethem, Elizabeth Wettlaufer had attributed a lot of these problems to memory lapses. There was some sense that this might even be menopausal and remember that because it made me think that the organization might have to find ways of accommodating memory impairments which would be challenging to do.

76. Caressant Care does not have an EAP program at the Woodstock site. EAP is a benefit that is typically bargained through collective bargaining. Access to confidential counselling services at no charge was provided for employees at the Woodstock site in the months following the revelations about Elizabeth Wettlaufer.

77. I asked Ms. Van Quaethem if Elizabeth Wettlaufer had ever disclosed any health issues. Ms. Van Quaethem responded that, at a meeting several months earlier Elizabeth Wettlaufer had made a reference to seeing her doctor about an issue but she did not specify what it was.

78. I asked Ms. Van Quaethem if there were any indications that a substance abuse issue may be present. I listed a number of symptoms and behaviours that might indicate that this was the case. Ms. Van Quaethem responded that none of these were evident.

79. My advice to Ms. Van Quaethem was two-fold. One, she should not continue to just issue warnings. Progressive discipline presumes a progression and so at some point, if things continued along this path, Ms. Van Quaethem was going to have to move to the next level in progressive discipline which would be suspension. I suggested that Ms. Van Quaethem encourage Elizabeth Wettlaufer to talk to her health care provider about the problems she was having at work and, if she was indeed experiencing some memory impairment, to ask her health care provider for advice or referral to someone who can help her develop some coping strategies for that. It was important that Elizabeth Wettlaufer understood that it was her responsibility to seek out solutions to her health issues. The employer could not do this for her.

80. I don't remember specifically the occurrence that prompted that initial conversation but I recalls that I advised Ms. Van Quaethem that she could either address it through a suspension or by giving Elizabeth Wettlaufer one more written warning, which this time should include a statement that more serious disciplinary action, such as suspension, would be imposed if there was a reoccurrence.. Ms. Van Quaethem opted for the latter. I believe the occurrence that led to this conversation is referenced in an email between myself and Brenda Van Quaethem.

81. Part of the reason for the progressive discipline was that the performance issues - particularly those related to medication - were creating risk so to that extent, those things were discussed with me.

Elizabeth Wettlaufer's Performance Appraisals

82. A performance appraisal should be done for each employee on an annual basis. In the case of Registered staff, appraisals would be completed by the Director of Nursing.

83. A performance appraisal should have been conducted for Elizabeth Wettlaufer each year. The goal is to help people overcome their performance problems so if something is identified it logically follows that the employee focuses on improvement in that area in the coming year.

84. In Elizabeth Wettlaufer's 2013 performance appraisal, although she scored low for medication administration, there was no mention of medication administration as an area for development. At this point, it was pretty apparent that it was a problem [LTCI000116785].

85. It is important to note however that the effectiveness of annual performance appraisals for unionized staff is a matter of some disagreement and confusion.

86. Performance appraisals are treated by employers as non-disciplinary (so that they do not become grievable and arbitrable). This being the case, they are not part

of the progressive discipline process and cannot be used as a basis for disciplinary action. There is also disagreement between employer and union representatives as to whether it is appropriate for employers to raise, in a performance appraisal, matters that have already been addressed through the progressive discipline process, particularly disciplinary action that has been sunsetted. Some see this as a form of double jeopardy or a means of retaining on file indefinitely derogatory information about employees which, under the collective agreement, is settled after a period of time.

INCIDENTS INVOLVING ELIZABETH WETTLAUFER - INVESTIGATION AND DISCIPLINE

i. March 19, 2013

87. As 2013 progressed Ms. Van Quaethem consulted with me on a couple of other occurrences which they dealt with by way of suspension. I recall that there was an occurrence in March of that year involving an issue to do with the narcotic count.

88. On March 18, 2013 I was contacted by email by Helen Crombez, regarding a medication error by Elizabeth Wettlaufer. Helen wanted to impose a one day suspension. I agreed that this was reasonable in the circumstances and the suspension was imposed. Elizabeth Wettlaufer was warned that continued poor work performance related to medication issues or resident care issues will result in further disciplinary action up to and including termination. This is standard language for a disciplinary notice and was appropriate in the circumstances [LTCI00072026, ITCI00016813].

ii. April 1, 2013

89. I do not recall being consulted about the occurrences described in the notes submitted by employees regarding Elizabeth Wettlaufer's actions on April 1, 2013 – neither Elizabeth Wettlaufer's comments to this resident nor about the threatening comments he directed at her. I assume this was because no findings of misconduct were made against Elizabeth Wettlaufer so no consultation about

follow-up action was necessary. It appears that the resident's behaviour was attributed to a urinary tract infection and, as his demeanour towards her changed once he was treated, the incident was considered closed [LTCI00016810, LTCI00016811, LTCI00000639].

90. I am not aware whether Elizabeth Wettlaufer's comments as reported were addressed with her. They may have been addressed informally. Elizabeth Wettlaufer should have taken a more constructive approach.

iii. April 12, 2013

91. This was a suspension of five days for a medication error. I do not recall that Ms. Van Quaethem consulted with me on this matter. However, I am satisfied that Ms. Van Quaethem addressed this issue appropriately.

92. The meeting notes at LTCI00016808 show that Elizabeth Wettlaufer was advised of the seriousness of the error and was offered reinstruction. The suspension was served April 12 – 16, 2013.

93. As noted earlier, ONA grieved this suspension but subsequently withdrew the grievance on the basis that Elizabeth Wettlaufer did not want to pursue it.

94. ONA has the authority to determine if an issue will be grieved as well as the disposition of the grievance. Generally, a union will take an employee's wishes into account prior to initiating a grievance about disciplinary action but typically, disciplinary action, particularly suspensions and dismissals, are grieved.

95. I do not recall that anyone else brought anything related to Elizabeth Wettlaufer to my attention in 2013.

iv. November 25, 2013 and December 19, 2013

96. The two warning letters that Elizabeth Wettlaufer received in November and December 2013 are somewhat anomalous in terms of the progressive discipline that was being imposed. Ms. Van Quaethem issued these. I believe that I was

not consulted on those because the letters are not written in the format or style that I would have used if Ms. Van Quaethem had sought advice about them. I saw these letters for the first time when Brenda emailed them to me in January 2014 when she was seeking advice about another medication error involving Elizabeth Wettlaufer [LTCI00016789, LTCI00016775, LTCI00072037].

97. It is not unusual or improper, when you are getting close to the point of termination with employees and they do something that is considered to be on the less serious side of the spectrum and which may not be sufficient to support a termination decision, to issue a letter addressing the occurrence and to emphasize to the employee that they are getting very close to the end of the employment relationship.

98. In terms of the December, 2013 letter, this was several days from Christmas. Managers do not like dismissing employees during this period. I think that the Home was concerned and didn't want to take precipitous action against Elizabeth Wettlaufer at this time. This is reflected in the meeting notes. It was like a last chance. They were basically saying "You're on the head office radar. If we talk to them we may have to fire you". There was still some hope for improvement.

99. The letters can appear to be something of a dip in the progression but they're not and did not compromise the process.

v. January 20, 2014 – January 28, 2014

100. The next time that I heard from Ms. Van Quaethem was January 2014 when Elizabeth Wettlaufer was given another five-day suspension. I recall telling Ms. Van Quaethem that this would in all likelihood be the last suspension and that further problems would result in Elizabeth Wettlaufer's dismissal [LTCI00072039, LTCI00016739].

vi. March 2014 Incident and Elizabeth Wettlaufer's termination

101. In March of 2014 there was another incident that involved a medication error and at that time I and Ms. Van Quaethem consulted again about Elizabeth Wettlaufer and given the disciplinary record that had developed at that point the question was "do we continue with yet another suspension or is this where things are going to end?" Ms. Van Quaethem's sense was that they had reached the point where dismissal was likely the best option and I concurred [LTCI00016733, LTCI00072088, LTCI00072091].

102. I brought that forward to the CEO of Caressant Care, whose authorization is required for the dismissal of non-probationary employees. He concurred that there was really not much point in continuing with progressive discipline in the form of perhaps a longer suspension and that the facts justified dismissal [LTCI00072096].

103. Elizabeth Wettlaufer was advised that her employment was terminated on March 31, 2014 [LTCI00072092, LTCI00016763, LTCI00016755, LTCI00072094].

104. Elizabeth Wettlaufer's termination was reported to the College of Nurses within the applicable time frame.

105. I was not aware that there were three other employees who had similar medication occurrences when Elizabeth Wettlaufer was fired [i.e. that other nurses besides her had given a resident the wrong insulin]. I would have expected that with the other nurses, some sort of disciplinary action would have been taken, unless there were compelling mitigating circumstances not to do so. The absence of any action against these employees would have been a significant vulnerability in our ability to defend the termination decision.

106. At this point in time, Ms. Van Quaethem did not send me the underlying documentation when the issues arose. I expected managers to provide relevant information verbally in discussions about potential disciplinary action. More recently, in situations where managers are contemplating termination I ask to see the underlying factual documentation.

THE SETTLEMENT OF ELIZABETH WETTLAUFER'S GRIEVANCES

107. Employment references are often provided by the Department Managers or employees' supervisors. Reference letters are sometimes drafted as part of a settlement of a wrongful dismissal action or a dismissal grievance. There is a range of situations where references may be requested and provided. My advice to managers who provide references is to keep them factual and to avoid statements that may not be truthful. Managers must be cautious when providing negative information as it is widely believed that this can lead to defamation claims.

108. If a bargaining unit employee was terminated for cause a reference may be provided through a grievance settlement the employer and the union. Elizabeth Wettlaufer was provided with such a letter because there was a settlement.

109. On January 30, 2014 ONA filed a grievance with respect to the 5 day suspension imposed on January 28, 2014 [LTCI00053014]. A grievance with respect to her dismissal was filed on March 31, 2014 [LTCI00053013, LTCI00072098].

110. Once a grievance is filed, the employer and the union often engage in settlement discussions. Collective agreements are required under the *Ontario Labour Relations Act* to provide a procedure for the disposition of grievances. The purpose of the grievance procedure is to provide a venue for settlement discussions and to encourage the workplace parties (the employer and the union) to resolve grievances between themselves. Grievance settlements can occur at any time during the grievance procedure. Settlement discussions are held on a without prejudice basis and are confidential. If a grievance is not resolved, the union can proceed to arbitration. ONA is quite aggressive in representing its members and tends to pursue unresolved grievances to arbitration; however, its representatives will typically pursue resolution opportunities up to and including during arbitration hearings.

111. Processing of the grievance happens regardless of whether proceedings or investigations, involving the grievor are underway in other venues, such as before

the College of Nurses. The union is not required to wait for the outcome of those proceedings prior to processing a grievance.

112. Moreover, the College does not share information about its investigations into reports of RN terminations or follow-up action with employers (see letter of July 14, 2014 from CNO to Helen Crombez), therefore, there was nothing for the employer to await.

113. Additionally, post-termination events have limited if any bearing on the outcome of the arbitration hearing where the matter to be decided is whether the employer had just cause to dismiss the grievor for the reasons that it did. The arbitrator could make no findings as to her fitness to practice or her suitability for her occupation. If Elizabeth Wettlaufer's license to practice had been suspended or revoked by the College, that may have reinforced to the arbitrator the seriousness of her final medication error, however, the College did not do that.

114. Jill Allingham initially contacted me with a proposal to settle Elizabeth Wettlaufer's grievances in early May 2014. An email dated May 8, 2014 6:20 pm references an earlier discussion (which would have taken place earlier that day or earlier in that week) [LTCI00072105].

115. ONA's proposed a monetary payment equal to one week per year of service, a reference letter, amending her termination to a resignation for personal reasons and the sealing of Elizabeth Wettlaufer's personnel file.

116. At the time of her dismissal Elizabeth Wettlaufer had 6.75 years of service. The proposed monetary settlement would therefore total $10,542.66. ($41.65/hr x 37.5 hours/wk x 6.75)

117. In relation to the reference letter Jill advised me that a confirmation of employment letter would not suffice. She wanted a reference letter that commented in a positive way about Elizabeth Wettlaufer's skills as an RN. I told Jill that the monetary amount was too rich but I would explore the possibility of a counterproposal. I advised her that we would not agree to a letter that made

positive comments about Elizabeth Wettlaufer's skills as a nurse due to her disciplinary record. I believe I responded by offering a letter that set out her duties as an RN. Jill then proposed a letter that spoke to Elizabeth Wettlaufer's strengths. I responded that I would check with the Administrator to see what strengths, if any, she had and would get back to her.

118. I contacted Brenda Van Quaethem by phone at some point thereafter to enquire about Elizabeth Wettlaufer's strengths for the purpose of a letter. Brenda told me that Elizabeth Wettlaufer did have some areas of strength and these were noted in her most recent performance appraisal. She proceeded to list them for me from the performance appraisal document itself. I asked her also if she believed these were true and she confirmed that she did. It's possible that Helen Crombez was present in Brenda's office during this phone call as they often spoke with me together.

119. I consulted with our CEO about the monetary aspect of the ONA proposal. We discussed the case, including the strengths and vulnerabilities and the costs of proceeding to arbitration which I estimated at anywhere between $50,000 to $100,000 and the impact of an adverse decision. I anticipated a lengthy hearing (possibly 5 – 10 days). If we were entirely unsuccessful we would also be looking at well over a year of backpay. While Elizabeth Wettlaufer's disciplinary record was solid, the case had certain vulnerabilities. Elizabeth Wettlaufer's earlier allusion to having some kind of health issues, possibly mental health issues, could upend our prospects for success as could a number of other mitigating factors (for instance, union allegations that she had been treated more harshly than other staff). An adverse decision would mean reinstatement which would result in the displacement of another RN and the likelihood of the continuation of her performance problems. From past experience I knew that the reintegration into the workplace of an employee whose dismissal is rescinded at arbitration is a difficult and disruptive process. I advised that the home did not want Elizabeth Wettlaufer back.

120. Based on our assessment of the case, I was authorized to propose a modest amount to see how far down ONA was willing to go. In labour relations parlance this is referred to as "nuisance money". I do not recall the specific amount but it would have been $2000 or slightly more.

121. The settlement discussions between me and Jill Allingham resulted in a settlement that provided Elizabeth Wettlaufer with a modest amount of money ($2,000) [LTCI00072111, LTCI00072115, LTCI00016707, LTCI00016709, LTCI00016710, LTCI00016712].

122. The ONA collective agreement provides (at Article 21.09) that terminated employees will receive a letter confirming the details of the employment.

123. From my experience, employers do not hire job applicants on the basis of reference letters. A letter from someone outside of the former employee's reporting line (for instance, from the HR department) is likely to send up red flags to a recruiter. On occasion I have received phone enquiries from prospective employers about reference letters I has signed. Mainly these callers want to confirm the authenticity of the letter and to ask further questions about the former employee. I received no such enquiries regarding Elizabeth Wettlaufer.

124. I believe that settlement amounts in these types of situations come from the nursing envelope, however the cost of professional services such as legal representation does not come from the nursing envelope.

125. Neither Brenda Van Quaethem nor Helen Crombez were involved in the settlement negotiations. They don't need to be.

126. Once the settlement was finalized and signed off, I advised Brenda that Elizabeth Wettlaufer's grievances had been resolved on the basis of a financial settlement and the kind of reference letter that we had discussed, that she would not be returning to work, and that she should refer any calls for employment references to me. I advised her that the settlement was confidential and that Elizabeth

Wettlaufer's file should be placed in a sealed envelope with instructions to open only with authorization from HR.

127. Neither the settlement nor the letter of reference were placed in Elizabeth Wettlaufer's personnel file. As I do not have control of employee files, I do not keep confidential settlements in them. These are kept in the grievance file in my office.

128. Information about employees and former employees, including disciplinary records, terminations, work performance and attendance is considered confidential. Managers do not disclose information about employees or former employees to third parties without the employee's written authorization. The unauthorized disclosure of confidential information is considered a privacy breach.

ACTIONS TAKEN AFTER THE OFFENCES

129. In terms of actions taken after the offences became known:

   a. I have done education sessions for managers on workplace investigation three times at Caressant Care Woodstock.

   b. I developed a workplace investigation checklist that has a step-by-step process.

   c. My approach is to mentor managers regarding the labour relations and staff issues for which they seek advice. As each situation is unique, managers need to learn to investigate, determine the facts, come to supportable conclusions and determine appropriate next steps. This often involves choosing from a range of options. While it is possible to provide managers with general guidelines, there is no cookie cutter that can be applied to any given scenario that will generate the best course of action. Managers are more likely to develop skills and confidence in this area of their responsibilities by consulting with an expert resource. This role involves spending time one-on-one, in a consultative discussion about the

specific details of a situation in some depth and guiding the manager to come to decisions that are reasonable in defensible.

d. I revamped the format for disciplinary notices. I also draft many suspension and termination letters or reviews those drafted by managers

THE IMPACT OF ELIZABETH WETTLAUFER'S CRIMES

130. In the aftermath of the news about the murder charges, Caressant Care held a number of "round table" sessions for staff at the Woodstock home. These were intended to provide staff members with a safe and private space in which they could share what they were feeling and what they were thinking. Carol Hepting, Kim Leuszler (VP, Quality Improvement) and I attended these.

131. The range of emotions expressed covered a wide spectrum - shock, distress, disbelief, confusion, bewilderment, anger, despair. Elizabeth Wettlaufer was described by many as kindly, caring, cheerful, a church-goer who babysat their children and pets and who taught Sunday school. Even those who found her somewhat quirky could find nothing in her behaviour that would suggest that she was capable of this kind of malevolent behaviour. Woodstock is a small city and many employees have grown up there and lived most of their lives there, as Elizabeth Wettlaufer did. There was a sense of familiarity and trust among the staff. Elizabeth Wettlaufer had betrayed them. This only heightened their sense of bewilderment at Elizabeth Wettlaufer's crimes.

132. Health care organizations have a culture of caring and staff take pride in the extent to which they can show compassion and provide care in a demanding environment. It is taken as given that their co-workers share their values.

133. Some described spending sleepless nights trying to figure out if there was something they could have done or something that they had missed – some red flag or smoking gun – and the sense of helplessness when it became apparent that they couldn't have and didn't.

134. There was fear about what lay ahead and dread that they would be scapegoated and shamed. Media reports that insinuated they – or long term care staff in general – were incompetent and uncaring, only added to this sense. Despite all of this however, they felt uneasy sharing about their emotions because, as virtually everyone who spoke up acknowledged, they knew that their pain paled when compared to that of the victims and their families.

135. To their credit, none of this dampened their commitment to our residents and their pride in providing great care. They hung together and we did what we could to support them over the difficult months that followed.

136. The news of Elizabeth Wettlaufer's confessions and her subsequent guilty plea was shocking and deeply disturbing to me, and devastating to the people who work at our sites and our corporate office.

137. The phenomenon of the "healthcare killer" was so rare for us. It's not something we had ever considered possible. The idea that an employee would intentionally and surreptitiously kill multiple "persons served" - be they patients, residents, clients, students, customers - is not a something that I've ever seen canvassed in risk management – ever in any organization for which I've worked.

138. Many of us have reflected for a long time about what could have been done to prevent or detect her activities but there are no answers. People have come up against the stark reality of how vulnerable our health care organizations are to predators and how little conventional methods and technology can do to prevent similar tragedies.

139. For myself I have spent a lot of time over the past two years reading up on the health care killer phenomenon, reviewing Wettlaufer's confession video and whatever information I could find about her, with a view to understanding what may have driven her and what we can do to prevent a recurrence, as unlikely as it is to happen. Answers to the former are elusive. For the latter, I think that the

answers may lie in emerging technologies, and new paradigms of leadership and organizational structure.