In the Matter Of:

The Long-Term Care Homes Public Inquiry

DAY 23/VOLUME 23

July 24, 2018

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THE LONG-TERM CARE HOMES PUBLIC INQUIRY

PUBLIC HEARINGS

--- This is Day 23/Volume 23 of the Public Hearings in the above Inquiry proceedings taken at the Elgin County Courthouse, Court Room 201, 4 Wellington Street, St. Thomas, Ontario, on the 24th day of July, 2018, commencing at 9:30 a.m.

BEFORE: The Honourable Justice Eileen E. Gillese, Commissioner

REPORTED BY: Deana Santedicola, CSR, CRR, RPR
& Olivia Arnaud, CSR

A P P E A R A N C E S:

Rebecca Jones, Esq., & Laura Robinson, Esq.,	Commission Counsel
David M. Golden, Esq.,	Caressant Care Nursing and Retirement Homes Limited, Caressant Care - Woodstock
Linda Rothstein, Esq., & Denise Cooney, Esq., & Mark Sandler, Esq., & Megan Schwartzentruber, Esq.	College of Nurses
Paul H. Scott, Esq.,	Jon Matheson, Pat Houde, Beverly Bertram
Shaun Singh, Esq.,	Registered Practical Nurses Association
Rita Bambers, Esq.,	Her Majesty the Queen in Right of Ontario
Nicole Butt, Esq., & Kate Hughes, Esq.,	Ontario Nurses Association

A P P E A R A N C E S (CONT'D):

Jane Meadus, Esq., & Suzan E. Fraser, Esq.,	Advocacy Centre for the Elderly
Alex Van Kralingen, Esq., & Mark Repath, Esq.,	Arpad Jr. Horvath, Laura Jackson, Don Martin, Andrea Silcox, Adam Silcox-Vanwyk Shannon Lee Emmerton, Jeffrey Millard, Judy Millard, Sandra Lee Millard, Stanley Henry Millard, Susie Horvath
Melanie Ouanounou, Esq.,	Ontario Long-Term Care Association
Christine Mainville, Esq.,	Registered Nurses Association of Ontario

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-- Upon commencing at 9:29 a.m.

THE COMMISSIONER: Morning, Ms. Jones.

MS. JONES: Good morning.

THE COMMISSIONER: Ready whenever you are.

MS. JONES: Madam Commissioner, we begin today the phase of the Public Inquiry dealing with the College of Nurses of Ontario. The College of Nurses is the regulatory body for nurses in Ontario. To practice nursing in the province, a nurse must be a member and registered with the College and therefore be subject to the College's regulation. Elizabeth Wettlaufer was a register registered, or an RN, and a member of the College of Nurses of Ontario from June 8th, 1995, to July 25th, 2017; however, following her confession to police in the fall of 2016, the public register was updated to state that she was not entitled to practice nursing.

Exhibit 8 in this Inquiry is the Overview Report pertaining to the College of Nurses of

09:30:54 Ontario, and we're asking this
09:30:56 morning for a small addendum to
09:31:00 be filed to correct two minor
09:31:02 typos in the OR.
09:31:03 One of them is the spelling of a
09:31:05 name, Commissioner, and one of
09:31:09 them is the date that the public
09:31:09 register was updated by the
09:31:09 College to reflect the fact that
09:31:11 Ms. Wettlaufer was no longer
09:31:13 able to practice.
09:31:14 And this addendum has been
09:31:17 circulated to the Participants;
09:31:20 they have no objection. And I
09:31:22 might suggest we mark it as
09:31:24 Exhibit 8-A so that it is clear
09:31:24 that it's an addendum to
09:31:31 Exhibit 8, which is the Overview
09:31:34 Report.
09:31:34 THE COMMISSIONER: Thank you.
09:31:48 Yes, thank you. So, Madam
09:31:52 Clerk, is that Exhibit 118?
09:31:58 MS. JONES: It would be
09:32:00 Exhibit 118, Commissioner.
09:32:03 Alternatively, we can mark it as
09:32:03 Exhibit 8-A so that it shows --
09:32:03 it would appear immediately
09:32:04 after Exhibit 8, which is the
09:32:04 Overview Report.
09:32:06 THE COMMISSIONER: Immediately
09:32:08 after where?
09:32:09 MS. JONES: Just in the list of

09:32:11 exhibits. So, for example, when
09:32:13 it shows up for the public, they
09:32:17 would be able to see that this
09:32:20 addendum was marked right after
09:32:21 Exhibit 8, which is the Overview
09:32:22 Report.
09:32:22 THE COMMISSIONER: Is there a
09:32:23 list of exhibits that's ongoing
09:32:25 on the website or --
09:32:26 MS. JONES: Yes, the website is
09:32:28 being updated with the exhibits.
09:32:29 THE COMMISSIONER: No, but with
09:32:30 the list with the letters and
09:32:32 the numbers?
09:32:33 MS. JONES: I believe so,
09:32:35 Commissioner. I'd have to
09:32:35 verify on the website, but I
09:32:39 believe so.
09:32:39 THE COMMISSIONER: It's really
09:32:40 not an issue for those of us in
09:32:40 the room; we all understand that
09:32:40 it's Exhibit 8 that needs to be
09:32:43 updated with the information.
09:32:44 It's how the information is
09:32:46 accessible to the public so that
09:32:50 if they were following, they'd
09:32:52 be aware of it today and they'd
09:32:54 be aware of it then at the
09:32:58 beginning of the evidence in
09:32:59 relation to the College.
09:33:01 So if there isn't an ongoing
09:33:01 updated exhibit list, it seems

like it should be in this order.
MS. MEADUS: I checked the website, and it has the exhibit list on the website.
THE COMMISSIONER: So everybody thinks that from the public's perspective, they'll best be able to understand this if we put it as Exhibit 8-A as opposed to chronological?
All right. I'm happy to go with the general consensus. I saw lots of nodding heads, so I will do as you suggest, Ms. Jones. And Exhibit 8-A, then, the addendum to the Overview Report on the College of Nurses, a single-page document.
EXHIBIT NO. 8-A: Addendum to Overview Report on the College of Nurses.
MS. JONES: Thank you. The Overview Report represents the results of a review following the issuance of a summons of thousands of documents produced by the College of Nurses to the Inquiry.
The College also responded to requests for further information from the Inquiry and facilitated investigative interviews

09:34:10 requested by the Inquiry.
09:34:11 The College stage of the Inquiry
09:34:15 will begin this morning by
09:34:18 opening remarks, and my opening
09:34:21 remarks will touch on two main
09:34:21 areas.
09:34:23 The first is the key laws that
09:34:24 impact the College's work, being
09:34:25 the Regulated Health Professions
09:34:29 Act, Schedule II to that act,
09:34:36 which is the Health Professions
09:34:38 Procedural Code, and the Nursing
09:34:40 Act and its regulations.
09:34:45 And, Madam Commissioner, we've
09:34:47 provided you with a brief with
09:34:47 some relevant legislation. I've
09:34:48 also given to Madam Clerk a
09:34:48 replacement for Tab A. We
09:34:52 provided at Tab A just the index
09:34:55 to the RHPA, and you can
09:34:58 substitute that in. That's the
09:35:01 RHPA in its entirety without the
09:35:04 schedules.
09:35:04 THE COMMISSIONER: Yes, thank
09:35:05 you very much.
09:35:08 MS. JONES: The legislative
09:35:11 regime which governs the
09:35:14 College's work is very
09:35:16 complicated and by no means is
09:35:18 there going to be attempt this
09:35:18 morning to go through all of the
09:35:19 various complexities of the RHPA

and the legislative regime as a whole.
But I am going to pull up the basic structure of these acts and certain highlights from the legislative regime to orient ourselves and to orient the public to the fact that the College operates in a very regulated environment under these laws.
So that's going to be the first part of my opening remarks, Madam Commissioner. The second will be a high-level review of the Overview Report, and in particular, a summary of the College's interactions with or regarding Ms. Wettlaufer.
After these opening remarks, we will call Anne Coghlan to testify. Ms. Coghlan is the executive director and chief executive officer of the College, and Ms. Coghlan will provide evidence about the overall structure and regulatory functions of the College as well as her and the College's involvement in regulatory actions relating to Ms. Wettlaufer.

09:36:35 After Ms. Coghlan gives her
09:36:38 evidence, we will be calling
09:36:43 Karen Yee to identify. Ms. Yee
09:36:50 was, in 2014, what is called an
09:36:53 intake investigator at the
09:36:55 College of Nurses, and she made
09:36:57 a recommendation to Ms. Coghlan
09:36:59 as to the handling of the
09:37:02 Caressant Care report, the
09:37:04 Caressant Care report which
09:37:05 we've heard about throughout the
09:37:09 Inquiry, reporting on
09:37:11 Ms. Wettlaufer's termination
09:37:12 from that facility.
09:37:18 So beginning with the
09:37:22 legislative framework or the
09:37:24 legislative overview, the
09:37:27 Regulated Health Professions
09:37:31 Act, which people call the RHPA,
09:37:35 which we'll hear a lot about
09:37:38 this week is a statute that
09:37:41 governs all self-regulating
09:37:43 health professions in Ontario,
09:37:44 of which there are 26.
09:37:46 So nursing is one of the 26
09:37:49 self-regulating health
09:37:51 professions that is governed by
09:37:52 this act.
09:37:53 And each profession, in addition
09:37:57 to being governed by the RHPA,
09:38:02 has its own act; so for nurses,
09:38:07 it's called the Nursing Act.

09:38:11 Schedule II to the RHPA is
09:38:11 referred to as the Health
09:38:15 Professions Procedural Code, and
09:38:15 it is often just referred to by
09:38:18 people that are operating under
09:38:21 it as "the Code."
09:38:25 And the Code sets out a
09:38:28 comprehensive list of rules that
09:38:32 all self-regulating health
09:38:36 colleges governed under the Code
09:38:38 must follow.
09:38:39 And, in fact, legislatively, the
09:38:41 Code, which is Schedule II to
09:38:46 the RHPA, is deemed by the RHPA
09:38:52 and the Nursing Act to form part
09:38:57 of the Nursing Act itself.
09:38:58 As I've indicated, the terms of
09:39:01 the RHPA and the Code govern all
09:39:04 of Ontario's self-regulating
09:39:06 health professions and
09:39:06 compliance with the RHPA and the
09:39:08 Code and the Nursing Act are
09:39:13 therefore mandatory, of course,
09:39:15 for the College of Nurses.
09:39:15 THE COMMISSIONER: Ms. Jones, I
09:39:16 hesitate to interrupt you, but I
09:39:19 would think of these Colleges as
09:39:19 "self-governing." You use the
09:39:22 word "self-regulating." Am I
09:39:27 misunderstanding something?
09:39:27 They're regulated by statutes,
09:39:27 so are they not self-governing

09:39:27 bodies?
09:39:29 MS. JONES: That's a very fair
09:39:31 question and, in fact, I
09:39:32 anticipate Ms. Coghlan might
09:39:33 give evidence about what
09:39:35 terminology we use and whether
09:39:38 or not "self-regulating" is the
09:39:40 best term. I believe, and I can
09:39:41 check, that the language of
09:39:42 "self-regulation" appears in the
09:39:46 statute, but I can check that,
09:39:48 Commissioner.
09:39:48 THE COMMISSIONER: All right.
09:39:49 At this stage, would it be fair,
09:39:51 then, for me to understand that
09:39:53 what we're talking about is
09:39:53 they're regulated and created by
09:39:55 the legislation, and they're a
09:39:56 self-governing body, and then
09:39:58 it's just an issue of
09:40:00 nomenclature?
09:40:04 MS. JONES: Yes.
09:40:05 THE COMMISSIONER: Thank you.
09:40:06 MS. JONES: Precisely. So as I
09:40:08 indicated, the RHPA is very
09:40:08 complex. The entire legislative
09:40:11 structure is very complex,
09:40:12 and there's an added layer of
09:40:13 complexity which we will have to
09:40:14 grapple with this week, which is
09:40:16 the legislative regime has
09:40:19 changed over time.

09:40:20 1 And so the legislative -- we are
09:40:23 2 looking at a span of time that
09:40:25 3 ranges from 1995 to 2017, and
09:40:30 4 the RHPA has changed; the Code
09:40:32 5 has changed since that time and
09:40:34 6 over that period of time.
09:40:36 7 So by way of just an overall
09:40:45 8 overview, I'd ask that we pull
09:40:48 9 up FD-5, page 1847, and here we
09:41:01 10 find the current Regulated
09:41:04 11 Health Professions Act, and if
09:41:07 12 we just scroll down, you'll see
09:41:14 13 the index, and stop.
09:41:18 14 At the very top of the page
09:41:19 15 right now, we see Schedule II,
09:41:24 16 which is the Health Professions
09:41:27 17 Procedural Code. And I'm just
09:41:29 18 going to take us to a very few
09:41:29 19 provisions in the RHPA itself.
09:41:31 20 So if we look at Section 3,
09:41:31 21 which is page 1849:
09:41:34 22 "It is the duty of the
09:41:34 23 Minister," that's the Minister
09:41:34 24 of Health and Long-Term Care,
09:41:34 25 "to ensure that the health
09:41:51 26 professions are regulated and
09:41:52 27 coordinated in the public
09:41:53 28 interest, that appropriate
09:41:53 29 standards of practice are
09:41:54 30 developed and maintained, and
09:41:55 31 that individuals have access to
09:41:58 32 services provided by the health

09:42:01 professions of their choice, and
09:42:01 that they are treated with
09:42:02 sensitivity and respect in their
09:42:03 dealings with health
09:42:06 professionals, the Colleges, and
09:42:09 the Board."
09:42:11 Now, if we turn to page 1854 and
09:42:29 Section 27, we see here the
09:42:31 provision setting out the fact
09:42:33 that there are certain
09:42:34 controlled acts in Ontario that
09:42:38 can only be done by health
09:42:41 professionals, and the way that
09:42:42 the structure works is that the
09:42:44 RHPA lists all of them, and you
09:42:46 can see them there under 27,
09:42:48 sub (ii).
09:42:52 And so you'll see at 27,
09:42:56 sub (ii) just at the top of the
09:43:01 page, if we stop there,
09:43:01 sub (iv): "Administering a
09:43:02 substance by injection or
09:43:02 inhalation," for example, is a
09:43:04 controlled act.
09:43:05 Right above that, Section 3:
09:43:09 "Setting or casting a fracture
09:43:12 of a bone or a dislocation of a
09:43:14 joint" is a controlled act.
09:43:15 And then each of the health
09:43:18 professions in their own
09:43:20 governing statute are advised or
09:43:20 it's mandated which controlled

09:43:23 acts they professionally can
09:43:24 engage in. So this is the
09:43:25 master list, if you will, for
09:43:27 the controlled acts.
09:43:29 And then finally, if we turn to
09:43:35 page 1859 and Section 36, we
09:43:46 have a confidentiality
09:43:48 provision. And in essence, it's
09:43:52 a long and complex provision,
09:43:53 but it requires that:
09:43:54 "Every person working at the
09:43:56 College keep confidential all
09:43:59 information that comes to their
09:44:00 attention in the course of their
09:44:00 duties under the act," but then
09:44:02 there are prescribed exceptions.
09:44:03 So to fellow regulators or to
09:44:07 the police or for the purposes
09:44:10 of the administration of the
09:44:10 act, there's a whole list of
09:44:13 exceptions to the
09:44:14 confidentiality provision.
09:44:15 Now, if we can turn to
09:44:24 page 1869, and for you,
09:44:27 Commissioner, that will be in
09:44:29 your binder, Tab 2.
09:44:43 Commissioner, my colleague has
09:44:45 just confirmed the reference in
09:44:47 the legislation is, as you
09:44:49 believe, "self-governing" as
09:44:52 opposed to "self-regulating."
09:45:02 So here we have -- if we scroll

09:45:05 down a bit, we have the index to
09:45:08 the Health Professions
09:45:10 Procedural Code. Like I've
09:45:12 indicated, this is incorporated
09:45:14 by reference into the Nursing
09:45:15 Act, and it's Schedule II to the
09:45:18 RHPA.
09:45:19 And the Code is really where we
09:45:20 find the substance, the main
09:45:23 place for where we can look to
09:45:26 see how Colleges are required to
09:45:29 structure themselves and to
09:45:31 conduct their affairs.
09:45:32 And so we're not going to go
09:45:35 over that in detail this
09:45:37 morning, but I imagine or I
09:45:39 anticipate that this evidence is
09:45:40 going to come out this week in
09:45:42 terms of this statutory
09:45:47 framework provided by the Code,
09:45:47 but I do think it's worthwhile
09:45:48 just to touch on how it's
09:45:49 structured and a few provisions.
09:45:51 So if you go down to the next
09:45:53 page, which is page 1870, and if
09:45:57 you just scroll so we can see
09:46:00 the very top of that page?
09:46:05 So you see just above
09:46:08 Section 15, we have the heading
09:46:09 of "Registration," which
09:46:12 mandates and provides structure
09:46:15 for the registration process and

more structures provided than in a registration regulation. The general regulation provides all sorts of information about registration, which we'll get to, but the overarching process starts here in the Code.

And then if you scroll down, you see "Complaints" and "Reports." The issue of what is a complaint and what is a report is not defined in the legislation, but we'll be hearing evidence about that this week as well.

If we keep scrolling down, we see "Discipline," and this is a section of the Code that governs the process and procedures of the discipline committee, which is an adjudicative body where specified allegations of professional misconduct are addressed when they are referred to that committee.

And when we speak about specified allegations of professional misconduct, what constitutes professional misconduct is contained in a regulation to the Nursing Act, which we'll turn to in a moment. But matters that are contained

09:47:38 within that regulation to the
09:47:39 Nursing Act and listed as being
09:47:43 professional misconduct, as
09:47:45 constituting professional
09:47:47 misconduct, can then be referred
09:47:48 to the discipline committee for
09:47:52 adjudication.
09:47:54 And now, if we scroll down
09:47:56 further in the index, we see
09:48:01 above Section 57, "Incapacity."
09:48:12 And the incapacity provisions of
09:48:14 the Code set out the procedures
09:48:16 that govern where the College
09:48:20 believes a member may be
09:48:24 incapacitated, and that is a
09:48:27 defined term, and it refers to
09:48:30 matters concerning the member's
09:48:34 health.
09:48:34 And if we go to page 1872 in
09:48:39 this document, we see under the
09:48:53 "Interpretation Provisions" of
09:48:55 the Code, if you go up, we'll
09:48:58 see the definition of
09:49:00 "incapacitated."
09:49:04 So "incapacitated" is defined as
09:49:04 meaning "in relation to a
09:49:04 member," so in this case, a
09:49:04 nurse that's registered with the
09:49:09 College, "that the member is
09:49:12 suffering from a physical or
09:49:14 mental condition or disorder
09:49:16 that makes it desirable in the

09:49:18 interest of the public that the
09:49:20 member's certificate of
09:49:22 registration be subject to
09:49:23 terms, conditions, or
09:49:25 limitations or that the member
09:49:27 no longer be permitted to
09:49:28 practice."
09:49:29 So it's that definition that the
09:49:31 provisions about incapacity are
09:49:32 addressing in the legislation.
09:49:52 So in addition to that overall
09:49:54 structure, there's just a few
09:49:56 particular provisions of the
09:49:57 Code, which I will ask to be
09:50:00 pulled up now, and the first
09:50:01 would be on page 1874 of the
09:50:06 Code, so it's within the same
09:50:07 document.
09:50:19 And if we go to Section 2.1,
09:50:32 1874, we see a duty of the
09:50:47 College under 2.1:
09:50:48 "It is the duty of the College
09:50:50 to work in consultation with the
09:50:52 Minister to ensure as a matter
09:50:54 of public interest that the
09:50:57 people of Ontario have access to
09:50:59 adequate numbers of qualified,
09:50:59 skilled, and competent regulated
09:51:04 health professionals."
09:51:04 And then under 3, sub (i), we
09:51:09 have the objects of the College,
09:51:10 and:

09:51:11 "The objects of the College are
09:51:13 set out there to regulate the
09:51:15 practice of the profession to
09:51:16 govern its members," et cetera.
09:51:18 You see 2: "To develop,
09:51:22 establish, and maintain
09:51:24 standards of qualifications for
09:51:27 registration..."
09:51:28 3: "Programs and standards of
09:51:29 practice to ensure the quality
09:51:31 of the profession..."
09:51:39 And various other particular
09:51:44 requirements or objects of each
09:51:46 College.
09:51:47 And then if you turn to
09:51:50 page 1876, Section 10, we see
09:52:03 what's mandated here is that the
09:52:07 College shall have the following
09:52:09 committees, and we will be
09:52:10 hearing a lot about some of
09:52:12 these committees.
09:52:13 So we'll see here just that the
09:52:16 College is mandated to have
09:52:17 these committees, the names of
09:52:18 the committees and how they
09:52:20 operate, and here's where they
09:52:21 list the committees.
09:52:22 So we have the executive
09:52:24 committee, the registration
09:52:25 committee, the inquiries,
09:52:27 complaints, and reports
09:52:27 committee -- which is referred

09:52:30 to as the ICRC -- the discipline
09:52:30 committee, the fitness to
09:52:30 practice committee, the quality
09:52:30 assurance committee, and the
09:52:30 patient relations committee.
09:52:38 And one of the things that makes
09:52:39 our task quite challenging this
09:52:42 week is that as the legislation
09:52:44 has changed, the names of the
09:52:46 committees have changed.
09:52:51 There used to be something
09:52:53 called a complaints committee,
09:52:56 for example, in 1995. The role
09:52:59 of that committee has now been
09:53:03 subsumed within the inquiries,
09:53:08 complaints, and reports
09:53:09 committee.
09:53:09 The role of the executive
09:53:11 committee -- there was an
09:53:12 executive committee in 1995;
09:53:12 there's an executive committee
09:53:15 today, but the role of that
09:53:16 committee has changed.
09:53:16 So as we trace this legislation
09:53:27 over time, part of our challenge
09:53:29 will be dealing with the
09:53:30 changing legislative structure,
09:53:32 the changing names.
09:53:35 And the details of all of that,
09:53:39 Commissioner, are not
09:53:41 necessarily important to
09:53:42 understand each detail of when

09:53:44 the committees changed or what
09:53:45 exactly their structure was.
09:53:47 We'll be going over the key
09:53:50 elements of that over the course
09:53:52 of the week, but the legislation
09:53:55 itself, as I've mentioned, is
09:53:56 very complex, and we do have it
09:53:59 in the legislation brief in
09:53:59 terms of the Foundational
09:54:02 Documents so that we can trace
09:54:06 some of that over time.
09:54:06 THE COMMISSIONER: Thank you.
09:54:07 MS. JONES: Now, if we turn to
09:54:09 page 1892, Section 23, just go
09:54:22 to the top of that section:
09:54:25 "The registrar shall maintain a
09:54:32 register."
09:54:33 So two parts of that: The
09:54:35 registrar is a defined statutory
09:54:37 actor -- in the College, the
09:54:38 registrar is referred to as the
09:54:40 executive director, which is Ms.
09:54:41 Coghlan -- so where we see
09:54:43 "registrar," we can substitute
09:54:46 "executive director" when it
09:54:48 comes to the College of Nurses.
09:54:50 And then the "register" is what
09:54:52 we've heard evidence about so
09:54:54 far in the Inquiry, which is the
09:55:00 contents of particular public --
09:55:03 information that the College
09:55:05 makes available to the public on

09:55:08 its website, on its website now.
09:55:10 In 1995, it was not available on
09:55:11 a website, and we will hear
09:55:13 evidence about how this
09:55:15 information was accessed before
09:55:17 it became available on the
09:55:19 College's website.
09:55:21 And if we look at the list, I
09:55:26 believe there are 20 items that
09:55:29 shall be contained on the
09:55:31 register, and so you'll see the
09:55:34 first few deal with sort of
09:55:37 demographic information.
09:55:42 And you see No. 5: "Each
09:55:44 member's class of registration
09:55:46 and specialist status."
09:55:50 6: "Terms, conditions, and
09:55:53 limitations that are in effect
09:55:56 on each certificate of
09:55:59 registration."
09:55:59 And then if we go down from
09:56:00 there, we see things like at 7:
09:56:03 "A notation of a caution that's
09:56:03 been made to the member."
09:56:03 And you'll see in the middle of
09:56:03 that paragraph 7: "Any
09:56:21 specified continuing education
09:56:21 or remedial programs."
09:56:21 Those are educational orders
09:56:22 that are made by the ICRC.
09:56:25 No. 8: "Every matter that's
09:56:28 been referred to the discipline

committee until the matter is resolved."
"Copy of the allegations that have been referred to the discipline committee."
At 10, we see: "Every result of a disciplinary or incapacity proceeding."
And again, if we think disciplinary has to do with professional misconduct and incapacity has to do with health.
And then there's various other provisions, undertakings, if there's an undertaking that has to do with professional misconduct or incompetence, "notations of findings of professional negligence," et cetera.
You can down to the next page: "Any revocation or suspensions."
And then at 19, there's: "The contemplation that information could be required to be kept on the register in accordance with regulations."
And then 20: "Information that is required to be kept in accordance with the bylaws," and bylaws would be a process

09:57:56 internal to the College itself.
09:58:06 And now, if we can turn to
09:58:10 page 1923, please.
09:58:12 Still be within Tab 2,
09:58:34 Commissioner.
09:58:34 THE COMMISSIONER: Yes.
09:58:36 MS. JONES: And we have here a
09:58:37 section about reporting of
09:58:42 health professionals, and we've
09:58:43 been hearing a lot of evidence
09:58:45 so far about mandatory reports,
09:58:48 and this is where we will find
09:58:50 the structure about mandatory
09:58:53 reporting, and I'm not going to
09:58:55 go over it right now. We'll be
09:58:57 going over it with Ms. Coghlan,
09:59:00 but the legislative structure is
09:59:03 found here in Section 85.1.
09:59:06 And you can just see from the
09:59:07 headings, you have above 85.1,
09:59:13 sub (i), "Reporting by Members,"
09:59:13 and then above 85.2, "Reporting
09:59:17 by Facilities," and if you go
09:59:20 down, continue to go down, we'll
09:59:24 see "Reporting by Employers."
09:59:36 Above 85.5, sub (i), we have
09:59:45 "Reporting by Employers."
09:59:46 And the evidence we'll hear is
09:59:48 that the circumstances which
09:59:50 trigger a mandatory report are
09:59:54 different depending on the
09:59:56 entity: An employer, a member,

09:59:58 1 self-reporting obligations, or
10:00:01 2 reporting obligations by a
10:00:03 3 facility operator, and the
10:00:05 4 important thing is that those
10:00:08 5 mandatory reports are grounded
10:00:10 6 in this section of the
10:00:12 7 legislation.
10:00:12 8 Now, if we can turn up in your
10:00:21 9 binder, Commissioner, Tab 3,
10:00:24 10 which is the Nursing Act, and
10:00:26 11 this is FD-51223.
10:00:40 12 And to get a sense of where the
10:00:42 13 Nursing Act fits in, you can
10:00:44 14 see, for example, at Section 4
10:00:46 15 of the act, "Authorized Acts,"
10:00:50 16 and this is what links the
10:00:52 17 Nursing Act to those controlled
10:00:54 18 acts that we looked at earlier
10:00:57 19 in the RHPA.
10:00:58 20 So under Section 4 of the
10:01:01 21 Nursing Act, we have those
10:01:03 22 controlled acts that nurses are
10:01:07 23 authorized to perform, and we'll
10:01:11 24 just look at this.
10:01:12 25 So we see again at sub (ii):
10:01:17 26 "Administering a substance by
10:01:19 27 injection or inhalation."
10:01:21 28 It's a controlled act for all
10:01:23 29 the health professionals, and
10:01:24 30 it's one that's granted
10:01:27 31 specifically to nurses by this
10:01:29 32 act.

10:01:30 1 There is an expanded list later
10:01:38 2 for nurse practitioners which
10:01:38 3 are a particular kind of nurse
10:01:41 4 but not relevant to us this
10:01:42 5 week.
10:01:42 6 And then for our purposes,
10:01:42 7 really, the rest of the Nursing
10:01:42 8 Act deals with provisions about
10:01:44 9 different classes of nurses,
10:01:44 10 procedural matters like the
10:01:47 11 election of council and other
10:01:50 12 matters like that.
10:01:51 13 There are, though, two very
10:01:54 14 important regulations under the
10:01:56 15 Nursing Act, and the first is at
10:02:00 16 Tab 4 for you, Commissioner, and
10:02:02 17 it is Foundational Document
10:02:09 18 51232.
10:02:13 19 THE COMMISSIONER: Okay.
10:02:14 20 MS. JONES: So this is the
10:02:48 21 professional misconduct
10:02:52 22 regulation under the Nursing
10:02:53 23 Act, and we see here under
10:02:57 24 Section 1: "The following are
10:02:59 25 acts of professional misconduct
10:03:04 26 for the purposes under the
10:03:06 27 Code..." and then there is a
10:03:08 28 long list of acts which
10:03:11 29 constitute professional
10:03:13 30 misconduct for the nurses.
10:03:15 31 So just by way of example,
10:03:17 32 No. 1: "Contravening a standard

10:03:17 of practice of the profession or
10:03:17 failing to meet the standard of
10:03:17 practice of the profession."
10:03:29 7: "Abusing a client..."
10:03:34 6: "Actually practicing the
10:03:36 profession while ability to do
10:03:40 so is impaired by any
10:03:41 substance..."
10:03:42 Section 8: "Misappropriating
10:03:45 property," et cetera.
10:03:45 So that when the College is
10:03:45 making determinations about
10:03:45 professional misconduct, it
10:03:45 would be in reference to this
10:03:50 document -- or this regulation,
10:03:53 rather.
10:04:01 And finally, there is another
10:04:06 document in your binder,
10:04:14 Commissioner. I cannot pull it
10:04:16 up at the moment, but it's just
10:04:17 the regulation having to do with
10:04:21 registration, the general
10:04:21 regulation, but it has to do
10:04:21 with registration.
10:04:24 This version in your binder you
10:04:24 may want to mark because it's
10:04:26 actually the 1995 version, the
10:04:28 one that was in effect in 1995.
10:04:31 The current version of this
10:04:33 regulation is an attachment to
10:04:36 Ms. Coghlan's affidavit, so
10:04:37 we've attached the previous one,

10:04:39 which was applicable at the time
10:04:42 that Ms. Wettlaufer became
10:04:43 registered.
10:04:45 And we'll be reviewing the
10:04:47 registration regulation, but it
10:04:50 mandates the process for
10:04:52 registration or applications for
10:04:54 registration to the College.
10:05:00 One word of caution about this
10:05:06 legislation brief and the
10:05:08 legislation brief that we've
10:05:09 used as a Foundational Document,
10:05:11 which is that it is, in effect,
10:05:15 as of the release of the
10:05:16 Foundational Documents, there
10:05:20 have been certain amendments
10:05:21 that are in grey in the
10:05:22 Regulated Health Professions Act
10:05:24 which is in our Foundational
10:05:25 Documents which are now in
10:05:29 force. And if that's relevant,
10:05:29 we will illicit that over the
10:05:30 course of the week, but our
10:05:30 Foundational Document brief was
10:05:32 as of the date that it was
10:05:35 circulated in March.
10:05:40 THE COMMISSIONER: Thank you.
10:05:42 MS. JONES: So, Commissioner,
10:05:47 that concludes the walk-through
10:05:51 of the legislative regime, which
10:05:53 we'll be hearing about this
10:05:55 week, and I'll now turn to the

10:05:58 contents of the Overview Report
10:06:00 itself. Our Overview Report is
10:06:04 divided into four sections.
10:06:07 Tab 1 is a specific factual
10:06:12 chronology, or Tab A, rather.
10:06:16 Tab B are the underlying
10:06:18 documents that support that
10:06:20 chronology.
10:06:21 Tab C is the key relevant
10:06:25 legislation, and we've discussed
10:06:27 that now this morning.
10:06:28 And Tab D are policy and process
10:06:31 documents from the College.
10:06:38 In terms of the interactions or
10:06:40 intersections between the
10:06:42 College of Nurses and
10:06:43 Ms. Wettlaufer, of course, to
10:06:47 practice nursing in Ontario,
10:06:49 Ms. Wettlaufer had to become
10:06:52 registered by the College, which
10:06:54 she did in 1995.
10:06:57 Following that, each member of
10:07:01 the College is required to
10:07:03 submit annual payment or annual
10:07:05 renewal -- the name of the
10:07:08 document changes over time --
10:07:10 forms every year, and
10:07:12 Ms. Wettlaufer did so.
10:07:13 Ms. Wettlaufer's first
10:07:18 registration with the College
10:07:19 was actually for temporary
10:07:23 registration, and it was as of

10:07:25 1 June 8th, 1995.
10:07:29 2 And at that time, Ms. Wettlaufer
10:07:33 3 had completed her nursing
10:07:36 4 education by obtaining a diploma
10:07:38 5 at Conestoga College, but she
10:07:42 6 had not yet written her nursing
10:07:46 7 registration examination, and
10:07:48 8 she was granted temporary
10:07:51 9 registration in those
10:07:53 10 circumstances while awaiting the
10:07:56 11 registration examination.
10:07:58 12 There's a process whereby a
10:08:00 13 nurse can be granted temporary
10:08:02 14 registration with certain
10:08:04 15 conditions including that she
10:08:07 16 only be permitted to work at a
10:08:08 17 particular site which was aware
10:08:11 18 of her status, and that was at
10:08:17 19 Geraldton Hospital, which we've
10:08:20 20 heard about.
10:08:21 21 This period of temporary
10:08:22 22 registration was very temporary.
10:08:22 23 Ms. Wettlaufer obtained her
10:08:22 24 general registration -- so her
10:08:23 25 non-temporary registration --
10:08:23 26 with the College on August 11th,
10:08:29 27 1995, so about two months later.
10:08:36 28 Other than the process of
10:08:38 29 registration and the process of
10:08:45 30 completing her annual renewal
10:08:47 31 forms, the College had
10:08:49 32 involvement specific to

10:08:51 Ms. Wettlaufer with her or
10:08:54 regarding her on three separate
10:08:57 occasions or three separate
10:09:00 periods of time, rather, between
10:09:04 1995 and 2017.
10:09:05 So the first is that on
10:09:09 September 14th, 1995, the
10:09:12 College received a call from the
10:09:16 director of nursing at Geraldton
10:09:20 District Hospital where
10:09:22 Ms. Wettlaufer was employed, and
10:09:23 the director of nursing reported
10:09:26 an incident involving
10:09:28 Ms. Wettlaufer in which she took
10:09:30 medication, which was lorazepam,
10:09:34 from the hospital supply,
10:09:37 ingested it at work, collapsed,
10:09:40 and was hospitalized.
10:09:42 Eventually, the director of
10:09:45 nursing makes a formal complaint
10:09:47 to the College. On
10:09:50 September 14th, it was a call,
10:09:51 and then eventually, as we'll
10:09:53 learn, there was a formal
10:09:55 complaint made to the College
10:09:56 which is then investigated.
10:09:59 And following that
10:10:00 investigation, the
10:10:04 then-complaints committee at the
10:10:06 College, which today would be
10:10:08 the ICRC or the inquiries,
10:10:12 complaints, and reports

committee, referred that matter or sent that matter about this incident to the executive committee, the then-executive committee. Today, if I understand correctly, it would be referred to a different panel of the ICRC. It would remain within the ICRC.

And the referral to the executive committee at that time was for incapacity proceedings. And as we've reviewed this morning, "incapacity" is a defined term in the RHPA, and it relates to the member's health. As part of these incapacity proceedings, the College of Nurses required that Ms. Wettlaufer be assessed by health professionals, and she was assessed twice by an addiction specialist, physician addiction specialist, and once by a psychiatrist. And we will see these assessment reports during the course of Ms. Coghlan's evidence.

The incapacity proceedings ultimately resulted in an order by the fitness to practice committee. So the fitness to

10:11:48 practice committee is the
10:11:50 adjudicative committee that
10:11:52 deals with incapacity matters at
10:11:55 the College and at all of the
10:11:58 self-governing Colleges.
10:12:02 And on consent between
10:12:04 Ms. Wettlaufer and the College,
10:12:07 there were restrictions placed
10:12:12 on Ms. Wettlaufer's registration
10:12:14 for a period of a year. And we
10:12:17 will go over these restrictions
10:12:20 in some deal, but they involve
10:12:24 matters like notifying her
10:12:27 employer, being followed by
10:12:30 health professionals who had
10:12:31 obligations to report if they
10:12:33 had ongoing concerns, et cetera.
10:12:36 That fitness to practice order
10:12:43 then expired at the conclusion
10:12:49 of the year, and on May 29th,
10:12:54 1998, Ms. Wettlaufer no longer
10:12:56 had restrictions on her
10:12:59 registration, so as of that
10:13:01 date.
10:13:05 And when we talk about the
10:13:08 language that's common in this
10:13:12 legislative regime is terms,
10:13:16 conditions, and limitations, and
10:13:17 so things like that you'd be
10:13:19 required to report things to
10:13:20 your employer; that you'd be
10:13:21 required to be followed by a

10:13:25 health care practitioner. Those
10:13:25 fall within terms, conditions,
10:13:28 and limitations, so those were
10:13:29 placed on her certificate, and
10:13:31 then after a year, those were
10:13:34 lifted, in essence.
10:13:36 The next involvement the College
10:13:44 had with Ms. Wettlaufer was
10:13:46 approximately 16 years later on
10:13:50 May 1, 2014, and this is when
10:13:54 the College received the
10:13:58 mandatory termination report
10:14:00 from Caressant Care. And as
10:14:03 we've gone over briefly this
10:14:07 morning, these mandatory reports
10:14:09 are mandated by legislation.
10:14:11 We see in the Overview Report,
10:14:15 and we will hear further this
10:14:17 week that this mandatory report
10:14:20 went through the College's
10:14:23 intake process, and it was
10:14:26 considered by both of the
10:14:28 witnesses that we will have this
10:14:30 week.
10:14:32 It was considered by intake
10:14:34 investigator, Karen Yee, who
10:14:42 made a recommendation as to the
10:14:43 handling of the report, and by
10:14:45 Ms. Coghlan herself, who made
10:14:49 the ultimate determination as to
10:14:51 the handling of the report.
10:14:56 And we see in the Overview

10:15:00 Reports documents which show the
10:15:02 process which Ms. Yee undertook
10:15:05 when she was considering the
10:15:07 report including steps that
10:15:10 we've already heard about in
10:15:11 this Inquiry, a telephone
10:15:14 conversation with the director
10:15:19 of nursing at Caressant Care,
10:15:27 Helen Crombez.
10:15:29 Ms. Yee's recommendation was
10:15:30 that the information in the
10:15:30 Caressant Care report be what's
10:15:32 referred to as "banked with
10:15:33 notice," which effectively means
10:15:38 that the information is kept on
10:15:42 file and that Ms. Wettlaufer be
10:15:44 notified that it was brought to
10:15:46 the College's attention.
10:15:49 And we will see as we see in the
10:15:51 Overview Report, Ms. Wettlaufer
10:15:58 is notified of this and asked to
10:16:03 review two of the College's
10:16:03 standards publications.
10:16:06 So Ms. Yee did not recommend
10:16:09 that a formal investigation be
10:16:12 commenced at this time, and her
10:16:15 recommendation to bank with
10:16:16 notice was presented at an
10:16:18 intake review meeting at the
10:16:20 College where it was accepted by
10:16:23 the group there before it was
10:16:25 presented to Ms. Coghlan.

10:16:37 The third intersection between
10:16:40 Ms. Wettlaufer and the College
10:16:42 was of course at the end of
10:16:44 September 2016 when the College
10:16:47 is contacted by a physician at
10:16:50 the Centre for Addiction and
10:16:57 Mental Health and advised of
10:16:59 Ms. Wettlaufer's confession.
10:17:00 And we see in the Overview
10:17:02 Report that Ms. Coghlan as
10:17:04 registrar makes an emergency
10:17:06 appointment of an investigator
10:17:08 when she has this information.
10:17:12 Various contact is made with the
10:17:15 police, with CAMH, et cetera,
10:17:18 and ultimately, Ms. Wettlaufer's
10:17:22 registration is formally revoked
10:17:23 by an order of the discipline
10:17:25 committee on July 25th, 2017;
10:17:29 otherwise, I indicated earlier,
10:17:31 her status had been updated as
10:17:36 "not entitled to practice" prior
10:17:39 to that time.
10:18:04 Just a procedural matter,
10:18:05 Commissioner. Just one moment.
10:18:07 THE COMMISSIONER: All right.
10:18:08 Thank you.
10:18:09 MS. JONES: Okay. So,
10:18:10 Commissioner, my colleague is
10:18:12 reminding me that there was
10:18:14 certain aspects of the KPMG
10:18:18 report that came up yesterday

10:18:19 1 that you asked to be brought
10:18:20 2 back today, and I think
10:18:23 3 Mr. Fraser has those and
10:18:27 4 Madam Clerk has those. I think
10:18:27 5 those were to be marked as an
10:18:28 6 exhibit yesterday.
10:18:28 7 THE COMMISSIONER: Well, why
10:18:28 8 don't we finish your overview
10:18:31 9 remarks?
10:18:31 10 MS. JONES: I am finished by
10:18:33 11 overview remarks.
10:18:33 12 THE COMMISSIONER: Oh, you are.
10:18:33 13 MS. JONES: I should have said
10:18:33 14 that, yes. I finished my
10:18:33 15 overview remarks, and we are
10:18:35 16 about to call Ms. Coghlan, so we
10:18:35 17 might just want to clean up that
10:18:38 18 issue before we call
10:18:40 19 Ms. Coghlan.
10:18:40 20 THE COMMISSIONER: Yes, all
10:18:41 21 right. That would be helpful,
10:18:42 22 then. Thank you.
10:18:43 23 MS. FRASER: Thank you for that
10:18:59 24 reminder.
10:18:59 25 MS. JONES: We can now call
10:19:02 26 Anne Coghlan --
10:19:02 27 THE COMMISSIONER: Sorry, I'm
10:19:05 28 just going to enter it as an
10:19:08 29 exhibit. Thank you. That's
10:19:09 30 Exhibit 118, then?
10:19:12 31 THE COURT CLERK: It's 120.
10:19:15 32 THE COMMISSIONER: 120, thank

you. Exhibit 120, then, is a several page document entitled "Strengths of Ontario Death Investigation System," and it is in draft for discussion purposes only, and it's a KPMG document from yesterday.

EXHIBIT NO. 120: KPMG Document Entitled "Strengths of Ontario Death Investigation System," a Draft for Discussion Purposes Only.

THE COMMISSIONER: Thank you. All right, go ahead.

MS. JONES: Thank you. Now, I will call Ms. Coghlan, please.

ANNE COGHLAN: SWORN.

EXAMINATION IN-CHIEF BY MS. JONES:

Q. Morning, Ms. Coghlan.

A. Good morning.

Q. You should have in front of you a document called "College of Nurses Document Brief." It might be on the ledge in the white binder there.

A. Thank you.

MS. JONES: And, Madam Commissioner, you should have that document brief as well.

THE COMMISSIONER: I do, thank you.

BY MS. JONES:

10:20:56 Q. Okay. And, Ms. Coghlan, you
10:20:59 should also have in front of you your affidavit
10:21:01 with the exhibits.
10:21:02 A. I do, thank you.
10:21:03 Q. Okay. Ms. Coghlan, you are
10:21:05 the executive director and chief executive
10:21:10 officer of the College of Nurses?
10:21:11 A. I am.
10:21:11 Q. And you have sworn an
10:21:13 affidavit in this proceeding?
10:21:14 A. Yes, I have.
10:21:15 Q. Okay. And if you can just
10:21:17 turn to the last page of the affidavit,
10:21:22 page 54, and confirm that that is your
10:21:31 signature and that this is the affidavit that
10:21:34 you've sworn?
10:21:34 A. Yes, it is.
10:21:36 MS. JONES: Okay. And if that
10:21:37 can be marked, Commissioner, as
10:21:39 the next exhibit?
10:21:43 THE COMMISSIONER: Thank you.
10:21:51 Exhibit 121, then, is the
10:21:51 affidavit of Anne Coghlan sworn
10:22:00 July 3rd, 2018.
10:22:00 EXHIBIT NO. 121: Affidavit of
10:22:02 Anne Coghlan Sworn July 3, 2018.
10:22:02 BY MS. JONES:
10:22:03 Q. If we can pull up
10:22:06 Document 72640, and for you, Ms. Coghlan,
10:22:10 it's Exhibit A to your affidavit.
10:22:12 And here, Ms. Coghlan, we have
10:22:14 your curriculum vitae, and under "Employment

10:22:17 History," we see, of course, that you're the
10:22:22 executive director and chief executive officer
10:22:24 of the College and that you've held that
10:22:29 position since the year 2000?
10:22:30 A. That's correct.
10:22:31 Q. In terms of your education,
10:22:31 you have your Bachelor of Science in Nursing
10:22:34 from the University of Toronto as well as your
10:22:35 Master's of Science and Nursing from the
10:22:39 University of Toronto?
10:22:40 A. That's correct.
10:22:41 Q. Your employment experience or
10:22:47 your employment history prior to your current
10:22:50 role that you assumed in the year 2000 includes
10:22:51 working at -Ernst & Young Consulting Services
10:22:54 as a principal in the health care practice?
10:22:59 A. That's right.
10:22:59 Q. And what did that role
10:22:59 involve?
10:22:59 A. It involved providing nursing
10:23:02 practice expertise to a consulting team that
10:23:06 was involved in advising health care
10:23:10 facilities, ministries of health, health care
10:23:15 organizations that were exploring changes in
10:23:20 their delivery models, changes in their
10:23:25 organizational structure.
10:23:27 And so along with a team that
10:23:29 included finance experts, IT experts,
10:23:39 administrative experts, there was a need for
10:23:39 clinical expertise, and so I provided that
10:23:40 nursing expertise along with experts in
10:23:45 medicine and pharmacy.

10:23:47 Q. Thank you. And we see
10:23:49 immediately prior to that position, you were
10:23:52 the director of professional practice and the
10:23:55 chief of nursing practice at the Markham
10:24:00 Stouffville Hospital. And so what did that
10:24:02 role involve?
10:24:03 A. That role involving provide
10:24:06 practice expertise in what was known as a
10:24:08 program management model. This is very early
10:24:11 days in the health care system where hospitals
10:24:13 were adopting what was known as a program
10:24:17 management -- a program management model as
10:24:21 opposed to individual departments, so a
10:24:22 department of nursing, a department of
10:24:25 pharmacy, a department of nutrition.
10:24:26 And the role of the director was
10:24:29 to provide practice, advice, and support to
10:24:35 program directors who were directors of
10:24:38 individual clinical areas in terms of the
10:24:43 supports that health professionals needed in
10:24:46 order to practice according to the standards of
10:24:49 their individual professions.
10:24:53 And then as the chief of nursing
10:24:57 practice, I providing expert support, advice,
10:25:01 education to nurse managers as well as to
10:25:05 clinical nurses around the application of
10:25:08 nursing standards in the practice setting.
10:25:11 Q. Thank you. And did your work
10:25:13 at the Markham Stouffville Hospital involve
10:25:20 patient care or was it managerial or both?
10:25:22 A. It did not involve patient
10:25:22 care.

10:25:22 Q. Okay. And so in terms of the
10:25:25 first part, the (indecipherable) practice part,
10:25:25 I understand that to be trying to get
10:25:28 standardization across various departments in
10:25:32 terms of standards; is that fair?
10:25:33 A. Yes.
10:25:36 Q. Okay.
10:25:36 A. Yes.
10:25:37 Q. And then prior to that, we
10:25:38 see that you were at the Hospital for Sick
10:25:41 Children in Toronto, and what was your role
10:25:45 there?
10:25:47 A. I started off as a staff
10:25:50 nurse in cardiology and cardiovascular surgery,
10:25:57 and then after pursuing my Master's degree, I
10:25:59 became a clinical nurse specialist, and
10:26:01 that involved providing practice support to
10:26:03 nurses in what was known as the surgery
10:26:04 program.
10:26:04 And part of that role, I think
10:26:08 there's reference to the pre-admission program,
10:26:12 and that involved providing support to children
10:26:15 and families who were undergoing invasive
10:26:20 procedures. And so it was a combination of
10:26:24 direct support to children and families along
10:26:28 with support to nurses who were developing
10:26:32 plans of care for children undergoing invasive
10:26:35 procedures.
10:26:35 So it is a nursing practice
10:26:41 expert role, a clinical nurse specialist that
10:26:47 involves a combination of clinical work,
10:26:50 research, consultation, and education.

10:26:54 Q. Thank you for that. And
10:26:58 under "Academic Appointments," we see that
10:27:02 you've held various academic appointments in
10:27:05 the past including on the Faculty of Nursing at
10:27:12 the University of Toronto and at the Ryerson
10:27:18 School of Nursing?
10:27:20 A. Yes, that's correct.
10:27:21 Q. And over the page to page 2,
10:27:23 under "Current Boards and Committees," there's
10:27:28 reference to your participation in several
10:27:33 ongoing boards and committees.
10:27:36 Here, I'm going to ask you about
10:27:38 one in the middle, the Canadian Council of
10:27:46 Registered Nurse Regulators. What is that?
10:27:48 A. That is a collaborative of
10:27:52 all of the registrars or executive directors of
10:27:54 the nursing regulatory bodies across Canada,
10:27:58 and that group was formed to provide a more
10:28:03 formal forum for collaboration and development
10:28:06 of best practices in regulation. There'd been
10:28:11 a long history of informal collaboration, and
10:28:16 we identified the need for a more formal
10:28:20 approach.
10:28:20 It also provides a touch point
10:28:23 for collaboration with national -- similar
10:28:25 national groups of other professions. So there
10:28:30 is a national medical group, a national
10:28:34 pharmacy group, for example, and that provides
10:28:36 opportunity for regulators to collaborate at a
10:28:40 national level.
10:28:41 Q. Okay. And so are the members
10:28:43 of this group, all of the various Colleges,

10:28:44 whether they're called Colleges, across Canada?
10:28:47 A. That's correct.
10:28:49 Q. Okay. And at the bottom of
10:28:55 page 2, we see a Federation of Health
10:28:59 Regulatory Colleges of Ontario as being another
10:29:01 committee or board on which you sit, and what
10:29:07 is the Federation of Health Regulatory Colleges
10:29:09 of Ontario?
10:29:10 A. So that is made up of all of
10:29:13 the regulators who fall under the Regulated
10:29:18 Health Professions Act, and again, it is the
10:29:21 registrars of those Colleges, and we come
10:29:25 together to collaborate on issues of
10:29:29 commonality across professions to support
10:29:35 education endeavours; so for example,
10:29:41 the federation provides a common discipline
10:29:41 orientation for discipline committees, so
10:29:43 health regulator colleges.
10:29:45 And we also recently have
10:29:51 expanded the website of the Federation of
10:29:57 Health Regulatory Colleges to provide a point
10:30:00 of contact for members of the public who may
10:30:04 not know how to find an individual regulator of
10:30:08 a specific health profession, but they can go
10:30:11 to the federation website, and it will link
10:30:14 them to all of the Colleges in Ontario.
10:30:17 Q. Thank you. And finally, in
10:30:20 this section over on page 3 at the top of the
10:30:25 page, second point, you reference the
10:30:32 Joint Provincial Nursing Committee, Ministry of
10:30:35 Health and Long-Term Care. What is that
10:30:36 committee?

10:30:36 A. This is a committee of the
10:30:39 Ministry, and it is a collaborative between the
10:30:39 nursing community and the Ministry of Health
10:30:47 and Long-Term Care, and its role is to provide
10:30:47 policy advice to the Ministry and to the
10:30:50 Minister on matters related to nursing.
10:30:54 Q. And we see, if we go over to
10:31:01 page 4, that you've given presentations and
10:31:06 papers -- bottom of page 4 and over to page 5
10:31:13 and following, you've given presentations and
10:31:16 papers on numerous issues including governance
10:31:17 issues, matters relating to self-governance,
10:31:18 and regulatory standards; is that fair?
10:31:24 A. Yes.
10:31:25 Q. Now, if we look back to
10:31:35 page 4, we see in the middle of the page, and
10:31:43 this is under a heading "Past Professional and
10:31:47 Community Service," but in the middle of the
10:31:51 page, there's a reference to 1991 to 1996.
10:31:54 And is this the -- it's Council
10:31:59 of the College of Nurses of Ontario, so I'm
10:32:02 going to ask you about that in a moment, but is
10:32:06 this the earliest touch point you had other
10:32:06 than as a nurse yourself in terms of a role
10:32:09 with the College of Nurses?
10:32:10 A. That's correct.
10:32:10 Q. Okay. And so between 1991
10:32:12 and 1996, you were a member of Council of the
10:32:17 College of Nurses?
10:32:17 A. Yes.
10:32:18 Q. Okay. And we'll talk about
10:32:20 the role of Council in more detail later, but

10:32:24 in a nutshell, what is the Council of the
10:32:27 College of Nurses?
10:32:28 A. The Council is the board that
10:32:30 provides the governance for the organization.
10:32:32 Q. And we see under the same
10:32:34 point that you ultimately became president of
10:32:37 the Council between or president of Council,
10:32:43 rather, and you held that role between 1994 and
10:32:47 1996?
10:32:47 A. That's correct.
10:32:48 Q. And is the role of sitting on
10:32:51 Council and even being president of Council, is
10:32:54 that a full-time role?
10:32:56 A. No, it's not.
10:32:56 Q. Okay.
10:32:57 A. I was employed full time
10:33:01 during that period.
10:33:01 Q. Okay. And I think --
10:33:01 A. It's a volunteer role.
10:33:02 Q. It's a volunteer role, I get
10:33:02 you. And I think when I look at your CV, it
10:33:02 overlaps with your time at the Markham
10:33:05 Stouffville Hospital?
10:33:05 A. And at the Hospital for Sick
10:33:09 Children.
10:33:10 Q. So if we look at your time at
10:33:16 the College, then, is it fair to say that at
10:33:20 the time that Ms. Wettlaufer became registered
10:33:22 with the College in 1995 and at the time of the
10:33:29 Geraldton report, you were the president of
10:33:31 Council at that time?
10:33:32 A. That's correct.

10:33:33 Q. But that you had left that
10:33:36 role when you went to Ernst & Young, and that
10:33:42 would be the time that the fitness to practice
10:33:42 committee ultimately made an order; is that
10:33:48 correct?
10:33:48 A. Yes.
10:33:48 Q. Okay. And if we then
10:33:51 fast-forward to 2014, at that time when there
10:33:54 was the Caressant Care report, you were the
10:33:57 executive director and chief executive officer
10:34:00 at the College?
10:34:01 A. That's correct.
10:34:02 Q. Ms. Coghlan, I'm going to ask
10:34:04 you to turn in your affidavit to page 8,
10:34:08 please, and we see at the top of the page,
10:34:08 paragraph 14:
10:34:35 "The RHPA is the umbrella
10:34:37 legislation for 26
10:34:40 self-regulating," and we should
10:34:41 be saying "self-governing" based
10:34:41 on the legislation, "health
10:34:41 professions including nursing
10:34:41 and that the RHPA, the Code, and
10:34:41 the Nursing Act set out the
10:34:46 regulatory scope of the
10:34:47 College."
10:34:49 So is it your understanding that
10:34:51 the College derives its powers from the RHPA
10:34:52 and the Nursing Act?
10:34:53 A. Yes, it is.
10:34:54 Q. And that the College is then
10:34:56 governed by those acts?

10:34:57 A. That's correct.
10:34:57 Q. And in terms of the 26 self-governing health professions, is it your understanding that they are all governed by the RHPA?
10:35:13 A. Yes, they are.
10:35:16 Q. And that they then also have their own legislation; so for doctors, for example, it would be the Medicine Act?
10:35:24 A. That's correct.
10:35:25 Q. And what does it mean to be a "self-governing profession"?
10:35:32 A. It means that the authority for governing the profession has been granted by statute to the profession in recognition of the profession's specialized expertise.
10:35:43 So that the -- for example, the profession has the best expert evidence and knowledge to determine what the requirements are for entry to the profession and what the standards of practice should be for the practice of the profession.
10:35:59 And that accountability is carried out in collaboration with members of the public under our regime because there are members of the public who are appointed to College councils and to statutory committees.
10:36:19 Q. Okay, thank you. And do you have to be a member of the College to practice nursing in Ontario?
10:36:24 A. Yes, you do.

10:36:25 Q. And when we hear about being
10:36:29 registered by the College, is that the same as
10:36:34 being a member of the College?
10:36:35 A. Yes.
10:36:35 Q. And so do you have to be a
10:36:38 member of the College or registered by the
10:36:41 College to perform the controlled acts or the
10:36:45 authorized acts in the Nursing Act?
10:36:47 A. Yes. Independently, you do.
10:36:51 You could have them delegated.
10:36:52 Q. Okay.
10:36:53 A. You would not be a member.
10:36:55 Q. Okay. So to perform them
10:36:57 yourself, you need to be a member of the
10:36:59 College, but it could be delegated by a member
10:37:03 of the College to somebody else?
10:37:04 A. That's correct.
10:37:04 Q. Okay.
10:37:04 A. In specific circumstances.
10:37:06 Q. And what are those specific
10:37:09 circumstances?
10:37:09 A. The very best example is what
10:37:11 we call activities of daily living. So an
10:37:15 individual who routinely needs the application
10:37:18 of a controlled act, a nurse or another
10:37:22 authorized health professional could delegate
10:37:27 that act.
10:37:27 So, for example, administering
10:37:32 an injection that needed to be administered on
10:37:36 a daily basis is something that an individual
10:37:39 may do himself or herself and/or may have
10:37:46 another family member or care provider do that,

10:37:51 1 and a nurse could delegate that.
10:37:53 2 So that means teaching and
10:37:57 3 ensuring that the individual understands and
10:37:59 4 has the capability to safely administer that
10:38:04 5 controlled act.
10:38:05 6 Q. Okay. And so to think of it
10:38:09 7 with a concrete example, could a PSW, a
10:38:15 8 personal support worker --
10:38:17 9 A. Yes.
10:38:17 10 Q. -- and a personal support
10:38:19 11 worker is not regulated under the Regulated
10:38:22 12 Health Professions Act; is that correct?
10:38:22 13 A. That's correct.
10:38:23 14 Q. So could a personal support
10:38:27 15 worker on their own, without this task being
10:38:29 16 delegated to them, administer an injection?
10:38:32 17 A. No.
10:38:32 18 Q. Okay. But from what your
10:38:34 19 evidence is, there are certain circumstances in
10:38:36 20 which that personal support worker could
10:38:38 21 administer an injection if it had been
10:38:41 22 delegated to them by a registered nurse?
10:38:48 23 A. Yes.
10:38:49 24 Q. Okay. And that's where it
10:38:49 25 meets the criteria of it's an ongoing activity
10:38:51 26 of daily living type injection, for example?
10:38:51 27 A. That's correct.
10:38:52 28 Q. As opposed to a one-time
10:38:55 29 injection; is that fair?
10:38:57 30 A. Yes.
10:38:57 31 Q. Okay, thank you. If we can
10:39:03 32 turn up Document 72872, and Madam Commissioner,

10:39:15 this will be found in your document brief; and,
10:39:18 Ms. Coghlan, this will be found in your
10:39:23 document brief at Tab 1.
10:39:37 And what is this document that
10:39:39 we're looking at, Ms. Coghlan?
10:39:40 A. This is the College's annual
10:39:43 report for the year 2017.
10:39:45 Q. Okay. And you have a version
10:39:47 of this annual report attached as Exhibit B to
10:39:54 your affidavit; is that correct?
10:39:56 A. That's correct.
10:39:57 Q. Okay. But I understand that
10:39:57 there was a small amendment made to the annual
10:39:57 report, and so is this version that we see on
10:39:59 the screen and at Tab 1 of the document brief
10:39:59 the current version of the annual report?
10:40:02 A. Yes, it is.
10:40:04 MS. JONES: Okay. So,
10:40:05 Commissioner, if we could mark
10:40:06 this version as the next
10:40:10 exhibit, please?
10:40:11 THE COMMISSIONER: Yes, we can.
10:40:12 So Exhibit 121.
10:40:15 THE COURT CLERK: 122.
10:40:17 THE COMMISSIONER: Sorry, 122.
10:40:21 Thank you. And that is the 2017
10:40:23 Annual Report from the College
10:40:25 of Nurses called "Leading In
10:40:27 Change."
10:40:32 EXHIBIT NO. 122: 2017 Annual
10:40:32 Report from College of Nurses
10:40:35 called "Leading In Change."

10:40:35 BY MS. JONES:
10:40:42 Q. I'm going to ask you to turn
10:40:43 to page 3 of this document, please, and we see
10:40:50 under the College's mission "Regulating nursing
10:40:54 in the public interest."
10:40:57 So can you unpack that for us?
10:40:59 What does it mean to regulate nursing in the
10:41:04 public interest?
10:41:04 A. The mission comes from the
10:41:09 legislative mandate, and the College's sole
10:41:15 mandate is to protect the public. So
10:41:18 the mission is to conduct the business of
10:41:18 regulation in a way that protects the public's
10:41:22 interests.
10:41:22 Q. Thank you. And then under
10:41:25 "Vision," "Leading in regulatory excellence,"
10:41:33 and what does that mean?
10:41:34 A. So our Council's view for
10:41:37 many years has been that the College has a
10:41:37 history of excellence in regulatory practices,
10:41:42 providing advice, consultation, and support to
10:41:46 other regulators, and the vision is that our
10:41:50 organization will be seen to be leading in
10:41:55 regulatory excellence, the opportunity to
10:41:59 develop best practices in regulation, and to
10:41:59 disseminate those practices so that colleagues
10:42:03 in the field of regulation can learn and
10:42:07 collaboratively continue to build the body of
10:42:10 knowledge around regulation.
10:42:17 Q. Thank you. And then below
10:42:19 that, we see:
10:42:20 "We are the College of Nurses of

Ontario. We are here to uphold safe nursing care for the public," and you've just explained that to us. "We oversee 175,000 nurses who provide care to the people of Ontario."

So would that be the number, 175,000, of nurses who are registered with the College?

A. That's correct.

Q. And then over on the right-hand side, the College has set out "How do we do this?" and it's in four main ways. And I think we're going to be touching throughout your evidence on portions of this, but I just want to go over them now.

The first main way is to "set requirements for becoming a nurse." And what does that mean?

A. It means determining what foundational knowledge, skill, and ability is required; so, for example, what educational requirement should a nurse have, what practice experience, what character is required of a nurse, and what knowledge in the legislation and the parameters that guide nursing practice in Ontario.

So what -- we call it jurisprudence, so what knowledge should a nurse be able to -- an individual be able to demonstrate before becoming a nurse. Another

10:44:02 1 requirement is fluency, so the requirement to
10:44:07 2 be fluent in either English or French. So
10:44:08 3 those are a few examples.
10:44:09 4 Q. Okay, thank you. And does
10:44:10 5 that involve -- in terms of setting the
10:44:10 6 requirements for becoming a nurse, does it
10:44:14 7 involve any involvement in educational nursing
10:44:18 8 programs that graduate nurses like --
10:44:18 9 A. Yes.
10:44:18 10 Q. -- Conestoga College, for
10:44:19 11 example, or nursing education programs?
10:44:22 12 A. Yes, it does. One of the
10:44:26 13 College's roles is to approve nursing education
10:44:30 14 programs, so the criteria for program approval;
10:44:32 15 so what competencies must be included in the
10:44:38 16 curriculum, for example, is one of the areas
10:44:40 17 that the College stipulates that programs that
10:44:44 18 are approved by the College Council must meet.
10:44:49 19 So those requirements are known
10:44:53 20 by all education programs, and there is a
10:44:59 21 regular assessment of a College's -- sorry, an
10:45:03 22 educational facility's ability to demonstrate
10:45:08 23 that they are meeting what we call the program,
10:45:09 24 the education program approval criteria.
10:45:12 25 Q. And then do they then get on
10:45:17 26 to a list or have some sort of approval status
10:45:18 27 which means you will accept the education of a
10:45:20 28 nurse coming from that program at the time of
10:45:20 29 registration?
10:45:21 30 A. That's correct. Anyone
10:45:23 31 seeking registration who has received education
10:45:28 32 in Ontario must have graduated from an approved

10:45:34 program, a program approved by the College's
10:45:37 Council.
10:45:39 Q. Thank you. And then if we
10:45:41 look to No. 2:
10:45:41 "We inform nurses of their
10:45:42 accountabilities and we tell the
10:45:42 public and other shareholders
10:45:45 what they can expect from
10:45:48 nurses."
10:45:48 What does that involve?
10:45:50 A. That refers to our mandate to
10:45:54 set the standards by which nurses are expected
10:45:57 to practice, and those standards also help the
10:46:00 public understand what they can expect of
10:46:04 nurses.
10:46:05 Q. And when we think of
10:46:06 standards, we can think of small "s" standards,
10:46:12 but also in the College's case, should we also
10:46:12 think of capital "S" Standards?
10:46:12 A. Yes.
10:46:13 Q. And those are publications
10:46:18 from the College?
10:46:20 A. Yes, they are, and they are
10:46:23 approved by Council using the mandate in the
10:46:29 legislation to set the standards by which the
10:46:32 profession will practice and the standards to
10:46:35 which a nurse will be held.
10:46:37 Q. Okay. And I'll ask you more
10:46:39 questions about standards later on as well.
10:46:42 And are there other ways other than the
10:46:46 publication of standards, other acts the
10:46:50 College takes in terms of informing nurses and

10:46:52 the public about these accountabilities?
10:46:56 A. Yes. There are other pieces
10:46:58 of legislation outside the Regulated Health
10:47:02 Professions Act or the Nursing Act that have an
10:47:04 impact on nursing practice, and that
10:47:06 legislation changes from time to time. And so
10:47:09 the College plays a role in keeping nurses
10:47:15 up-to-date about what their accountabilities
10:47:18 are in relation to, for example, privacy
10:47:20 legislation.
10:47:20 As well, the College issues
10:47:23 guidelines, which are documents that help
10:47:25 nurses in their interpretation and application
10:47:27 of the standards.
10:47:28 Q. Okay.
10:47:31 A. And then there, we have
10:47:34 regular communication vehicles to nurses that
10:47:39 provide them with reminders about standards,
10:47:42 updates on changes in the regulatory
10:47:45 environment or the health care system that will
10:47:49 have an impact on their practice.
10:47:51 Q. Thank you. And then now over
10:47:54 to 3:
10:47:55 "We respond to your concerns
10:47:58 about nurses' conduct,
10:48:06 competence, and health."
10:48:10 And what, in a nutshell, does
10:48:10 that involve?
10:48:11 A. That refers to our -- what we
10:48:13 call our professional conduct processes, and
10:48:16 that is -- that includes processes by which
10:48:19 the public can draw to the College's attention

10:48:19 concerns that they have about the practice or
10:48:24 behaviour of an individual member.
10:48:27 It also includes reports from
10:48:31 other sources, and they may be mandatory
10:48:36 reports, or they may be simply reports of
10:48:40 concerns about nursing practice or conduct.
10:48:44 Q. Okay. And does this section
10:48:48 deal with the fact that the College then has
10:48:48 processes to deal with that sort of information
10:48:49 that comes to it?
10:48:49 A. That's correct.
10:48:49 Q. Okay. And then finally,
10:48:52 No. 4:
10:48:52 "We ensure that nurses engage in
10:49:00 continuous quality improvement
10:49:02 throughout their career[s]."
10:49:05 And how is it that the College
10:49:07 does that?
10:49:07 A. So all Colleges are required
10:49:07 to have what is known as a "quality assurance
10:49:08 program," and this point refers to the
10:49:14 College's program to support nurses in their
10:49:20 continuous learning and their commitment to
10:49:25 continuing to develop and grow in their
10:49:28 professional knowledge, skill, and judgment.
10:49:30 Q. Okay. So does the quality
10:49:36 assurance role of the College include mandating
10:49:41 specific continuing education requirements once
10:49:43 a nurse is registered and they're practicing?
10:49:47 A. No, not specifically
10:49:48 continuing education in the sense of a number
10:49:52 of hours; however, what it does mandate is that

10:49:57 every nurse is accountable to continually
10:50:02 assess one's practice setting, the needs of
10:50:05 clients, and to identify learning goals.
10:50:08 So on an annual basis, nurses
10:50:11 are expected to identify learning needs,
10:50:16 to develop learning goals and a plan to meet
10:50:17 those goals, and to document that and keep that
10:50:23 as a record that the College can request at any
10:50:26 time.
10:50:27 That whole sequence of
10:50:29 activities is grounded in what we call
10:50:35 "reflective practice," which is well-documented
10:50:40 in the literature that suggests that
10:50:44 professionals best continue to develop and grow
10:50:46 in their -- and maintain their competence when
10:50:52 they are reflecting on what they are
10:50:52 encountering in their practice, seeking peer
10:50:55 feedback, seeking out specific -- it may be
10:50:58 formal education or programs that support them
10:51:02 to develop additional competence throughout the
10:51:12 course of their careers.
10:51:13 Q. Okay. So does that mean that
10:51:13 the College -- if I understand your evidence,
10:51:15 the College requires nurses to engage in this
10:51:18 self-reflective practice. Are they required to
10:51:21 write it down, their --
10:51:22 A. Yes, they are.
10:51:23 Q. I see. And then to come up
10:51:26 with certain learning goals that they are
10:51:30 expected to then implement?
10:51:31 A. Yes. And what I neglected to
10:51:33 include was that those learning goals are to

10:51:36 reference College standards. So to link the
10:51:41 goals to the College's standards and to
10:51:46 document and retain that documentation that
10:51:50 includes an evaluation of how those learning
10:51:53 goals have been met.
10:51:54 Q. Okay. And then the College
10:51:56 can, if it chooses, to make sure people are
10:52:01 doing this, request a copy of that document?
10:52:03 A. Yes.
10:52:03 Q. I see. And are there any --
10:52:04 I think you said there's no hours requirement.
10:52:06 So there's no ongoing -- other that what you've
10:52:06 just described, there's not another process
10:52:10 where you have to take a certain number of
10:52:11 courses a year to maintain your registration as
10:52:14 a nurse?
10:52:15 A. No, that is a not a
10:52:18 regulatory requirement. There are requirements
10:52:21 in practice settings where there are particular
10:52:24 needs of client populations where an employer,
10:52:28 for example, may require nurses to complete
10:52:38 particular courses either prior to caring for a
10:52:38 patient population or on an ongoing basis such
10:52:42 as CPR.
10:52:43 Q. Okay, thank you. And then
10:52:45 you also reference at the beginning of -- so I
10:52:47 understand now the self-reflective practice
10:52:49 component, but you also referred to the quality
10:52:53 assurance component. I understand that those
10:52:55 are combined in some way. Does the quality
10:52:59 assurance program also conduct any sort of
10:53:02 random audits of nurses?

10:53:04 A. Yes. So the requirement that
10:53:06 I just described applies to all nurses, and
10:53:10 then on an annual basis, nurses are randomly
10:53:14 selected for what we refer to as practice
10:53:14 review.
10:53:15 And so that would be the
10:53:16 completion of practice tests that test a
10:53:22 nurse's ability to apply standards, and if
10:53:29 there are deficits that are identified through
10:53:37 that process, then the quality assurance
10:53:40 committee may require specific continuing
10:53:42 education.
10:53:42 Q. And how are nurses selected
10:53:45 for that? Is it entirely random?
10:53:48 A. So there is a random
10:53:49 selection of the full population, and then
10:53:53 several years ago, Council also identified that
10:53:57 based on our regulatory information and
10:54:05 historical experience that there would be
10:54:10 random selection from what were identified as
10:54:14 potentially high-risk groups, and there were
10:54:16 two that were identified with the potential for
10:54:19 others to be added in the future.
10:54:22 And one was the long-term care
10:54:26 sector, and the other is nurses who have been
10:54:30 involved in our, what we call "executive
10:54:36 director action process."
10:54:38 So those are individuals who
10:54:40 have been requested following a report to the
10:54:43 College to review standards; nurses who have
10:54:53 been requested to meet with a member of College
10:54:56 staff to reflect on incidents that were

10:54:59 1 reported and their review of applicable
10:55:02 2 standards; as well as nurses who have been
10:55:06 3 requested to meet with me to provide the
10:55:09 4 College with assurances that review of
10:55:13 5 standards and reflection on incidents has
10:55:16 6 resulted in the nurse's development of insight
10:55:20 7 into ways to improve practice.
10:55:23 8 So those are examples of what we
10:55:25 9 call executive director actions, and that
10:55:28 10 population, there is also a random selection
10:55:31 11 from our annual quality assurance.
10:55:35 12 Q. Okay, thank you. And so we
10:55:38 13 have a random selection of the entire nursing
10:55:42 14 group, but then how does it work in terms of
10:55:44 15 the higher risk groups? Is there a
10:55:47 16 particularly high random selection for people
10:55:48 17 in long-term care or who have been subject to a
10:55:51 18 executive director action?
10:55:53 19 A. I'm sorry. I'm not
10:55:54 20 understanding the question completely.
10:55:56 21 Q. What is the effect -- it
10:56:01 22 wasn't a very clear question. What is the
10:56:05 23 effect of Council having identified these two
10:56:09 24 groups, long-term care as one group and nurses
10:56:13 25 that have been subject to the executive
10:56:14 26 direction action? What is the impact of that
10:56:16 27 identification on this quality assurance
10:56:18 28 program?
10:56:19 29 A. Well, the intent is to look
10:56:23 30 at areas where there is a potential risk to see
10:56:27 31 if there is any exacerbated risk in these
10:56:27 32 groups. And it's early days because we -- I've

10:56:27 learned from the statisticians that one year
10:56:40 does not make a trend, so you need to look over
10:56:41 a period of years.
10:56:42 And so far, our monitoring is
10:56:44 not showing increased incidents of individuals
10:56:51 not being successful in the quality assurance
10:56:56 process.
10:56:56 Q. I see. So nurses that have
10:56:59 been selected randomly, you're looking at them
10:57:02 and not seeing a particular pattern for nurses
10:57:06 in long-term care of not going through the
10:57:08 process successfully?
10:57:09 A. That's correct.
10:57:10 Q. Okay, I see. And
10:57:13 approximately how many nurses are selected for
10:57:16 this random quality assurance audit per year?
10:57:20 A. Now, that's a number that is
10:57:25 escaping me at the moment.
10:57:26 Q. Okay. I think I can help you
10:57:29 with that actually so we don't have to make it
10:57:31 a memory test. So if you turn to, within this
10:57:35 document, to page 15, please.
10:57:38 A. Thank you.
10:57:42 Q. And at the top middle, we
10:57:45 have 801?
10:57:47 A. Yes, that's correct.
10:57:47 Q. Okay. So:
10:57:49 "801 nurses we randomly selected
10:57:53 and whose practice we assessed
10:57:58 as part of our quality assurance
10:58:01 program."
10:58:02 And would that be typical,

around 800?

A. Yes. And I should say that our Council is currently reviewing the quality assurance program, and that review started just over a year ago with Council identifying the need to make changes that will increase the College's ability to engage more nurses in a more robust way. So that work is currently underway with our College's Council.

Q. I see. And so with the intention that that 800 or so number would increase over time?

A. Potentially. They're actually looking at the whole program. They've reviewed the literature and the evidence and best practices in other jurisdictions around continuing competence and are considering what changes might be made based on a review because there's now a much greater body of knowledge than there was at the time that our program was created. But one of the things that Council has identified is that they would like to see the ability to engage more nurses on an annual basis in some components of quality assurance.

Q. Okay. And if you're one --

A. And there'd be -- sorry, just one other thing that came to mind is they're particularly looking at that first piece of practice reflection and identification of a learning plan.

And right now, that could be requested at any time, and they're looking at

10:59:55 1 ways to ensure that the College ensures that
11:00:01 2 all nurses who are required to participate are,
11:00:07 3 in fact, participating. So that's one example
11:00:09 4 of something that they're looking at.
11:00:11 5 Q. And if you are one of the 800
11:00:15 6 or so nurses selected for this random audit,
11:00:19 7 what does it involve? Is it a chart review of
11:00:21 8 their practice or...?
11:00:22 9 A. That would -- I'm not
11:00:24 10 speaking specifically to nurse practitioner;
11:00:27 11 the quality assurance for nurse practitioner is
11:00:27 12 is slightly different.
11:00:29 13 So what registered nurses and
11:00:29 14 registered practical nurses go through is the
11:00:29 15 completion of those practice tests that I
11:00:46 16 referred to earlier, and those tests are
11:00:46 17 testing the nurses' knowledge and ability to
11:00:50 18 apply standards in practice. And then
11:00:52 19 depending on the outcome, the majority of
11:00:54 20 nurses complete those successfully and will
11:00:58 21 exit the process.
11:01:00 22 For those who don't, the quality
11:01:03 23 assurance committee reviews the results to
11:01:08 24 identify potential gaps in practice and then
11:01:12 25 would impose other requirements on those nurses
11:01:19 26 in order to complete their quality assurance
11:01:24 27 requirement.
11:01:24 28 Q. Okay, thank you. Now, if you
11:01:26 29 turn to page 4, and we again see the number
11:01:26 30 175,000 nurses, and those are the nurses that
11:01:26 31 are registered. Would all of them be actively
11:01:44 32 practicing?

11:01:44 A. No. There are about -- I think it's about 13,000 who are in the non-practicing class.
11:01:49 Q. Okay. So they maintain their registration, but they're not actively practicing nurses?
11:01:54 A. That's correct.
11:01:55 Q. Okay. And then if we look above that, we have three bubbles to see how this number breaks down, that the majority of nurses are registered nurses, 119,000?
11:02:16 A. Yes.
11:02:16 Q. And then 55,760 are registered practical nurses, RPNs -- we've been hearing about that as well -- and then we have nurse practitioners, 3,344, and my understanding is nurse practitioners have certain heightened abilities and scopes of practice compared to the RNs and the RPNs; is that correct?
11:02:39 A. Yes. They have additional controlled acts that allow them to diagnosis and prescribe, order tests, those kinds of things.
11:02:46 Q. Okay. And am I correct that the nurse practitioners are actually technically within the RN category but they just have an extended class; is that the right language?
11:02:55 A. Yes. As you said at the outset, the legislation is complicated, and so there are two classes, registered nurse and

11:03:08 1 registered principal nurse -- or, sorry,
11:03:12 2 categories. Those are two categories.
11:03:12 3 And within the registered nurse
11:03:16 4 category, there are two classes: The general
11:03:20 5 class and the extended class. So the extended
11:03:23 6 class includes the nurse practitioners.
11:03:23 7 Q. Thank you.
11:03:26 8 A. For the purpose of public
11:03:28 9 communication, we do not refer to that
11:03:30 10 language. We simply refer to registered
11:03:33 11 nurses, registered practical nurses, and nurse
11:03:38 12 practitioners.
11:03:38 13 Q. Okay. And I'm interested in
11:03:40 14 particular in the difference between a
11:03:43 15 registered nurse and a registered practical
11:03:47 16 nurse. First of all, do the standards that the
11:03:47 17 College issues or publishes which we'll be
11:03:50 18 hearing about, do those apply equally to RNs
11:03:56 19 and RPNs?
11:03:57 20 A. Yes, they do.
11:03:58 21 Q. So they're accountable to the
11:04:01 22 very same standards?
11:04:05 23 A. Yes.
11:04:06 24 Q. And are there particular
11:04:06 25 acts, do they have the same controlled acts --
11:04:06 26 other than the extended class, the nurse
11:04:10 27 practitioners -- do RNs and RPNs have the same
11:04:12 28 power to perform the same controlled acts?
11:04:16 29 A. They do. The one difference
11:04:18 30 is in some circumstances, registered nurses can
11:04:23 31 provide an order for a registered practical
11:04:32 32 nurse to perform certain components of one of

11:04:35 1 those controlled acts.
11:04:36 2 So the example that I would use
11:04:42 3 is that both RNs and RPNs can provide wound
11:04:47 4 care. Registered practical nurses need an
11:04:52 5 order in order to do debriding of a wound. So
11:04:59 6 it's a more complex activity than a dressing
11:05:06 7 change, for example.
11:05:07 8 Q. Okay. And where are those
11:05:10 9 set out? So if you wanted to know which --
11:05:14 10 A. In the Nursing Act.
11:05:15 11 Q. In the Nursing Act, okay.
11:05:17 12 And then if we turn now within this document to
11:05:21 13 page 14, and we see at the top of the page that
11:05:33 14 the College received 13,500 applications from
11:05:44 15 people seeking to become a nurse?
11:05:45 16 A. That's correct.
11:05:45 17 Q. Okay. So those are the
11:05:45 18 people that are seeking to become registered by
11:05:47 19 the College?
11:05:47 20 A. That's correct.
11:05:47 21 Q. Okay. And the College
11:05:49 22 actually completed the registration this year,
11:05:52 23 2017, I believe -- yes -- of 10,165 nurses?
11:05:56 24 A. Correct.
11:05:58 25 Q. And at slide 15, the College
11:06:12 26 has set out at the bottom of the slide where
11:06:17 27 nurses are working so that we see that
11:06:19 28 61 percent of RNs are working in hospitals. So
11:06:23 29 that would be the majority of RNs?
11:06:25 30 A. Yes.
11:06:26 31 Q. And then we have nurse
11:06:29 32 practitioners in the middle working in the

11:06:30 1 community, and then in terms of RPNs, split
11:06:36 2 basically evenly between long-term care homes
11:06:38 3 and hospitals?
11:06:39 4 A. That's correct.
11:06:39 5 Q. And in terms of these
11:06:41 6 different practice settings, does the College
11:06:46 7 have information about the number of hospitals,
11:06:49 8 long-term care homes that are employing nurses
11:06:51 9 in Ontario?
11:06:52 10 A. Our database suggests that
11:06:56 11 there are over 13,000 individual employers in
11:07:00 12 Ontario, and that would range from large
11:07:03 13 facilities all the way to single employers.
11:07:12 14 Q. And one thing that we've
11:07:14 15 heard some evidence about in this Inquiry is a
11:07:20 16 suggestion that it might be hard to find RNs to
11:07:24 17 work in long-term care facilities. Is that
11:07:27 18 something that you're aware of or have insight
11:07:30 19 into?
11:07:30 20 A. That isn't information that
11:07:35 21 the College would gather or have data about.
11:07:35 22 I've heard anecdotally comments to that effect.
11:07:41 23 Our role in terms of the overall systems,
11:07:45 24 health human resource planning, is to collect
11:07:48 25 data about the supply of nurses.
11:07:51 26 So that's what our annual
11:07:53 27 renewal process is engaged in, and we collect
11:07:57 28 data on behalf of the Ministry that provides
11:08:01 29 information about the numbers of members of the
11:08:04 30 College who are, in fact, working, where
11:08:09 31 they're working, what their work status is
11:08:14 32 like; so is it full time, part time, casual?

11:08:17 Are they looking for work is another category
11:08:20 of data that we collect.
11:08:25 And so that information is
11:08:26 provided to the province to assist in their
11:08:28 work in health human resource planning. But we
11:08:33 don't have any information about the demand
11:08:35 side of the system. Our information is about
11:08:38 the supply.
11:08:40 MS. JONES: Thank you.
11:08:41 Commissioner, it's a bit past
11:08:44 11. I'm about to move into a
11:08:44 new area, if we should take the
11:08:49 morning recess, perhaps.
11:08:49 THE COMMISSIONER: Yes, that
11:08:49 makes good sense to me. Thank
11:08:51 you very much.
11:10:24 -- RECESSED AT 11:10 A.M.
11:09:57 -- RESUMED AT 11:28 A.M.
11:28:38 BY MS. JONES:
11:28:41 Q. Ms. Coghlan, if you could
11:28:42 turn now to page 8 of your affidavit, paragraph
11:28:47 17, at the very bottom of the page. To get a
11:28:58 sense of the scope of the College's work and
11:29:01 budget, you have set out here what the
11:29:03 College's annual expense budget was, and I
11:29:05 understand in the second line there is a typo
11:29:08 there; is that correct?
11:29:09 A. Yes.
11:29:09 Q. Okay, and what should the
11:29:12 2016 number be?
11:29:13 A. It should be 33.7.
11:29:15 Q. Okay. And if you go over the

11:29:16 page, there is a chart, and what is this chart?
11:29:23 A. This is a chart that lays out
11:29:28 the College's budget, number of staff and
11:29:33 number of members, along with the same data for
11:29:38 several other health regulator colleges and two
11:29:42 other regulators in Ontario.
11:29:45 Q. Okay, and that would be the
11:29:47 Ontario College of Teachers and the Law Society
11:29:50 at the bottom?
11:29:51 A. That's correct.
11:29:51 Q. Okay. So am I correct that
11:29:54 the Ontario College of Teachers and the Law
11:29:56 Society would not be governed by the RHPA?
11:29:58 A. That's correct.
11:29:59 Q. But the colleges above that
11:30:01 would be?
11:30:01 A. Yes.
11:30:02 Q. Okay. And is the College of
11:30:04 Nurses the largest of the self-governing
11:30:07 professions under the RHPA?
11:30:09 A. Yes, it is.
11:30:10 Q. And has this budget -- we
11:30:16 have the 2016 numbers. Has this budget
11:30:18 increased in the last two years?
11:30:20 A. Yes, it has. Our 2018 budget
11:30:23 is 44.5 million dollars.
11:30:25 Q. And is there a reason for the
11:30:27 increase, to your knowledge?
11:30:29 A. Yes, the volume of matters
11:30:33 that the College is dealing with has increased,
11:30:37 and that includes increases in applications to
11:30:41 the College, increases in reports and the

11:30:49 creation of some new programs, so for example,
11:30:52 the 2018 budget includes a budget to implement
11:30:58 a nurse health program.
11:30:59 Q. Okay. And in terms of the
11:31:02 increase in reports, do you have a sense of how
11:31:04 significant the increase in reports that the
11:31:08 College is receiving?
11:31:09 A. Yes, in 2018 the average
11:31:14 number of reports that we are receiving on a
11:31:17 weekly basis has almost doubled that that we
11:31:22 received in 2017. So for example, in 2018 we
11:31:28 are receiving approximately 40 reports every
11:31:31 week.
11:31:31 Q. And to what do you attribute
11:31:38 that increase, if anything?
11:31:39 A. I would be speculating, but
11:31:43 our assessment has been that we believe that
11:31:49 the increased attention that this Inquiry has
11:31:53 placed on the health care sector has increased
11:31:58 employers' reports to the College.
11:32:01 Q. Now, in the document brief in
11:32:06 front of you, Ms. Coghlan, if you could turn to
11:32:09 tab 2, which is document 72837.
11:32:20 A. My apologies, tab 2?
11:32:23 Q. In the document brief, not in
11:32:24 the affidavit.
11:32:32 A. Thank you, yes.
11:32:35 Q. And this is a document
11:32:36 entitled "CNO Organizational Structure"?
11:32:39 A. That's correct.
11:32:40 Q. And in this structure, I take
11:32:42 it that you are at the top here, the "Executive

Director & Chief Executive Officer"?

A. I am.

Q. And then off to the side we see "Council", which you have described as like a board?

A. Correct.

Q. Okay, and so I'm going to ask you a few questions about Council. Do you sit on Council as Executive Director?

A. No, I attend the Council meetings, but I am not a member of the Council.

Q. Okay, and so how many people sit on Council?

A. Our legislation provides for up to 39 members. We currently have 37 members of Council. We have a range of permitted public members, and so that creates a Council of 37 currently, which is made up of both members of the profession and, as I mentioned earlier, members of the public who are appointed through Order in Council.

Q. So that is appointed through a government process, members of the public, and does that mean they are just not nurses?

A. That's correct.

Q. Okay.

A. They are not health profession professionals.

Q. They are no, I see, okay, they are not any sort of health professional, okay.

And then the rest of Council

11:33:50 would be made up of nurses?
11:33:51 A. Yes.
11:33:51 Q. And what is the role of
11:33:54 Council?
11:33:54 A. Well, the role of Council is
11:33:57 to fulfil the objects that are set out in the
11:34:05 legislation. Council makes decisions about
11:34:10 requirements for entry to practice, for
11:34:12 example, so one of the requirements is an entry
11:34:15 exam.
11:34:16 We talked earlier this morning
11:34:18 about program approval, education program
11:34:20 approval, and Council makes those approvals.
11:34:24 Council appoints members of
11:34:26 statutory committees, so those are the
11:34:29 committees you outlined earlier this morning in
11:34:32 your overview of the RHPA.
11:34:33 Q. Like the Discipline Committee
11:34:35 and --
11:34:36 A. Right.
11:34:36 Q. Okay, yes.
11:34:37 A. And also appoints the Chairs
11:34:40 of those committees.
11:34:42 Q. And does Council have any
11:34:46 role in setting standards for the nursing
11:34:49 profession?
11:34:50 A. Yes, Council establishes the
11:34:53 standards and also would recommend to the
11:34:59 Minister any new regulations or changes to
11:35:03 regulations in the Nursing Act.
11:35:05 Q. And how does Council go about
11:35:07 setting the standards?

11:35:10 A. Well, it is a process that is very extensive, supported by staff resources who are expert in a variety of areas, including extensive literature review.

11:35:23 There is extensive consultation with stakeholders, and by "stakeholders", I mean members of the profession, members of the public, other professions, other nurse regulators nationally and internationally.

11:35:37 So there is a broad consultation process and a gathering of evidence and best practice that Council reviews.

11:35:45 Council considers the context in which practice is occurring in the province and is looking at trends and will consider that in determining whether standards need to be revised or updated in order to accurately reflect the context of care at the time.

11:36:10 Q. Okay, thank you. And you said earlier when you were a member of Council and President of Council, that was not a full-time position.

11:36:18 A. No.

11:36:19 Q. Does that remain the case for the Council currently, that the Council members are not there full-time in that role?

11:36:27 A. No, they are not. They are -- it is a volunteer position.

11:36:31 Q. And does Council -- we have seen reference in the legislation to by-laws. Does Council play any role in by-laws?

11:36:41 A. Yes.

11:36:41 Q. Okay.
11:36:42 A. Council can establish
11:36:44 by-laws, and there are certain by-laws as set
11:36:47 out in the legislation that require circulation
11:36:52 prior to approval, a final approval of by-laws.
11:36:57 So they have accountability for both of those
11:37:00 processes.
11:37:00 Q. I see, okay, and circulation
11:37:02 to whom when the Council is passing --
11:37:05 A. To the members of the
11:37:06 profession.
11:37:07 Q. Okay, so to all the -- if we
11:37:09 take 175,000 nurses, for by-laws, certain
11:37:14 by-laws to be passed, they would be circulated
11:37:16 to every member of the profession?
11:37:17 A. That's correct. And so, for
11:37:19 example, we have most recently circulated a
11:37:21 change to our fee by-law to increase fees, and
11:37:25 Council considered the evidence, the
11:37:28 recommendation of the Finance Committee, and
11:37:31 recommended that a proposed fee increase be
11:37:33 circulated. And so that process took place.
11:37:37 Council receives all the feedback that is
11:37:40 received and then makes a final determination.
11:37:43 Q. And I am not going to take
11:37:44 you to it, but I understand that there is some
11:37:46 anticipated changes to the structure and
11:37:49 governance of Council and that those are set
11:37:51 out in a document called the "Vision 2020"
11:37:54 document attached to your affidavit?
11:37:55 A. That's correct.
11:37:56 Q. Okay. And if we go back to

11:37:59 1 our organizational structure here, and we start
11:38:01 2 in the middle with the "Executive Director &
11:38:04 3 Chief Executive Officer", the RHPA refers to a
11:38:09 4 "Registrar". Why are you not called a
11:38:13 5 Registrar, and do you play the same role as a
11:38:15 6 Registrar?
11:38:15 7 A. I do play the same role as a
11:38:18 8 Registrar, and I think this is a holdover from
11:38:22 9 the Health Disciplines Act which was the
11:38:25 10 legislation that predated the Regulated Health
11:38:31 11 Professions Act.
11:38:31 12 And my understanding is that at
11:38:33 13 the time of the creation of the Regulated
11:38:35 14 Health Professions Act, the College of Nurses
11:38:38 15 requested the provision to allow the College to
11:38:41 16 continue to use the term "Executive Director"
11:38:45 17 to refer to the College's Registrar under the
11:38:48 18 new legislation. And that is a change that our
11:38:51 19 Council's new vision will be requesting of
11:38:56 20 government, is a change to use the title
11:38:58 21 "Registrar" the same way all other health
11:39:02 22 profession colleges do.
11:39:03 23 Q. And how would you describe
11:39:05 24 your role as Registrar or Executive Director of
11:39:08 25 the College?
11:39:08 26 A. Well, I could neatly I think
11:39:14 27 describe it as having two main components.
11:39:16 28 So one is to oversee the
11:39:20 29 organization. So as the Chief Executive
11:39:24 30 Officer, I have accountability for ensuring
11:39:25 31 that the College has the resources required to
11:39:30 32 fulfil its mandate, and that includes the staff

and the expertise that are required.

And then I have very specific accountabilities that are outlined in the legislation. So there are certain powers, if you will, that are allocated to the Registrar, and those include, for example, ordering an investigation, requesting the appointment of an investigator. There are certain registration decisions that the Registrar is accountable for, and where the Registrar has doubts that an applicant may not fulfil the requirements, then the Registrar is obliged to make a referral to the Registration Committee.

So those are some examples of very specific authorities and accountabilities that are outlined in the legislation that pertain to my role.

Q. Thank you. And then if we look back at this organizational structure, on the right-hand side we have "Administration" of the College, and I don't have any questions about that.

In the middle we have "Strategy & Innovation", and then to the left-hand side I think we have the portion of the College that is most relevant to us today and that would be the portion of the College that deals with what matters?

A. The Quality Team, as we refer to it, deals with all of the regulatory functions, so those four areas that we talked about earlier this morning in terms of

11:41:16 applications to the profession, setting
11:41:21 standards, ensuring there is a quality
11:41:24 assurance program and ensuring that we have
11:41:27 processes to deal with complaints and reports.
11:41:32 Those are what we refer to as our regulatory
11:41:35 functions, and they all fall under the Quality
11:41:37 Team.
11:41:37 Q. And that would so include
11:41:40 investigations, discipline, incapacity; all of
11:41:44 that would be dealt with with your Quality
11:41:46 Team?
11:41:46 A. That's correct.
11:41:47 Q. Now --
11:41:52 A. Under -- sorry, under the
11:41:54 left-hand side you see the "Director of
11:41:56 Professional Conduct", and those examples that
11:41:57 you have just highlighted fall in that section
11:42:00 of the Quality Team.
11:42:01 Q. Now, if you turn back to your
11:42:05 affidavit now -- oh, I apologize, we should
11:42:13 mark this, Commissioner, as the next exhibit.
11:42:15 THE COMMISSIONER: All right,
11:42:15 thank you.
11:42:17 Madam Clerk, what exhibit number
11:42:20 is it now?
11:42:20 THE COURT CLERK: 123.
11:42:23 THE COMMISSIONER: So Exhibit
11:42:24 123 then, the single-page
11:42:26 document entitled "CNO
11:42:28 Organizational Structure".
11:42:29 Thank you.
11:42:34 EXHIBIT NO. 123: Single-page

document entitled "CNO Organizational Structure".

BY MS. JONES:

Q. Now, within your affidavit if you turn to tab "C", and this is document 72703. Thank you.

So we saw in the legislation and you have referred in your evidence to the College's Statutory Committees, and is this a diagram of the College's Statutory Committees?

A. Yes, it is.

Q. And does the line that comes from Council to all of these committees, does that suggest that these committees are made up of members of Council?

A. Council appoints the members of the committee, and the membership of the committees is a combination of Council members and non-Council members.

Q. I see. And then just briefly if we can touch on the roles of these committees, and first of all, are the roles of these committees set out in the Regulated Health Professions Act and, in particular, the Code?

A. Yes, they are.

Q. Okay. So briefly, what would be the role of the Discipline Committee?

A. The Discipline Committee sets panels to hear specified allegations to determine and make decisions as to whether a nurse is guilty of professional misconduct.

11:44:53 Q. Okay, and those would be the
11:44:55 specific professional misconduct provisions
11:44:58 that are a regulation to the Nursing Act?
11:45:00 A. That's correct.
11:45:01 Q. Okay. And then does the
11:45:04 Discipline Committee deal with health matters?
11:45:07 A. No, health matters go to the
11:45:09 Fitness to Practise Committee.
11:45:11 Q. Okay, so that is right next
11:45:12 door, the Fitness to Practise Committee, and
11:45:14 what is the role of that committee?
11:45:15 A. That committee is to hear
11:45:20 concerns about a nurse's health that are having
11:45:24 an impact on the nurse's ability to practice,
11:45:28 and that committee will adjudicate to determine
11:45:35 whether there is a need for terms, conditions
11:45:39 or limitations on a nurse's Certificate of
11:45:43 Registration.
11:45:43 Q. Okay. And then to the right
11:45:46 of that we have the Inquiries, Complaints and
11:45:49 Reports Committee, or the ICRC. What is the
11:45:51 role of that committee?
11:45:53 A. That committee is a screening
11:45:54 committee, and it reviews reports of
11:45:59 investigations that have been conducted subject
11:46:04 to a section 75 investigation, which may be
11:46:11 through a complaint or a report, and they
11:46:15 determine -- they assess risks associated with
11:46:19 the incidents that have been reported and
11:46:24 determine what appropriate regulatory action
11:46:28 should be taken, and that can range from in
11:46:33 very rare circumstances taking no action all

11:46:36 1 the way to referring specified allegations to
11:46:39 2 the Discipline Committee.
11:46:39 3 Q. I see. So are all issues
11:46:42 4 that the College considers pertaining to
11:46:45 5 misconduct or health, will they all ultimately
11:46:49 6 be determined by a committee or could they be
11:46:51 7 determined, the regulatory response, could it
11:46:54 8 be determined prior to going to a committee?
11:46:56 9 A. That is correct. So the
11:46:58 10 legislation requires that all complaints are
11:47:02 11 investigated. There is no discretion. There
11:47:06 12 is discretion with reports, and that discretion
11:47:09 13 lies with the Registrar, and so we have -- or
11:47:13 14 the Executive Director in our case.
11:47:15 15 And so we have what I have
11:47:17 16 referred to earlier as Executive Director
11:47:21 17 actions which are regulatory -- a range of
11:47:24 18 regulatory actions that may be used along with
11:47:28 19 a -- sorry, an initiation of a section 75
11:47:35 20 investigation, if warranted.
11:47:37 21 Q. Okay, so if we take a step
11:47:39 22 back, the difference between a complaint and a
11:47:44 23 report.
11:47:45 24 A. Okay.
11:47:46 25 Q. So first of all, are these
11:47:48 26 both, are complaints and reports, are they both
11:47:52 27 information that the College receives about the
11:47:54 28 practice or health of a member?
11:47:57 29 A. For the most part, yes.
11:47:58 30 Q. Okay. And then what makes
11:48:01 31 something a complaint and something else a
11:48:03 32 report? So first of all, are those terms

11:48:08 defined in the legislation?
11:48:09 A. No, they are not. Our
11:48:12 College has determined that the complaints
11:48:13 process is for the public, that the opportunity
11:48:18 to bring a concern forward, to have that
11:48:22 concern addressed will go through the
11:48:24 complaints process.
11:48:26 Reports are handled with the
11:48:32 discretion that is identified in legislation.
11:48:37 And your comment about reports being about
11:48:45 matters in relation to professional misconduct
11:48:49 and I said for the most part. We also get
11:48:53 reports about nurses that have nothing to do
11:48:54 with nursing practice or conduct in relation to
11:48:59 nursing practice.
11:49:00 Q. And what would an example --
11:49:01 A. So my tenant who is a nurse
11:49:04 hasn't paid her rent.
11:49:05 Q. Fair, okay.
11:49:06 A. So those are examples of
11:49:08 reports that the College may receive.
11:49:09 Q. Okay, and so when you say
11:49:11 members of the public for the complaints
11:49:15 process, who would make up members of the
11:49:19 public for the purposes of determining that
11:49:22 something should be treated as a complaint?
11:49:24 A. That would be a client, a
11:49:25 patient, a resident, and their family members.
11:49:29 Q. Okay, so if the concern that
11:49:31 is brought to the College's attention is from a
11:49:33 patient -- and is "patient" and "client", are
11:49:39 they used interchangeably?

11:49:40 A. They are.
11:49:41 Q. Okay, so I'll use the word
11:49:43 "patient" right now. So if a patient or their
11:49:45 family member raises a concern, and I take it
11:49:47 it has to be in writing for it to be a
11:49:48 complaint; is that true?
11:49:49 A. In writing or a recording,
11:49:55 some documented version.
11:49:56 Q. Okay. So if a patient or a
11:49:59 member of their family brings forward a
11:50:01 complaint in some documented form about a nurse
11:50:04 and the care they received from the nurse or an
11:50:06 interaction with a nurse, that would be treated
11:50:09 by the College as a complaint?
11:50:10 A. That's correct.
11:50:10 Q. Okay, and what about --
11:50:13 A. What we do, if I may, the
11:50:16 first thing we do is verify the intention, and
11:50:21 sometimes a family member or a patient will
11:50:24 indicate I don't want to be part of the
11:50:27 complaints process. So the first step that the
11:50:30 College goes through is to explain our
11:50:32 processes and to confirm what the wishes are of
11:50:37 the individual. Sometimes they just want the
11:50:40 College to be aware, in which case we would
11:50:44 treat that as a report.
11:50:45 Q. I see. So if it is a patient
11:50:47 or a family member, your default then is to
11:50:51 treat it as a complaint, but if they would
11:50:53 prefer it to be treated as a report, it could
11:50:55 be treated as a report?
11:50:56 A. That's correct.

11:50:57 Q. Okay. And then in terms of
11:51:01 let's take other members of the public but now
11:51:04 maybe stakeholders like an employer, if an
11:51:07 employer raises issues with the College about a
11:51:10 nurse, is that treated as a complaint or a
11:51:13 report?
11:51:13 A. It is treated as a report.
11:51:15 Q. Okay. And again, that is not
11:51:18 set out in the legislation. That is a practice
11:51:19 that the College has developed?
11:51:20 A. That's correct.
11:51:21 Q. And are those reports all
11:51:24 mandatory reports, or could they also be
11:51:26 voluntary reports?
11:51:27 A. They are not all mandatory
11:51:30 reports.
11:51:30 Q. So some of the information
11:51:32 the College receives from an employer could
11:51:35 fall under the mandatory reporting rules, and
11:51:38 some might be information that an employer
11:51:40 provides even though they are not required to
11:51:42 provide it?
11:51:42 A. That's correct. It is
11:51:44 usually information that employer has deemed is
11:51:48 important for the College to be aware of
11:51:49 because they have a concern about the nurse's
11:51:51 safety in practice.
11:51:54 Q. Okay. And you have testified
11:52:00 that the investigation of a complaint is
11:52:03 mandatory; is that correct?
11:52:04 A. That's correct.
11:52:05 Q. Okay, and it is mandatory in

11:52:07 the legislation?
11:52:08 A. Yes.
11:52:08 Q. And explain to us now for a
11:52:13 report - and you started giving this evidence
11:52:16 but it is quite tricky, and so we'll just walk
11:52:19 through it again - what is the process when the
11:52:20 College receives a report in terms of whether
11:52:23 or not there needs to be an investigation?
11:52:25 A. So I don't have it in front
11:52:28 of me, but my recollection is that the
11:52:31 legislation says that complaints "shall" be,
11:52:34 that the Registrar "shall" order an
11:52:37 investigation, and for reports it says "may"
11:52:41 order. That is my recollection.
11:52:43 In the case of receiving a
11:52:46 report, that information is reviewed upon
11:52:53 receipt to determine whether the information
11:52:59 poses a high risk of harm.
11:53:03 Q. Okay, and that process we
11:53:04 will go into in some detail, but sufficient for
11:53:08 our purposes now that the College investigates
11:53:10 the complaints on a mandatory basis and goes
11:53:13 through a process, a discretionary process for
11:53:16 reports?
11:53:17 A. That's correct.
11:53:17 Q. Okay. And are there
11:53:23 differences, other than whether or not the
11:53:26 College is mandated to investigate a complaint
11:53:30 or a report, are there other differences
11:53:33 arising from the legislation about whether
11:53:35 something is treated as a complaint or a
11:53:37 report?

11:53:40 1 I'll give you an example. Are
11:53:44 2 there differences in terms of when a decision
11:53:46 3 is made by a College relating to a complaint,
11:53:50 4 differences in the appeal route that the member
11:53:53 5 might have compared to a report?
11:53:54 6 A. Yes. The complaints process,
11:54:04 7 the route of appeal is to the health
11:54:06 8 professions regulatory advisory council or
11:54:12 9 committee --
11:54:13 10 Q. Health Professions -- the
11:54:16 11 HPARB?
11:54:16 12 A. The Health Profession Appeal
11:54:18 13 and Review Board. Sorry, there are too many
11:54:21 14 acronyms.
11:54:22 15 Q. Appeal and Review Board.
11:54:25 16 A. The Health Profession Appeal
11:54:26 17 and Review Board, and the reports process, the
11:54:27 18 route would be Divisional Court.
11:54:29 19 Another example may be that, for
11:54:33 20 example, a report of sexual abuse is a
11:54:37 21 mandatory investigation.
11:54:40 22 Q. And you have testified that a
11:54:46 23 complainant or a member, a patient, let's say,
11:54:48 24 who says I don't want to be part of the
11:54:50 25 complaint process, you might then treat that as
11:54:53 26 a report?
11:54:53 27 A. That's correct.
11:54:54 28 Q. And what about the opposite
11:54:56 29 situation? What about now, in terms of your
11:54:59 30 current practice, if an employer says, I want
11:55:03 31 my report treated as a complaint, will the
11:55:07 32 College do that?

11:55:07 A. I'm not aware of receiving
11:55:09 that request, so in my experience, we have not
11:55:14 encountered that. We would explain our
11:55:16 process, and to my knowledge, employers are
11:55:20 satisfied with that.
11:55:21 Q. And then if we look now
11:55:25 briefly back at document 72703, and you have
11:55:35 already given evidence about the Quality
11:55:38 Assurance Committee. I think the role of the
11:55:39 Registration Committee we'll touch on a bit
11:55:42 later.
11:55:42 What about at the top, the
11:55:44 Executive Committee? What is the current role
11:55:46 of the Executive Committee?
11:55:49 A. The current role is basically
11:55:51 to make decisions between Council meetings, so
11:55:54 if there is an urgent need for Council to take
11:55:59 a decision, the Executive Committee has that
11:56:01 authority and reports on that to Council at its
11:56:04 next meeting.
11:56:05 It also will -- so for example,
11:56:09 some of the decisions that they may make, if
11:56:11 there is a vacancy on a Statutory Committee, in
11:56:13 order to ensure those Statutory Committees can
11:56:16 continue with their work, the Executive
11:56:19 Committee will appoint someone and that
11:56:21 appointment will be ratified by Council at its
11:56:24 next meeting.
11:56:25 Q. And that is a different role
11:56:27 for the Executive Committee than it has had
11:56:30 historically; is that fair?
11:56:31 A. That's correct.

11:56:31 Q. And now if you turn to page
11:56:34 10 of your affidavit, and I am going to ask you
11:56:44 some questions about the standards which we
11:56:46 have discussed a bit this morning.
11:56:48 And so at paragraph 22 you have
11:57:00 given evidence that:
11:57:01 "The College publishes a number
11:57:03 of practice standards" --
11:57:06 referred to as "the Standards"
11:57:08 -- "which are authoritative
11:57:09 statements setting out the legal
11:57:10 and professional basis of
11:57:11 nursing practice."
11:57:13 And you have testified that
11:57:14 those run through Council who ultimately
11:57:16 approves the standards?
11:57:18 A. Uhm-hmm.
11:57:18 Q. And then you say that they:
11:57:20 "[...] inform nurses of their
11:57:21 accountabilities, and inform the
11:57:23 public of what to expect of
11:57:24 nurses."
11:57:24 And that they:
11:57:26 "[...] apply to all nurses
11:57:27 regardless of their role, job
11:57:28 description or area of
11:57:30 practice."
11:57:31 And so we looked at the
11:57:33 professional misconduct regulation this
11:57:38 morning. Is it an act of professional
11:57:40 misconduct to contravene a standard?
11:57:42 A. Yes, it is.

11:57:43 Q. And do all contraventions of
11:57:49 the standard suggest to the College that a
11:57:53 nurse is practising below the standard in
11:57:56 general?
11:57:56 A. I'm not sure I understand
11:58:05 your question.
11:58:05 Q. I'll put it a different way.
11:58:06 Would every contravention of a standard result
11:58:10 in a regulatory process by the College?
11:58:13 A. No.
11:58:13 Q. Okay. Why not?
11:58:16 A. Well, the vast majority of
11:58:18 incidents of practice falling below the
11:58:22 standard are addressed in the practice setting.
11:58:24 So by virtue of the nature of
11:58:27 the work that nurses do, there are mistakes;
11:58:35 there are errors and omissions. And the best
11:58:38 place to address those in order to improve
11:58:41 practice is at the point of care.
11:58:44 And so those incidents would not
11:58:47 even come to the College's attention, but the
11:58:50 workplace would use the College's resources as
11:58:54 well as other nurses in the setting to ensure
11:58:56 that everyone is aware of standards and would
11:58:59 identify mechanisms in the workplace that could
11:59:03 support nurses to practice according to
11:59:07 standards.
11:59:07 Q. Okay, and so that is an
11:59:08 example of the standards used by employers.
11:59:12 What about when a suggestion about a breach of
11:59:14 a standard comes to the College's attention,
11:59:18 will that always be prosecuted as an act of

11:59:20 professional misconduct?
11:59:21 A. No, it would not.
11:59:22 Q. And why is that?
11:59:23 A. The reality is that there are
11:59:30 gaps in practice all the time, and in the vast
11:59:34 majority of circumstances, nurses who
11:59:41 demonstrate insight, who have a willingness to
11:59:46 review standards and improve their practice are
11:59:54 conducive to a regulatory action that is
11:59:56 remedial.
11:59:57 And the College uses its
12:00:00 regulatory authority in the most appropriate
12:00:03 way. So it wouldn't be appropriate for us to
12:00:06 use the most forceful regulatory action for
12:00:13 every matter that came to the College's
12:00:15 attention. That would not be in the public
12:00:19 interest.
12:00:22 We want to ensure that the
12:00:24 resources are applied in a proportionate way,
12:00:29 and so the most forceful regulatory actions are
12:00:37 used where there is the highest risk of harm to
12:00:41 clients.
12:00:43 We also want to support and
12:00:45 encourage a culture where nurses are willing to
12:00:52 recognize their errors, reflect on them and
12:00:56 identify opportunities to improve not only
12:01:00 their own practice, but often nurses through
12:01:03 their own errors will identify opportunities to
12:01:06 prevent errors that their colleagues may
12:01:08 inadvertently make.
12:01:09 And that is a culture of patient
12:01:11 safety that the College's processes also

12:01:15 consider when considering the appropriate
12:01:19 regulatory action.
12:01:20 Q. And in terms of the role the
12:01:27 standards play for the College, do the
12:01:31 standards play a role in determining what the
12:01:35 regulatory response should be? So would the
12:01:37 College have reference to its standards to
12:01:40 determine how big a risk, for example, to the
12:01:43 public a nurse is? Would that be in reference
12:01:46 to the standards and what standards had been
12:01:48 breached?
12:01:48 A. The standards are one
12:01:54 component. There are other considerations as
12:02:00 well, so intentional behaviour, reckless
12:02:04 behaviour, blatant abuse, those kinds of
12:02:09 things, yes, they are contraventions of the
12:02:11 standards, but they are also very high-risk
12:02:13 behaviours that put clients at risk.
12:02:14 Q. Okay. And in terms of those
12:02:18 sorts of things like abuse, those would be
12:02:20 themselves breaches or acts of professional
12:02:23 misconduct?
12:02:24 A. Absolutely.
12:02:24 Q. Okay, but are you talking
12:02:26 about more of a weighing in terms of --
12:02:28 A. Yes, so the standards would
12:02:29 apply to everything, but the regulatory action
12:02:33 will be different depending on the assessment
12:02:36 of the risk.
12:02:36 Q. And you referred to -- and
12:02:42 one more question. If a nurse is ultimately
12:02:46 referred to the Discipline Committee say for

12:02:50 professional misconduct, can the standards be
12:02:52 used as evidence in those proceedings?
12:02:55 A. Yes.
12:02:56 Q. Okay. And then you have also
12:02:58 testified that Council issues guidelines, and
12:03:02 are guidelines equally authoritative as
12:03:05 standards, or what role do they play?
12:03:08 A. No, guidelines are resources
12:03:10 to assist nurses in applying the standards.
12:03:14 Q. And could you be prosecuted
12:03:17 for failing to comply with a guideline?
12:03:20 A. Not specifically a guideline.
12:03:24 It would be the standard that the guideline
12:03:27 referred to that would be the basis of the
12:03:29 prosecution.
12:03:29 Q. And at paragraph 24 of your
12:03:35 affidavit you provide that:
12:03:45 "The College's Professional
12:03:46 Standards [...] provides an
12:03:49 overall framework for the
12:03:50 practice of nursing and a link
12:03:52 with other Standards, guidelines
12:03:54 and competencies [...]"
12:03:56 So it sort of like an umbrella
12:04:00 standard over all the other standards?
12:04:02 A. That's correct.
12:04:02 Q. Okay, so let's turn that up.
12:04:04 That is Exhibit "G", document 55074. So this
12:04:31 is the umbrella standard, and then there would
12:04:31 be all sorts of individual standards, am I
12:04:32 correct, like a medication standard, for
12:04:35 example, an ethics standard, et cetera?

12:04:37 A. That's correct.
12:04:37 Q. And so if we look at page 3
12:04:40 of this document, under "Introduction" it says
12:04:52 what you just testified, that the:
12:04:55 "Professional Standards," this
12:04:57 particular standard, "[...]
12:04:59 provides an overall framework
12:05:00 for the practice of nursing and
12:05:01 a link [to the] other standards,
12:05:01 [...]"
12:05:04 And:
12:05:06 "It describes in broad terms the
12:05:07 professional expectations of
12:05:08 nurses and applies to all
12:05:09 nurses, in every area of
12:05:11 practice."
12:05:12 Correct?
12:05:13 A. That's correct.
12:05:14 Q. And if you go over to the
12:05:17 right of the page, we have in the middle of the
12:05:23 page:
12:05:25 "A standard is an authoritative
12:05:28 statement that sets out the
12:05:30 legal and professional basis of
12:05:31 nursing practice"?
12:05:32 A. That's correct.
12:05:33 Q. And then if we flip through
12:05:34 this document, starting at page 4 is it fair to
12:05:41 describe the categories then that are set out
12:05:44 in the professional conduct standard or the
12:05:49 Professional Standards standard as sort of big
12:05:53 categories of competencies? So you have at

12:05:56 page 4 "Accountability", for example, that the
12:06:00 nurse must demonstrate accountability to their
12:06:02 patients and the public?
12:06:03 A. Yes.
12:06:04 Q. And then you have at page 5
12:06:07 "Continuing Competence", that the nurse needs
12:06:14 to do things like perform a self-assessment,
12:06:17 engage in a learning process, some of the stuff
12:06:19 we spoke about earlier today?
12:06:20 A. Correct.
12:06:21 Q. At page 6 we have components
12:06:32 dealing with "Ethics", and so nurses have to
12:06:37 identify ethical issues, and this is under
12:06:39 "Indicators":
12:06:41 "A nurse demonstrates the
12:06:42 standard by:"
12:06:44 And there is sort of broad
12:06:45 categories:
12:06:46 "- identifying ethical issues
12:06:48 and communicating them to the
12:06:50 health care team;
12:06:51 - identifying options to resolve
12:06:55 issues", et cetera.
12:06:57 If we keep flipping through, the
12:07:00 next couple of categories are "Knowledge" and
12:07:02 "Knowledge Application" and then "Leadership".
12:07:04 And then if we go to page 11, we
12:07:08 have "Relationships", so these are standards
12:07:10 pertaining to the relationships between nurses
12:07:14 and their clients or nurses and their patients
12:07:17 and also their professional relationships?
12:07:20 A. Correct.

12:07:21 Q. And so it has things like
12:07:23 under "Indicators" practising in accordance
12:07:30 with the nurse-client relationship standard,
12:07:33 which is a different standard, but:
12:07:35 "- demonstrating respect and
12:07:38 empathy for, and interest in
12:07:39 clients;"
12:07:40 And then:
12:07:41 "- maintaining boundaries
12:07:42 between professional therapeutic
12:07:44 relationships and
12:07:45 non-professional personal
12:07:46 relationships", et cetera.
12:07:52 Correct?
12:07:52 A. That's correct.
12:07:53 Q. Okay. And so that is the
12:07:56 overarching standard, but I am going to ask you
12:07:59 now to turn to one of the specific standards
12:08:01 and that is a medication standard, and that
12:08:04 will be at document "I", which is 55066.
12:08:26 So I understand that this, and
12:08:28 it says "Revised 2017", this is the College's
12:08:32 current medication standard?
12:08:34 A. That's correct.
12:08:34 Q. And this would be the
12:08:36 standard in the current world that nurses would
12:08:38 be accountable to follow?
12:08:38 A. That's correct.
12:08:39 Q. And if we turn to page 3 of
12:08:48 the standard, in the "Introduction":
12:08:51 "The Medication practice
12:08:53 standard describes nurses'

accountabilities when engaging in medication practices, such as administration, dispensing, medication storage, inventory management and disposal."

And it says there are:

"Three principles outline the expectations related to medication practices [...]"

And these principles are "authority", "competence" and "safety".

And then the next line, again:

"This practice standard applies to all nurses."

And then those three categories, authority, competence and safety, are then described further below.

And so if you look in the middle under "Authority", it says, for example:

"Nurses accept orders that are:

- clear.
- complete.
- [and] appropriate."

And just in terms of how this standard would work, would it be the case that if a nurse accepted an order and implemented an order and it wasn't complete, so the dose wasn't correct or the time of administration wasn't correct, that would be a breach of the medication standard because they didn't accept an order that was clear, complete and appropriate?

12:10:00 A. If they did not accept an
12:10:03 order that was clear, complete and appropriate,
12:10:07 you are correct, it would be a breach of the
12:10:08 medication standard.
12:10:09 Q. Okay, so if they I guess --
12:10:11 and maybe I'm putting it in the opposite way,
12:10:14 but if they accepted and handed out a
12:10:16 medication or administered a medication where
12:10:18 the dose hadn't been set out by the physician,
12:10:20 for example, and they decided the dose
12:10:23 themselves, that would be a breach of the
12:10:26 standard?
12:10:26 A. That's correct.
12:10:27 Q. Okay. And you have given
12:10:36 evidence in your affidavit that this medication
12:10:38 standard, the 2017 medication standard,
12:10:41 represents a bit of a change from the way that
12:10:43 the College used to look at medication
12:10:45 standards?
12:10:46 A. Correct.
12:10:46 Q. And in what way? What is the
12:10:49 change in this medication standard?
12:10:51 A. This standard is based on the
12:10:52 review of the evidence and best practice in
12:10:58 standards and is what we call a principle-based
12:11:03 standard, and this is the leading practice in
12:11:06 regulatory standards that has emerged over the
12:11:09 last several years.
12:11:09 And the design of the standard
12:11:15 recognizes that the practice setting is
12:11:19 constantly changing, and there is risk in the
12:11:24 old style of standard that is very prescriptive

12:11:28 1 that it doesn't keep up with the changes in
12:11:32 2 practice settings.
12:11:34 3 It also acknowledges the
12:11:36 4 professional accountability, which is another
12:11:39 5 standard, that nurses have for exercising their
12:11:43 6 knowledge, skill and judgment whenever they are
12:11:46 7 practising.
12:11:47 8 So the primary change is a move
12:11:50 9 from a more prescriptive standard to a
12:11:53 10 principle-based one that allows for flexibility
12:11:57 11 and adaptation to the myriad of different
12:12:05 12 contexts in which medication is administered.
12:12:07 13 Q. Can you give an example of a
12:12:10 14 prescriptive portion of the old standard that
12:12:14 15 may not apply in a particular practice setting
12:12:16 16 or a changing practice setting?
12:12:21 17 A. Well, without looking at the
12:12:23 18 old standard, this may be a bit of a guess, but
12:12:27 19 for example, if the old standard had said that
12:12:31 20 the physician writing must be legible - and I'm
12:12:38 21 making that up - the new standard, that may not
12:12:44 22 have applied in a very granular way to an
12:12:46 23 electronic order in an electronic health
12:12:51 24 record, and yet, to your example, maybe the
12:12:55 25 dose was missing, and this new standard
12:13:01 26 acknowledges the nurse's accountability for
12:13:03 27 making sure that before accepting an order,
12:13:06 28 that it is clear and complete.
12:13:09 29 Q. And in terms of medication,
12:13:15 30 you testified earlier that the injection --
12:13:18 31 administering medication by injection is a
12:13:20 32 controlled act. Is administering medication

not by injection, so handing out pills or tablets, for example, is that a controlled act?

A. No, it is not.

Q. So we have heard evidence that Ms. Wettlaufer at a certain portion or a certain part of her work history worked in a group home environment, and as part of that role, she was administering medication. So would that mean that she was practising as a nurse because she was administering medication?

A. No, that alone wouldn't characterize her as practising as a nurse.

Q. So how would you define when someone is practising as a nurse?

A. They are using their nursing knowledge, skill and judgment in their work. They are using the controlled acts that are authorized to nursing, and they are employed in a nursing role.

Now, that last one, there are times when individuals may not be employed in a nursing role but are contravening the requirement to be a member of the College in order to engage in controlled acts.

Q. I'm sorry, can you give that to me again?

A. So your question was about when an individual would be practising as a nurse, and so there are a number of criteria that determine whether an individual may be practising as a nurse, and they include using knowledge, skill and judgment, nursing

knowledge, skill and judgment to influence or care -- influence the care of or care for a client, a patient, a resident, or practising the controlled acts that are authorized to nursing.

Q. Okay, thank you. And then now in this current medication standard, at page 3, I think we are on page 3, at the right-hand side, that's right, we have a category called "Safety" and it refers in the safety category, towards the bottom, third up from the bottom:

"- take appropriate action to resolve or minimize the risk of harm to a client from a medication error or adverse reaction.

- report medication errors, near misses or adverse reactions in a timely manner."

Is the making of a medication error a breach of the standard?

A. Yes, it is.

Q. Now, you referred to the previous medication standard, so we'll just flip to that briefly, and that is at tab "H".

I just wanted to identify this. It is my understanding that this would have been the medication standard that was in place at the time the College received the Caressant Care report; is that correct?

A. That's correct, yes.

12:16:58 Q. And this would then be the
12:17:04 more, I think to use your language, the more
12:17:08 prescriptive version of the medication
12:17:09 standard?
12:17:10 A. That's correct.
12:17:10 Q. And if you turn to page 6
12:17:16 within this document, under "Implementation".
12:17:29 I apologize, 55063, page 6, please.
12:17:50 And under "Implementation" we
12:17:58 have -- so this is under "Implementation",
12:18:00 which is described as:
12:18:02 "Nurses prepare and administer
12:18:03 medication(s) to clients in a
12:18:04 safe, effective and ethical
12:18:06 manner."
12:18:07 On the right-hand side we have:
12:18:09 "verifying:
12:18:12 - the right client,
12:18:13 - the right medication,
12:18:14 - the right reason,
12:18:15 - the right dose", et cetera.
12:18:17 And we have heard evidence I
12:18:18 think about the "five Rs", but there is more
12:18:21 than that here.
12:18:22 But these expectations, that
12:18:25 when a nurse administers medication, that they
12:18:27 ensure that it is the right client, the right
12:18:29 medication, the right reason, et cetera, would
12:18:32 these remain expectations of the College even
12:18:34 in the new medication standard, even though
12:18:37 they are not set out that way?
12:18:38 A. Yes, they would, and this is

12:18:40 an excellent example of the reason that a
12:18:51 principle-based approach is more
12:18:55 all-encompassing.
12:18:55 So when I went through nursing
12:18:57 education, it was the "five Rs", but research
12:18:59 and experience and guidance in patient safety
12:19:05 has suggested over time that there are more
12:19:08 than the "five Rs".
12:19:10 So now we are up to eight, and
12:19:13 as opposed to making sure every nurse remembers
12:19:17 every single piece, this principle-based
12:19:20 approach is highlighting for nurses the things
12:19:28 they should be aware of.
12:19:30 Now, a guideline that may change
12:19:32 over time may provide information about updated
12:19:39 tips and ways to prevent a medication error,
12:19:48 but this is a great example of the evolution to
12:19:50 a principle-based standard as practice and
12:19:55 science and health care settings change over
12:19:58 time, standards can lag.
12:20:03 Q. Okay, and if we turn to page
12:20:05 8 in this document, and there is a section
12:20:14 about "Medication errors", and "A medication
12:20:19 error is defined [...]", and this is in the
12:20:21 middle of the page:
12:20:22 "A medication error is defined
12:20:24 as any preventable event that
12:20:25 may cause or lead to
12:20:26 inappropriate medication use or
12:20:28 client harm while the medication
12:20:29 is in the control of the health
12:20:31 care professional, client or

12:20:33 1 [customer]."
12:20:35 2 So first of all, are medication
12:20:37 3 errors a risk to patient safety?
12:20:38 4 A. Absolutely.
12:20:39 5 Q. And at the bottom of that
12:20:47 6 column, we see reference to:
12:20:49 7 "Preventing and reducing errors
12:20:52 8 involv[ing] collaboration
12:20:53 9 between the nurse, other health
12:20:54 10 care professionals and the
12:20:56 11 facilit[ies]."
12:20:57 12 And if you go to the right-hand
12:21:00 13 side now under "Safe medication practice", at
12:21:03 14 the fourth point up from the bottom there is a
12:21:07 15 reference to an obligation to report.
12:21:11 16 "[...] all errors and near
12:21:12 17 misses using formal
12:21:14 18 practice-setting communication
12:21:15 19 mechanisms".
12:21:20 20 Why is that part of the
12:21:21 21 College's expectation, that nurses report all
12:21:23 22 medication errors?
12:21:25 23 A. This expectation is based on
12:21:27 24 a huge body of literature and scientific
12:21:31 25 investigation that started with a report in the
12:21:34 26 United States called "To Err is Human", and
12:21:38 27 that began a patient safety movement that
12:21:42 28 highlighted the importance of errors being
12:21:48 29 openly discussed and reporting being supported
12:21:55 30 and encouraged, without there being -- without
12:21:59 31 the health professional risking being blamed or
12:22:05 32 punished for errors.

12:22:09 1 And this is in recognition of
12:22:10 2 the huge incidence of medication errors in the
12:22:18 3 health care system and the need to look at ways
12:22:20 4 to prevent those errors, and one of the ways is
12:22:22 5 for health professionals to have a safe
12:22:25 6 environment in which to identify errors, report
12:22:30 7 on their own errors, identify errors that are
12:22:34 8 made by others, so that the whole team can be
12:22:37 9 aware of and can collectively identify measures
12:22:43 10 to potentially prevent future error.
12:22:45 11 Q. And you are referring to
12:22:48 12 preventing future error sort of more on a
12:22:53 13 policy basis. Is there an interest in
12:22:55 14 self-reporting a medication error that is
12:22:58 15 specific to the very patient who had the
12:23:00 16 medication error or who the nurse made the
12:23:04 17 medication error on, if we can put it that way?
12:23:06 18 A. Sorry, could you just repeat
12:23:08 19 your question, please?
12:23:09 20 Q. Sure. In terms of there
12:23:11 21 is -- you have referred to an advantage of
12:23:16 22 reporting medication errors so we can learn
12:23:18 23 from them going forward.
12:23:19 24 Is there a patient safety
12:23:21 25 component to that as well in terms of a patient
12:23:24 26 who may have been subject to a medication
12:23:26 27 error? Is there an interest in that being
12:23:31 28 reported?
12:23:32 29 A. Absolutely. Do you mean
12:23:34 30 should the error be disclosed to the patient?
12:23:37 31 Q. Yes.
12:23:37 32 A. Is that what you are asking?

12:23:38 Yes, and nurses are encouraged to disclose to
12:23:42 the patient. Patients are partners in care,
12:23:46 and so patients can also be part of that safety
12:23:52 net. And the whole practice of medication
12:23:55 administration involves patients, clients and
12:23:57 their families who can assist in preventing
12:24:02 errors as well.
12:24:03 So the whole field of medication
12:24:12 administration has become much more
12:24:15 transparent. There is lots of discussion and
12:24:18 acknowledgment of the fact that well-meaning
12:24:23 health professionals make mistakes, but it is
12:24:26 disclosing those mistakes, talking about them
12:24:28 and engaging other members of the care team,
12:24:30 including the patient and family, that will
12:24:35 help detect and prevent errors.
12:24:38 Q. And is there literature in
12:24:42 the nursing world which refers or assists us
12:24:47 with the frequency of medication errors in the
12:24:50 nursing profession?
12:24:51 A. There is a lot. There has
12:24:57 been a lot written and studied over the years.
12:24:59 There is a seminal article which we have
12:25:00 provided to the Commission that is a
12:25:05 pharmacological review --
12:25:09 Q. Why don't we turn that up.
12:25:10 Is that the article at tab 50 of the document
12:25:12 brief, which is document 71054?
12:25:18 A. Yes, it is.
12:25:19 Q. And this is a seminal article
12:25:22 about medication errors in the health care
12:25:26 setting?

12:25:26 A. It is.
12:25:27 MS. JONES: Okay, so perhaps,
12:25:29 Commissioner, we should mark
12:25:33 this document as the next
12:25:33 exhibit.
12:25:40 THE COMMISSIONER: Yes, thank
12:25:40 you. Madam Clerk, is that
12:25:40 Exhibit 124?
12:25:46 THE COURT CLERK: Yes.
12:25:47 THE COMMISSIONER: Yes, okay,
12:25:50 Exhibit 124 then. It is the
12:25:51 document 71054, and it is
12:25:54 entitled "Prevalence and Nature
12:25:55 of Medication Administration
12:25:56 Errors in Health Care Settings".
12:25:59 EXHIBIT NO. 124: Document
12:25:54 71054, an article entitled
12:25:54 "Prevalence and Nature of
12:25:55 Medication Administration Errors
12:25:56 in Health Care Settings".
12:26:05 BY MS. JONES:
12:26:05 Q. So I apologize, Ms. Coghlan,
12:26:08 I interrupted you. So what does this article,
12:26:10 and it looks like it was published in 2013,
12:26:14 correct, at the bottom of the page?
12:26:15 A. Yes.
12:26:15 Q. Okay, and what does this
12:26:17 article tell us? And you can walk us through
12:26:19 it or tell us just the highlights of what does
12:26:23 this tell us about medication errors?
12:26:25 A. So this study attempted to
12:26:29 look at the prevalence and nature of medication

12:26:35 1 administration errors by looking at
12:26:38 2 observational studies.
12:26:41 3 So this is a review study of 91
12:26:46 4 scientific studies that involved the
12:26:52 5 observation of medication administration
12:26:56 6 errors, so these studies were designed to
12:27:00 7 detect medication administration errors through
12:27:03 8 observation. So trained observers studied the
12:27:10 9 incidence and prevalence of medication
12:27:12 10 administration errors in a variety of different
12:27:16 11 settings, in different countries and under
12:27:19 12 different conditions.
12:27:20 13 So this group of 91 studies was
12:27:23 14 used by these authors to attempt to quantify
12:27:29 15 how frequent medication administration errors
12:27:32 16 that are observed occur in health care settings
12:27:36 17 and the nature of those errors.
12:27:39 18 And what the study identified is
12:27:42 19 that the median error rate of all medications
12:27:48 20 administered was 19.6 percent, and when you
12:27:54 21 remove errors that involved administration at
12:27:58 22 the wrong time, the rate was 8 percent.
12:28:07 23 The other piece that I think is
12:28:13 24 notable that they identified was that there was
12:28:21 25 a slightly higher incidence of observed
12:28:24 26 medication administration errors in the
12:28:26 27 long-term care sector. And I am just trying to
12:28:31 28 find that. I think it was about 23 percent. I
12:28:45 29 am just trying to find this spot.
12:28:56 30 Q. There is a reference, Ms.
12:28:58 31 Coghlan, at page 4. I'm not sure if this is
12:29:03 32 it, but it does refer to long-term care

12:29:05 1 settings.
12:29:15 2 A. That is the number of
12:29:20 3 long-term care settings that were represented
12:29:23 4 in this study, and --
12:29:32 5 Q. At page --
12:29:34 6 A. Sorry.
12:29:35 7 Q. Page 13, I believe.
12:29:37 8 A. That sounds closer to the
12:29:42 9 spot that I might be -- yes, here we are. So
12:29:46 10 studies carried out in hospitals reported a
12:29:51 11 medication administration error rate of 19.1
12:29:55 12 percent when you included errors that involved
12:29:59 13 timing, and that rate was 24.2 percent in
12:30:08 14 long-term care -- sorry, the error rate was
12:30:11 15 23.3 percent in long-term care institutions and
12:30:16 16 8.4 percent without timing errors.
12:30:19 17 Q. Thank you. And are
12:30:31 18 medication errors, reports or complaints about
12:30:36 19 medication errors, do you have a sense of how
12:30:39 20 frequently the College is receiving reports or
12:30:44 21 complaints that involve medication errors?
12:30:46 22 A. Of all the reports and
12:30:48 23 complaints we receive, depending on the year,
12:30:50 24 the range is between 20 and 30 percent of
12:30:54 25 matters involve medication errors.
12:30:58 26 Q. So would that be 20 or 30
12:31:01 27 percent, would that include matters where there
12:31:03 28 were other concerns as well but a medication
12:31:05 29 error was --
12:31:06 30 A. Yes.
12:31:06 31 Q. Okay, and is that -- if you
12:31:16 32 look at categories of the types of concerns

12:31:19 1 that are brought to your attention, where would
12:31:21 2 this fall on the spectrum? Would this be a
12:31:25 3 significant proportion, a small proportion? Is
12:31:27 4 there another type of issue that is brought to
12:31:31 5 your attention more than medication errors?
12:31:33 6 A. I would say it is one of the
12:31:35 7 more prominent examples, and I think it
12:31:38 8 actually may be this study that reminds us that
12:31:44 9 up to a third of a nurse's time providing care
12:31:51 10 may be involved in medication administration,
12:31:54 11 so it is not unusual that medication errors are
12:32:01 12 prominent in reports or complaints.
12:32:02 13 Q. Thank you, Ms. Coghlan.
12:32:14 14 Turning past the standards now,
12:32:16 15 I'm going to ask you to turn to your affidavit
12:32:19 16 at page 26, paragraph 61, please, and you state
12:32:43 17 at paragraph 61 that:
12:32:44 18 "The Code", and this would be
12:32:46 19 the Health Professions
12:32:49 20 Procedural Code, "in 1995, and
12:32:50 21 today, sets out a number of
12:32:52 22 circumstances in which
12:32:53 23 employers, facility operators,
12:32:55 24 and other nurses must alert the
12:32:56 25 College of concerns about a
12:32:58 26 member's practice."
12:33:01 27 A. That's correct.
12:33:01 28 Q. And would those be referred
12:33:02 29 to as mandatory reports?
12:33:04 30 A. Yes.
12:33:04 31 Q. And if you go down to the
12:33:10 32 next paragraph, one of these entities or

12:33:14 1 categories of people who have to make mandatory
12:33:18 2 reports are facility operators, and so how does
12:33:22 3 the College define "facility operator" for this
12:33:27 4 purpose?
12:33:27 5 A. The facility operator is the
12:33:29 6 individual who operates the facility where a
12:33:32 7 nurse is practising, and in many cases, in the
12:33:37 8 practice of nursing the facility operator and
12:33:41 9 the employer are the same entity.
12:33:43 10 Q. Okay, and what about with an
12:33:46 11 agency nurse, in an agency nurse situation
12:33:50 12 would the agency be the employer but not the
12:33:55 13 facility operator?
12:33:56 14 A. That's correct.
12:33:56 15 Q. Okay. So if an agency
12:33:59 16 employs a nurse and places him or her into a
12:34:02 17 hospital --
12:34:04 18 A. Yes.
12:34:04 19 Q. -- okay, who is the employer
12:34:06 20 and who is the facility operator?
12:34:08 21 A. The employer is the agency
12:34:10 22 and the hospital is the facility operator.
12:34:12 23 Q. And do employers and facility
12:34:16 24 operators have identical mandatory reporting
12:34:18 25 obligations?
12:34:19 26 A. In the legislation they do
12:34:20 27 not.
12:34:21 28 Q. And why do you say in the
12:34:23 29 legislation they do not?
12:34:24 30 A. Well, there are other
12:34:26 31 parameters that, particularly nurses who are in
12:34:33 32 leadership roles, where their professional

12:34:37 1 accountability would guide them to make reports
12:34:42 2 to the College, and we receive those all the
12:34:46 3 time.
12:34:46 4 Q. I see. So is that
12:34:48 5 referencing when you talked, and perhaps it was
12:34:52 6 my language, to voluntary reports in addition
12:34:54 7 to mandatory reports?
12:34:55 8 A. That's correct.
12:34:56 9 Q. Okay, so you may get
12:35:00 10 voluntary reports of matters of concern that
12:35:05 11 aren't mandated by the legislation
12:35:06 12 specifically?
12:35:06 13 A. That's correct.
12:35:07 14 Q. And at page 27, paragraph 64,
12:35:20 15 you set out for us in one place here the
12:35:24 16 mandatory reporting requirements in the
12:35:25 17 legislation. And you state here for
12:35:36 18 "Employers" that since 1994 they have been
12:35:40 19 required to report:
12:35:41 20 "[...] the termination,
12:35:42 21 revocation, suspension, or
12:35:44 22 imposition of restrictions on
12:35:45 23 the member's employment or
12:35:47 24 privileges for reasons of
12:35:49 25 professional misconduct,
12:35:50 26 incompetence, or incapacity
12:35:50 27 [...]"
12:35:53 28 And that is within 30 days?
12:35:55 29 A. That's correct.
12:35:55 30 Q. Okay, and the reference to
12:36:00 31 "privileges", do nurses tend to have privileges
12:36:06 32 like physicians do?

12:36:06 A. No, they don't.
12:36:08 Q. Okay.
12:36:08 A. This is language in the Code that applies to all regulated health professions, so for example, physicians, midwives, dentists in some cases would have hospital privileges.
12:36:22 Q. Okay.
12:36:22 A. But they are not employees of the hospital.
12:36:26 Q. And there is reference in this paragraph to "suspension" in terms of an employer's obligation. Does an employer have an obligation to report to the College if they have suspended a nurse, like a one-day suspension, a five-day suspension?
12:36:48 A. No.
12:36:49 Q. No, okay. And so in terms of 64(a), is it -- in a nursing practice context, if a nurse doesn't have privileges, is the only mandatory reporting obligation on termination?
12:37:06 A. Yes.
12:37:07 Q. And is that set out in the legislation?
12:37:09 A. Yes, it is.
12:37:11 Q. And you say at the bottom of that paragraph:
12:37:19 "Members cannot avoid a mandatory report to the College simply by resigning their employment: [Because] the Code requires employers to report a

voluntary resignation where the resignation is related to the member's professional misconduct, incompetence or incapacity"?

A. That's correct.

Q. So for employers we can put in our mind termination?

A. Yes.

Q. Okay, and that is the mandatory reporting obligation.

Now, if we go to 64(b), we have "Facility operators", and facility operators you have set out here that it says since 1995 and today, or at least in 1995 this applied and today:

"[...] requires facility operators to report to the College if they have reasonable grounds to believe that a member has sexually abused a patient."

So that has gone all the way back to the beginning of Ms. Wettlaufer's time at the College.

But that since 2009, this mandatory reporting obligation has increased, and now the facility operator also has:

"[...] to file a report with the College if the facility operator has reasonable grounds to believe that the member is incompetent or incapacitated"?

12:38:47 A. That's correct.
12:38:47 Q. Okay. And am I correct then
12:38:48 that the legislation doesn't require the
12:38:52 employer to report if they have concerns about
12:38:54 incapacity, unless those concerns result in
12:38:57 termination? And let's take an example where
12:39:00 the employer and the facility operator are not
12:39:03 the same person.
12:39:07 A. That is what the legislation
12:39:10 says. That is my understanding of what the
12:39:13 legislation has said.
12:39:14 Q. Okay. And then again, once a
12:39:21 facility determines that it has an obligation,
12:39:23 the report must be made within 30 days. And we
12:39:28 are going to look at what the meaning of
12:39:31 "incompetent" and "incapacitated" are in a
12:39:33 moment, but just continuing to go down this, we
12:39:37 have under (c) --
12:39:39 THE COMMISSIONER: Ms. Jones,
12:39:41 just before we move on, so who
12:39:42 is the facility operator in a
12:39:43 long-term care home?
12:39:46 BY MS. JONES:
12:39:46 Q. So in a long-term care home,
12:39:48 who would be the facility operator?
12:39:49 A. The owner of the long-term
12:39:52 care facility.
12:39:53 Q. So would that be someone in
12:39:55 head office? So let's say there is a long-term
12:39:59 care home or organization that has various
12:40:02 homes.
12:40:05 A. I would have to look at the

12:40:06 specific wording of the legislation, but
12:40:09 whoever is accountable for that entity has the
12:40:16 legislative requirement.
12:40:20 Q. Is it your understanding, and
12:40:23 tell me if you don't have this understanding
12:40:25 and we can look at the legislation, but can
12:40:27 that be delegated so that the head of a
12:40:32 long-term home organization could say to the
12:40:34 Director of Nursing, for example, you need to
12:40:37 report this on our behalf?
12:40:39 A. Those may be policies within
12:40:42 organizations that I am not aware of.
12:40:44 Q. Okay, but from the
12:40:46 College's -- the College's expectation is that
12:40:49 someone at the facility has to put in the
12:40:51 mandatory report?
12:40:52 A. That's right. And I just
12:40:55 want to be clear that you mentioned that the
12:40:56 report must be made to the College within 30
12:40:58 days. The report must be filed immediately if
12:41:02 there is a concern that the nurse poses a
12:41:04 continued risk.
12:41:05 Q. And then at sub (c) at page
12:41:13 28, under "Health care professionals":
12:41:19 "The Code as in force in 1995,
12:41:21 and today, requires regulated
12:41:23 health care professionals,
12:41:25 including nurses, to report the
12:41:27 sexual abuse [...]"?
12:41:28 A. That's correct.
12:41:29 Q. And then in (d) you have
12:41:32 "Self reporting", and this is a nurse that is

12:41:35 required -- this is when a nurse has to make a
12:41:38 report about him or herself to the College?
12:41:41 A. That's correct.
12:41:41 Q. Okay. And we look at your
12:41:43 examples or your evidence here which is if the
12:41:46 nurse is found guilty of an offence, and would
12:41:50 these be criminal offences, controlled drug
12:41:53 offences; do you know?
12:41:56 A. Yes, both of those examples.
12:42:02 Q. All right, and whether the
12:42:05 nurse has been charged with an offence, even if
12:42:08 there is no finding of guilt, a finding of
12:42:12 professional negligence or malpractice?
12:42:15 A. Correct.
12:42:15 Q. And then "iv":
12:42:19 "[...] a finding of professional
12:42:20 misconduct, incompetence or
12:42:22 incapacity or any similar
12:42:23 finding, in relation to the
12:42:26 practice of nursing [...]"
12:42:27 And "v":
12:42:29 "is the subject of a current
12:42:30 investigation, inquiry or
12:42:32 proceeding for professional
12:42:35 misconduct, incompetence or
12:42:37 incapacity or any similar
12:42:38 investigation [...]", and again,
12:42:41 "in any jurisdiction"?
12:42:42 A. Correct.
12:42:43 Q. Do nurses have obligations to
12:42:44 self-report health conditions to the College?
12:42:48 A. No. I should say unless

12:43:03 1 asked. So on application, individuals are
12:43:06 2 asked whether they suffer from a health
12:43:09 3 condition that may have an impact on their
12:43:11 4 ability to practice safely.
12:43:11 5 Q. On application --
12:43:12 6 A. So there are specific times
12:43:14 7 when a nurse may be asked, but otherwise, there
12:43:18 8 is not a mandatory report.
12:43:21 9 Q. Okay. And so on application
12:43:25 10 would be when they were becoming registered
12:43:27 11 with the College?
12:43:28 12 A. That's correct.
12:43:28 13 Q. But then after that, there is
12:43:29 14 not an ongoing obligation that you are aware
12:43:32 15 of?
12:43:32 16 A. No, the Professional
12:43:34 17 Standards guide nurses to remove themselves
12:43:37 18 from practice if their health interferes with
12:43:40 19 their ability to practice safely.
12:43:42 20 Q. Okay, so the Professional
12:43:45 21 Standards, would that be the Professional
12:43:47 22 Standards document we looked at before?
12:43:49 23 A. Yes, the general framework
12:43:50 24 around accountability, ethics, the duty of care
12:43:53 25 to the client, putting the client first, and
12:43:58 26 ensuring that one is -- that is a basic
12:44:01 27 competency as well in nursing practice,
12:44:04 28 ensuring that one is fit to practice, so you
12:44:07 29 don't go to work tired or under -- you know,
12:44:14 30 suffering from a condition that may interfere
12:44:17 31 with your ability to practice safely.
12:44:19 32 Q. And is that -- you have

12:44:22 1 referred to competencies in general. Is that
12:44:25 2 specifically outlined in any of the practice
12:44:27 3 standards, like you should report a health
12:44:30 4 condition or remove yourself --
12:44:32 5 A. Report a health condition,
12:44:34 6 no. But nurses are reminded, and I can't put
12:44:37 7 my hand on specifically where, but they are
12:44:40 8 reminded of their obligation to remove
12:44:43 9 themselves from practice, and that is not
12:44:47 10 uncommon advice to be in letters to members.
12:44:54 11 And as I said, it is a general
12:44:58 12 expectation, and perhaps over lunch I can try
12:45:02 13 to find the specific places where it is
12:45:05 14 referenced.
12:45:05 15 Q. Okay, thank you. Now, if you
12:45:09 16 can turn to Exhibit "O" to your affidavit,
12:45:14 17 which is document 60147, and what is this
12:45:38 18 document?
12:45:38 19 A. This is a guidance document
12:45:42 20 for employers, facility operators and nurses to
12:45:47 21 guide them in their mandatory reporting
12:45:49 22 obligations under the legislation.
12:45:50 23 Q. And how do employers or
12:45:54 24 facility operators become aware of that
12:45:57 25 document? Is it circulated?
12:45:58 26 A. It is on our website. We
12:46:01 27 have a variety of ways that we engage with
12:46:05 28 employers. They know that the College's
12:46:07 29 website is the authoritative resource.
12:46:11 30 We also publish what we -- a
12:46:13 31 newsletter that goes specifically to employers
12:46:17 32 and educators and different stakeholders to

12:46:23 alert them of College processes and to draw
12:46:26 their attention to information on our website.
12:46:30 Q. And is this -- in your
12:46:35 affidavit, rather, you refer to this as being
12:46:37 the current Mandatory Reporting Policy?
12:46:41 A. That's correct.
12:46:41 Q. This one. And we have the
12:46:43 previous Mandatory Reporting Policy. We don't
12:46:46 need to turn it up, but would that be the one
12:46:48 at tab "N" of your affidavit?
12:46:57 A. Yes.
12:46:57 Q. And why was the mandatory
12:46:58 reporting document updated? Is there any
12:47:01 significant change between the earlier version
12:47:03 and this one?
12:47:04 A. The significant change is to
12:47:07 reflect legislative changes, so the provisions
12:47:11 in PHIPPA, the Personal Health Information and
12:47:16 Privacy Protection Act, provide additional
12:47:24 provisions for health information custodians to
12:47:27 report to the College, and so this document was
12:47:30 updated to reflect that new legislative
12:47:33 requirement.
12:47:33 Q. Okay. And would that be the
12:47:36 biggest change between the previous version of
12:47:39 the mandatory reporting document and the
12:47:40 current one?
12:47:41 A. Yes, that's correct.
12:47:42 We also took the opportunity to
12:47:46 consult with employers in reviewing the
12:47:51 mandatory reporting guide to get feedback on
12:47:54 its clarity and usefulness, and the feedback

12:47:58 1 that we received from employers in a variety of
12:48:01 2 sectors indicated that this was helpful and
12:48:05 3 they didn't have suggestions for further
12:48:07 4 change.
12:48:07 5 Q. And then if you look page 3
12:48:16 6 of this mandatory reporting document, under
12:48:23 7 "What is the purpose of mandatory reporting?"
12:48:25 8 the College states:
12:48:27 9 "Mandatory reporting ensures
12:48:28 10 that the College is alerted if
12:48:30 11 there is a concern that a nurse
12:48:31 12 is not practising safely. It
12:48:32 13 allows the College to take
12:48:34 14 action to protect the public
12:48:35 15 [...]"
12:48:37 16 Correct?
12:48:37 17 A. That's correct.
12:48:38 18 Q. And then it says under the
12:48:41 19 next section "What does the College do when it
12:48:45 20 receives a report?" and then it states here at
12:48:50 21 the bottom of the first paragraph:
12:48:51 22 "The Executive Director [...]",
12:48:53 23 which is you, right?
12:48:54 24 A. Yes.
12:48:54 25 Q. "[...] assesses the level of
12:48:58 26 risk posed to the public and
12:48:59 27 determines an appropriate
12:49:00 28 regulatory response.
12:49:01 29 Not every report will
12:49:03 30 require the College to make a
12:49:04 31 formal investigation and
12:49:06 32 hearing."

12:49:07 1 And you testified to that
12:49:09 2 earlier.
12:49:10 3 And then over on the right-hand
12:49:14 4 side it says "Who is required to report?" and
12:49:17 5 under "Facility operators", and maybe this can
12:49:21 6 provide some assistance in terms of the
12:49:23 7 Commissioner's question, it says:
12:49:25 8 "The College defines a facility
12:49:27 9 operator as the individual who
12:49:28 10 operates a facility where one or
12:49:30 11 more nurses practice."
12:49:34 12 THE COMMISSIONER: It doesn't.
12:49:35 13 It doesn't help me.
12:49:37 14 MS. JONES: Fair enough. In
12:49:38 15 terms of determining who within
12:49:40 16 the facility has the obligation.
12:49:42 17 THE COMMISSIONER: Yes, and I am
12:49:44 18 not even sure if the person who
12:49:46 19 operates the facility is
12:49:47 20 necessarily an individual
12:49:50 21 with -- pardon me, my voice is a
12:49:52 22 bit croaky today -- is
12:49:54 23 necessarily, for example, the
12:49:55 24 administrator of a long-term
12:49:56 25 care home where you have a head
12:49:59 26 office structure, regional
12:50:01 27 managers and all of that. I
12:50:03 28 just wondered if there was some
12:50:07 29 generalized sense of that?
12:50:08 30 THE WITNESS: My sense would be
12:50:09 31 that the -- so this is not a
12:50:12 32 legal document. This is our

attempt to provide assistance to employers and facility operators making decisions around their obligations that come out of the legislation.

And so my expectation would be that there would be practices within facilities. They know what legislation governs their practice and that they would have policies and procedures in place, but I don't have awareness of what those might be.

MS. JONES: Yes, and I have just looked as well, Commissioner. It doesn't appear to be a defined term.

Under "Reporting by Facilities" in the Code, which I can just give you the page number for, 1923, under "Reporting by Facilities", it says:

"A person who operates a facility where one or more members practice shall file a report."

BY MS. JONES:

Q. So I guess from you, Ms. Coghlan, what we can ask is whether or not the College has any particular expectations about who that person would be?

12:51:16 THE COURT REPORTER: I'm sorry,
12:51:16 did the witness say "no"?
12:51:16 MS. JONES: She said --
12:51:16 THE WITNESS: I'm sorry, no.
12:51:26 BY MS. JONES:
12:51:26 Q. Yes, thank you.
12:51:33 There is some direction, though,
12:51:35 actually on the next page. At page 4, under
12:51:40 "Facility operators" it says:
12:51:48 "The person who operates the
12:51:50 facility -- not staff members --
12:51:51 is required to make the report."
12:51:54 Is that the College's
12:51:55 expectation?
12:51:56 A. Well, that is our
12:51:56 interpretation of the legislation, which
12:51:59 indicates that it is a person who operates the
12:52:01 facility.
12:52:01 Q. And then the policy goes on
12:52:07 to list the mandatory reporting obligations for
12:52:11 employers and nurses, which we have already
12:52:13 gone over, and then over the page, health
12:52:22 information custodians, and I believe that is
12:52:25 what you were referring to in terms of the new
12:52:27 part of this policy?
12:52:27 A. That's correct.
12:52:28 Q. And then on the right-hand
12:52:33 side of page 5 we have a definition of
12:52:36 "Incompetence", and do you know where this
12:52:39 definition comes from? Is this set out in the
12:52:41 legislation?
12:52:42 A. I don't believe this is set

12:52:52 out in legislation, but I am not positive.
12:52:58 Q. And it says that:
12:53:01 "The definition of incompetence
12:53:02 includes the following [...]
12:53:04 components:
12:53:05 1: [incompetence] must relate
12:53:07 to the nurse's professional care
12:53:09 [...]
12:53:11 2. the nurse must display a
12:53:13 lack of knowledge, skill or
12:53:14 judgment; and
12:53:16 3. any deficiencies must
12:53:19 demonstrate that the nurse is
12:53:21 unfit to continue to practice,
12:53:23 or that their practice [...] be
12:53:24 restricted"?
12:53:25 A. That's correct.
12:53:26 Q. And then over the page to
12:53:27 page 6, there is the section regarding
12:53:42 "Incapacity"?
12:53:45 A. Yes, and now that I read
12:53:46 this, I know that this definitely does come
12:53:48 from the legislation, so the incompetence piece
12:53:50 may well come from there as well. I would have
12:53:52 to refer to the legislation.
12:54:03 MS. JONES: And my colleague is
12:54:05 identifying there is a section
12:54:06 of the Act which at least refers
12:54:08 to incompetence which we can
12:54:10 note down, which is at page
12:54:13 1909, Commissioner.
12:54:15 THE COMMISSIONER: Thank you.

12:54:17 BY MS. JONES:
12:54:18 Q. And in terms of the
12:54:19 definition of "Incapacity", we see that it
12:54:23 consists of two essential components, so:
12:54:25 "1. the member must have a
12:54:27 physical or mental condition;
12:54:29 and,
12:54:29 2. the condition must warrant
12:54:31 that the member not be permitted
12:54:32 to practise, or that their
12:54:34 practice be restricted"?
12:54:35 A. That's correct.
12:54:36 Q. And then underneath that it
12:54:37 says:
12:54:37 "A nurse is incapacitated when
12:54:39 they have a health condition
12:54:40 that impairs their ability to
12:54:41 provide care. The impairment
12:54:44 must be of such a degree that
12:54:46 the facility operator finds it
12:54:47 necessary to restrict the
12:54:49 nurse's practice or remove the
12:54:51 nurse from practice to protect
12:54:53 clients."
12:54:54 So my question for you about
12:54:59 that is, is the intention to have the facility
12:55:06 operator determine whether or not the nurse has
12:55:10 a health condition such that some sort of
12:55:12 restriction should be placed on his or her
12:55:15 practice?
12:55:16 A. Yes, the expectation is that
12:55:21 those who are closest to the care setting are

12:55:25 1 in the best position to identify whether there
12:55:29 2 are concerns that are impacting patient care.
12:55:32 3 Q. Okay, but what if the person
12:55:35 4 that is closest in the care setting is not
12:55:38 5 themselves, for example, a health care provider
12:55:40 6 or a health care expert?
12:55:42 7 A. We are not expecting that
12:55:51 8 they make a finding of incapacity, but we are
12:55:55 9 expecting that they would be in a position to
12:55:58 10 identify that a health condition may be
12:56:05 11 interfering with safe practice, and that would
12:56:08 12 be -- so it is the warning signs or the signals
12:56:10 13 that we are expecting them to be able to
12:56:14 14 identify, and that would trigger contacting the
12:56:17 15 College who has the authority to proceed to --
12:56:24 16 through the legislative processes to determine
12:56:29 17 whether in fact an individual is incapacitated
12:56:34 18 by definition in the Code.
12:56:37 19 Q. Okay. And so if, for
12:56:43 20 example, an example we heard evidence about
12:56:44 21 earlier, if a nurse confesses to a facility
12:56:49 22 operator or an employer that they are an
12:56:53 23 alcoholic and that they are drinking again --
12:56:59 24 THE COMMISSIONER: A recovered
12:57:01 25 alcoholic was the example, not
12:57:03 26 an alcoholic. My recollection
12:57:05 27 of the evidence was that the
12:57:06 28 evidence was that they were a
12:57:07 29 recovered alcoholic and had
12:57:10 30 drunk again.
12:57:11 31 MS. JONES: And were drinking
12:57:12 32 again.

12:57:13 THE COMMISSIONER: Yes.
12:57:14 BY MS. JONES:
12:57:15 Q. Yes, a recovered alcoholic
12:57:16 and were drinking again, but the employer
12:57:20 didn't feel it was necessary to place
12:57:21 restrictions on the nurse's practice, would the
12:57:25 College have any expectations about whether or
12:57:28 not that should be reported to the College?
12:57:29 A. I think if anyone has
12:57:33 information that would suggest that clients
12:57:36 could potentially be at risk, then we would
12:57:39 expect that that -- you know, we all need to be
12:57:42 part of the safety net in the health care
12:57:45 system, and that is information that the
12:57:47 College would want to have.
12:57:49 So it is not a mandatory report,
12:57:51 but it is information that the College needs in
12:57:55 order to fulfil its mandate.
12:57:59 Q. Okay, and so --
12:58:00 THE COMMISSIONER: Sorry, can I
12:58:01 just -- I just need to
12:58:03 understand if I understood your
12:58:06 answer correctly.
12:58:08 So that if they heard that there
12:58:09 was a recovered alcoholic and
12:58:11 the person said that they were
12:58:12 drinking again, is the
12:58:13 obligation or the request to
12:58:17 report if the person also forms
12:58:20 the opinion that the clients may
12:58:22 be potentially at risk?
12:58:24 THE WITNESS: I think that that

12:58:26 information would suggest that
12:58:30 that individual would not be
12:58:32 safe to practice, whether it is
12:58:34 in that facility or anywhere
12:58:36 else.
12:58:36 THE COMMISSIONER: But the
12:58:37 example is that the person
12:58:38 refused to come to work when
12:58:40 they got called in because they
12:58:43 had had a drink and said, I
12:58:45 can't come in, I have had a
12:58:46 drink.
12:58:47 So if you had that cluster of
12:58:50 information, my question is, is
12:58:53 the person, is the facility
12:58:55 operator to simply say, I have a
12:58:58 recovered alcoholic, but I now
12:59:00 have information that they are
12:59:01 drinking again; I must report,
12:59:03 and that is my obligation, as it
12:59:05 were?
12:59:05 Or is it, I understand the
12:59:07 person is a recovered alcoholic,
12:59:09 that they are drinking again,
12:59:10 but they themselves have taken
12:59:12 steps not to come to work if
12:59:13 they have had a drink. I don't
12:59:15 see any signs of problem at the
12:59:17 work. Do I have to go on and
12:59:20 ask, am I satisfied that the
12:59:23 clients may be potentially at
12:59:26 risk or not?

12:59:26 THE WITNESS: Well, the nature
12:59:29 of the disease is that judgment
12:59:30 is clouded, and the information
12:59:35 that someone who is a recovered
12:59:38 alcoholic is drinking again is a
12:59:39 huge red flag and warning sign.
12:59:42 So that is the kind of
12:59:44 information that the College
12:59:46 would hope that a facility
12:59:48 operator or an employer would
12:59:50 share, because what that
12:59:52 individual doesn't know or that
12:59:53 facility doesn't know is whether
12:59:55 that nurse is working anywhere
12:59:58 else, and that would definitely
13:00:02 pose a potential risk of harm.
13:00:04 THE COMMISSIONER: That was very
13:00:05 helpful, thank you.
13:00:07 BY MS. JONES:
13:00:10 Q. Ms. Coghlan, so in terms of
13:00:11 the -- and then over on page 7, we see there is
13:00:17 a "Summary of mandatory reporting obligations"?
13:00:21 A. Yes.
13:00:22 Q. And would this be a summary
13:00:25 of all of the mandatory reporting obligations
13:00:28 mandated by the legislation?
13:00:29 A. Yes, and again, I just want
13:00:33 to give the caveat that this is the College's
13:00:37 summary. It is not the legislation. So the
13:00:42 authoritative source is the legislation, but it
13:00:44 covers a summary of all of the mandatory
13:00:46 reporting obligations.

13:00:48 Q. And does the College have the
13:00:50 ability or the authority to impose additional
13:00:53 mandatory reporting obligations on --
13:00:56 A. No.
13:00:57 Q. Okay, no, so not on employers
13:01:00 or facility operators?
13:01:01 A. No.
13:01:01 MS. JONES: Okay. It is 1
13:01:07 o'clock, Commissioner, so this
13:01:08 might be a good time for the
13:01:09 lunch recess.
13:01:10 THE COMMISSIONER: Yes, you are
13:01:11 moving to a new topic?
13:01:13 MS. JONES: I am.
13:01:13 THE COMMISSIONER: All right,
13:01:14 thank you.
13:01:15 -- RECESSED AT 1:01 P.M.
14:17:44 -- RESUMED AT 2:17 P.M.
14:17:44 THE COMMISSIONER: Go ahead.
14:17:45 BY MS. JONES:
14:17:47 Q. Ms. Coghlan, I understand
14:17:48 that the College maintains a public register?
14:17:53 A. That's correct.
14:17:54 Q. And is that public register,
14:17:56 is the content of that public register as set
14:17:59 out in the legislation?
14:18:00 A. Yes, it is.
14:18:01 Q. And is it currently online?
14:18:06 A. Yes, it is.
14:18:06 Q. And when did it become
14:18:09 online, approximately?
14:18:10 A. I believe 2005.

14:18:13 Q. And before that time, if it's
14:18:20 approximately 2005, before that time, how would
14:18:23 an employer or a member of the public access
14:18:27 information on the public register?
14:18:29 A. A member of the public or an
14:18:34 employer could phone the College and that
14:18:36 information would be read to them, or they
14:18:39 could come in to the College and actually view
14:18:43 the information.
14:18:43 Q. Okay. So if someone, an
14:18:46 employer or a member of the public called and
14:18:49 asked for information that was public register
14:18:49 information, they would be provided with that
14:18:50 information by telephone?
14:18:51 A. That's correct.
14:18:51 Q. And we looked at the public
14:19:03 register listing this morning. I didn't see
14:19:05 any reference to including information on the
14:19:05 public register that a nurse is the subject of
14:19:06 a complaint; is that correct?
14:19:08 A. That's correct.
14:19:08 Q. And there's also not -- it's
14:19:11 not listed on the public register in the
14:19:13 legislation that it should be on the public
14:19:18 register. It's not one of the public register
14:19:20 categories that a nurse is subject to an
14:19:23 investigation; is that correct?
14:19:26 A. That's correct.
14:19:27 Q. And so is that information on
14:19:28 the College's public register?
14:19:30 A. No, it's not.
14:19:32 Q. And to the best of your

14:19:34 1 understanding, could the College place that
14:19:37 2 sort of information on its register?
14:19:39 3 A. Well, I'm not a lawyer, so
14:19:41 4 that may be a question best posed to a legal
14:19:47 5 authority; however, the College has reviewed
14:19:50 6 information that is publicly available to the
14:19:54 7 College. And that work started back in, I
14:19:58 8 believe, 2012 in collaboration with other
14:20:04 9 health regulators who had considerable
14:20:10 10 expertise and experience in administering the
14:20:10 11 Regulated Health Professions Act.
14:20:14 12 So that was at the College of
14:20:14 13 Nurses, the College of Physicians and Surgeons,
14:20:17 14 the Royal College of Dental Surgeons of
14:20:19 15 Ontario, and the College of Pharmacists. And
14:20:25 16 that work began in an effort to leverage the
14:20:29 17 expertise that those four colleges had in a way
14:20:34 18 that could enhance transparency of information
14:20:38 19 that is publicly available to -- about
14:20:42 20 information that the College has.
14:20:45 21 We were later joined in that
14:20:48 22 initiative by the College of Physiotherapists
14:20:57 23 and the College of Optometrists, and we called
14:21:00 24 that our transparency initiative, and it was a
14:21:03 25 piece of work that explored what information
14:21:07 26 would be of assistance to the public in making
14:21:10 27 decisions about their health care provision.
14:21:14 28 And that work resulted in the
14:21:23 29 identification of additional information
14:21:26 30 that -- this group was called the Advisory
14:21:31 31 Group for Regulatory Excellence, and the short
14:21:35 32 form is AGRE.

So AGRE recommended to the respective College councils that they consider adding information to the public register which would give the public information about decisions of statutory committees that related to matters that posed a moderate to high risk to the public.

And so, for example, our College along with several of the others used bylaw provisions to add information about members who have received a caution from the inquiries, complaints, and reports committee or had been ordered to undergo a specified continuing education and remediation program.

Those regulatory actions are used when the screening committee has identified, after reviewing the results of an investigation, that the matters under investigation posed a risk of moderate to high harm to clients. So the other provision is referring specified allegations to the discipline committee, and those are already on the public register.

So those were additional pieces of information that the College added in bylaw in 2015 along with information that was felt to be of relevance and interest to the public that came from verifiable sources; so, for example, criminal charges that were verified, criminal findings, findings in other jurisdictions. So those are examples of additional information the College added in bylaw.

14:23:38 1 And so at that time, College
14:23:40 2 Council considered the benefit of expanding
14:23:46 3 the -- and agreed it was in the public interest
14:23:49 4 to enhance the transparency of that
14:23:52 5 information.
14:23:52 6 There wasn't a discussion at
14:23:56 7 that time about adding the fact of a complaint
14:23:59 8 or the fact of an investigation to the public
14:24:07 9 register, and those pieces of information did
14:24:10 10 not fit the criteria of information that had
14:24:13 11 already been verified.
14:24:14 12 And so that would have to be a
14:24:19 13 further discussion of our Council with legal
14:24:22 14 advice as to whether, in fact, Section 36,
14:24:28 15 which is the confidentiality provision in the
14:24:31 16 legislation, would actually permit the creation
14:24:34 17 of bylaws to add that information to the public
14:24:37 18 register.
14:24:37 19 Q. Okay, thank you. Is there
14:24:43 20 currently any information that an employer can
14:24:47 21 obtain from the College about the status of a
14:24:50 22 nurse that a member of the public cannot?
14:24:53 23 A. No.
14:24:53 24 Q. Okay. So is the information
14:24:56 25 that's accessible to the employer the
14:25:00 26 information on the public register?
14:25:01 27 A. That's correct.
14:25:02 28 Q. And are you familiar with the
14:25:04 29 College of Physicians and Surgeons' practice of
14:25:11 30 having certificates of professional conduct?
14:25:14 31 A. Yes.
14:25:15 32 Q. Okay. And can you explain

14:25:16 what a certificate of professional conduct is?
14:25:18 A. Well, my understanding is
14:25:20 that this is a provision that was put in place
14:25:23 to allow a prospective -- a facility operator,
14:25:39 actually, who was considering giving privileges
14:25:39 to a physician to get information about whether
14:25:42 there had been any previous restrictions or a
14:25:48 removal of privileges in another facility. And
14:25:52 again, that's my understanding. It may be
14:25:56 broader than that.
14:25:56 And so the physician would
14:26:04 agree, sign a consent that the College could
14:26:08 respond to those inquiries and provide
14:26:10 information, and it's very specific information
14:26:15 that the physician consents to having the
14:26:19 College provide.
14:26:19 Q. And so by this manner, then,
14:26:21 does the employer through this process
14:26:26 potentially have access to more information
14:26:30 than that on the public register?
14:26:32 A. My understanding is that the
14:26:34 facility operator would because physicians are
14:26:37 not in an employer-employee relationship.
14:26:47 Q. Ms. Coghlan, I'm going to ask
14:26:48 you some questions now about registration.
14:26:52 THE COMMISSIONER: Okay. So
14:26:53 have you finished your questions
14:26:54 about the register?
14:26:57 MS. JONES: I had.
14:26:58 THE COMMISSIONER: May I just --
14:27:00 MS. JONES: Certainly.
14:27:01 THE COMMISSIONER: My question

is: Is there any history of the nurses' registration? I know it says that the member's registration history is there, but it doesn't show any employment history, is that right, on the register?
THE WITNESS: No, it does not.
THE COMMISSIONER: Were you going to explore that at all?
MS. JONES: So employment history over time, Commissioner?
THE COMMISSIONER: Right.
MS. JONES: Okay. So I'm happy to explore that.
THE COMMISSIONER: Yes. You know the line of questions that I'm talking about that have arisen from the evidence in the Facilities, right?
BY MS. JONES:
Q. I will do my best. Ms. Coghlan, is information about a nurse's current employment sites, where the nurse is currently employed, are those on the public register?
A. Yes, they are.
Q. And what about information about previous sites of employment by the nurse?
A. No, they are not.
Q. They're not maintained on the

14:28:00 1 public register, okay. And so is there a means
14:28:03 2 by which an employer could obtain information
14:28:03 3 or a prospective employer, say, could obtain
14:28:07 4 information from the College about the
14:28:09 5 employment history over time of a nurse as
14:28:12 6 opposed to their current employment history?
14:28:15 7 A. No. And they can -- that
14:28:17 8 would not be information that the College would
14:28:19 9 have, but the expectation would be that the
14:28:21 10 employer would use reference checks to obtain
14:28:25 11 that information.
14:28:31 12 MS. JONES: Are there further
14:28:34 13 questions, Commissioner?
14:28:35 14 THE COMMISSIONER: Maybe for the
14:28:38 15 public consultation process.
14:28:38 16 MS. JONES: Okay.
14:28:39 17 THE COMMISSIONER: Thank you.
14:28:42 18 BY MS. JONES:
14:28:44 19 Q. Now --
14:28:45 20 A. If I could just add one thing
14:28:48 21 that might be of assistance?
14:28:48 22 Q. Sure.
14:28:50 23 A. That information is
14:28:52 24 self-report information. So the obligation is
14:28:55 25 on the member to report to the College, current
14:28:59 26 employers, and that information is required to
14:29:02 27 be updated. If there's a change, the member is
14:29:08 28 to update that information with the College and
14:29:11 29 on the public register.
14:29:13 30 Q. So that if a nurse is
14:29:15 31 employed at Geraldton Hospital, for example,
14:29:21 32 and then leaves that employment site and goes

14:29:24 to a new employment site, they are required to
14:29:27 update the College?
14:29:27 A. That's right.
14:29:28 Q. But then the College will
14:29:31 then put the new employment site on the public
14:29:33 register?
14:29:33 A. That's right.
14:29:34 Q. Okay. And the old site of
14:29:38 employment in this example, Geraldton Hospital,
14:29:40 will no longer be on the public register?
14:29:40 A. That's right. Because one of
14:29:41 the requirements for the public register is
14:29:43 that the current business address be available
14:29:46 to the public.
14:29:52 Q. If you turn now to your
14:29:53 affidavit, page 16, paragraph 36, please, and
14:30:19 you state in this portion of your affidavit,
14:30:19 paragraph 36 that:
14:30:19 "The requirements for
14:30:21 registration with the College
14:30:22 are set out in the general
14:30:25 regulation under the Nursing
14:30:27 Act,"
14:30:27 and you've attached the current
14:30:30 regulation as Exhibit J to your affidavit. And
14:30:32 as I mentioned before, the previous
14:30:36 registration regulation as it appeared in 1995
14:30:40 is in the legislation brief, Madam
14:30:45 Commissioner.
14:30:45 THE COMMISSIONER: Yes.
14:30:48 BY MS. JONES:
14:30:49 Q. And, Ms. Coghlan, do you have

14:30:50 a copy of the registration brief?
14:30:50 A. Yes.
14:30:52 Q. Okay. Now, if we look at the
14:30:57 current regulation for guidance that's at
14:31:01 Tab J, and this is document FD-51278, please.
14:31:13 Page 1278.
14:31:36 And if we look at Section 1.4,
14:31:42 sub (i), we see that these are -- it provides
14:31:46 in the regulation:
14:31:47 "The following are registration
14:31:50 requirements for the issuance of
14:31:51 a certification of registration
14:31:52 for any class,"
14:31:53 and the first section under
14:31:55 there requires an applicant to disclose certain
14:31:59 information to the College; is that correct?
14:32:00 A. Yes.
14:32:01 Q. And that includes under
14:32:04 sub (i) "a finding of guilt for any criminal
14:32:13 offense," and then (ii), "a finding of
14:32:18 professional misconduct..." (iii), "a current
14:32:28 investigation," et cetera, correct?
14:32:31 A. Yes.
14:32:31 Q. And then if you look at 1.4,
14:32:34 sub (i), 2, and then the subcategories under
14:32:35 that, it says that:
14:32:36 "The applicant's past and
14:32:37 present conduct in the opinion
14:32:38 of the executive director or a
14:32:39 panel of the registration
14:32:40 committee must afford reasonable
14:32:44 grounds for the belief that the

applicant: One, does not suffer from any physical or mental condition or disorder that could affect his or her ability to practice nursing in a safe manner; two, will practice nursing with decency, honesty, and integrity and in accordance with the law; three, has sufficient knowledge, skill, and judgment to competently engage in the practice of nursing authorized by the certificate of registration; and four, will display an appropriately professional attitude."

And then if we look through the rest of the regulation -- and we don't have to do it in any detail -- it also sets out, for example, on page 1279, 2, sub (i), "Educational requirements." So for a registered nurse, for example, that they must have a bachelorette degree in nursing, correct?

A. Correct.

Q. Okay. And in terms of the College's requirements or standards for registration, are there additional requirements that are not set out in this regulation, or does this regulation represent all of the College's registration requirements for nurses?

A. This regulation represents the requirements.

14:33:55 Q. And how does the College --
14:33:58 if we go back to page 1278, how does the
14:34:02 College determine the information set out, in
14:34:09 terms of the requirements for regulation, in
14:34:12 1.4, sub (i), paragraph 1 and 2? How does the
14:34:18 College determine that information?
14:34:20 A. There are a couple of ways.
14:34:22 The first way is self-report. The nurse is
14:34:25 asked to declare.
14:34:28 Q. In the nurse's application?
14:34:29 A. Yes.
14:34:30 Q. Okay.
14:34:31 A. Secondly, the College may
14:34:34 have information that has been provided to us
14:34:36 by another jurisdiction, and that would be on
14:34:41 file or available electronically on a database.
14:34:49 And there may be other information that the
14:34:52 College has; so, for example, a media report of
14:34:56 a finding of guilt in a criminal proceeding.
14:35:00 The main way we know is self-report.
14:35:02 Q. Okay. And does the College
14:35:04 then take the -- when you say "self-report," if
14:35:08 we consider it an application --
14:35:10 A. Yes.
14:35:11 Q. -- does the College then take
14:35:14 the information in the application and
14:35:15 independently verify it?
14:35:17 A. No.
14:35:18 Q. And if we turn to Tab L, I
14:35:25 believe we have here -- it's Document 72704, so
14:36:09 if you scroll down a little bit, please -- in
14:36:16 Section 1 -- Section A, rather, the applicant

14:36:19 sets out their nursing education?
14:36:22 A. Yes.
14:36:23 Q. Okay. And then it refers to
14:36:28 their examination, their examination results,
14:36:32 have they completed the examination.
14:36:36 And then if you go down further,
14:36:38 please, to the next page? And here, we have a
14:36:46 series of questions, 1 through 6, and these
14:36:50 appear to be the questions that were set out in
14:36:52 the regulation; is that correct?
14:36:54 A. That's correct.
14:36:54 Q. Okay. And then after the
14:36:58 nurse or the prospective nurse answers these
14:37:03 questions, the nurse then signs that she or he
14:37:08 has answered these questions correctly?
14:37:10 A. That's correct.
14:37:11 Q. And what would happen if a
14:37:19 nurse answered one of these questions in the
14:37:23 affirmative? So they had a criminal conviction
14:37:25 or 6 -- 1, suffer from any physical or mental
14:37:32 condition or disorder? What would be the
14:37:34 process if they answered something in the
14:37:37 affirmative?
14:37:38 A. So there would be follow-up
14:37:40 with the applicant to obtain more information,
14:37:41 to conduct an assessment as to whether the
14:37:46 information provided suggested that the nurse
14:37:50 may require terms, limits, or conditions on the
14:37:56 registration.
14:37:56 Q. And if there's disputes about
14:38:00 this process, is this the type of thing that
14:38:03 gets determined by the registration committee?

14:38:06 A. That's correct.
14:38:07 Q. So if a nurse completes this,
14:38:09 and they answer everything "no" and sign it --
14:38:12 A. Yes.
14:38:13 Q. -- would they then obtain
14:38:16 their registration?
14:38:17 A. Yes. If they've met all of
14:38:19 the requirements that have outlined in the --
14:38:21 and paid their fee.
14:38:22 Q. And paid their fee, okay.
14:38:26 But in terms of the requirements, are they set
14:38:29 out here in terms of the application as long as
14:38:32 they say they've graduated from...
14:38:32 A. No, we independently verify
14:38:35 that they have graduated from an approved
14:38:35 program. This is providing us with information
14:38:38 about which program they've come from so that
14:38:41 we can verify that.
14:38:42 Q. So that's helpful. So what
14:38:44 information is independently verified outside
14:38:46 of this application? The fact that they've
14:38:52 graduated from a nursing program?
14:38:54 A. That's correct. They will --
14:38:55 another requirement is the completion of a
14:38:59 jurisprudence exam, and that's one that the
14:39:02 College offers. So the assessment of whether
14:39:05 the individual has completed all of the
14:39:07 requirements would include completion of the
14:39:11 jurisprudence exam. And... seeing what else
14:39:25 isn't here.
14:39:26 So all of the requirements that
14:39:27 you previously referred to in the act, in the

14:39:32 regulation are assessed and determined to --
14:39:38 the individual needs to have met all of those
14:39:43 criteria prior to the application being
14:39:46 processed. This is the last step of the
14:39:50 application being processed, and the
14:39:53 declaration is the final piece, requirement.
14:39:58 Q. Okay. But just to make sure
14:40:00 that I'm clear, the steps leading up to it
14:40:04 would be having the proper educational
14:40:06 completion?
14:40:06 A. Yes.
14:40:07 Q. Okay. And doing the
14:40:09 jurisprudence exam?
14:40:09 A. Correct. And I just
14:40:11 remembered fluency, for example.
14:40:13 Q. Okay. Confirming fluency in
14:40:14 English or French?
14:40:15 A. That's right.
14:40:15 Q. Paying a fee?
14:40:16 A. Correct.
14:40:16 Q. Okay. And then completing
14:40:18 the application?
14:40:19 A. That's right.
14:40:21 Q. Okay. And does the College
14:40:23 require criminal records checks?
14:40:25 A. Yes, it does.
14:40:25 Q. Okay.
14:40:27 A. That's another requirement.
14:40:29 The other requirement is that the nurse must
14:40:31 acknowledge that she or he has obtained
14:40:34 liability protection.
14:40:35 Q. Okay. Now, are we missing

14:40:39 anything now in terms of the information that
14:40:40 the College is obtaining on application?
14:40:43 A. I don't think so.
14:40:50 Q. Thank you. Now, I'm going to
14:40:55 ask you to turn to Exhibit K, which is
14:41:00 Document 36268. Actually, I'm going to ask you
14:41:14 to turn, behind the blue sheet, to 36266. And
14:41:25 this is the application for a certificate of
14:41:29 registration, and this is the application that
14:41:31 was completed by Ms. Wettlaufer in 1995,
14:41:33 correct?
14:41:34 A. Yes.
14:41:34 Q. Okay. And so if we turn to
14:41:40 page 2, it's a bit shorter than it is now. If
14:41:43 we turn to page 2, we see again a series of
14:41:47 questions, and these questions -- we didn't
14:41:50 pull up the 1995 regulation, but do these
14:41:54 questions come out of the 1995 requirements?
14:41:56 A. Yes, they do.
14:41:58 Q. Okay. And so Ms. Wettlaufer
14:42:01 in this case answered everything "no," correct?
14:42:05 A. That's right.
14:42:06 Q. Okay. And so I take it from
14:42:08 your evidence before, unless the process in
14:42:11 1995 was different, there wouldn't have been an
14:42:14 independent verification of her answers to
14:42:21 these questions?
14:42:21 A. That's correct.
14:42:22 Q. And at the time in 1995, was
14:42:24 there a criminal records check required?
14:42:27 A. I don't believe so.
14:42:28 Q. And I understand from looking

14:42:32 1 at the two regulations, 1995 and today, that
14:42:36 2 one of the differences is at the time in 1995,
14:42:40 3 to be a registered nurse like Ms. Wettlaufer,
14:42:43 4 you didn't require a university degree?
14:42:47 5 A. That's correct.
14:42:47 6 Q. Okay. Now, after
14:42:57 7 Ms. Wettlaufer became registered with the
14:43:00 8 College through the registration process which
14:43:03 9 you've described, was she required to complete
14:43:07 10 annual renewal forms or annual payment forms?
14:43:12 11 A. Yes, she was.
14:43:13 12 Q. And I'm going to ask you to
14:43:15 13 turn up in the document brief Tab 3, which is
14:43:24 14 Document 36305. And what are we looking at
14:43:46 15 here?
14:43:46 16 A. This is the annual payment
14:43:48 17 form for Elizabeth Wettlaufer for 2002.
14:43:52 18 Q. Okay. So this is an example
14:43:57 19 of one of the annual payment forms
14:44:00 20 Ms. Wettlaufer would have completed?
14:44:01 21 A. That's right.
14:44:02 22 Q. And what is the purpose of
14:44:05 23 the annual renewal process?
14:44:05 24 A. It is an administrative
14:44:06 25 process, and it is the way that on an annual
14:44:08 26 basis the College collects fees from members.
14:44:11 27 Member fees support the work of the College,
14:44:15 28 and it is also the way on an annual basis that
14:44:18 29 the College collects data which contributes to
14:44:21 30 the provincial health human resource database.
14:44:26 31 MS. JONES: And if we turn over
14:44:28 32 to page 2 of this document --

and, Madam Commissioner, this document is already in evidence as part of the Overview Report.

THE COMMISSIONER: Thank you.

BY MS. JONES:

Q. It says, right in the middle of the page under paragraph 3, numbered paragraph 3:

"I am currently employed as an unregulated care provider."

She's indicated on this -- this is when she was employed at Christian Horizons, the group home?

A. Correct.

Q. Does the College have regulatory authority over -- did the College have regulatory authority over Ms. Wettlaufer while she was employed as an unregulated care provider?

A. While she was a member of the College, the College had regulatory authority regardless of employment. So she would be required to meet the same requirements as any ongoing member of the College.

Q. And then if we look at the bottom of the page under "self-reporting obligations," one of the questions is -- there's three questions under that Section L.

One of the questions is:

"Since your initial registration with CNO, has there been a finding of professional

misconduct, incompetence, or incapacity against you in relation to the nursing profession or any other health profession whether in Ontario or another jurisdiction?"

And that question doesn't appear on all of the annual payment forms that Ms. Wettlaufer completed; is that fair?

A. That's correct.

Q. Okay. And why was it on this annual payment form and not the others?

A. So it would have been on previous ones. The obligation change that it wasn't an annual report that was required, members were required to update the College in a timely manner if that information changed and not wait until the next annual renewal cycle.

Q. And --

A. And that changed in the College's bylaws.

Q. I see, okay. Which required on an ongoing basis nurses to self-report that information?

A. Correct.

Q. Okay. And then we see here in 2002, Ms. Wettlaufer indicates, she answers "no," to the question about whether or not there had been a finding of professional misconduct, incompetence, or incapacity against her, correct?

A. That's right.

14:47:03 Q. And that at that time was
14:47:05 actually not accurate, correct?
14:47:09 A. That's correct.
14:47:09 Q. Okay. Because she had had
14:47:11 a finding of incapacity through the Geraldton
14:47:12 incident process?
14:47:13 A. That's correct.
14:47:13 Q. And are you aware of whether
14:47:15 the College noted that discrepancy at the time
14:47:19 in 2002?
14:47:22 A. I'm not aware; however, the
14:47:26 College would already have that information.
14:47:28 So that would be part of Ms. Wettlaufer's file
14:47:31 that the College had.
14:47:33 Q. Turning to a new area,
14:47:38 Ms. Coghlan, which is the fitness to practice
14:47:42 regime, and we're going to review that, and in
14:47:45 particular, Ms. Wettlaufer's interaction with
14:47:47 the fitness to practice regime between 1995 and
14:47:55 1998.
14:47:56 But I'm going to ask you to
14:47:58 start at page 44 of your affidavit,
14:48:17 paragraph 109, and you state here that:
14:48:18 "The College follows the process
14:48:21 established under the RHPA,"
14:48:22 and you've set out the
14:48:23 definition for incapacity, and you've set out
14:48:26 the definition in 1995 and the definition
14:48:29 today, correct?
14:48:31 A. That's correct.
14:48:32 Q. And the language has changed
14:48:33 a bit, but it's essentially the same two-part

14:48:37 1 test: "Does the member have a condition or
14:48:40 2 disorder?" And then that makes it in the
14:48:41 3 interest of the public that, and then in 1995
14:48:44 4 referred to:
14:48:44 5 "The member no longer be
14:48:46 6 permitted to practice or that
14:48:47 7 their practice be restricted,"
14:48:49 8 and currently, using the
14:48:53 9 language of terms, conditions, or limitations?
14:48:57 10 A. Right.
14:48:57 11 Q. Okay. And what are terms,
14:48:59 12 conditions, and limitations?
14:49:01 13 A. So those are -- I can give
14:49:03 14 you some examples. An example may be that a
14:49:07 15 nurse can practice but may not administer
14:49:11 16 narcotics. Another may be that -- can -- is
14:49:18 17 required to wear hearing aids while practicing.
14:49:23 18 Another may be that a nurse is
14:49:27 19 not -- so a limitation may be that a nurse is
14:49:32 20 not to practice independently, so not to --
14:49:38 21 must practice in the company of other health
14:49:42 22 professionals.
14:49:42 23 Q. So does the College look at
14:49:44 24 that from the two parts? Having a condition or
14:49:47 25 disorder in itself would not meet the
14:49:49 26 definition? It's only if further steps need to
14:49:54 27 be taken in relation to that condition or
14:49:56 28 disorder?
14:49:56 29 A. That's correct.
14:49:56 30 Q. So, for example, if a member
14:49:58 31 had obsessive-compulsive disorder or bipolar
14:50:03 32 disorder, would that necessarily meet the

criteria of incapacity?

A. No, not necessarily. Those conditions can be well-controlled, and nurses may have measures in place to ensure that their health condition does not impact their ability to practice safely.

Q. If you turn in your affidavit to page 45, paragraph 113, you state that:

"In the last several years, the College has received through intake an average of between 100 and 120 matters annually that relate to incapacity"?

A. Correct.

Q. And then at paragraph 114, you state that:

"The College has the discretion to treat a concern about a member as either a health issue, a discipline issue, or both."

Can you explain what you mean by that?

A. Well, if the concern relates specifically to a health condition that the member acknowledges and is suitable to the fitness to practice process, the College elects to use that process, recognizing that health can have an impact on an individual's ability to practice and that the best approach is to have that health issue addressed and return the nurse to safe practice.

An example where it may be a

14:51:36 1 discipline issue is where a nurse is diverting
14:51:45 2 drugs for her own use, and the impact is that
14:51:48 3 the clients are not receiving pain medication.
14:51:51 4 So that is not only a health condition, but
14:51:55 5 it's a serious risk of harm to clients.
14:52:01 6 And in that example, the nurse
14:52:05 7 may deny having a health condition and
14:52:10 8 regardless, the College would pursue
14:52:13 9 professional misconduct prosecution.
14:52:16 10 Q. And would the College elect
14:52:19 11 between fitness to practice and discipline --
14:52:23 12 professional misconduct -- or could the College
14:52:25 13 do both?
14:52:26 14 A. The College can do both. In
14:52:31 15 most circumstances, we choose between them, but
14:52:34 16 there are examples where the College has done
14:52:37 17 both.
14:52:37 18 Q. And you gave an example where
14:52:40 19 a nurse is diverting medication and then not
14:52:44 20 giving it to the patients, where -- and that
14:52:44 21 was an example of where the College might elect
14:52:47 22 to go the professional misconduct route,
14:52:49 23 correct?
14:52:49 24 A. Yes, or both.
14:52:51 25 Q. Or both, okay. And what
14:52:53 26 about if a nurse is diverting medication,
14:52:56 27 taking medication from the hospital stock, say,
14:52:58 28 but not necessarily not providing it to
14:53:00 29 patients?
14:53:00 30 A. Well, it would -- that may
14:53:03 31 well be a professional misconduct investigation
14:53:07 32 unless there was corresponding information that

14:53:11 the nurse suffered from a health condition. So
14:53:15 if the College isn't aware that the nurse is
14:53:19 taking the medication in relation to a
14:53:27 substance use disorder, then the College would
14:53:31 go the professional misconduct route.
14:53:33 But if the nurse says, I -- yes,
14:53:37 I took those medications and I have an
14:53:39 addiction and I need help, then that may well
14:53:43 be -- most likely would go the fitness to
14:53:49 practice route, the health inquiry route.
14:53:53 Q. And we're not going to go
14:53:54 over this in any detail but just for everyone's
14:53:59 reference, at the back of your affidavit,
14:54:01 page 57, you've set out the process that was in
14:54:11 place in 1995 to 1998 when Ms. Wettlaufer's
14:54:18 capacity issue was handled by the College, and
14:54:21 if we go one page further down, we see the
14:54:25 process, the current process?
14:54:27 A. That's correct.
14:54:27 Q. And like we've talked about
14:54:30 before, the names of committees have changed,
14:54:33 and the process has changed a bit over time,
14:54:36 correct?
14:54:37 A. Correct.
14:54:37 Q. Okay. So we'll go through
14:54:38 the process that the College went through with
14:54:41 Ms. Wettlaufer, but please feel free if there's
14:54:44 significant changes from that process at the
14:54:47 time to today, please let us know about that,
14:54:51 and I'll try to help you along the way with
14:54:53 that.
14:54:53 So turning now to the Geraldton

14:54:57 report, Ms. Coghlan; first of all, we know that
14:55:04 you were the president of Council in 1995. Did
14:55:11 you have any involvement or do you have any
14:55:13 recollection about this report from Geraldton?
14:55:15 A. I have no recollection.
14:55:17 Q. So have you reviewed the
14:55:20 College's files relating to the handling of
14:55:23 this report to prepare to give your evidence?
14:55:27 A. Yes, I have.
14:55:28 MS. JONES: So I'm going to ask
14:55:29 you to turn now -- and,
14:55:32 Commissioner, again, all of
14:55:32 these documents now are in the
14:55:32 Overview Report, so we will not
14:55:34 need to mark them.
14:55:34 THE COMMISSIONER: Thank you.
14:55:36 BY MS. JONES:
14:55:37 Q. At Tab 4 of your document
14:55:37 brief, which is Document 37185. And,
14:56:01 Ms. Coghlan, I'm going to lead you through some
14:56:01 of this evidence; it's already in evidence in
14:56:07 the OR but ask you some questions arising from
14:56:08 it.
14:56:08 So it looks like what we're
14:56:10 looking at here is a summary of a telephone
14:56:14 call received by the College of Nurses on
14:56:19 September 14, 1995, correct?
14:56:20 And if we look at -- and it
14:56:21 concerns -- you see towards the bottom of the
14:56:23 page "Description of member, Elizabeth Parker,"
14:56:28 and we know that that was Ms. Wettlaufer's
14:56:33 previous name.

14:56:34 1 If we look even further down, we
14:56:39 2 see the reason or the description for the call.
14:56:40 3 And to look over it together, Ms. Wettlaufer
14:56:40 4 was working -- this is the information, I take
14:56:44 5 it, that the College received at the time?
14:56:47 6 A. That's my understanding, yes.
14:56:49 7 Q. Okay. And I should have said
14:56:51 8 at the top of the page, we see who provided
14:56:53 9 this information, which was Marlene Pavletic,
14:57:01 10 who was the director of nursing at Geraldton?
14:57:01 11 Okay. So back to where we were:
14:57:01 12 "Ms. Parker was working night
14:57:01 13 shift at Geraldton and
14:57:03 14 collapsed. She admitted to
14:57:05 15 taking lorazepam, which she took
14:57:09 16 from the hospital stock. She
14:57:09 17 was admitted overnight.
14:57:12 18 In the morning, she admitted
14:57:14 19 taking between 20 to 30 tablets
14:57:15 20 in an attempt to commit suicide.
14:57:18 21 This nurse is a recent employee
14:57:21 22 who is still in probationary
14:57:26 23 period. Hospital is not sure
14:57:28 24 if she will be terminated.
14:57:28 25 Union concerns. I advised if
14:57:30 26 terminated..."
14:57:32 27 Arrow, and it looks like that's
14:57:35 28 "manned reporting"?
14:57:36 29 A. Yes.
14:57:37 30 Q. Okay.
14:57:37 31 "Marlene asked if she must
14:57:40 32 report to the CNO. I said that

14:57:40 we would strongly encourage her
14:57:40 to do so, as this was a serious
14:57:40 matter."
14:57:44 And at this time in 1995, was
14:57:52 there mandatory reporting by facility operators
14:57:54 for matters of incapacity?
14:57:57 A. Facility operators? No, not
14:58:02 in 1995.
14:58:03 Q. Okay. And then below that,
14:58:05 it says:
14:58:05 "I explained two options:
14:58:06 Letter of report/letter of
14:58:08 complaint. She said she will
14:58:11 definitely be doing either a
14:58:14 complaint or a report."
14:58:15 And based on your evidence this
14:58:18 morning, today would that be treated as a
14:58:22 complaint or a report?
14:58:23 A. It would be treated as a
14:58:25 report.
14:58:25 Q. But in 1995, were employers
14:58:29 given the option of doing it either way?
14:58:32 A. That's my understanding from
14:58:34 reading the records, yes.
14:58:35 Q. "I sent her guidelines.
14:58:37 Nurse will be suspended in the
14:58:41 meantime,"
14:58:42 and then there's a reference to
14:58:45 an earlier message. Now, if you turn now to
14:58:52 Tab 5, which is Document 37184, and we see this
14:59:00 is about six weeks later on October 25th, 1995.
14:59:06 There appears to be another telephone call.

14:59:09 And my first question is between
14:59:12 September 14th, which was the first telephone
14:59:14 call, and October 25th, are you aware of
14:59:18 whether the College took any steps in relation
14:59:20 to this information?
14:59:21 A. I'm not aware of the College
14:59:25 taking steps.
14:59:25 Q. Okay. So as far as you're
14:59:26 aware, there weren't steps taken at that point?
14:59:26 A. Correct.
14:59:26 Q. Okay. And then if we look at
14:59:28 this one, we have at the top of the page the
14:59:31 date, October 25th, and it says "caller CNO
14:59:40 staff."
14:59:40 A. Right.
14:59:40 Q. To your understanding, does
14:59:40 that mean that the CNO staff initiated the
14:59:42 call?
14:59:42 A. That's my understanding.
Q. And then the call, again, was
with Marlene Pavletic --
A. Yes.
Q. -- the director of nursing?
And then we go to the bottom of the page to
look at the information at this time:
14:59:59 "Before can report to CNO,
14:59:59 decision made to term..."
15:00:00 Do you read that as "terminate"?
15:00:02 A. I do.
15:00:02 Q. Okay.
15:00:03 "And letter sent to the member
15:00:06 October 3rd. Unionized grieve

termination October 19th. Has not completed probationary period. Speaking with hospital lawyer, this is delay to send formal report in next two weeks."

And then it looks like:

"The caller asked how much can disclose since member gave info as PT."

How do you read "PT"?

A. "Patient."

Q. "Then has concerns re: Patient confidentiality."

And if --

A. My understanding is that this is a note of what has been told to the CNO caller.

Q. Okay. This is coming from the director of nursing telling --

A. Yes.

Q. Okay. And in terms of the concerns about confidentiality, from your review of the records, am I correct that it looks like Ms. Wettlaufer was employed at Geraldton Hospital, but when she had this lorazepam incident, she was also admitted to Geraldton Hospital?

A. That's my understanding.

Q. Okay. And then back to where we are and where we were:

"Reports made out by employees

will not include these statements at this point, will include names," and then it seems like it says, "no incapacity issue, no substance issue."

And, in your view, would the incident that was described in the first call with the taking of the lorazepam from the hospital stock in at least in that call when the apparent suicide attempt, would that suggest an incapacity issue?

A. That would lead me, if I were the assessor, to form the belief that there could be an incapacity issue, yes.

Q. Okay. And then it says: "Thinks just one-time incident. Initial story was took some Ativan, then 24 hours later, story was she took," and then it's cut off, and then some more. "7:30 shift," I don't think we need to go over that. "Then took 5 mgs of lorazepam." And then it refers to: "Credibility, members working elsewhere; one, misappropriated drugs; two, look non-prescribed drugs; three, ingested while on duty."

And I don't know if you could assist us at this point whether that list of three things came from the director of nursing

15:02:27 1 or came from the CNO staff member who took the
15:02:31 2 call or who made the call, rather?
15:02:31 3 A. My assumption would be that
15:02:34 4 that is the CNO staff member's summary of the
15:02:41 5 information that has just been received from
15:02:42 6 the director of nursing.
15:02:46 7 Q. Now, if you turn now in the
15:02:49 8 document brief to Tab 6, we have
15:02:56 9 Document 37176. And what is this document that
15:03:16 10 we're looking at?
15:03:17 11 A. This is a letter from the
15:03:21 12 executive director in 1995 -- sorry, it was
15:03:24 13 addressed to the executive director at the
15:03:26 14 College in 1995, reporting the termination of
15:03:34 15 Elizabeth Parker, and it is from the director
15:03:40 16 of nursing at the Geraldton District Hospital.
15:03:44 17 Q. And under "Details," this
15:03:48 18 would be the formal report; is that fair?
15:03:50 19 A. Yes.
15:03:51 20 Q. Okay. And so under
15:03:54 21 "Details," we have:
15:03:55 22 "Member was completing a 12-hour
15:03:59 23 night tour at 0730. Two
15:03:59 24 oncoming RNs reported that the
15:03:59 25 member who was coming out of the
15:04:02 26 bathroom appeared dazed, was
15:04:05 27 grossly unsteady on her feet and
15:04:05 28 had difficulty communicating
15:04:05 29 verbally.
15:04:08 30 Subsequently, it was ascertained
15:04:09 31 from the member that she had
15:04:12 32 removed lorazepam from the ward

15:04:12 medication stock without
15:04:15 authorization and had ingested
15:04:16 them during working hours.
15:04:17 The history given by the member
15:04:19 changed several times over the
15:04:21 24-hour period."
15:04:23 I'm going to ask you something
15:04:25 about that last sentence:
15:04:25 "The history given by the member
15:04:25 [had] changed several times over
15:04:25 the 24-hour period."
15:04:30 In your experience dealing with
15:04:32 incapacity matters, is that a usual or unusual
15:04:38 aspect of some of these reports?
15:04:41 A. That's not uncommon. It is
15:04:44 often a reflection of the disease process that
15:04:47 clouds judgment.
15:04:48 Q. Now, if you turn, then, to --
15:04:58 to this point, now we're at November 2, 1995.
15:05:05 Had any steps been taken by the College to
15:05:11 investigate this information?
15:05:13 A. Other than the inquiry phone
15:05:16 call that was placed on October 25th, there's
15:05:20 no formal investigation launched prior to
15:05:26 November 2nd, no.
15:05:27 Q. Okay. And then if we look at
15:05:29 Tab 7, we see Document 37183, and actually, let
15:05:43 me ask you one other question.
15:05:45 Is it required that the College
15:05:48 have the information in writing as they did in
15:05:53 the November 2nd letter to initiate an
15:05:56 investigation of a matter?

15:05:57 A. An investigation, yes. An
15:06:02 inquiry, no.
15:06:03 Q. Okay. So what's the
15:06:04 difference?
15:06:05 A. So an inquiry is following up
15:06:07 on information. It is requesting that
15:06:13 investigation be provided on a voluntary basis.
15:06:19 An investigation is a formal Section 75 and --
15:06:23 or a Section 57, which is the incapacity
15:06:27 investigation, and there are certain provisions
15:06:30 in the legislation that must precede the
15:06:40 initiation of a formal investigation.
15:06:43 So in the case of a health -- a
15:06:45 suspected incapacity issue, the registrar must
15:06:50 form the belief, and in the case of
15:06:52 professional misconduct investigation, there
15:06:54 must be reasonable and probable grounds.
15:07:04 Q. That's the test for
15:07:04 initiating a formal investigation?
15:07:04 A. That's correct.
15:07:04 Q. But does the registrar's
15:07:05 belief or reasonable and probable grounds, does
15:07:05 that require a written document from the
15:07:09 reporting entity, or could it be based on
15:07:12 information over the telephone?
15:07:13 A. We require a written report
15:07:16 because we need to be able to verify that the
15:07:20 information that we've received is credible and
15:07:24 reliable. Anybody could phone, could make a
15:07:26 phone call.
15:07:27 Q. Now, if you turn to Tab 7,
15:07:34 Document 37183, we have a letter to the

15:07:47 director of nursing at Geraldton, correct?
15:07:51 A. That's correct.
15:07:51 Q. And this letter refers to the
15:07:53 fact that in the second paragraph:
15:07:56 "Since all of the information
15:07:58 pertaining to this matter is
15:08:01 confidential, we are unable to
15:08:01 inform you of the proceedings or
15:08:01 outcome in relation to any
15:08:01 investigation which may ensue."
15:08:05 Is that confidentiality -- if
15:08:05 this had been a complaint as opposed to a
15:08:11 report, would the complainant have had access
15:08:14 to information as it proceeded along its
15:08:16 course?
15:08:16 A. Yes.
15:08:17 Q. Okay. But as a report, when
15:08:19 it's a report, can the College provide the
15:08:22 reporting person with information?
15:08:23 A. No.
15:08:24 Q. Why not?
15:08:26 A. It's a Section 36 provision
15:08:29 where information coming to the College's
15:08:31 attention is confidential.
15:08:37 Q. At Tab 8, which is
15:09:09 Document 37239, what is this document,
15:09:20 Ms. Coghlan?
15:09:21 A. This is the executive
15:09:23 committee's approval of the appointment of an
15:09:27 investigator as requested by the executive
15:09:30 director at the time.
15:09:30 Q. Okay. And if we look down a

15:09:33 1 little bit, we see your signature?
15:09:35 2 A. That's correct.
15:09:35 3 Q. Okay.
15:09:36 4 A. And that was in my role as
15:09:40 5 president of Council and chair of the executive
15:09:45 6 committee.
15:09:45 7 Q. And you've referred a
15:09:47 8 couple times today to Section 75
15:09:47 9 investigations, and we see in this document
15:09:48 10 there's a reference to in accordance with
15:09:53 11 Section 75(a) of the Code that you were
15:09:54 12 initiating or the College was initiating at
15:09:57 13 that point an investigation into this incident?
15:09:59 14 A. That's correct.
15:10:00 15 Q. Now, if you turn to Tab 9,
15:10:10 16 I'm going to ask you some questions about the
15:10:13 17 investigation. We'll be looking at
15:10:19 18 Document 37218.
15:10:25 19 And am I correct that it appears
15:10:30 20 that after the initiation of the investigation,
15:10:35 21 someone at the College, an investigator by the
15:10:35 22 name of Ms. Wong, had a further call with the
15:10:43 23 director of nursing about the incident?
15:10:46 24 A. That's correct.
15:10:46 25 Q. And you don't need to read
15:10:46 26 the whole thing, but as an overview, what was
15:10:49 27 the information that the College obtained at
15:10:51 28 this point?
15:10:51 29 A. The College was getting
15:10:55 30 background information to assist in assessing
15:11:01 31 the complaint.
15:11:04 32 Q. And it looks like in the

15:11:06 second paragraph that the director of nursing
15:11:09 was indicating there were no concerns about
15:11:14 Ms. Wettlaufer's practice until this
15:11:16 incident that says while she was a student with
15:11:17 them, she was "a little bit different," and
15:11:18 that she didn't really socialize with the other
15:11:22 staff but that there were no complaints with
15:11:24 the staff, correct?
15:11:25 A. Yes.
15:11:25 Q. Now, following this
15:11:41 additional interview, we see at Tab 10,
15:11:46 Document 37214 -- actually, I apologize. I
15:12:16 want to go back to Tab 9, Document 37218.
15:12:31 And it says in this, the first
15:12:34 paragraph towards the bottom, that Ms. Pavletic
15:12:44 suggested to her that she may also want to seek
15:12:44 employment at the Geraldton Association for
15:12:44 Community Living. Did the College have
15:12:53 information at this time, based on your review
15:12:53 of the file, about whether or not
15:12:56 Ms. Wettlaufer was working?
15:12:57 A. This is '95. I would have to
15:13:05 refresh my memory on what her annual renewal
15:13:09 form said at that time. Is that the one that's
15:13:13 at...?
15:13:14 Q. No, I think the annual --
15:13:16 this would have just been the first year of her
15:13:20 registration. I don't think she would have
15:13:20 completed --
15:13:20 A. Oh, that's correct. No. So
15:13:22 we would not have any knowledge of that. Thank
15:13:27 you.

15:13:27 Q. And if the College was aware
15:13:31 at that time through any means that the member
15:13:35 was working somewhere else, does the College
15:13:38 take any steps at this point in the process?
15:13:40 A. Yes. The College would make
15:13:46 inquiries of any other employers, just a
15:13:50 general inquiry call to inquire how the nurse
15:13:55 was doing in practice, if there were any
15:13:58 concerns in those workplaces.
15:13:59 Q. And to the best of your
15:14:00 knowledge, was that the practice in 1995 as
15:14:03 well?
15:14:03 A. I believe so, yes.
15:14:04 Q. Okay. Now, I apologize. We
15:14:06 were back at Tab 10, which is Document 37214,
15:14:22 and this is a letter from the director of
15:14:25 nursing stating that she wishes to change her
15:14:28 letter of report to a letter of complaint,
15:14:32 correct?
15:14:33 A. Yes.
15:14:33 Q. And then based on your
15:14:34 evidence, once she does that, was she then able
15:14:38 to obtain information as the process was
15:14:41 continuing, the investigation was continuing?
15:14:44 A. Yes. The provisions in the
15:14:46 legislation under Section 75 outline the role
15:14:50 of the complainant in the investigation.
15:14:55 Q. Okay. And does that role
15:14:56 include being updated as to the results of an
15:15:00 investigation?
15:15:01 A. Yes. They would receive
15:15:04 information from the complaints committee.

15:15:09 Q. And then we see at Tab 11,
15:15:12 Document 37255, a letter to Ms. Wettlaufer
15:15:36 dated December 4th, 1995, correct?
15:15:41 And Ms. Wettlaufer in this
15:15:42 letter is being advised of the complaint?
15:15:46 A. That's correct.
15:15:46 Q. And if you go over the page
15:15:48 to page 2 under "Your Written Response," is it
15:16:06 fair that Ms. Wettlaufer is being asked to
15:16:08 provide a response to the complaint?
15:16:09 A. That's correct.
15:16:09 Q. And now, if we go over to
15:16:13 page 3, there's a summary that's provided to
15:16:19 Ms. Wettlaufer about the nature of the
15:16:22 complaint, correct, at the top of the page?
15:16:26 A. That's correct.
15:16:26 Q. And then at the bottom of
15:16:32 page 3, the very last paragraph states:
15:16:39 "I am also requesting
15:16:41 information from you about your
15:16:42 health. Enclosed, please find
15:16:44 some Health Release Forms,"
15:16:47 and Ms. Wettlaufer is asked to
15:16:52 sign some forms so that the College could
15:16:53 obtain health information at that time?
15:16:53 A. That's correct.
15:16:54 Q. And in terms of the current
15:16:56 practice -- and again, not thinking about the
15:16:59 names of committees or anything of that --
15:17:01 would that remain the practice today, that the
15:17:06 member would be notified of information in the
15:17:09 College's possession and asked to provide a

15:17:13 response and also asked for their health
15:17:15 records?
15:17:15 A. That's correct.
15:17:16 Q. And at this stage,
15:17:22 Ms. Wettlaufer does not sign consents for the
15:17:26 release of her health records, correct?
15:17:29 A. That's right.
15:17:30 Q. Okay. And at this stage, did
15:17:32 the College have the power to compel
15:17:34 Ms. Wettlaufer to sign those release forms?
15:17:36 A. To sign the release forms?
15:17:38 No.
15:17:38 Q. Is there ever a stage in the
15:17:42 process, the incapacity process, where the
15:17:45 College does have the power to compel a member
15:17:48 to sign release forms to release their health
15:17:51 records?
15:17:53 A. Not to compel them to sign
15:17:55 the release forms. If an independent medical
15:17:58 examiner who's been appointed by the statutory
15:18:04 committee to review the health of the member
15:18:06 requires health records in order to complete
15:18:10 the assessment and the member is not willing to
15:18:16 provide consent to access those health records,
15:18:19 then that assessment remains incomplete.
15:18:24 And the committee in '95 --
15:18:30 would have been the executive committee --
15:18:34 would have the authority to suspend the
15:18:36 member's certificate of registration until such
15:18:40 time as access to the provision of the health
15:18:45 records was granted --
15:18:46 Q. I see, okay.

15:18:48 A. -- in order to complete the
15:18:51 assessment.
15:18:51 Q. So if as part of the
15:18:53 College's process they order an assessment and
15:18:54 the assessor needs the records, the College can
15:18:59 suspend the member until those records are
15:19:02 provided for the assessment?
15:19:03 A. That's correct.
15:19:03 Q. Okay. And now, if you look
15:19:08 at Tab 12, please, Document 37164, we see in
15:19:22 the middle of the page that the College is
15:19:26 writing and requesting health records from
15:19:29 Geraldton, and this is -- yes, in the middle of
15:19:35 the page, the investigator is writing and
15:19:39 asking for health records, correct?
15:19:41 A. That's correct.
15:19:42 Q. Okay. And do you know at
15:19:44 this stage whether the College had the power to
15:19:46 compel Geraldton to provide those records?
15:19:49 A. My understanding in reading
15:19:51 this is that because this was a Section 75 --
15:19:53 so this wasn't a health inquiry. This was a
15:19:58 Section 75 investigation, and the investigator
15:20:00 is using the powers granted to an investigator
15:20:04 to require that those records be provided.
15:20:11 Q. So at this stage, it was
15:20:12 under Section 75, and it eventually becomes a
15:20:16 health matter; is that correct?
15:20:17 A. That's right.
15:20:17 Q. Okay. So at this stage, the
15:20:19 investigator is using those powers in
15:20:22 requesting the health records, and this is the

15:20:25 health records just from Geraldton District
15:20:30 Hospital?
15:20:31 A. That's correct.
15:20:31 Q. Okay. And does the College
15:20:33 obtain those records as part of its
15:20:37 investigation? Did the College obtain these
15:20:37 records?
15:20:37 A. Yes, yes.
15:20:38 Q. Okay. And now, if you turn
15:20:40 to Tab 13, which is Document 37178, we see a
15:20:53 letter to the director of nursing at Geraldton
15:20:57 dated December 5th, 1995, the day after the
15:21:02 letter we just looked at. And in this case,
15:21:05 the College is requesting information from
15:21:09 Geraldton in its role as employer, I think; is
15:21:13 that fair?
15:21:13 A. That's correct.
15:21:14 Q. And the information is in the
15:21:15 middle of the page there requiring Geraldton as
15:21:19 employer to provide the following
15:21:22 documentation, and it's all documentation and
15:21:23 communications relating to the incident
15:21:26 including anecdotal notes, internal
15:21:31 investigations, et cetera, staff schedules,
15:21:32 background information about where the member
15:21:35 worked and the routines and addresses and
15:21:41 telephone numbers of all staff identified as
15:21:44 witnesses, correct?
15:21:45 A. That's correct.
15:21:46 Q. And from your review of the
15:21:48 file, did the College obtain that information?
15:21:50 A. Yes, I believe so.

15:21:52 Q. Okay. And again, in today's
15:21:58 process, whether it's through a Section 75
15:22:02 investigation or early incapacity inquiries, is
15:22:10 this the type of information that the College
15:22:13 obtains about an incident?
15:22:15 A. Yes.
15:22:15 Q. Tab 14, then, we have
15:22:26 Document 37305. And am I correct that this is
15:22:41 a letter from Ms. Wettlaufer's counsel to the
15:22:44 College?
15:22:44 A. That's correct.
15:22:45 Q. And in this letter,
15:22:47 Ms. Wettlaufer's counsel advises that
15:22:50 Ms. Wettlaufer advises -- this is in the second
15:22:55 paragraph -- that she took 25 milligrams of
15:23:00 lorazepam and essentially that it was a suicide
15:23:03 attempt, and it was not brought on by drug
15:23:06 addiction, correct?
15:23:08 A. That's correct.
15:23:08 Q. And it then says:
15:23:10 "I've advised Ms. Parker not to
15:23:12 provide you with signed releases
15:23:12 at this time,"
15:23:13 and you've assisted us with the
15:23:14 fact that the College was not able to then
15:23:16 compel that information at this point?
15:23:22 A. That's right.
15:23:25 Q. Then if you look at Tab 15,
15:23:29 please, we have Document 37209. And this is a
15:23:41 discharge summary from Geraldton Hospital,
15:23:44 correct?
15:23:45 A. Yes.

15:23:45 Q. And the more complete
15:23:48 hospital records are in the Overview Report,
15:23:49 but I've excerpted this for the course of
15:23:53 yesterday. What was the diagnosis that
15:23:56 Geraldton had arrived at at this time?
15:23:59 A. "History of benzodiazepine
15:24:06 overdose and history of suicide
15:24:14 attempt."
15:24:14 Q. And then if you turn to
15:24:19 Tab 16, we have Document 37270. And again,
15:24:33 I've extracted this from a larger group of
15:24:38 documents that are in the Overview Report that
15:24:40 came from Geraldton as part of their internal
15:24:43 investigation documents?
15:24:45 A. Yes.
15:24:45 Q. Okay. And so this is the
15:24:46 type of information -- again, just an
15:24:49 excerpt -- that was obtained by the College
15:24:53 from Geraldton as part of its own internal
15:24:57 investigation?
15:24:58 A. That's correct.
15:24:58 Q. And we see in this summary
15:25:02 that Ms. Wettlaufer had a dazed look, she
15:25:08 stumbled backwards in the bathroom, she started
15:25:12 stumbling, and eventually they move her into a
15:25:16 chair. She was unsteady, she was very sloppy,
15:25:22 slurred speech, and slow to respond.
15:25:25 And it looks like, internally,
15:25:27 they notify the employee health staff nurse
15:25:29 about Ms. Wettlaufer's condition, correct?
15:25:31 A. Yes.
15:25:33 Q. And again, looking at this

15:25:35 information, does this raise capacity issues?
15:25:38 A. Yes.
15:25:38 Q. And if you turn to Tab 17,
15:25:53 then, Document 37247, is it fair to describe
15:26:14 this as a further submission by
15:26:16 Ms. Wettlaufer's counsel to the College --
15:26:18 A. Yes.
15:26:19 Q. -- about the matter? Okay.
15:26:21 And the first big paragraph, it says that:
15:26:31 "Ms. Parker has acknowledged
15:26:35 throughout her actions in this
15:26:38 regard; those actions, however,
15:26:38 arise from health problems from
15:26:38 which she was suffering at the
15:26:38 time..."
15:26:39 And it refers to enclosing two
15:26:42 reports from the North of Superior Program
15:26:45 which we'll look at a moment.
15:26:47 And then it goes on to say or
15:26:50 submit by her counsel that much of her
15:26:54 depression related to her isolation and
15:26:58 loneliness, and she's returned and that she's
15:26:58 going to be seeing an addiction specialist by
15:27:02 the name of Dr. Judson, correct?
15:27:12 A. Yes.
15:27:12 Q. And then over the page on
15:27:14 page 2, Ms. Wettlaufer's counsel states:
15:27:16 "While it would not appear that
15:27:18 Mr. Parker is addicted to any
15:27:21 controlled drugs, her actions
15:27:21 giving rise to this complaint
15:27:22 clearly relate to a health

problem.
Accordingly, we would ask that your committee refer this matter to the executive committee for investigation of incapacity in due course."
Correct?
A. Yes.
Q. Okay. And this is what you were describing earlier which is it started out as an investigation, and now counsel is saying this is a health issue. We think it should be referred through the health track of the College; is that fair?
A. That's right.
MS. JONES: Madam Commissioner, it's almost 3:30. Might this be a good time for the afternoon recess?
THE COMMISSIONER: Are we just going to continue to read the documents like this?
MS. JONES: I was intending to, and I have questions for the witness arising from the documents.
THE COMMISSIONER: Okay. We'll take the afternoon recess.
-- RECESSED AT 3:28 P.M.
-- RESUMED AT 3:50 P.M.
BY MS. JONES:
Q. Ms. Coghlan, before we broke,

15:50:21 we had been looking at a further letter from
15:50:26 Ms. Wettlaufer's counsel attaching two reports
15:50:30 which were from mental health workers or from
15:50:34 the North Superior Program.
15:50:37 And is it correct that the
15:50:38 College at that stage received two reports
15:50:41 about interactions Ms. Wettlaufer was having
15:50:44 with that program?
15:50:45 A. That's correct.
15:50:46 Q. And if you then turn to tab
15:50:52 20, document 36822, we arrive at a Decision of
15:51:26 the Complaints Committee; is that correct?
15:51:28 A. That's correct.
15:51:29 Q. And did this process have to
15:51:33 result in a Decision of the Complaints
15:51:35 Committee because it had been turned into a
15:51:37 complaint?
15:51:37 A. That's correct.
15:51:37 Q. Okay. And what does the
15:51:40 Complaints Committee do with the information it
15:51:44 had at that time? And it may be helpful for
15:51:47 you to turn to page 3, the "Conclusion"
15:51:50 paragraph.
15:51:51 A. So the committee reviews the
15:51:57 results of the investigation, considers the
15:52:01 allegations concerning Ms. Parker, and
15:52:08 identifies that information that they have
15:52:11 received during the course of the investigation
15:52:13 indicates that the member is suffering from
15:52:15 health-related problems that may be affecting
15:52:17 her capacity to practice safely.
15:52:19 Q. Okay, and what do they do as

15:52:23 a result?
15:52:23 A. And then they refer the
15:52:24 matter to the Executive Committee for the
15:52:27 purpose of incapacity proceedings.
15:52:29 Q. Okay. So at this point, does
15:52:32 the matter now take the health-related or
15:52:36 incapacity path?
15:52:37 A. That's correct.
15:52:37 Q. Now, when Ms. Wettlaufer was
15:52:47 now in this health-related or incapacity path,
15:52:51 did the College arrange for her to be assessed
15:52:54 by health care professionals?
15:52:55 A. Yes, it did.
15:52:56 Q. And I am going to ask you to
15:52:58 turn to tab 22, which is document 37188. And
15:53:28 what is this document, Ms. Coghlan?
15:53:30 A. This is the assessment report
15:53:33 by the independent medical examiner,
15:53:37 Dr. Cunningham, who was requested to perform an
15:53:40 independent medical exam by the Board of
15:53:48 Inquiry.
15:53:48 Q. Okay, and what kind of doctor
15:53:51 is or was Dr. Cunningham?
15:53:54 A. He was an addiction
15:53:57 specialist.
15:53:57 Q. And if we look at the
15:54:01 beginning of this report, it appears that
15:54:04 Mr. Cunningham met with Ms. Wettlaufer. It
15:54:07 says:
15:54:08 "We talked for about an hour and
15:54:11 15 minutes"?
15:54:12 A. That's correct.

15:54:12 Q. And then it appears that
15:54:15 Mr. Cunningham, or Dr. Cunningham, rather,
15:54:18 reviews Ms. Wettlaufer, the history of the
15:54:21 incident, as well as her own developmental
15:54:22 history; correct?
15:54:23 A. Correct.
15:54:23 Q. And then in the middle of
15:54:27 page 2, Dr. Cunningham sets out the care at
15:54:38 that point that Ms. Wettlaufer was receiving;
15:54:42 is that fair?
15:54:43 A. That's right.
15:54:43 Q. And what did that care
15:54:45 involve?
15:54:45 A. That involved being under the
15:54:51 care of Dr. Judson, an addiction medicine
15:54:54 specialist, as well as attending a health
15:54:58 professional support group and following the
15:55:11 prescribed treatment that Dr. Judson had made,
15:55:16 which included the Professional Health Group
15:55:21 and it looks like that she was prepared to
15:55:31 attend Alcoholic Anonymous meetings.
15:55:35 Q. Okay. And then at the bottom
15:55:41 of that page, does Dr. Cunningham set out his
15:55:46 views arising from this assessment?
15:55:48 A. Yes, he thinks that the
15:55:56 member is an incapacitated nurse under the Act.
15:56:01 He agrees with the support, the guidelines or
15:56:11 restrictions that Dr. Judson -- or
15:56:13 recommendations, rather, that Dr. Judson has
15:56:16 made. He indicates that in his view no further
15:56:19 assessment or treatment is required and that
15:56:22 she should continue to see -- to attend the

15:56:29 health profession support group and that
15:56:33 Dr. Judson should receive reports from that
15:56:35 group. And he encourages her to attend one
15:56:38 meeting a week of Alcoholics Anonymous.
15:56:44 And he also indicates that it
15:56:53 may be that the support she receives through a
15:56:57 spiritual program may meet the same objectives
15:57:02 as an Alcoholics Anonymous group participation.
15:57:06 Q. Okay, and then over to the
15:57:08 next page, was it his view that she required
15:57:13 further definitive treatment?
15:57:15 A. No, he indicates that that
15:57:19 was not required.
15:57:19 Q. And does he make any
15:57:22 recommendations then?
15:57:23 A. He encourages her to continue
15:57:28 to attend the Health Professional Group on a
15:57:30 permanent basis and receive reports from
15:57:35 Dr. Judson. He has no concerns regarding her
15:57:40 narcotic history and feels that urine
15:57:44 monitoring would be sufficient to provide
15:57:46 ongoing assessment and management of her
15:57:49 condition.
15:57:50 Q. Okay. And what role do
15:57:54 medical assessment reports play in the
15:57:57 College's considerations of incapacity?
15:58:00 A. They provide expert evidence
15:58:06 upon which the committee makes a determination
15:58:13 about the appropriate regulatory action, so
15:58:17 before determining whether terms, limits or
15:58:23 conditions should be placed on a member's
15:58:26 certificate, the committee requires expert

15:58:30 evidence in the form of an independent medical
15:58:33 assessment.
15:58:34 Q. And did the College at this
15:58:40 stage receive any other medical assessment
15:58:43 reports?
15:58:44 A. I believe there was a report
15:58:51 from a family physician, but there was also a
15:58:53 psychiatric report.
15:58:55 Q. Okay, so if you turn to tab
15:58:58 23, document 37191, and what kind of doctor, to
15:59:15 your knowledge, is Dr. Ross?
15:59:16 A. Dr. Ross is a psychiatrist.
15:59:18 Q. And at the first sentence of
15:59:23 Dr. Ross's report, he says:
15:59:25 "I am writing to report the
15:59:26 findings of my IME of this
15:59:28 registrant [...]"
15:59:29 What does "IME" mean?
15:59:30 A. Independent medical
15:59:32 examination.
15:59:32 Q. And again, it appears that
15:59:38 Dr. Ross goes over the history in terms of the
15:59:43 incident, and over to the second page, third
15:59:53 paragraph, does Dr. Ross provide a psychiatric
15:59:59 diagnosis at this point?
16:00:00 A. Yes, he diagnoses major
16:00:04 depressive disorder, a single episode of
16:00:07 moderate severity.
16:00:08 Q. And then if you go down two
16:00:14 paragraphs, it looks like Dr. Ross is referring
16:00:18 again to alcohol avoidance, which was -- am I
16:00:22 right that was the focus of Dr. Cunningham's

16:00:24 report?
16:00:25 A. That's correct.
16:00:26 Q. And he then says what? What
16:00:29 else does he assist the College with in terms
16:00:31 of his opinion of Ms. Wettlaufer's mental
16:00:34 health status at this point?
16:00:36 A. His assessment is that she is
16:00:42 no longer ill from a psychiatric standpoint,
16:00:45 that no active treatment is required, and that
16:00:48 return to work is realistic and safe in his
16:00:51 view.
16:00:51 Q. Does he make any
16:00:55 recommendations in terms of terms, conditions
16:00:59 or limitations that should be imposed by the
16:01:02 College before a return to work?
16:01:04 A. Not in regard to her
16:01:06 psychiatric diagnosis.
16:01:08 Q. Now, it appears that at a
16:01:23 certain point Ms. Wettlaufer is assessed a
16:01:26 second time by Dr. Cunningham; is that correct?
16:01:29 A. Yes.
16:01:29 Q. And if you could turn now to
16:01:33 tab 27, and this is document 37186. And from
16:01:47 your review of the file, could you determine
16:01:49 why Ms. Wettlaufer was assessed a second time
16:01:52 by Dr. Cunningham?
16:01:54 A. My understanding is that she
16:01:59 was having difficulty with her recovery and
16:02:05 there was a concern about a lapse in her
16:02:11 abstinence.
16:02:12 Q. A lapse in her, sorry?
16:02:14 A. Abstinence.

16:02:16 Q. Abstinence. And what does
16:02:18 Dr. Cunningham conclude? And if you turn to
16:02:23 page 2, there is a paragraph beginning "In
16:02:32 summary [...]"
16:02:35 What does Dr. Cunningham then
16:02:36 opine with respect to this or in this report?
16:02:39 A. So he identifies his concern
16:02:42 that her what he refers to as her recovery life
16:02:47 is getting out of balance and that other
16:02:50 aspects of her life are interfering with her
16:02:54 ability to commit and attend to the parameters
16:03:04 required for full recovery.
16:03:06 And for example, he has
16:03:09 indicated that her work schedule may be
16:03:11 interfering with her recovery work and sends a
16:03:16 letter to her employer asking for modified work
16:03:20 in order to support her to attend a minimum of
16:03:24 three group supports per week.
16:03:26 Q. And does he make any further
16:03:30 recommendations?
16:03:31 A. He suggests that if she
16:03:41 cannot attend the Health Professional Group,
16:03:43 she should call the facilitator ahead of time
16:03:47 and a record should be kept of this.
16:03:50 He also supports continued urine
16:03:54 monitoring and suggests that she should commit
16:04:01 to attend her Bible study every Wednesday and
16:04:04 her church every Sunday.
16:04:09 And he also recommends that the
16:04:11 College consider asking for reports regarding
16:04:18 her attendance at Bible study and church.
16:04:21 Q. Okay. And if you can turn

16:04:24 now to document 28, which is document number
16:04:32 36838, please.
16:04:34 A. Yes.
16:04:34 Q. And we see here what is
16:04:53 called a Memorandum of Agreement, and what is
16:04:55 this document, Ms. Coghlan?
16:04:57 A. This is an agreement between
16:04:59 the College and the member which outlines the
16:05:06 conditions upon which --
16:05:19 Q. On page --
16:05:20 A. Wait a minute, I'm sorry, I'm
16:05:21 getting --
16:05:22 Q. On page 2, and this might be
16:05:23 of assistance, paragraph 3, is this an
16:05:27 agreement between the member and the College to
16:05:32 a certain form of order by the Fitness to
16:05:35 Practise Committee?
16:05:36 A. That's correct.
16:05:37 Q. Okay. And then if we look at
16:05:43 Schedule "A" over on the next page, would that
16:05:45 be the order of the Fitness to Practise
16:05:47 Committee?
16:05:47 A. That's correct.
16:05:52 Q. And setting aside for a
16:05:53 moment the details of this particular order of
16:05:55 the Fitness to Practise Committee, the Fitness
16:06:00 to Practise Committee presumably continues to
16:06:01 this day to make orders placing, for example,
16:06:03 terms, restrictions and limitations on a
16:06:06 nurse's certificate if they have a health, or a
16:06:08 capacity issue, rather?
16:06:09 A. If there is a finding of

16:06:10 incapacity, that's correct.
16:06:11 Q. Okay. And in this case, in
16:06:13 the Memorandum of Agreement does Ms. Wettlaufer
16:06:15 admit to incapacity, if you look at the first
16:06:20 page of that document?
16:06:20 A. Yes, it is a decision on
16:06:22 consent.
16:06:23 Q. Okay. And if we look at the
16:06:24 bottom of page 1, it says:
16:06:33 "The Member acknowledges that
16:06:34 she is incapacitated as that
16:06:36 term is [...] [defined]."
16:06:40 Correct?
16:06:41 A. I'm sorry, I'm lost on which
16:06:46 page we are on.
16:06:47 Q. So you should be at tab --
16:06:49 A. Schedule "A"? Are we still
16:06:51 on Schedule "A"?
16:06:51 Q. No, I apologize. So if we go
16:06:53 back to tab 25 -- sorry, 28, and it is up on
16:06:59 the screen as well, the very first document
16:07:01 there, the Memorandum of Agreement. At the
16:07:04 bottom of that page --
16:07:06 A. Yes, I see that.
16:07:07 Q. Okay.
16:07:07 A. Thank you.
16:07:10 Q. No, that was my fault. And
16:07:11 if you go over back to Schedule "A" at page 3?
16:07:19 A. Yes.
16:07:20 Q. On consent, we have the order
16:07:23 of the Fitness to Practise Committee, and if we
16:07:25 look at the finding, the Fitness to Practise

16:07:28 Committee finds that Ms. Wettlaufer was
16:07:32 incapacitated; correct?
16:07:33 A. Yes.
16:07:34 Q. And then the remainder of
16:07:38 this decision appears to set out conditions,
16:07:41 terms, conditions and limitations that the
16:07:43 Fitness to Practise Committee was then imposing
16:07:46 on Ms. Wettlaufer's Certificate of
16:07:49 Registration; is that correct?
16:07:49 A. That's correct.
16:07:50 Q. Before this order was issued,
16:07:54 were there any, throughout the process from the
16:07:57 time of the Geraldton report to the date of
16:08:01 this Fitness to Practise Decision, were there
16:08:06 restrictions on Ms. Wettlaufer's Certificate of
16:08:10 Registration?
16:08:10 A. I am not aware of any.
16:08:11 Q. Okay. And so but now as of
16:08:14 the date of this Fitness to Practise Decision,
16:08:16 there would have been restrictions placed on
16:08:17 her certificate; correct?
16:08:18 A. That's correct.
16:08:19 Q. And so from this point
16:08:20 forward until a year later, as we'll see, what
16:08:25 information would have been on the public
16:08:28 register?
16:08:28 A. From this point forward?
16:08:30 Q. Yes.
16:08:30 A. There would be a finding of
16:08:34 incapacity, and the specific terms, limits or
16:08:39 conditions would be outlined.
16:08:41 Q. Okay, so if -- and at this

16:08:45 point, the public register was not on the
16:08:47 website; correct?
16:08:48 A. That's correct.
16:08:48 Q. So if at this stage, once
16:08:52 this order was issued, someone had called the
16:08:55 College and asked for the status of the nurse,
16:08:58 whether there were any terms, conditions or
16:09:00 limitations, would they have been advised of
16:09:02 this order?
16:09:02 A. Yes.
16:09:03 Q. And prior to the date of this
16:09:07 order, if someone had called and asked for
16:09:10 information about the status of the nurse, I
16:09:13 take it they would have been advised there is
16:09:15 no terms or conditions on her certificate?
16:09:18 A. That's correct.
16:09:18 Q. And if we look at the terms
16:09:23 and conditions on her certificate, it looks
16:09:31 like if we start at - and we are not going to
16:09:36 go through all of them, but we can go through
16:09:38 some of them to get an idea - paragraph 2 on
16:09:41 page 4:
16:09:45 "The Member shall not abuse any
16:09:49 substance and shall remain
16:09:51 alcohol free [...]"
16:09:52 Correct?
16:09:52 A. That's right.
16:09:53 Q. And then paragraph 3:
16:09:54 "The Member shall advise her
16:09:56 current employer", at that time
16:09:59 Christian Horizons, "of the fact
16:10:00 that her Certificate is subject

16:10:02 to Conditions."
16:10:04 And then what is required then
16:10:08 of Christian Horizons?
16:10:11 A. So Christian Horizons is -
16:10:19 and I am just looking to see if this is
16:10:21 outlined here - asked to agree to immediately
16:10:30 notify in writing the College if, in their
16:10:34 opinion as the employer, the member's chemical
16:10:40 dependency is affecting her ability to practice
16:10:45 nursing or if she has failed to comply with any
16:10:47 of the conditions placed on her registration by
16:10:49 the Fitness to Practise Committee.
16:10:50 Q. Okay. And then at paragraph
16:10:51 4 and 5, it appears that the member or Ms.
16:10:57 Wettlaufer was required to advise the College
16:10:59 immediately if she obtains any other employment
16:11:02 other than Christian Horizons; correct?
16:11:03 A. That's correct.
16:11:03 Q. And then at paragraph 5, that
16:11:05 she then has to advise all prospective
16:11:09 employers of these conditions?
16:11:10 A. That's correct.
16:11:10 Q. And then at paragraph 6 it
16:11:20 provides -- paragraph 6 and a combination of 7,
16:11:25 paragraph 7(c), provides for urine samples to
16:11:28 be provided; correct?
16:11:29 A. That's right.
16:11:30 Q. And it also earlier in
16:11:32 paragraph 7, paragraph 7(a), Ms. Wettlaufer is
16:11:38 required to attend individual counselling with
16:11:39 Dr. Judson and (b) attend the Health
16:11:45 Professional Group?

16:11:45 A. Yes.
16:11:46 Q. And what is the Health
16:11:48 Professional Group?
16:11:48 A. It is a support group for
16:11:50 health professionals with substance use
16:11:53 disorders that is very similar to Narcotics
16:11:59 Anonymous or Alcoholics Anonymous. What is
16:12:03 unique is everyone in the group is a health
16:12:05 professional.
16:12:06 Q. And then if you skip over to
16:12:12 paragraph 10, it appears that the member was
16:12:21 also required to submit letters from Dr. Judson
16:12:24 and Dr. Tam, and these letters, if you look at
16:12:32 10(b), did these require those physicians to
16:12:35 agree to notify the College if there were any
16:12:37 concerns about Ms. Wettlaufer's recovery?
16:12:39 A. Yes.
16:12:40 Q. And now if you turn to
16:12:43 paragraph 13, it provides that:
16:12:49 "The Conditions shall remain in
16:12:51 force for a period of one year
16:12:52 [...]"?
16:12:53 A. That's correct.
16:12:54 Q. And so looking at this order
16:12:57 or this Fitness to Practise Order as a whole,
16:13:01 would this be today the kind of order that
16:13:03 would issue from the Fitness to Practise
16:13:05 Committee? Are there any major differences
16:13:07 today? And I understand that it would be
16:13:10 case-specific.
16:13:10 A. Yes, it is case-specific. I
16:13:12 think the major difference that I identify is

16:13:15 1 that monitoring periods are typically longer
16:13:18 2 now. They typically run three to five years.
16:13:22 3 Q. Three to five years?
16:13:23 4 A. Yes.
16:13:23 5 Q. Okay, and why is that?
16:13:24 6 A. The science has changed and
16:13:26 7 the practice and expert advice of addiction
16:13:31 8 specialists has evolved over the years, and
16:13:35 9 their expert advice is that monitoring occur,
16:13:40 10 for the most part. There are still instances
16:13:43 11 where one year may be recommended, but they,
16:13:48 12 for the most part, are recommending three to
16:13:50 13 five years.
16:13:50 14 Q. And in terms of your evidence
16:13:57 15 about what would have been on the public
16:13:59 16 register as of the date of this Fitness to
16:14:03 17 Practise Order, how long would that information
16:14:05 18 have remained on the public register?
16:14:07 19 A. Until the order was complete.
16:14:11 20 Q. Okay, and so does that mean
16:14:15 21 that after the one-year period, assuming it was
16:14:18 22 fulfilled successfully, that information would
16:14:20 23 no longer be on the public register?
16:14:22 24 A. That's correct.
16:14:23 25 Q. Okay. And would there be any
16:14:26 26 record kept about the fact that there had been
16:14:28 27 information on the public register?
16:14:29 28 A. Would the College keep that
16:14:31 29 information?
16:14:31 30 Q. No, on the public register,
16:14:33 31 even if they didn't have the details of the
16:14:35 32 terms and conditions, would there be any

16:14:37 information that indicated that there had been
16:14:39 a Fitness to Practise Order?
16:14:41 A. If there had been a
16:14:44 suspension, it would show up in the member's
16:14:49 registration history.
16:14:51 Q. But was there a suspension
16:14:55 here?
16:14:55 A. No.
16:14:56 Q. Okay. Now, after this period
16:15:03 of time, and I won't ask you to turn up each of
16:15:06 these documents, Ms. Coghlan, but after this
16:15:08 period of time, did the College engage in any
16:15:11 monitoring of Ms. Wettlaufer under this order?
16:15:16 A. Following the completion of
16:15:18 the order?
16:15:19 Q. During the one-year period.
16:15:20 A. Oh, during the one-year
16:15:22 period, yes, the College did.
16:15:24 Q. Okay. And from a high level,
16:15:26 what did that type of oversight or compliance
16:15:32 review look like?
16:15:33 A. It involved contacting her
16:15:36 health professionals, so Dr. Tam I believe was
16:15:43 her family physician, as well as Dr. Judson, to
16:15:49 inquire into how she was doing and whether they
16:15:52 had any concerns.
16:15:54 There was contact with Ms.
16:15:57 Wettlaufer herself to inquire about her
16:15:59 progress.
16:16:01 And I believe there was contact
16:16:05 with her employer, Christian Horizons, but I am
16:16:08 not positive on that.

16:16:11 Q. Okay, and if you -- I can
16:16:14 assist you with that, actually. If you look at
16:16:18 tab 30, document 37061.
16:16:22 A. Yes.
16:16:23 Q. Okay, and so this was a
16:16:25 letter to Christian Horizons?
16:16:28 A. That's correct.
16:16:28 Q. Okay, and it states here --
16:16:31 and a similar letter was sent, and we don't
16:16:34 need to turn them up, but a similar letter was
16:16:36 sent to Ms. Wettlaufer's physicians too; is
16:16:39 that correct?
16:16:39 A. Yes, that's correct.
16:16:40 Q. Okay. And it refers in the
16:16:42 third paragraph to -- Ms. Raso, the Incapacity
16:16:50 Coordinator, indicates that she'll be
16:16:52 contacting Mr. Petkau approximately four times
16:16:54 during the year. Do you know if that occurred?
16:16:57 A. I believe it was three times,
16:17:00 and I think the "approximately" refers to,
16:17:06 since this was a year period, by the time all
16:17:09 the notices had been given and the agreements
16:17:11 signed, a period of time had passed, so those
16:17:19 check-ins, if you will, by the College occurred
16:17:23 more frequently -- sorry, the duration between
16:17:27 was shorter because I think they started about
16:17:31 five months into the year, by the time
16:17:35 Christian Horizons has sent back their
16:17:38 agreement that they would agree and the
16:17:39 physicians had sent back their agreement.
16:17:42 So I believe it was three times
16:17:44 that there was a check-in, including one very

16:17:47 close to the end of the monitoring period.
16:17:54 Q. And, Ms. Coghlan, I'm just
16:17:57 going to refresh your recollection on this.
16:17:58 A. All right.
16:17:59 Q. It appears from the documents
16:18:00 that there were three check-ins with Dr. Tam,
16:18:03 the family physician?
16:18:04 A. Yes.
16:18:05 Q. Okay, and I can only see one
16:18:07 check-in with Christian Horizons.
16:18:08 A. That is possible.
16:18:09 Q. Okay, thank you. And if you
16:18:25 then turn to tab 31, document 37055.
16:18:35 A. Yes.
16:18:36 Q. And this is a summary of a
16:18:50 telephone call, and is it fair to say that this
16:18:54 is a summary of one of these check-ins, this
16:18:57 one with Dr. Judson, the addiction specialist?
16:18:59 A. That's correct.
16:19:00 Q. And what information was
16:19:04 obtained about how Ms. Wettlaufer was doing at
16:19:07 that point by Dr. Judson?
16:19:08 A. Dr. Judson reports that she
16:19:13 recently had a mouthful of champagne on her
16:19:17 honeymoon and that she acknowledged this in a
16:19:22 support group meeting where the group
16:19:26 criticized that, and she received feedback from
16:19:34 both the group and Dr. Judson that this was not
16:19:41 appropriate and she committed to not drinking
16:19:45 at all in the future, regardless of the
16:19:47 occasion.
16:19:50 Q. Okay, and if you turn over to

16:19:55 1 the second page of that document, what else
16:19:59 2 does that assist us with?
16:20:01 3 A. He reports that he continues
16:20:04 4 to see her once a month and on an individual
16:20:08 5 basis, as well as once a week when she attends
16:20:11 6 the Health Professionals Group, and this is a
16:20:13 7 group that he is running, and that she is
16:20:17 8 attending Bible class once a week and goes to
16:20:20 9 church weekly.
16:20:21 10 He indicates he has no concerns
16:20:23 11 about her relapsing to previous behaviour, and
16:20:27 12 generally she is doing well at work.
16:20:29 13 Q. Okay. And we don't need to
16:20:32 14 turn them up, but in terms of the three year
16:20:36 15 review of the file, in terms of the three
16:20:40 16 check-ins with Dr. Tam and the check-in with
16:20:43 17 Christian Horizons, as well as this check-in by
16:20:46 18 Dr. Judson, were any concerns raised about how
16:20:49 19 Ms. Wettlaufer was doing during this period of
16:20:51 20 time?
16:20:51 21 A. No concerns were raised
16:20:52 22 during the check-in, nor did the College
16:20:55 23 receive any reports of concern from any of
16:20:57 24 those individuals who had agreed to immediately
16:21:00 25 report to the College if they identified any
16:21:03 26 concern.
16:21:04 27 Q. I see. So outside of the
16:21:06 28 check-in process which is demonstrated in these
16:21:10 29 telephone call summaries, your evidence is the
16:21:13 30 College also didn't receive any independent
16:21:15 31 reports from these physicians that there were
16:21:17 32 any issues?

16:21:17 A. That's correct.
16:21:19 Q. And now if you turn to tab
16:21:30 34, document 36837, please, and this is a
16:21:48 letter to Ms. Wettlaufer dated May 29th, 1998,
16:21:52 and what was the purpose of this letter?
16:21:54 A. This letter indicates that
16:21:57 the conditions that had been attached to her
16:21:59 Certificate of Registration have been met, that
16:22:05 the year provision for the conditions is no
16:22:12 longer in effect because she has fully
16:22:15 complied, and she is reminded that she has --
16:22:27 or there is an acknowledgment that she has
16:22:29 developed sufficient insight and a support
16:22:32 network to monitor her own health status and
16:22:35 ability to practice nursing without the
16:22:37 involvement of the College of Nurses.
16:22:40 And so that it is advised that
16:22:44 the College will no longer monitor compliance
16:22:46 with recommended treatment and that her
16:22:49 condition -- her certificate would no longer
16:22:51 have conditions on it.
16:22:52 Q. Okay. And then from this
16:22:57 date, May 29th, 1998, to the time after Ms.
16:23:04 Wettlaufer's confession and ultimate
16:23:07 revocation, were there ever any other terms,
16:23:10 conditions or limitations placed on her
16:23:12 registration?
16:23:12 A. No, there weren't.
16:23:13 Q. And did the College ever
16:23:19 receive any other reports or information that
16:23:24 the member had relapsed or was incapacitated?
16:23:27 A. No, the College did not.

16:23:28 Q. The final matter for today,
16:23:42 Ms. Coghlan, if you could turn back to your
16:23:44 affidavit and turn to page 50, please, and at
16:24:12 paragraph 131 of your affidavit you refer to:
16:24:21 "In 2015, following a
16:24:23 constitutional challenge by the
16:24:24 Ontario Nurses' Association, the
16:24:26 ICRC adopted a new process for
16:24:28 accepting Undertakings from
16:24:29 members."
16:24:30 So was this process of
16:24:35 undertakings part of the process before 2015?
16:24:37 A. No, it wasn't.
16:24:38 Q. Okay, and so can you explain
16:24:39 what the undertaking process is that the
16:24:42 College now has in place?
16:24:44 A. So this process acknowledges
16:24:47 that the label of "incapacity" as defined in
16:24:55 the Code is associated with significant stigma,
16:25:00 and where there are members who pose a low risk
16:25:05 of relapse, who are stable, in treatment with
16:25:09 health care professionals who have agreed to
16:25:11 monitor the individual and to communicate with
16:25:14 the College if there are any concerns, the ICRC
16:25:19 enters into undertakings that result in all of
16:25:27 the monitoring taking place, but they do not
16:25:32 result in a finding of incapacity that is on
16:25:36 the public register.
16:25:38 Q. Okay, so in terms of the
16:25:41 monitoring, could an undertaking include the
16:25:45 same types of monitoring provisions that we saw
16:25:47 in the Fitness to Practise Order?

16:25:49 A. Yes, it could.
16:25:51 Q. Okay, but is the undertaking
16:25:52 then placed on the public register?
16:25:55 A. Any terms, limits or
16:25:57 conditions that may be in the undertaking are
16:26:01 placed on the register.
16:26:02 Q. Okay.
16:26:03 A. But there is no label of a
16:26:08 finding of incapacity.
16:26:10 Q. I see, and so when you say
16:26:13 all terms, conditions and limitations are
16:26:15 placed on the register, would those include
16:26:17 things like the requirements for urine
16:26:18 monitoring?
16:26:20 A. I'm sorry, the -- thank you
16:26:23 for helping me recall what I just said.
16:26:27 What is on the register is
16:26:30 information that is not related to health. So
16:26:37 the goal, the objective is to make sure that
16:26:44 information that is necessary to protect the
16:26:47 public is on the information -- is on the
16:26:50 register, but for example, if one of the terms
16:26:55 is that a nurse is not to have access to
16:27:02 narcotics, then that would be on the register.
16:27:07 If one of the terms is to have
16:27:13 regular monitoring by a health care
16:27:15 professional, that would not be - let's say by
16:27:19 a psychiatrist - that information would not be
16:27:21 on the register. That is treated as personal
16:27:23 health information. And again, this is in the
16:27:27 instance where there is insight and a low risk
16:27:31 of relapse and the ICRC is of the view that the

16:27:37 public can be protected through an undertaking
16:27:40 as opposed to a referral to the Fitness to
16:27:46 Practise Committee which would result in a
16:27:47 finding of incapacity.
16:27:48 Q. So in some cases, does the
16:27:53 College continue to go through the formal
16:27:57 Fitness to Practise Order process, as opposed
16:28:00 to the undertaking process?
16:28:01 A. Yes, it does.
16:28:01 Q. Okay, and that is based on an
16:28:02 assessment of what?
16:28:03 A. An assessment of risk and a
16:28:08 determination of the -- so there are criteria
16:28:15 for the appropriateness of an undertaking that
16:28:19 the ICRC uses in determining whether the
16:28:25 current state of health of an individual nurse
16:28:30 is conducive to an undertaking, and if not, if
16:28:35 their determination is that the public would be
16:28:37 best protected through a formal fitness to
16:28:41 practice process, then the nurse would go that
16:28:46 route.
16:28:46 Also, if the nurse and the
16:28:49 College are not able to come to agreement on
16:28:51 the terms of an undertaking, that would be
16:28:54 another example of when a referral would be
16:28:57 made to the Fitness to Practise Committee.
16:29:03 MS. JONES: Thank you. Madam
16:29:05 Commissioner, I note that it is
16:29:06 now 4:30. I have further
16:29:08 questions for this witness, so
16:29:10 we may wish to adjourn for the
16:29:11 day.

16:29:12 THE COMMISSIONER: How much
16:29:12 longer will you be?
16:29:14 MS. JONES: At least an hour,
16:29:16 Commissioner.
16:29:18 THE COMMISSIONER: Okay, we can
16:29:22 retire for the day then.
16:29:24 I can just remind you, Counsel,
16:29:26 that you are, under the rules,
16:29:28 allowed to lead and that may
16:29:30 sometimes speed things up.
16:29:32 MS. JONES: Thank you.
16:29:33 THE COMMISSIONER: Thank you.
16:29:33

-- Adjourned at 4:29 p.m.

REPORTER'S CERTIFICATE

We, DEANA SANTEDICOLA, RPR, CRR, CSR, Certified Shorthand Reporter, and OLIVIA ARNAUD, CSR, Certified Shorthand Reporter, do certify:

That the foregoing proceedings were taken before us at the time and place therein set forth;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by us and were thereafter transcribed;

That the foregoing is a true and correct transcript of our shorthand notes so taken.

Dated this 24th day of July, 2018.

NEESON COURT REPORTING INC.
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