

The Saskatchewan Employment Act

In the Matter of an Arbitration Pursuant to a Collective Agreement

Between:

Canadian Union of Public Employees, Local 974 (Carla Smith, Grievor),

Union

and

The Community Health Services (Saskatoon) Association Ltd.,

Employer

Before:

Anne M. Wallace, QC
Chair, Arbitration Board Panel

Dolores Douglas, Union Representative

Eric Sarauer, Employer Representative

Representing the Union:

Janice Janzen, CUPE National Representative

Representing the Employer:

Leah Schatz, QC, Counsel

Heard at:

Saskatoon, Saskatchewan – November 7 – 9, 2017

Award

I. Introduction

1. On September 19, 2016, the Canadian Union of Public Employees (“CUPE” or the “Union”) filed a grievance (the “Grievance”) on behalf of Carla Smith (“Smith” or the “Grievor”) against The Community Health Services (Saskatoon) Association Ltd. (“CHSA” or the “Employer”) with respect to termination of Smith’s employment with CHSA on September 19, 2016.
2. The Union filed the Grievance pursuant to a Collective Bargaining Agreement (the “CBA”) between the Employer and the Union in force from April 1, 2012 to March 31, 2017. The parties agree this is the relevant CBA.
3. The letter of termination dated September 19, 2016 (the “Termination Letter”) reads:

As you will recall, you received a Letter of Reprimand on March 17th, 2016 for insubordination and unacceptable behavior. Additionally, at that time, you were advised that CHSA has an expectation that staff communicate respectfully with Department Heads and other staff.

Disrespectful, aggressive behavior is a violation of the Personal Conduct Policy and will not be tolerated.

On March 21, 2016, you received a Letter of Suspension and were suspended without pay because of your action towards your Manager which violated CHSA's Harassment policy, and our Personal Conduct policy. This letter stated any future occurrence would result in termination of employment.

On September 12, 2016, September 13, 2016, and September 14, 2016, your Director received numerous complaints from several staff regarding your inappropriate actions and disrespectful behavior. These include breach of confidentiality, working outside your scope of practice, and violation of CHSA's Personal Conduct Policy.

As per CHSA's Personal Conduct Policy, CHSA is committed to cultivating an atmosphere of trust, respect, and dignity in all our relationships. Your actions are a direct violation of this policy in addition to CHSA's Harassment Policy.

CHSA will not tolerate this behavior. Effective immediately, your employment with CHSA has been terminated for cause. We request that you return any and all property that was generated or obtained during your employment with us, including any CHSA property which may include documents, handbooks, name tags, keys, security cards, etc.

All monies owing to you will be delivered via registered mail by October 6, 2016 as well as a Record of Employment.

4. Grievance states:

I / We the undersigned claim that on Sept 19/16, the employer unjustly terminated Carla Smith, and is in violation of Article 19 of the collective agreement.

Therefore I / We request that Carla Smith be made whole without loss of wages and benefits and that she be made whole including but not limited to damages. Appropriate adjustment to seniority and any other remedy under the circumstances.

5. The Employer claims it had just cause for the termination. The parties were unable to resolve the Grievance and the Union referred the Grievance to arbitration. I was appointed to chair the arbitration board (the "Board") to hear this case. The Union has appointed Dolores Douglas and the Employer has appointed Eric Sarauer.
6. At the outset, the parties acknowledged the Board has been properly constituted and that we have jurisdiction to hear and determine the Grievance. The parties also agreed to the usual order for exclusion of witnesses.
7. Janice Janzen, CUPE National Representative, represented the Union. Leah Schatz, QC, represented the Employer.
8. Employer witnesses included:
 1. Coreen Usselman, CHSA Director of Human Resources
 2. Leilani Oscaris, CHSA Receptionist and Clinical Office Assistant
 3. Jeff Lerio, CHSA Receptionist and Clinical Office Assistant
 4. Jennifer Purcon, CHSA Receptionist and Clinical Office Assistant
 5. Dorothy Griffith, CHSA Registered Nurse
 6. Marie Bruce, former CHSA Director of Support Services and Information Systems

7. Leane Bettin, MD, CHSA Family Physician

9. The Union’s only witness was Carla Smith.

II. The Evidence

10. This summary of evidence includes a summary of the evidence of the witnesses along with reference to relevant portions of the documents entered in evidence at the hearing.

11. I will deal with the credibility, reliability and relevance of the evidence in the *Analysis* section of this Award.

General	
Coreen Usselman	<p>Coreen Usselman has been employed at CHSA since 2009. She began as a receptionist and has worked as a medical steno, out of scope confidential secretary, Executive Assistant Board Secretary – Head of Secretariat Department, and Director of Support Services. Usselman is now CHSA’s Director of Human Resources (“HR”).</p> <p>CHSA operates the Saskatoon Community Clinic (the “Clinic”). The Clinic, founded in 1962, is a member owned and operated cooperative with a nine-member board of directors.</p> <p>The Clinic has two locations in Saskatoon, one on 2nd Avenue North (the “Main Clinic”) and one on 20th Street West (the “Westside Clinic”). The Clinic houses many disciplines and services including physicians, nurse practitioners, pharmacists, lab, ECG, physical therapists, occupational therapists and seniors programs.</p> <p>Carla Smith was a receptionist when Usselman started working at the Clinic in 1990. Over the years, Smith held a number of positions and worked at both Clinics. Smith retired from the Westside Clinic in 2008.</p> <p>In June 2009, Smith came back to work at the Westside Clinic as a “SWITCH” receptionist. SWITCH is the Student Wellness Initiative Towards Community Health and it is run out of the Westside Clinic. SWITCH runs Monday and Wednesday evenings from 4:40 p.m. to 8:00 pm and Saturdays from 10:00 a.m. to 2:00 p.m.. In 2010, Smith bid into a casual position at the Main Clinic. At the time of Smith’s termination, she held the position of Clinical Office Assistant (Receptionist) at the Main Clinic.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> Usselman confirmed that between the time she became Director of HR in August of 2015 and March of 2016, she had received no formal complaints about Carla Smith. There were some informal complaints about Smith and Usselman spoke to Smith about those.
Leilani Oscaris	<p>Leilani Oscaris has been a Receptionist and Clinical Office Assistant (“COA”) at CHSA for more than three years. She worked with Carla Smith.</p>

Jeff Lerio	Jeff Lerio is a fulltime Receptionist and COA at CHSA. He worked with Carla Smith.
Jennifer Purcon	Jennifer Purcon has been a Receptionist and COA at CHSA for over two years. She worked with Carla Smith.
Dorothy Griffith	Dorothy Griffith has been employed as a registered nurse at CHSA since April of 2008. She is also a certified respiratory educator. In her work, Griffith had reason to interact with Carla Smith.
Marie Bruce	<p>Marie Bruce was hired at CHSA in January of 2016 and resigned in October of 2017. She was the Director of Support Services and Information Systems. She managed the Health Records Department, the COA/Receptionists and the Information Systems Department.</p> <p>Before she came to CHSA, Bruce had over 36 years of experience in health care with a focus on health records, registration, clinical information systems and integration at the provincial, regional and private level. She was a union member for 25 years and for last eleven years was in management in out of scope positions. She worked with the Saskatoon Health Region and with E-Health Saskatchewan.</p> <p>At CHSA, Carla Smith reported to Bruce. Smith was a Receptionist. Her Job Description was Clinical Office Assistant (Receptionist), but Smith was only allowed to work receptionist duties, not COA duties. Smith could do receptionist and front desk. Smith was not authorized to do COA duties because she needed a COA diploma to do that and she did not have a diploma.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Bruce said when she was hired at CHAS in January of 2016, she worked only four days and then was away for the remainder of January and the month of February on a previously booked trip. She started fulltime at the beginning of March. • Bruce said when she started, she was not given a run down on staff members or any mandate to tighten things up and make sure policies were followed more rigorously. There was no discussion about needing to get rid of senior staff because things needed to be cleaned up. • Bruce was not aware of any issues with Smith's skills. <ul style="list-style-type: none"> I was learning their processes at the time too. I asked the staff to help me determine their processes. We were working towards standard work. There was documentation we created. I saw quickly that new staff weren't trained consistently, and developed the list so staff are trained on everything. Carla [Smith] was part of creating that list. All the staff were. In my time there, pretty much everybody took part. We have a fair amount of turnover so there's a need for casuals, there are a number of younger women on mat leaves. Everybody has had a hand in the training. • Bruce confirmed Smith was only allowed to do reception, not COA duties. Bruce couldn't say whether there are things Reception can do at Westside that they can't do at the Main Clinic. Westside Clinic Reception didn't report

	to Bruce.
Leane Bettin	Dr. Leane Bettin has been employed by CHSA as a family physician since 2006 minus a year in about 2008 where she worked someplace else. Bettin is a medical doctor.
Carla Smith	<p>Carla Smith first began working with the Saskatoon Community Clinic (CHSA) in March 1975. She retired in 2008 and came back again in 2009.</p> <p>In 1975, Smith began working in the Rose area of the Main Clinic and then in the Red area. In 1978, she went to the Westside Clinic where she worked as a medical records receptionist. At Westside, Smith did every job -- reception – medical records – looking at urine tests – pregnancy tests – cleaning and dressings - blood pressures, interviewing patients before they saw the doctor – unplugged toilets – shoveled the walk –home visits with other staff – stopped fights in the office.</p> <p>I would be asked by clients to listen to their stories and relate their stories to the doctor. On occasion, I went by myself to home visit to assess the situation to assess whether the patient had to be seen. I took patients to the hospital. I did it all.</p> <p>Then too many clients passed away in violent deaths and I couldn't take it anymore. I went back to the main clinic to reception and then to the billing department. But in those early years from 1975 to 1978, I worked in pharmacy, optical, podiatry, the lab, physio, medical records, reception. Back in the day, whoever needed help, we went into that department if we were not needed in our department.</p> <p>Smith worked in reception and billing in the Main Clinic and eventually went back to the Westside Clinic and retired from there in 2008. Smith loved working at the Clinic. As far as she knows, she got along with other staff. Her relationships were good. She left in 2008 when she lost both her parents and was overwhelmed. She just decided she needed to leave and retire.</p> <p>Before 2008, Smith never had any discipline and never had a poor performance review.</p> <p>Smith came back to work for CHSA in 2009. She had worked previously with the SWITCH program when she was at the Westside Clinic. Smith went back to see her co-workers in the summer. Cheryl [surname unknown] approached Smith and asked if Smith would work casual at SWITCH, so Smith came back and worked casual. That then turned into a fulltime job. It started as 12 hours a week and Smith thinks maybe in 2010, she was talking with Bev, the supervisor at Main Clinic where there was a casual position available. Smith wanted to go to 20 hours a week, so she wanted to apply for that job and the supervisor said, "Go ahead. I don't have to train you. You know the job." Smith then started working casual at the Main Clinic.</p> <p>So when I came back to work I also got on the board of directors and the chair was a friend of mine, so I would be over at his house with his wife and other friends and he would say, We need to get rid of all the old staff. We need new young blood in there." And I would say, "Stan, you can't say that."</p> <p>Eventually Smith moved to a fulltime Receptionist position at the Main Clinic in 2015. Smith had no discipline between 2009 and 2016. She had no bad</p>

	<p>performance reviews and was never told her performance had to improve. She was never told her attitude or behavior had to improve and no concerns or complaints were brought to her attention. No one in management ever told Smith there was a harassment complaint against her. Smith has never been involved in harassment investigation meetings. She has never received any type of conflict resolution training at clinic.</p> <p>As of November 2017, Smith was unemployed.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Smith admitted that she didn't ever have a negative or positive performance review because the Clinic doesn't do performance reviews. • Smith acknowledged that in a conversation in 2016, the Board Chair Stan Rice said they needed new blood in the Clinic. Having been on the Board, Smith is aware of Board policy that no member of the Board speaks for the Board. Smith agreed Rice was speaking on his own behalf in a private conversation in his home and the view he expressed was his view and not the Board's view. • Smith said when she came back to the Clinic in 2009, she wanted to do the COA training and management refused. When asked if it was the Employer who said no to the training, Smith said: <ul style="list-style-type: none"> Not the employer. Dr. Bettin who was part of that training, she said yes, she would do it. I talked to Trudi, the head of physio who would need to do some of the training. She said yes, and then the head of nursing said she didn't want to do it. Patrick was administrator then, but I can't remember what he said. He said we could do it if everyone was on board. • Smith acknowledged that when she said management refused to give her the training, she meant that the Department of Nursing refused. She can't remember if the Executive Director refused or if management generally refused. • Smith acknowledged that there is special training to be COA and that a COA is different than a receptionist. When counsel asked Smith to acknowledge that she knew she was not qualified to do the COA duties, Smith said: <ul style="list-style-type: none"> I had not been approved by anybody to be a COA, but if you look at my career, I had done almost everything the COA has done. • Asked again to acknowledge that she knew she didn't have the training to do the COA job, Smith acknowledged she did not have the training.
January to March, 2016	
Smith	<p>Smith had a good working relationship with Marie Bruce when Bruce first came to CHSA. Smith didn't feel any tension between them.</p> <p>Smith recalls there was a staff meeting on March 11, 2016. They didn't have regular staff meetings during Marie Bruce's time.</p> <p>When Coreen [Usselman] was supervisor for our department, she had weekly little</p>

huddles and never really had a full – I guess we had a couple of them – usually she was coming in every evening around 4 o'clock and saying phones are quiet now, let's have a chit chat.

Other than March 11, 2016, Smith thinks Bruce called only one staff meeting.

Smith doesn't remember the discussion at the meeting about the Personal Conduct Policy, but she remembers she signed the Policy because she had to do it for work and for the board of directors. Smith thinks a lot of staff had never seen it. All employees have to sign a Confidentiality Agreement. Smith signed one on August 10, 2010.

In January 2016, Smith's manager said Smith had too much overtime and that Smith had to take her overtime before she took her EDOs. Smith worked at scheduling her overtime hours through February and March.

I had to use them before March 31 so was I trying to get those out of the way.

March 17, 2016

Usselman At this time, Stan and Judy Rice were interim executive management at CHSA. The CBA and a Letter of Understanding require that all full-time Clinic employees be part of the EDO ("earned day off") program. Smith had not been taking her EDOs. In January and February of 2016, Usselman and interim executive management Judy Rice, had discussions with Smith about the need for Smith to take her EDOs. In March it was still continuing. Smith still hadn't taken her EDOs for January and February. This was taxing the budget because the EDOs are an unpaid day.

Marie Bruce, Manager of Support Services and Information Services at the time, consulted with Usselman as Director of Human Resources and Bruce decided to issue a letter of reprimand to Smith (the "Reprimand Letter"). The letter, dated March 17, 2016, reads:

The event of noncompliance to the scheduling of EDO's was reviewed with you on March 16 and 17th, 2016. According to the current collective agreement between CUPE Local #974 and the Community Health Services (Saskatoon) Associated Limited specifically the Re-arranged Work Week (or RWW) – LoU #2 all full-time union employees are required to work 18 minutes per day in addition to the regular seven and one-half (7.5) hour shift.

On numerous occasions you have clearly refused to take or schedule the required EDO's. The letter of understanding clearly indicates 'The EDO is an unpaid day' as the employee is paid the extra 18 minutes on each day worked. Accounting brought to your attention in January that you had EDOs that must be scheduled. The previous manager also brought this to your attention in January.

Expectation: To schedule per month (except July and December) and take all 10 required EDO's per year as per the collective agreement Re-arranged Work Week (RWW) – LoU #2.

This letter is notice of unacceptable performance. Not scheduling or taking EDOs causes unfairness amongst the employees, impacts morale and will jeopardize the annual budget as the extra monies paid to an employee when EDO's are not taken have not been included in the budget. As Union President you are aware that all members must follow the collective agreement. Failure to practice in accordance with departmental policy will result in discipline up to and including dismissal. Further, CHSA has an

	<p>expectation that staff communicate respectfully with Department Heads and other staff. Disrespectful, aggressive behaviour is a violation of the Personal Conduct Policy and will not be tolerated.</p> <p>Bruce and Usselman met with Smith and Shop Steward Erin Shingoose to deliver the letter of reprimand. During the meeting, Bruce went over CHSA's expectation that all staff take their EDOs in accordance with the CBA and LoU. Bruce explained there was no opting out. Smith was concerned that since EDOs were unpaid, that would impact her income. Bruce explained that full-time employees were paid for the extra 18 minutes they worked each day as they worked those days, so they had already received the money for the unpaid day.</p> <p>Smith got upset and said, "Well fuck you." Smith was upset when she said this and she said it very loudly. The comment was directed to Bruce and Usselman.</p> <p>Bruce and Usselman immediately asked for an apology. Smith was a little shocked, and said, "Well, it's not at you." Bruce said, "Well yes it is. It is at me and the organization." It was relating to Bruce, Usselman and CHSA. Smith then wrote a note (the "Apology Note"):</p> <p style="padding-left: 40px;">I apologize for my language in the meeting between Coreen Usselman & Marie Bruce & the organization.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Counsel suggested that perhaps when Marie Bruce started working at CHSA, Usselman had conversations with Bruce about things to watch for with Smith. Usselman said Bruce started in January 2016 and that Usselman was off on sick leave at the time. Bruce only worked a few days in January and then was away on vacation until March. • Usselman acknowledged that she was aware Smith had conversations about EDOs with the manager in January. Asked if she was aware the manager told Smith she needed to take her overtime hours before taking her EDOs, Usselman said no. Usselman was not aware of how many overtime hours Smith had. • Usselman said she did not know how far in advance the schedules were posted for Reception because each department is different. • Usselman confirmed that Lisa Clatney came on as Executive Director in July of 2016.
Smith	<p>Smith did manage to take her EDOs before the end of March. She thinks she took them on the 18th and the 23rd, but she is not positive.</p> <p>Smith recalls meeting with Marie Bruce on March 16.</p> <p style="padding-left: 40px;">Marie had said they were going to schedule the EDOs right away and I said OK, but is there any way we can schedule them so they are in two different pay periods so they are not all in one pay period.</p> <p style="padding-left: 40px;">On the 16th I thought I would try one more time to see if we can work it out. I walked into her office and said -- I just want to talk to you about rescheduling these dates so they're in two different pay periods. -- She said a flat no right away and I left her office.</p>

	<p>I said okay and walked out of the room. She said -- Carla come back here. -- I said I am too upset right now to talk, can we talk later. She said -- get back here. -- I said Marie, I am upset. I can't talk right now and I walked away.</p> <p>I don't think anything happened on the 17th. I don't know if that's the day she called me to a meeting with Coreen and her. ...</p> <p>She said I want a meeting with you – I said okay – I went and got Erin. We went over to the 424 building to the meeting room. She presents me with this letter of reprimand and said -- I have talked to you about this and I have told you that if I have those three days off – my paycheque – I am going to lose my apartment because I won't be able to pay my rent [crying]. -- She said I don't care, you were told to take these days and I remember saying the words "fuck you" but she interrupted me. I was so upset. In my mind I thought I was saying I have done everything you have ever asked me. I have given 120 per cent to this and I have asked for nothing all through my working career – and I am having some financial difficulties and you are adding to this. I was sure in my mind I was saying all this. I thought I was saying the association was saying "fuck you" to me. Carla was saying it to me. I right away I apologized and I wrote out the letter. I have never said that to a manager in all my years of working and I was just so upset. That's all I can say. It was wrong to say.</p> <p>Smith wrote the apology note right in the meeting.</p> <p>I was just so shocked I had sworn. I am not sure whether I apologized before she asked for the apology. We were all so shocked that the words came out of my mouth.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> Smith confirmed her earlier evidence that at the March 17 meeting, she was concerned about her financial situation and worried about not being able to pay her rent. Smith said she told those at the meeting that money was a problem. Asked if she asked for an advance, Smith said: <p>No, because it just compounds the problem because then I am short the next month – and frankly, I don't know if I didn't know or if I forgot that they could do that.</p> <p>I guess that's what I was looking for from Marie when I asked to talk about this, that it was going to be a financial hardship for me and she wasn't willing to discuss anything. The manager could have stepped up. I forgot about an advance. The manager could have talked about that. I went to family.</p> Smith said she didn't ask for a salary advance because: <p>I didn't think that was possible. She said a very blatant "No". "No, no, no." I said is there any way we can talk about the EDOs because over, ah, doing them in two different paycheques so it wasn't so much of a hardship.</p> Smith said Bruce was clear she wouldn't schedule the days in different pay periods even though Smith raised her financial situation twice. Smith agreed she didn't put forward any other options or ask for an advance.
Bruce	<p>CHSA's fiscal year end is March 31 and unscheduled EDOs have to be used by fiscal year end. Interim manager Stan Rice and Accounting had both told Bruce that Carla Smith had several unscheduled EDOs to take. They had spoken to Smith previously about this in January to ensure the EDOs were used by fiscal year end. The EDOs were still outstanding:</p> <p>I had conversations with Carla. She refused to schedule the EDOs. I gave her the option to select the days just as long as it was operationally feasible. She didn't select any days</p>

and I indicated I would have to schedule them for her. She said she didn't like them because her paycheque was smaller. I explained to her that 18 minutes worked extra every day is paid every day so according to the LoU when you take a banked day, it is a non-paid day because you are already paid for that time. One cheque is smaller, but in that four week pay period, the two cheques total to what they were getting paid before. She wasn't missing money, she was paid for it already.

Carla indicated she didn't vote for the EDOs and didn't like them and indicated that as union president she was well aware that whatever was voted by the collective membership was what was followed and that was agreed on and all members have to take the EDOs. There were no exceptions. The LoU was actually signed by Carla when the agreement was signed with the Clinic.

She flatly refused to take the EDOs. We called - Coreen and I called a meeting and gave her a letter of reprimand for insubordination. Refusing to take the EDOs as asked by Accounting, by the previous interim manager and by me and in accordance with the CBA. The letter was issued and her EDOs were scheduled to bring her up to current status before March 31, 2016.

Bruce decided to issue a reprimand instead of a letter of direction because:

In discussion with the Director of HR because she had been spoken to by accounting and by the previous manager and simply refused to cooperate in scheduling the EDOs, it was decided to do a letter of reprimand.

The Union did not grieve the reprimand.

Bruce and Usselman met with Smith and Chief Shop Steward Erin Shingoose. At the meeting they discussed the EDOs.

At the same meeting I discussed the Personal Conduct Policy to re-emphasize – I wanted to make sure that Carla understood what conduct was expected by the Clinic. We went through the letter of reprimand, and had a discussion about EDOs and personal conduct.

When told she would have them scheduled by the end of the month, and it would affect her pay, she looked directly at me and said, "Well, fuck you."

I have to say I was shocked. In 36 years [crying] working in health care or actually any place I have worked at all my life I have never been spoken to like that by another staff, co-worker or employee. I was shocked. We were in a meeting discussing these things and her response is "well, fuck you". So I stated to Carla that was unacceptable behaviour and she would need to write a letter of apology to myself and to Coreen. Carla said she didn't direct the comment to either of us, it was to the association and I said we are part of the association and she needed to write a letter of apology to the association, to Coreen and to myself.

Smith then wrote the Apology Note. Bruce gave Smith the Reprimand Letter and the meeting adjourned.

After the meeting, Usselman and Bruce discussed the situation further.

We felt that Carla's behaviour in this meeting was once again inappropriate, especially just after discussing insubordination and personal conduct.

Coreen, Stan Rice and I had a meeting and it was determined at that time that that type of behavior is not within the policy of the Clinic and that there was a decision to go a step further and provide a letter of suspension.

	<p>In cross-examination:</p> <ul style="list-style-type: none"> • Bruce confirmed she personally only had a couple of conversations with Smith about the EDOs. Accounting and the previous interim manager had conversations with Smith. Anytime Bruce broached the subject, Smith wasn't willing to schedule the EDOs. • Bruce agreed that management could just schedule the EDOs and they actually did that in March after the March 17 meeting. <ul style="list-style-type: none"> Staff have the option to pick their EDOs. I always gave them the option to select EDOs and we would schedule them if operationally feasible. • Asked if Smith asked to talk to her on March 16, Bruce said: <ul style="list-style-type: none"> Yes. I actually talked to her on the 16th. She was in my office and walked out of my office. • Asked if that meeting was to reschedule one EDO that she wanted to reschedule in March, Bruce said she didn't recall. <ul style="list-style-type: none"> We were discussing EDOs. I do not recall whether it was to deal with one or all of them. • With respect to unscheduled EDOs, Bruce said: <ul style="list-style-type: none"> The ones – she had at least two still outstanding after the 17th. There was one -- she had taken holidays and one was changed to an EDO from a holiday to make it that much less. She took a holiday day and we changed it to an EDO. • Bruce agreed that Smith was Union President during the time Bruce was dealing with her, but when the LoU with respect to EDOs was signed, Bruce wasn't at CHSA yet. • Bruce confirmed she had her first staff meeting with Reception staff on March 11, 2016. Asked when the next meeting took place, Bruce said: <ul style="list-style-type: none"> I don't know. We tried to have monthly meetings, depending on resources. The problem with meetings is we couldn't close the phones down. The Clinic didn't stop for us to have a meeting. We generally had meetings when physicians blocked out for their medical group meeting which occurred once a month and was sometimes cancelled. Any issues that arose I discussed with the staff and I sent emails out. Anything needing to be addressed before a staff meeting was sent in email and discussed with staff.
March 21, 2016	
Usselman	<p>Usselman and Stan Rice, interim executive management, met with Smith and Shingoose at 4:30 p.m. on March 21, 2016. At that meeting, Stan Rice gave Smith a letter of suspension (the "Suspension Letter"). It was necessary for Rice to attend because CHSA's process requires that the executive director be involved in any suspension or dismissal. The Suspension Letter says:</p> <p>This letter is notice of unacceptable behaviour. At a meeting to discuss for insubordination called by your Manager, Marie Bruce, on March 17th, 2016 at 3:00 p.m. with your shop steward, and the Director of Human Resources present, you were insolent in the use of abusive and disrespectful language towards your manager and the Association.</p> <p>CHSA does not condone this behaviour. Your actions are in violation of CHSA's</p>

	<p>Harassment policy, our Personal Conduct policy and contravene the essence of our collaboration efforts between staff members. Furthermore, we believe your actions undermine your manager as well as the Association.</p> <p>Therefore, you are being suspended without pay for three days; Tuesday, March 22nd, 2016; Thursday, March 24th, 2016; and Tuesday, March 29th, 2016. You are to return to work on Wednesday, March 30th, 2016 at 8:42 a.m.</p> <p>CHSA does recognize that you have provided a written letter of apology immediately after the incident. However, CHSA is committed to providing a safe work environment and has no tolerance for this type of behavior.</p> <p>This behavior will not be tolerated. Any future occurrence will result in termination of employment.</p> <p>Usselman was involved in the discussions that lead to the Suspension Letter. CHSA did not issue a letter of correction in this instance because they had already issued a letter of reprimand on March 17 after repeated meetings with Smith about Smith's failure to take her EDOs.</p>
Bruce	The Union did not grieve the suspension.
Smith	<p>Smith was not shocked that she got a letter of discipline for the swearing. That is why she didn't grieve it. She was disrespectful to management and she agreed with this discipline.</p> <p>Smith was the Union local president at this time. Through the years, she was president before, as well as vice president, secretary, and chief steward. She also served on many committees. When she was chief steward and president, Smith never saw anyone else suspended for three days.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Smith agreed that she had never seen anyone else suspended for three days, but that in her experience the Employer had disciplined employees before. Asked to acknowledge that the Employer has in fact terminated employees in the past, Smith hesitated and then said: <p style="margin-left: 40px;">I would have to say yes, because we went out on a one day strike when they terminated someone and they brought her back. They have terminated without cause.</p> • Smith said she did not remember any with cause terminations within the Union employees.
September 2016	
Usselman	<p>Marie Bruce had been away on holiday for two weeks and returned around September 10th or 11th. During the first few days after Bruce's return, a number of employees came to Bruce's office to share events in relation to Smith's behaviour while Bruce was away. There were five complaints in total.</p> <p>Bruce and Usselman called a meeting with Smith and Shingoose for September 19, 2016 at 3:30 p.m., to address the five complaints. Usselman took notes at the meeting.</p> <p>The first part of the meeting notes before the notes about the specific</p>

	<p>complaints, says:</p> <p>Prior to commencement of meeting, Marie indicated today's meeting was to review numerous complaints received over the last week. She has a duty to follow up on them. Carla this meeting has been called to address numerous complaints from multiple staff received last week regarding your actions between Aug 29 and Sept 14th, 2016.</p> <p>Carla are you familiar with the COA/Receptionist job description? C-Yes</p> <p>Do you understand the Reception specific duties in the scope of your job? C-Yes</p> <p>Do you recall meeting with Grace on Dec 21st to review your job description? c- no, but yes. Grace did review JD between telephone calls.</p> <p>Are you familiar with the Reception Training check list? C- Yes, M – Carla did bulk of creation of it. C- agreed. Carla acknowledged that she reviewed it when training a new staff (BU) – and she added some things at the end of the list.</p> <p>Is anything missing form it? C – still a work in progress. M – as far as you know, it is as complete as possible to date. C- yes.</p> <p>Carla are you familiar with the Confidentiality Agreement? C-Yes</p> <p>Personal Conduct Policy? C- Yes</p> <p>CHSA Harassment Policy? C- Yes</p> <p>[The notes reflect that before going to the list of complaints, Bruce asked Smith some questions about Dr. Szott's death. I have reproduced those notes at the appropriate place under the Second Complaint.]</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Usselman confirmed that where there is something in her notes from the meeting in quotation marks, those are exact words said at the meeting.
Bruce	<p>Bruce went on holiday for two weeks from the end of August to the beginning of September. On her first day back to work and for several days thereafter, several staff came to her office to launch complaints against Smith. Bruce spoke to each person, asked them to document the incidents and told them she would follow up. When she received the details of the complaints, she spoke to each person about each incident. She spoke to HR and to the Executive Director.</p> <p>We proceeded to an investigative meeting with Carla and the Union rep so we could get her side of story and the details of these incidents. ...</p> <p>In the meeting, first of all, I went through and wanted to validate that Carla was aware of her job duties, scope of practice and the Personal Conduct Policy, Confidentiality Agreement, Harassment Policy, Reception Training Checklist. She responded she was familiar with all of them.</p> <p>At the meeting, Bruce asked Smith if she was aware of the CHSA Harassment Policy and Smith said that she was. Records show Smith attended an anti-bullying workshop in 2011. Bruce specifically asked Smith if she was aware of Section 1.3 of the <i>Policy on Confidentiality of Client Information</i> which reads:</p> <p>Collection, Access and Use of Information: Clinic staff, students and volunteers will only collect, access, and be given access to patient information that they</p>

	<p>need-to-know to perform their job. Client information will only be used for the purposes for which it was gathered.</p> <p>Smith agreed she was aware of the policy and that provision specifically. Smith acknowledged she was aware of the <i>Personal Conduct Policy</i>.</p> <p>I asked Carla if she was aware of the <i>Personal Conduct Policy</i>. She said yes. It was also discussed previously in the meeting with the letter of reprimand and a copy presented to her then. I discussed it at my first reception staff meeting on March 11. We discussed privacy and confidentiality, the <i>Personal Conduct Policy</i> and ... minutes from that meeting show Carla attended and ...I sent out the minutes and included the <i>Personal Conduct Policy</i>. Carla is in the email.</p> <p>During the meeting, Smith never apologized for any of her behaviour. Smith did not provide any personal reasons for why she behaved the way she did.</p> <p>No, she did not. I truly believe she will not. A staff member indicated to me in April [2017] after Carla was terminated in September – a staff member asked if Carla was coming back and Carla’s response was you bet your ass I’m coming back and I’m going to make her life a living hell so that she wishes she was never born. She was referring to me.</p>
Smith	<p>After the suspension in March, 2016, the Employer never raised any concerns with Smith’s work from April to September.</p> <p>Smith was called to a meeting on September 19, but had no idea why she was called. Even when Marie Bruce said the meeting was about complaints from co-workers, Smith had no idea what the meeting was about. None of Smith’s co-workers had come to her about any issues before this. Smith didn’t feel the meeting was going to be a discipline meeting.</p>
The First Complaint	
Usselman	<p>The first complaint was from Leilani Oscaris who said Smith was bullying her. CHSA operates a paperless system. The EMR is an electronic medical charting system used in the Clinics. Staff were not supposed to communicate in the EMR. Smith had written a record in the EMR. She had written a message directed towards Oscaris in which Smith said Oscaris hadn’t done her job appropriately. The note said Smith would be speaking to Bruce about it. The note says:</p> <p>08/09/16 Leilaine you are to go into SCI if a pt doesn’t have their SHSP number on them at the time of booking. PLease complete this task and info pt of her u/s date and time I will be speaking to Marie concerning this cs</p> <p>Employees are not to put notes about another employee’s performance in the EMR. Doctors and other medical providers have access to the EMR.</p> <p>Oscaris’ sent an email to Bruce on September 8, 2016:</p> <p>I find it as a threat and I had enough of Carla when you come back I want to file a complaint - Lanie</p> <p>Bruce asked Oscaris to provide a statement. Oscaris provided a statement to elaborate on the issue:</p> <p>Just to inform you that Carla’s response to my mistake is not acceptable. I feel like bullied, threatened and it affects my behavior at work. I became unhappy and just don’t</p>

want to talk to her anymore. Even if I made a mistake for not checking the SCI for pt's health card, still that's not enough reason to threaten me especially using patient chart. Her bossy attitude made us all unhappy at the front reception. She always sees our mistake but once she made mistakes she always tells as she did not do it and never spoke to the patient. As far as I know, union protects the employees. But Carla as the president of the union causes us pain and stress at the front. Some of our co workers also experience harassment and bullying from her but they are scared of filling complaint because they are afraid to be called to the board meeting. I even cried to Grace that day of Sept 8/16 because I can't release my anger towards her and I felt that she really can do what she really wants. She needs to stop doing this to us, we all deserve some respect regardless of age, gender and race.

At the September 19, 2016 meeting, Smith knew instantly which employee Usselman and Bruce were speaking about. Smith said:

That was Lanie and I did bully her.

Usselman's notes with respect to this complaint say:

1. September 12th I reviewed an email dated Sept 8 from an in scope staff member who wanted to lodge a complaint about your continual bullying of her and other staff. This staff member felt threatened by you and wants this type of behaviour to stop. It is causing her a lot of stress. She feels other staff are also stressed by your behaviour. A formal complaint has since been received.

Carla – "that was Lanie and I did bully her". Carla said," Why didn't you finish this? I'm talking to Marie about this." Carla thought this was in an email. Marie said that it was in a patient electronic medical record (EMR) task. Marie indicated that this type of communication should not be done in a patient's record. Carla – 'oh ya'. Marie said But Carla you didn't come and speak to me. Carla acknowledged that she didn't come and speak to Marie. Marie said this is an idle threat. Carla – yes, that was an idle threat. Marie – discuss with staff about not being aggressive with each other and staff should work as a team. We all make mistakes and we need to not handle errors in a belligerent manner.

In cross-examination:

- Usselman confirmed that Oscaris' error was that she should have looked up the patient's health care number and instead she passed the information on to the next person as to what had to happen with the patient by way of a task in EMR.
- Usselman said Bruce never said anything to her about Smith trying to talk to Bruce about that note.

Oscaris

On September 8, 2016, Oscaris was on the floor that day and training someone on the shift. She was working as a COA that day. When she opened her tasks in the system, she saw a task under her name. It was dated September 7 and Smith threatened to tell Marie Bruce that Oscaris had made a mistake.

But that mistake is that I just forgot to ask for a patient's health card number. I think she is trying to intimidate me and she can do whatever she wants. We're not allowed to write anything on a patient's chart. ...

She said she was going to tell Marie about this. She can actually talk to me right away if she had any complain, but she wants to tell Marie, but that time Marie on holiday. Carla never came and said I think you made a mistake.

	<p>Smith had put the note right into the patient record.</p> <p>After reading this one, I went to Grace [Varga] because Grace was covering for Marie and I said I think she is trying to threaten me. She said don't let any other people treat you like that. She said we have a policy. You can complain. She said don't let anybody threaten you like that. I feel I was harassed and threatened and it is so hard to work with her. Every time I come to work I am afraid. I am not sure what is going to happen on the day.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Oscaris confirmed that when she sent the email to Bruce on September 8, Bruce was not at work. Oscaris did not ask Smith about the note. • Oscaris confirmed that she felt Smith's note on the chart to the effect she was going to talk to Bruce was a threat. <ul style="list-style-type: none"> This is not the only event. She is actually threatening me because she is trying to intimidate me so I can do everything she wanted. • Oscaris said she did not know whether Smith had left similar notes for others. This was the first time Smith left a note like that for her. • Oscaris said she went directly to the manager because she thought it was the right thing to do. When Bruce came back from holiday, Oscaris went to Bruce to hand in her complaint, but she had already sent Bruce an email about the matter.
Bruce	<p>With respect to Oscaris' complaint:</p> <p>This staff person was quite upset. She felt she was bullied and threatened by Carla. She was really really stressed. She was worried about coming to work. She also made a comment to me about – they were worried that Carla was Union President and Board Member and nothing would happen to her if they complained. She felt this was one of the reasons staff were reluctant to come forward. This staff person had had enough and she was tired of being in the situation and wanted something done.</p> <p>Carla told her she hadn't done the task correctly. She documented part of this complaint to Lanie in the patient's medical record. That is not the place to make that comment. It should be a personal conversation, email or be brought up with the manager. Carla also said she would be speaking to me concerning this and Lanie felt that was a threat.</p> <p>The medical record is the legal record of the person's health information and this note was workflow process and not part of the patient's treatment or health care.</p> <p>When Bruce raised this issue in the September 19 meeting, she didn't say who lodged the complaint, and Smith immediately said, "That was Lanie and I did bully her."</p> <p>I said it was inappropriate to make that type of notation in a chart and she should have come to talk to me. I said in the task in the chart it said you would come speak to me and you didn't – and she acknowledged that she didn't come and talk to me and I said what appears then in the chart as an idle threat. She indicated in the task that she was going to speak to me – that would make me believe it was an idle threat and she said, yes, it was an idle threat.</p> <p>I told her staff need to work as a team. You can't be aggressive with each other - at times people make mistakes and have to be respectful to each other and not handle</p>

	<p>things in a belligerent manner.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Bruce confirmed that Oscaris didn't actually send her the email about the September 8 incident. Oscaris came to see Bruce about the issue on September 8, 2016. Bruce asked for a written statement, Oscaris typed up her statement, printed it, signed it and gave it to Bruce the next day.
Smith	<p>When Bruce raised the issue about the note in the EMR:</p> <p>I thought it was maybe Lanie because I had written a note to Lanie saying I was going to speak to Marie concerning a task that she didn't do.</p> <p>At the meeting, Smith did not agree that she had bullied Oscaris or that she meant the note she left to be a threat.</p> <p>I know I stated at the meeting that I was telling Lanie that I was going to speak to Marie and I was giving a head's up so she could tell her side of the story. Lanie wasn't working in the department that day. She was COA outside department so I didn't have a chance to talk to her. You can't leave the fishbowl cause it's just too busy.</p> <p>Smith tried to talk to Bruce about the note:</p> <p>My recollection is this happened on Thursday. When I walked into work to do tasks for the day on the Friday, Lanie hadn't done tasks from Thursday night. I sent Lanie the task asking her to complete it and that I would talk to Marie. Marie was away Friday. She didn't work Fridays. I think she was in Monday. I can't recall whether she was in or not. Tuesday I was off for union business, so Wednesday I tried to talk to Marie while I was on my union president leave because I couldn't get away from the area.</p> <p>I did go to talk to her, but I didn't talk to her. I went to her office. I said do you have a moment, I need to talk to you about something. She said I am busy and I said can you come and talk to me when you are free, so I left it at that.</p> <p>Bruce did not come to talk to Smith.</p> <p>Asked if in the meeting she admitted that leaving the note about talking to Marie on the patient chart was not a good idea, Smith said:</p> <p>How can I – yes and no. So a doctor was tasking me back and forth on the day and Diane who was head of nursing and Marie were standing in front of my desk and I said Marie we need to find out a better way of doing this because going back and forth in patient chart – Marie and Diane had conversation in front of me saying yes there had to be a way in EMR that we could do messages back and forth with each other without it being in the chart.</p> <p>I agreed with that. Marie said to me –Carla, I'm gonna get back to you on this once I investigate it and have a chat with Karen, our IT person. And I said okay and she never got back to me, and I still don't know if they figured it out.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Asked to clarify the conversation with Bruce and Diane about how to get into EMR without being in the patient's chart, Smith said: <p>Oh well, maybe – that's not what I understood the conversation to be. What they were trying to figure out was how we could send messages back to each other on a client with it not becoming part of the chart. So this -- if I could use an example -- The doctor sends a task saying – please book the patient in tomorrow – you phone and reach the patient</p>

	<p>and they say can't come in until next week. You send it back to the doctor and the doctor sends a task that says no, I need to see them now – tell the patient they need to come in. ...</p> <p>Their discussion was how could a conversation with doctors not be part of the chart.</p> <ul style="list-style-type: none"> Smith acknowledged she knew there was concern about having conversations in the charts. <p>Marie said it to me, well, I said so what do you want me to do and she said I will get back to you.</p> Smith admitted that she continued to make comments in the charts: <p>Yes, I continued to do it. I admit to that, but all staff continued to do it because we hadn't had a directive from management.</p> Smith said as far as she was concerned communicating in the chart was not outside her scope of practice. When counsel suggested Smith knew she wasn't supposed to go into the EMR to send messages, Smith said: <p>They said they would get back to me to say how we would do it.</p> Smith insisted that in the meantime "everyone kept doing it." When counsel suggested Smith didn't wait for the manager to come back to her, Smith said: <p>Yes, I did. From their conversation to when I wrote in the chart was probably six weeks in time, maybe a month to six weeks' time. I had been waiting for her to get back to us.</p> Counsel then said, "And you just did it anyway," and Smith replied, "Yes." <p>In re-examination, Smith said the conversation between Bruce and Diane was about where in the EMR these messages between staff could be left. It wasn't about whether Smith should be going into the chart. Smith continued to leave notes in the chart where everyone had previously been doing it.</p>
The Second Complaint	
Usselman	<p>The second complaint was in relation to events that occurred when Dr. Szott, one of CHSA's physicians, passed away. The physician, who had been with CHSA for 25 years, had been away on sick and she had passed away on September 11. On September 12, a staff person overheard Smith telling a patient that Dr. Szott had passed away on the weekend. Staff had been advised not to release that information until the family had a chance to post an obituary.</p> <p>Lisa Clatney, CHSA Executive Director, sent an email to all staff including Carla Smith, at 9:54 a.m. on September 12, 2016, advising them that Dr. Szott had passed away. At 11:06 that same morning, Marie Bruce forwarded that email to her staff, including Carla Smith, with an email that says:</p> <p>Please do not pass this information on to any of Dr. Szott's patients until the family has made an announcement and the obituary is in the paper. Thank you.</p> <p>When Usselman and Bruce asked Smith about this incident, Smith said she didn't recall doing that.</p>

She also wondered how we knew she was actually talking to a patient, and the staff person who witnessed it said she had been booking an appointment for the patient over the telephone.

On September 20, 2016, the employee, Jennifer Purcon, provided Bruce with an email about the incident:

Monday morning, after you told us not to inform any patients about Drs. Szott's passing. I heard Carla telling a patient, over the phone, about her death. I heard her said, "She passed away last night" and "You can still see any doctor here in the clinic". She then continued with the booking. I can't exactly phrase what she said but those phrases what I remember clearly, because I know we were not supposed to do that until the Obituary gets published in the newspaper. She was sitting behind me that day (Reception/Membership desk) so it is not hard not to hear her because of her very loud voice as well. I then talk to Dorothy about what I heard and she advised me to let you know, unfortunately, it has been a busy day and I eventually forgot about it until you called me at Westside, Friday afternoon.

It is probably about time to speak out about the rules that Carla repeatedly violates and that her bullying other coworkers has to stop. I really feel bad especially for Dorothy because she has been repeatedly bullied by her for such a long time. Ever since I started, she has been very nice to everybody and I don't see why Carla treats her differently everyday. I have never seen anything like it in any workplace that I work in the past. When I come in to work and see her, there is just a different vibe. I used to be happy, excited and I always look forward for the next day, but the longer I stayed and the more I see the sisters fight, the bullying. Things changed, I feel scared coming in to work, feeling tense. When she is not around, it feels light, we get to laugh and joke around just a very different environment. I'm glad that something is done about the situation and hopefully things get straightened out.

Usselman's notes relevant to the Second Complaint, in the portion of the notes before the list of complaints read:

Carla did you a tell any patients about Dr. Szott's death? No, telling patients that she passed away and clinic is trying to find doctor to replace and will inform patients when a replacement doctor here. All doctors are looking after her patients but not doing CPs.

Marie – Dr. Bell is covering Dr. Szott's practice if Bell away or no appointments, then any physician who has availability.

Carla – responded that she was referring to women who want female GPs.

The second of the notes dealing with the Second Complaint say:

2. Sept 13th received a complaint from another in-scope staff regarding overhearing you telling a patient over the telephone of Dr. Szott death shortly after I instructed Reception staff working on Sept 12th not to pass this information on to any of Dr. Szott's patients until the family made an announcement and the obituary was in the paper. The obituary appeared in the paper on Sept 14.

Carla – does not recall this. 'How does the staff know that I was talking to a patient?

Marie – you were booking an appointment. Carla – I don't remember.

(Of note, Obituary was not published until September 14th and an email from Coreen was sent out to all staff about message on September 15th, 2016.)

In cross-examination:

- Usselman agreed she has no proof of who it was Smith was talking to on the phone on September 12, 2016 or whether Smith booked an appointment for

	<p>someone at that time. Usselman agreed it was unlikely Purcon could have seen what Smith was doing on the computer at the time.</p> <ul style="list-style-type: none"> • Usselman acknowledged it may have been possible for staff to have heard info about Dr. Szott’s passing before they got the email at 9:54 on the morning of September 12. • Asked if staff have access to their work email while they are on the computer, Usselman said most people open their email at the beginning of the day and they see it all day. It is a requirement of the job for employees to check email on a regular basis during the day.
Jennifer Purcon	<p>Purcon confirmed that she reported the incident about Carla Smith’s discussion with a patient and identified her September 20, 2016 email.</p> <p style="padding-left: 40px;">It was in the morning when we were informed about one of the doctors passing and I was sitting right next to Carla and she said to a patient over the phone about her death and that she passed away the other night and that the patient can still see any doctor in the clinic.</p> <p>Purcon felt this was a problem because the staff had been specifically told not to tell any patient until a letter went out to the patient. Purcon recalls getting the two emails on the morning of September 12, 2016. Marie Bruce also spoke to the staff:</p> <p style="padding-left: 40px;">It was a verbal message from our manager not to say anything. I am not entirely sure if it was after I received the first email, but there was a verbal message at reception from the manager.</p> <p>Purcon did not go to Bruce about the incident. She just sent Bruce an email. Purcon did not speak to Smith about the incident because:</p> <p style="padding-left: 40px;">I am intimidated of her and I have always been intimidated of her so I kept it to myself.</p> <p>Asked why she is intimidated, Purcon said:</p> <p style="padding-left: 40px;">The way that she talks and her personality is really strong and I just – I’m just intimidated of her.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Purcon confirmed that the staff were informed of the doctor’s passing on Monday morning, September 12. • Purcon agreed that she forgot about the incident until Marie Bruce called her. Asked what Bruce called her about, Purcon said: <ul style="list-style-type: none"> • I think it was – ah – mm – I can’t recall for sure what it was. I might have been working at West Side. I was worked at Westside at that time when she called and the conversation we talked about, I couldn’t recall for sure. I know I was working at Westside that day. • Purcon was not sure whether Bruce asked her anything specifically about Smith, but it was during a conversation with Bruce that Purcon told Bruce about the phone call. She thinks Bruce asked her to send a statement and that is why she sent the email. • Asked for further clarification about the incident, Purcon said she was

	<p>working on the membership desk, sitting right next to Smith.</p> <p>There is a cubicle and a desk right beside her. She would be behind me if we were sitting and then I would be beside her, but there is a small break for people to walk by.</p> <ul style="list-style-type: none"> • Purcon said she couldn't see Smith's computer or what she was doing on the computer, but Smith's voice is loud and she could hear what Smith was saying. Purcon doesn't know who Smith was talking to or who Smith booked the appointment for. • Purcon agreed that at the time Clinic staff could use Clinic doctors as their family doctors. Asked if it could have been another staff member Smith was talking to, Purcon said it could have been anybody. • Asked what she meant by using the word "glad" at the end of her email, Purcon said: <p>Just, well, when I was working with her, we have this other staff that, I don't know that she just treats her differently than all the others and sometimes, like with me, I don't know if that is just the way she talks, or that is how she communicated with people. Sometimes when she talks to me, I don't know if she is mad at me or that is just how it is. Whenever she does that, I think maybe that is just how she is, but it scares me sometimes because I am intimidated of her. It's just I think when I heard about the news that this happened, I kind of had a relief. I was relieved because I know that maybe there would be a difference where I work and that there would be - ah – ya - just maybe there would be a difference at work, because I would like to work in a place where I am not scared and not intimidated and feel safe.</p> • Asked if she wrote the email after Smith was terminated, Purcon said she didn't remember for sure when Smith was terminated. • Purcon didn't remember if she knew Smith had hearing loss. • Purcon agreed that she has always been intimidated by Smith, not because of any one incident. It is not just because Smith is loud. It is Smith's tone. <p>On questioning from the panel, Purcon confirmed that Marie Bruce came to the reception area on the morning of September 12 and physically told the staff about the doctor's passing and told them then not to tell patients until a letter had gone out to everybody the obituary was out. Purcon heard Smith on the phone shortly after that on the same day.</p>
Bruce	<p>Dr. Szott passed away. The Executive Director sent an email about the death.</p> <p>I forwarded the email from the ED to all my staff, including Carla, and said please do not let patients know that Dr. Szott has passed away. After I sent that email, I went and spoke to the staff to make sure they were aware of it.</p> <p>Purcon told Bruce she heard Smith talking to a patient on the phone after the staff were told not to do that. In the meeting with Smith:</p> <p>Her response was – how do you know I was talking to a patient? Jennifer indicated she was in process of booking an appointment when that comment was made. Jennifer also included in her complaint about the rules that Carla repeatedly violates and her bullying of other co-workers has to stop.</p>

	<p>In cross-examination:</p> <ul style="list-style-type: none"> • Bruce confirmed that she didn't have Purcon's complaint in writing until September 20, 2016, the day after Smith was terminated, but that she had received the complaint verbally before then. <p style="margin-left: 40px;">I was calling her about something else. When she heard my voice, it reminded her she had something to discuss with me.</p> • Bruce said that in the conversation, she did not mention other issues with Smith to Purcon. The conversation was on the Friday [September 16] and Bruce asked Purcon to put the information into writing. Purcon was then on days off and she provided the email on the following Tuesday [September 20].
Smith	<p>Smith did not tell a patient about Dr. Szott's passing:</p> <p style="margin-left: 40px;">I was talking to another staff member from 424. I am sorry I don't remember who. If she had come to me the day after, I could have remembered which staff member, but when you come – because it was – you know I can't remember which staff person – but I did talk to a staff member about Margaret's passing.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Smith said that during the investigation meeting, she told Bruce and Usselman that she was talking to another staff member. When counsel pointed out that this is not reflected in the notes of the meeting, Smith said she disputes many of the things in the notes Usselman took that day. • Smith said she did not take any notes at the meeting and while she assumed the Union rep, Erin Shingoose, took some notes, Smith did not have those notes.
The Third Complaint	
Usselman	<p>The third complaint involved the creation of a lab requisition. Smith had gone into the EMR and ticked off the tests in the EMR for a patient to have some lab work done.</p> <p style="margin-left: 40px;">We had heard about creation of it and Marie had gone into the EMR. It leaves a fingerprint whenever you are working in EMR. It leaves a fingerprint of when they were there and what part they looked at or worked in.</p> <p>The information came from Oscaris who, during the week of August 29, 2016, had observed something. Oscaris' note to Bruce about this says:</p> <p style="margin-left: 40px;">On the week of Aug 29/16. I saw Carla handing out a requisition to patient that she did herself. I saw her ticking the box. I did not get the name of the patient. She even asked me if she's doing it right and I told her "I don't know because we're not allowed to do requisition for patient, I am only doing it when I'm working as COA and just for urine Stat. FYI because I know we're not supposed to do that.</p> <p>This complaint was a problem because requisitions are not within the scope of Smith's position. Requisitions are ordered by the physician or any registered nurses. Bruce found the lab requisition and she and Usselman reviewed it. The fingerprint that is left in the EMR shows Carla Smith created the lab requisition</p>

on August 29, 2016. It shows Smith entering the system and 4:34 p.m. and completing the task. It shows Smith signing off on the lab requisition at 4:36 p.m..

At the September 19 meeting,:

Part of Carla's explanation for creating the lab requisition was that it was early in the morning and there were no staff in the Rose area. The clinic is color coded. Dr. Bettin works in Rose. We also have Green and Blue areas.

There was a nurse working at that time and a COA – Clinical Office Assistant. Dr. Bettin was working in that area as well.

Usselman's notes with respect to this complaint say:

3. Sept 13th an in-scope staff member reported seeing you create a new lab requisition and check off the test(s). Carla do you recall creating this lab req? No.

Marie stated "this is not part of your job description or scope of practice" Carla said no do you remember the patient (name) Marie – stated that she has a copy of the req with her, the EMR leaves a fingerprint, and she showed Carla the req at this time. Carla – stated 'Oh, talk to Dr. Bettin about that'. Marie said we have. Marie asked Did you talk to Dr. Bettin before or after creating the lab req? Carla said that she spoke to Dr. Bettin after creating the req and giving it to the patient. M – What prompted you to create this req? Carla responded that the patient came in, and nobody was in Rose.

Marie said that this is considered fraud. Creating a lab req under physician's name without the physician's knowledge is a fraudulent act.

Carla asked if it is fraud when she is booking an ultrasound?

Marie responded that you are booking an ultrasound based on standard work for UPP. The SCC abortion lab orders are templated with the tests already selected and reception/coa are just printing the req to give to the patient. You are not selecting the lab tests by checking boxes.

Marie asked how did you know what the patient needed?

Carla's response was – patient came in and stated Dr. Bettin wants me to come for bloodwork. I'm post termination and she wants my levels done. Carla further indicated that Rose was closed.

Marie – asked how do you know what levels are? Carla responded that she knows what that means. Marie asked how do you know that is what Dr. Bettin wanted and only what she wanted? Marie said that without speaking to the physician you really do not know. And even if no one is in Rose, do you understand that you cannot complete a lab req? Marie also said that you checked with Dr. Bettin after so why wouldn't you have gone to Dr. Bettin to complete the req in the first place?

Carla stated that she understand and "I won't do it again."

Later in Usselman's notes, following a break, the following appears:

Carla indicated that she was sure that the patient who came in for bloodwork arrived at 8 am and that the nurses are not in at that time. She thinks that is why she completed the lab req.

Marie clearly indicated that a lab req can only be completed by a doctor/nurse practitioner / or an RN with a written doctors order.

	<p>In cross-examination:</p> <ul style="list-style-type: none"> • Usselman confirmed that August 29, 2016 was a Monday and that Dr. Bettin doesn't usually work at the Clinic on Mondays, but Dr. Bettin appears to have been working that day. • Usselman did not know whether the time 4:36 was when the requisition was printed.
Oscaris	<p>Oscaris wrote the email to Bruce about the August 29, 2016 issue with the lab requisition.</p> <p>That day I am working at reception with her. There is one patient, she is on the requisition of blood work or something. She is ticking those boxes for the tests, but we are not supposed to do that. She even asked me am I doing this right. I said we are not supposed to do that. I really don't know. . . .</p> <p>I sent this email to Marie. I said are we allowed to do that because she is actually doing that. When I am working on the floor, I only do requisitions for urinalysis. We need analysis right away because we need it right away. Everything is already in there, we just print it out. It's actually prepared by the doctor. I just print it out.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Oscaris confirmed that she has only worked at the Westside Clinic once and otherwise has worked at the Main Clinic. She has no idea whether there are different requisitions at the Westside Clinic. • Oscaris confirmed she did not actually look at which boxes Smith checked off on the requisition because she knew they weren't supposed to be doing that. Smith checked a few boxes.
Bruce	<p>A staff member brought to my attention that while I was gone, Carla was handing out a requisition to a patient - that she observed her actually selecting the lab tests that needed to be completed, which is out of scope for receptionists. Carla asked Lanie if she was doing it right and Lanie indicated she didn't know because they weren't allowed to do requisitions for a patient.</p> <p>If someone is a COA, which Smith is not, there are times when they are instructed to do a urine test. They might complete that specific one. The doctor might have ordered it verbally or the nurse.</p> <p>There is an audit trail in the EMR. Every single item created edited or deleted is recorded. The screen in evidence shows that Carla Smith created the requisition, not a physician. Smith created it under the name of Dr. Bettin.</p> <p>With respect to the lab work, Carla didn't think there were any nurses at that time. It was in the morning. There was no nurse. I had a copy of the lab req and when it was created and it was created at 16:35 in the afternoon and there was a nurse and a COA in Rose at that time Even if there was no nurse, it could have been done by a nurse from another area. I indicated a lab req can only be completed by a doctor or nurse practitioner or by an RN or COA if they have a written or verbal order from the doctor.</p> <p>Bruce had checked who was working on the day in question and made a note with the information she found out:</p> <p>That is when I checked to see if anyone was working on Rose when Carla did this. I</p>

	<p>asked Carla why she didn't speak to Dr. Bettin and I asked if she knew what tests Dr. Bettin had done. The patient had indicated something to Carla and Carla selected the tests in accordance with what the patient told her she thought the doctor wanted. Dr. Bettin was working that day, Dorothy [the RN] was working and Tina the COA was there until 5.</p> <p>The formalized UPP process does not say a Receptionist can do a requisition.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Bruce confirmed that she received the note about the requisition from Oscaris during the first week after her return from vacation. Oscaris came to see Bruce to report the incident on September 12. Oscaris typed up what happened and printed it and signed it. • Bruce confirmed that the history in the EMR shows that Bruce created the requisition, saved it, opened it again and either modified it or looked at it and saved it again. • Bruce confirmed that Dr. Bettin doesn't normally work on Mondays but sometimes the doctors switch days. Sometimes Dr. Bettin has UPP surgeries on Mondays. • Bruce confirmed that she made a note at the time when she checked to see who was working on August 29. Dr. Bettin was working as were Dorothy and Tina.
Bettin	<p>Dr. Bettin could not confirm from looking at the requisition whether she was the person who prepared it, but the requisition has her name on it as the doctor for this patient.</p> <p>The usual process for lab requisitions is that the physician or nurse practitioner crafts the requisition and gives it to the patient.</p> <p style="padding-left: 40px;">We do have some processes where a nurse or COA can create and print a lab requisition on your behalf using pre-made templates and there are protocols around those specific circumstances.</p> <p style="padding-left: 40px;">What I mean by templates. I personally did create templates. I would have created them. They are in the computer. You just select them and choose the appropriate template.</p> <p>There is no template in the computer for "BHCG (Quantitative – Level)" which is the test checked on the requisition in question. This requisition is dated August 29, 2016 and it would have been created that day.</p> <p>Dr. Bettin does not recall instructing Carla Smith to create a requisition. Dr. Bettin has never instructed Carla Smith to create a requisition.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Dr. Bettin confirmed she never doubted Smith's ability to do her job. • Dr. Bettin could not estimate how many UPP clients she dealt with over the years. • Dr. Bettin confirmed the lab work in the requisition was lab work she needed

	<p>for this patient.</p> <ul style="list-style-type: none"> • Asked if she told Smith this after the fact, Bettin said: <ul style="list-style-type: none"> I don't remember exactly what she said, but it was a patient we had been trying to track down to follow up. I was pleased we got a hold of this patient and happy the lab work was being done. • Dr. Bettin confirmed that Smith did not order any unnecessary tests. • Dr. Bettin confirmed that to her knowledge Smith has never done a requisition like this for her before. <p>In re-examination, Dr. Bettin confirmed that while she needed the lab work for the patient, it was not within Smith's scope of practice to order the lab work and the requisition had to be ordered by the doctor or nurse practitioner.</p>
<p>Carla Smith</p>	<p>As of January 2016, Smith occupied the position of Receptionist/COA. She doesn't think anyone ever told her she was only allowed to do the duties of the front desk.</p> <p>The doctors would send us tasks and we would look at them and think, well that is a nursing task, and we would send it to a nurse and they would send it back to us and say they are too busy. They would just say they were busy and ask us to do it. Doctors would also send us tasks. I remember one time, Lanie alluded to it, that I sent a task to a doctor saying the patient would like to have bloodwork done before the appointment and the doctor sent me back a requisition with nothing on it. I sent it back to him to fill out and he sends me back a note with not so many choice words about how the computer system was going to be the death of him and could I please fill it out for him.</p> <p>The Reception/COA duties have changed over the years. Years back there was only reception. Then management said they had to have COAs in the clinic, which nobody was opposed to.</p> <p>So they were training the receptionists to become COAs if you didn't have that certificate. I came in on the tail end of that and asked to be trained and management refused. They slashed the reception job duties and put COA up there and added some more duties.</p> <p>Smith helped to create the job description, but it has changed over time.</p> <p>Smith had never seen CHSA's Standard Operating Procedure for Booking UPP Patients before the hearing. She believes it must have been created after she was terminated. At the time Smith was terminated, the staff used a document headed "Receptionist Booking UPP patients" which Smith and her sister Diane created to help other receptionists. That document was updated periodically and is virtually identical to the Standard Operating Procedure document.</p> <p>Smith acknowledged creating the lab requisition. Asked why she didn't speak to Dr. Bettin about this, Smith said:</p> <p>She was not at work and I forgot to talk to her. She wasn't at work. I mean, the patient came in in the morning on a Monday morning because Dr. Bettin doesn't work on Mondays. The patient had already been down to the lab to have blood work but didn't have a lab requisition, so they sent her up to us. It was 8 am. No other staff besides myself and my co-worker were in Rose that I am aware of. The patient was upset in front of me, weepy. She keeps on telling me she is going to be fired from work because she</p>

has missed so much work. She tells me what blood tests she needs.

I know those are the tests she needs because of Dr. Bettin's inservices to train staff. There were no nurses until 8:45. The COAs came in at 8:30. This was eight o'clock and she need to get back to work. So I printed off the requisition and gave it to her feeling that Dr. Bettin would not be upset with me for doing it.

With respect to the EMR information in evidence:

I have looked at this many times and this is the one I printed out. I admit it. But when you look at it, it says 4 in afternoon. I did it at 8 in the morning. I don't understand who changed the time on it. I printed it out at 8 in the morning.

Smith acknowledges that issuing lab requisitions is not part of her job description.

In cross-examination:

- Counsel asked Smith to clarify her evidence that Dr. Bettin suggested that before an appointment is made there needs to be lab work or ultrasound. Smith said:

No, it's not before an appointment is made. It is before the person comes in for the appointment. The appointment is made when the patient calls. We book the appointment right away, book the ultrasound right away, print off the lab work, book the ultrasound and then, ah, when the ultrasound is done they come for the blood work the same day so it is all done for the appointment date which is later.

- Confronted with the EMR record showing Smith was in the system doing the requisition between 4:00 p.m. and 5:00 p.m. on August 29, Smith said:

I do dispute that. I know I printed that off at approximately 8 in the morning. Did I go in later in the day again, I can't remember that. That patient was in the office before there was other staff in the building.

- Smith maintained that someone went in and changed the record to show Smith was in the system in the afternoon. Counsel suggested that it isn't possible to get into the EMR and change information. Smith said:

I am questioning why you would put into evidence the 4 o'clock one and not the 8 o'clock one.

- Counsel suggested there is no entry for 8 o'clock. Smith said:

I can't go into the EMR – I don't have access.

- Smith admitted she should not have done the lab requisition. Counsel then asked, if it was 8 o'clock, hypothetically, and Smith was not authorized to do it, why she did not wait for a nurse. Smith said:

The patient was upset. She was missing work, had gone through a lot. Going through this procedure is a hard thing for a woman. The doctor told her she needed this done. I didn't want to make it hard for her. Dr. Bettin is so thorough, I am amazed she missed this. If she had it ready, I would have just printed it off. I marked it and printed it off, but I did it at 8 in the morning because that was when the patient came in. She was late for work. She had to get back to work. She was upset.

- Smith acknowledged that nowhere in the procedures for UPP patients does it say the receptionist should do the lab requisitions.

	<p>No, it doesn't but we were always doing them.</p> <ul style="list-style-type: none"> • Counsel said, "It does not say on this document that you should complete the requisition." Smith said, "No it doesn't." <p>In re-examination, Smith said she was not sure whether the EMR record in evidence was for the same patient for whom she completed the requisition at 8 a.m. on August 29. The record could be for a different patient.</p>
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The Fourth Complaint

Usselman	<p>The fourth incident was about disrespectful behaviour. Another of Smith's co-workers, Jeff Lerio, came forward. He said Smith was very angry with him regarding performing a task. Lerio's written explanation of what occurred says:</p> <p style="padding-left: 40px;">I am writing to report an event that occurred last September 09, 2016.</p> <p style="padding-left: 40px;">It involves my co-worker, Ms. Carla. She has been breaching company personal conduct policy by doing inappropriate behavior. It happens when I'm at the front desk (greeter 2) and she was in the back desk (phone1). That time there were no patient and no phone ringing, so I do some task under Dorothy Blondeu because that's what they teach me to do. There was a task that you need to I [sic] identify it is a WCB, SGI etc. I ask Dianne to help me how to do those task and Dianne help me. She teaches me, printed the form for me, and then I faxed it. The time passes by suddenly Carla asking about what happened to the task. I told her that I faxed it and completed it. Then she got angry because she said that that task might still not be complete because it is under Dr. Ibrahim task. Then I saw her do some action that represent she is angry. That time I felt that I don't want to do task because I'm afraid that I might go wrong again.</p> <p style="padding-left: 40px;">I respect her and my other co-worker very much because they work at the Community Clinic for how many years. I hope that you look into this matter.</p> <p>When Usselman and Bruce asked Smith about this incident at the September 19 meeting:</p> <p style="padding-left: 40px;">Carla knew it was Jeff. She said that was Jeff and that she was always angry at Jeff because he doesn't know his work and she also said she won't deal with Jeff.</p> <p>Usselman's notes from the September 19 meeting say:</p> <p style="padding-left: 40px;">4. Sept 14th in-scope reported disrespectful behaviour from Carla when she became very angry regarding a task.</p> <p style="padding-left: 40px;">Carla notes that was Jeff. "I'm always angry at Jeff. He does not know his work at all." Marie responded "well he does. He is new. Does not know everything."</p> <p style="padding-left: 40px;">Carla stated "will not deal with Jeff."</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Usselman confirmed that Smith admitted she was angry with Jeff Lerio. • Usselman confirmed that all employees help to train new hires and agreed that Smith would have helped to train Lerio. Nobody is appointed to be the primary trainer. • Usselman confirmed that Lerio's probation was extended because of a communication issue due to language issues. She could not say how long the extension was without looking at the records.
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<p>Lerio</p>	<p>Lerio recalls making a complaint against Carla Smith in September 2016. He confirmed his written statement sets out what happened.</p> <p>That time I am at front reception and at that time there is no, like there is no patients or no calls. If there is no calls or no patients checking in, I can help with the tasks. So that time I decided to do some tasks and that task is to – one that it needs to identify which if it is WCB or SGI one so I don't know what to do, so I asked co-worker Dianne to help me and she teach me how to do it.</p> <p>She printed those forms for me and helped me do the task. A few minutes passed. Carla ask about that task. I told her that I completed it and then she suddenly get angry with me. So, um, so, um, and then I saw her do some actions. She was holding paper and she did like this [slammed it down but did not hit the table]. I feel if I do more tasks, she get angry again.</p> <p>Lerio doesn't remember if Smith's voice was loud, but he felt she was angry with him because of her tone and her actions.</p> <p>Lerio told Marie Bruce what happened and Bruce asked Lerio to provide her with an email about what happened.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Asked if Smith threw the papers down, Lerio demonstrated a downward motion, just touching the table, not a slam. • Lerio said he had never seen Smith do that before. He had only been at the job a few months. • Lerio said Smith didn't say she was angry, but he knew by the tone of her voice that she was angry. Lerio didn't know whether Smith was frustrated. • Lerio agreed that Smith was a good teacher when she was training him. • Lerio confirmed that he understood his mistake to be that he had done something under Dr. Ibrahim's tasks. • Lerio denied that anyone ever told him he should go to Bruce if he had issues with Smith. He went to Bruce because he knew that if he had any problems at work, he could talk to his manager. He felt comfortable going to Bruce.
<p>Bruce</p>	<p>The next thing I investigated was a conversation with a staff person who felt Carla was breaching the Personal Conduct Policy. He felt her behaviour – she was angry in her actions - and he was very intimidated. Jeff was a newer staff member and there is a great amount of information and processes to learn. There are training checklists, but lots of things that don't come up very often and training takes a couple of weeks and even then there will be things that come up later. ...He was intimidated by Carla and felt uncomfortable asking her anything.</p> <p>Lerio brought the incident about the task to Bruce's attention.</p> <p>In the September 19 meeting:</p> <p>I raised that with her. I didn't indicate who I was talking about. I said an in scope reported disrespectful behaviour, that she became very angry regarding a task. Carla noted it was Jeff, even though I didn't say it was Jeff and she indicated she is always angry at Jeff. He doesn't know his work at all. My response was -- well he does know his work, but he</p>

	is new and he doesn't know everything yet. Carla's response to that was she will not deal with Jeff.
Smith	At the September 19 meeting, Smith admitted she knew the staff person in question was Jeff Lerio and that she became frustrated with Lerio on occasion. Smith denies saying she was always angry with Lerio because she was not always angry with him. She denies saying that she would not deal with Lerio.
The Fifth Complaint	
Usselman	<p>The fifth complaint had to do with the Deputy Director of Nursing, Dorothy Griffith, who lodged a complaint with Bruce about Smith's aggressive behaviour towards her. Griffith sent Bruce an email about Smith on September 14, 2016:</p> <p>I didn't appreciate the tone or the message delivered by Carla Smith this afternoon. She marched over to see me about this pt. & told me that Dr. Bettin won't see UPP patients unless all their bloodwork & US's are done & in the EMR. She informed me I made a mistake in talking to the Sexual Health Clinic earlier in the day. I asked if she wanted to change the appointment then, she said no "I'm not going to change the appt, the Sexual Health Clinic made the app't, look at her age." I had already tasked Dr. Bettin to ask her whether she still wanted to see the pt. or wait until the results were all in. Carla was very abrupt & aggressive in her manner, she was wanting to inform me of "my mistake" so "I wouldn't make another mistake like it again."</p> <p>Besides being very rude (felt like I was being scolded), I don't understand why she was in this chart. There was no task to Reception at the time of our interaction.</p> <p>At the September 19 meeting, Smith explained the process the Clinic follows with regards to patients with an unplanned pregnancy. Smith said there wasn't a task for her to be checking, but the doctor requires that, before booking an appointment, the reception staff make sure the ultra-sound and lab work are available. Smith acknowledged that she was rude and aggressive with Griffith.</p> <p>Usselman's notes from the September 19 meeting say:</p> <p>5. September 14th the Deputy Director of Nursing has also lodged a complaint regarding your actions towards here. She felt you were very abrupt and aggressive in manner. This staff member felt Carla was rude and had no reason to be in the patient's chart that was being discussed. Dorothy felt that Carla scolded her and indicated that she was not doing her job.</p> <p>Marie inquired of Carla "can you explain why you were in this patient's chart?"</p> <p>Carla responded that she checks to make sure lab and u/s are back before patient is seen by physician.</p> <p>Marie asked ' did you havea [sic] task on that patient?</p> <p>Carla – said, 'there was. I'm sure there was'.</p> <p>Marie indicated there was a task for an u/s but not lab. Lab work wasn't ordered here. Sexual Health ordered the lab work.</p> <p>Carla – said that the Sexual Health Centre called to book this patient. None that she did not receive the call. Another staff person did. (Carla could not recall who that was). Carla said that she indicated to the person who had taken the call that 'we are to do bloodwork and Sexual Health is to book the u/s.</p> <p>Marie – asked why were you in the patients [sic] chart looking for lab work?</p>

	<p>Carla responded that reception gets tasks from Dr. Bettin for lab and u/s results.</p> <p>Marie asked if Dr. Bettin sent you a task on this patient? Carla said no. Carla stated, 'all this week, UPPS are booked. Today she goes into those booked for tomorrow to check if all their lab and ultrasound results are received. If you don't Leane send you a task'.</p> <p>Marie indicated this is not in your job description. This is not in the UPP standard process and you were not instructed to do this by Dr. Bettin for another staff person. Therefore, you had no reason to be in the patient's chart.</p> <p>Carla said that she wasn't in the patients [sic] chart, she was just at lab. Marie notes that if you are looking into the lab then you are in the patients [sic] chart. Carla responded that she wasn't reading it but she was just looking at it.</p> <p>Carla further indicated that another receptionist phoned the patient (Diane). The patient was a minor and no one wrote it was okay to phone this number. Carla indicated that she wasn't going to phone the patient.</p> <p>Marie stated that this should be done at Nursing.</p> <p>Carla said that if Mardi (Rose) was here Mardi would do it.</p> <p>Marie indicated that any nurse covering would be responsible for doing this.</p> <p>Marie said that she has reviewed the UPP process and this isn't in there.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Usselman confirmed that in the meeting Smith admitted to being aggressive with Griffiths, but agreed there is nothing in the meeting minutes about that. • Asked if management was more concerned about Smith being in the chart than with Smith's behaviour, Usselman said: <p style="margin-left: 40px;">Management was concerned about both issues. Not having a task and going into a patient's chart is not in the scope of her position. There was no task for her to be in there.</p>
<p>Dorothy Griffith</p>	<p>Griffith confirmed her email to Marie Bruce on September 14, 2016 and the incident referred to in the email.</p> <p>I was working in the Rose area. ...It was afternoon and I was sitting at the nursing desk and the nursing desk is situated in the middle of the whole Rose waiting room. Carla came over to me and was scolding me for something to do with a UPP patient about my interaction with the Sexual Health Clinic that day and an appointment the patient had booked for the following day with Dr. Bettin.</p> <p>What was running through my head at the time was how do you know anything about this because I hadn't talked to her about that patient's care and she was saying that she wanted to point out my mistake so I didn't do it again and I was thinking I didn't make a mistake and how is it you are involved in this.</p> <p>I was confused why she was talking to me about this patient. I said I talked to the Sexual Health Clinic earlier and I had talked to Dr. Bettin about the patient's appointment tomorrow – and I had already tasked Dr. Bettin about the patient's appointment tomorrow and I didn't understand what her issue was and why she was in the patient's chart.</p> <p>I asked her if there was a task on the patient and she said no there was no task. I didn't understand why she scolded me or her involvement in the story or why she was in the chart.</p> <p>It was a public setting and I didn't appreciate being talked down to in a public way. It was</p>

unprofessional and very inappropriate and I was pretty steaming mad at the moment so I took a couple of deep breaths and carried on with the day. It couldn't get it addressed in the moment.

I emailed Marie the following day. I would have talked to her about it after I sent it.

Griffith also provided Bruce with a copy of the email with her signature on it.

Griffith was shocked that Smith went into the patient's record because:

...we have a confidentiality policy at the clinic that says you can only be in a patient's chart when you need to be in it. Otherwise it was hands off.

I was confused about what she was talking about and I asked if there was a task on this chart - What you say doesn't make sense. Did you have a task and she said no. Then in my head I said then why are you in the chart. That was what I emailed and discussed with Marie – the rude behaviour and why was she in this chart. If there was a legitimate reason, I didn't know what it was and I couldn't imagine what it was.

In cross-examination:

- Griffith said in her experience it is not normal for Reception or COAs to check patient files to make sure blood work and ultrasounds are done prior to an appointment.

If you are in a clinical office assistant, you may need to be in the chart. If you are the receptionist, I would say no. That is an important distinction.

- Asked if her biggest complaint was the tone and message from Smith. Griffith said:

No, I had two issues - her tone and her message the way she delivered the message and her being in a confidential file without a task. A task would be the only legitimate reason for her to be in the chart. She said no, she had no task.

- Asked how she would characterize Smith's tone, Griffith said:

I felt I was being scolded like I was a five year old child in a public setting with patients in the waiting room.

- Griffith agreed that when this first happened, she was upset. Asked if she went back to Smith after she calmed down to find out what Smith had meant, Griffith said:

No, I did not. It happened in the middle of the afternoon and my day was sufficiently busy that it wasn't possible. I wouldn't have felt comfortable talking to her directly, so I went to the supervisor.

- Asked what she meant when she said she had seen Smith in action for years, Griffith said:

My interpretation of her behaviour with other people – co-workers or patients – would be the same abrupt, sometimes loud, aggressive behavior. There was a time when I was a supervisor of nursing and I have had other staff in my department and staff from reception coming to me with complaints.

- Asked if anything was done about those complaints, Griffith said:

I wouldn't know that. I have reported anything significant over the years to the various supervisors. What became of that, I don't know.

	<p>In re-examination, Griffith confirmed that the issues she took to others occurred when she was director of nursing which was more than two years previously. If Smith was disciplined for any of those incidents, the discipline would not likely be on her file because the CBA has an 18 month sunset clause in Article 19.06.</p>
<p>Bruce</p>	<p>I had communication from Dorothy about Carla marching over to her about a specific patient and informing Dorothy she made a mistake. There was a conversation between them and Carla misunderstood. The lab work was done at the Sexual Health Clinic and not the Community Clinic. Dorothy asked why Carla was in the patient's record because we are to go into the record only on a need to know basis. There was no task assigned to reception to go into the lab work of this patient. She [Dorothy] felt she [Smith] was being very rude and disrespectful and that she [Dorothy] was being scolded.</p> <p>In the investigation, I first wanted Carla to explain why she was in the record – and Carla's response was that she checks to make sure lab and ultrasound results are back before the patient is seen by the physician. I asked Carla if she had a task regarding this patient. She thought there was. She was sure there was. I indicated there was only a task for ultrasound and not lab work. The lab work wasn't ordered at the clinic. It was ordered at the Sexual Health Clinic.</p> <p>Again I asked her why she was in the chart looking at lab work. Carla responded that Reception gets tasks from Dr. Bettin for lab and ultrasound results. ...</p> <p>I asked if Dr. Bettin had sent her a task and Carla said no.</p> <p>Bruce then reviewed the UPP process to show it doesn't say anywhere that reception checks lab work.</p>
<p>Smith</p>	<p>Smith does not feel she was abrupt when she approached Dorothy Griffith.</p> <p>No, I was whispering to her. Had she seen my task that I had written in the patient's chart, that I had phoned Sexual Health to make sure the patient had blood work done – and I – and I – I left a message with Sexual Health. I went for coffee and told the staff I was going for coffee and if Sexual Health called back all I wanted to know was whether the patient had her blood work done because then I could tell the nurse the patient had the work done and she could phone the provincial lab.</p> <p>When I got back from coffee, I said to the staff did Sexual Health phone and they said yes, we put it to the nurse. I ran over to the nurse and knelt down and said, whispering, did you talk to Sexual Health about the patient's blood work whether she had it done or not. And Dorothy said to me – it says here in the chart that her ultrasound is back and I had left a task in that chart saying that I had phoned, the date. I phoned Sexual Health about the blood work and put my initials on it as you are to do in every task you produce. I said I am not talking about the ultrasound, it is in her chart. Did you ask if she had her blood work done. Dr. Bettin will want the blood work done before she sees her. Then Dorothy said you can phone the patient. I said I am not phoning the patient. She is 14 or 15 years old. You will have to phone the patient – and I walked away – but I was crouched down by her desk talking to her.</p> <p>Smith had just phoned Sexual Health and asked for blood work. The reason she was in the patient's chart in the first place was:</p> <p>Ok, well, so, we have had patients booked for Dr. Bettin who have neither had ultrasound or bloodwork done before coming in for their appointment to see her. Dr. Bettin has come out and very strongly suggested to us – I won't say she yells – she strongly suggests to us that before a patient has an appointment with her, it is our job to make sure the lab work and ultrasound are there, not that we are to phone for the results, but – like – I would phone the ultrasound place to see if she came to her</p>

	<p>appointment. I would talk that to the nurse. I don't know the bloodwork.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Counsel asked Smith why she was in the patient's chart in the first place. Smith said: <p style="margin-left: 40px;">The day before the patient came in to see Dr. Bettin. All the receptionists at the desk, somebody would do it – would check to make sure both the ultrasound and blood work were in the chart so Dr. Bettin had a complete chart when the patient came in. Dr. Bettin had asked us to do that. She had come out a few times to say – where were the results and could we phone.</p> <p style="margin-left: 40px;">I never phoned the lab. I would phone the ultrasound and I would always give the task to the nurse to call the lab.</p> • Asked why she did not tell the nurse to get the tests done, Smith said: <p style="margin-left: 40px;">From what I understood, it was being done at Sexual Health. I found out after the fact – I phoned Sexual Health to find out if she had the blood work done – then if I would have received that call, I would have tasked the nurse.</p> • Counsel asked, "Why not go to the nurse in the first place?" Smith did not respond. • Counsel asked, "Why go into the record first when you only go in on a need to know basis?" Smith said: <p style="margin-left: 40px;">This was a need to know basis. Dr. Bettin had asked us to make sure the results were in the chart before she saw the patient.</p> • Counsel said, "But the nurse could do that." Smith said: <p style="margin-left: 40px;">The nurse could do that, but they always say they are too busy.</p> • Counsel said, "But that is the nurse's job." Smith said: <p style="margin-left: 40px;">I don't know that that is the nurse's job. Things have definitely changed since I left.</p> • Counsel said, "It is not in your job description." Smith said: <p style="margin-left: 40px;">I don't know. I was asked by the doctor to do something. I was following doctor's orders.</p>
The Termination	
Bruce	After the discussion with Marie Bruce at the meeting, Smith asked Bruce, "Are you terminating me?" Bruce, said no, that this was an investigation. Bruce and Usselman then took a break.
Usselman	<p>The investigation drew to a close and Usselman and Bruce excused themselves from the room. They went to meet with Lisa Clatney, the Executive Director and Grace Varga the Quality Project Manager at that time. Bruce and Usselman shared their findings from the investigation meeting.</p> <p>Usselman's notes from the portion of the meeting after they reviewed the five complaints say:</p> <p style="margin-left: 40px;">Marie then notes that Carla had received:</p> <p style="margin-left: 40px;">On March 17th, 201 a Letter of Reprimand.</p> <p style="margin-left: 40px;">On March 21st, a Letter of Suspension. This letter noted that further occurrence would</p>

result in termination of employment.

Carla asked, 'Are you terminating me?'"

Marie said no, is an investigation.

We requested a ten minute break and left the meeting room. Marie, Coreen, and Grace met with the Executive Director to review our findings. After consideration, it was determined that we would terminate for cause immediately. Lisa signed the termination letter.

Reconvene:

...

Coreen read the Letter of Dismissal and noted it was signed by the Executive Director. Coreen also notes that she would walk Carla off the premises after she had a chance to collect her personal belongings.

Smith had received training on confidential information and the importance of confidential information and she acknowledged in the meeting she had that training.

Smith acknowledged the conduct alleged and acknowledged she had engaged in harassment.

Smith was aware of her job description and the harassment policy. CHSA's records show that Smith attended an anti-bullying workshop on Friday November 18, 2011. Smith was also well aware of CHSA's policy on confidentiality of client information. On August 10, 2010, Smith signed the CHSA's *Confidentiality Agreement on Client Health Information*:

I, Carla Smith understand that in my position with the Saskatoon Community Clinic, I will have access to and will have disclosed to me, confidential information about clients of the Clinic. I understand that all client information is confidential, and that release of information must be done in accordance with the Clinic Policy on Confidentiality of Client Information, which policy I have received, read and understand.

I agree that after my employment or position with the Clinic, I will continue to keep all Clinic information strictly confidential, and I will continue to act in accordance with the Clinic Policy on Confidentiality.

CHSA has a *Personal Conduct Policy*. CHSA's records show that Smith attended a Reception Staff meeting on March 11, 2016 where Bruce discussed privacy and confidentiality and the *Personal Conduct Policy* with the Reception staff.

There is a standard protocol for the receptionists work in relation to booking patients with respect to unplanned pregnancies. This protocol was created by Marie Bruce and her staff in consultation with Dr. Bettin. Nowhere in the protocol does it say that the receptionist is permitted to do requisitions.

After discussing the matter, those presented decided to terminate Smith's employment. CHSA's practice is that when someone is terminated, the Executive Director signs the letter. Clatney signed the letter, but she was unable to attend the meeting where the letter was delivered to Smith, so Usselman delivered the letter. The Union immediately grieved the termination.

	<p>In cross-examination:</p> <ul style="list-style-type: none"> • Usselman acknowledged that she and Bruce had discussed the allegations against Smith before the September 19 meeting, but said they did not make the decision to terminate Smith’s employment before the meeting. • At the suggestion the Termination Letter was ready to go before the meeting, Usselman said: <ul style="list-style-type: none"> No, it wasn’t. We took a break and Marie and I met with Lisa and Grace and discussed findings. The decision was then made to terminate, and I went next door to my office and did up the letter. • Usselman agreed that the Employer did not follow Article 19.02 c) of the CBA requiring a suspension and union investigation before a dismissal and said the Employer used Article 19.05 which permits the Employer to bypass Articles 19.02 (a), (b) and (c) in cases of gross misconduct. • Usselman said she considered the situation to involve gross misconduct because it was a combination of abusive, disrespectful behaviour and working outside scope of practice. Usselman agreed the term “gross misconduct” was not used in the Termination Letter. • Usselman said the break when management made the decision to termination was about 15 minutes long. • Usselman said she remembers Smith asking Bruce at the meeting if Smith was going to be terminated and Bruce saying, “No, this is an investigation meeting.
<p>Bruce</p>	<p>We left the meeting room for Carla and Erin to discuss and us to discuss. We met with Grace and Lisa to review findings. After consideration it was determined we would terminate for cause. ...</p> <p>We got the letter done and reconvened. We went back into the meeting. ...</p> <p>Coreen read the letter of dismissal. She also said she would walk Carla off the premises once she had collected her things. Carla said, “Well Marie, if you were going to fire me you should have done it in the morning so I could have the day off.”</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Asked if she ever commented to staff that if they had complaints with Smith they should report them to her, Bruce said: <ul style="list-style-type: none"> No, I suggested to staff when they were bringing complaints to me that they should make the Union aware of their complaints. • Asked if, at the September 19 meeting, Smith acknowledged the allegations or denied them, Bruce said: <ul style="list-style-type: none"> As I said before, when I was describing the complaint, without telling her who, she knew who I was talking about. She acknowledged that it was Lanie and she did bully her. She didn’t deny any of them. • Bruce repeated that she told Smith at the time she was not being terminated because at that point it was an investigation.

	<ul style="list-style-type: none"> • Bruce acknowledged the notes from the meeting say they took a ten minute break, but she thought it was longer than that. • Asked if the Termination Letter was already written, Bruce said: I didn't write it. I don't recall. • Bruce said she was not aware whether Smith received a letter saying she was not allowed to be on the premises except for medical reasons. • Bruce said both Usselman and Shingoose would have heard Smith's comment, "Well Marie, if you were going to fire me you should have done it in the morning so I could have the day off." Smith said this while they were all walking out. • Asked if she ever told Smith she was too busy to talk to her, Bruce said: Staff could speak to me at any time. I had an open door policy. Unless I was going to a meeting or something and then I would make arrangements. I never refused to talk to any of my staff. Carla was in my office quite a lot discussing different things.
Smith	<p>I think just Coreen came back into the office and handed me the letter of termination and said she was going to escort me out of the building and I said am I able to get my personal things. She said yes. I went to the fish bowl and got my belongings, turned and said to Diane – I have been fired. I will be in the car – cause we car pool together. I handed Coreen the key to the Union office and left the building.</p> <p>Smith immediately grieved the termination. She believes it was important to grieve:</p> <p>Because I think that with all my other supervisors – I am not going to say I have had a wonderful relationship with every worker – there has been disagreements over the years with staff, with co-workers, but past management has always pulled us into an office and said – okay – what is going on here – how can we fix this – you guys have to work together – let's talk about this and sort things out.</p> <p>That hasn't happened – well, that just didn't happen. I knew nothing about the complaints. I was never given a chance to really tell my side of the story of the complaints. I felt that I was – that - that – my feelings – that my story didn't count in this at all.</p> <p>Smith has suffered financial hardship and emotional stress because of the termination.</p> <p>Smith wants her job back.</p> <p>I grew up as a clinic kid. My mother worked there starting in 1965. She was passionate about Medicare and lobbied in Ottawa, so yah.</p> <p>On hearing her co-workers are scared to work with her, Smith said she was totally shocked:</p> <p>Totally – I am just amazed. I mean, like, ya, I couldn't believe they were saying that.</p> <p>Smith admits she has a loud voice and a strong personality. She can see how someone might find her intimidating until they got to know her. That changes when people get to know her. Smith does not see herself as vindictive. Staff have nothing to fear if Smith comes back to work at the Clinic.</p>

Asked what she would do differently if she gets her job back, Smith said:

I have to talk to the staff and find out – and tell them that if they feel that I am not nice to them – talk to me – let’s talk it out – let’s have this conversation. I am not a vindictive person – I don’t know where they are getting that from – and I know that I cannot do the lab work – and you know – I was trying to help the patient, sorry [crying].

Smith still feels the Clinic is a good place to work. She believes in the Clinic and what it stands for.

In cross-examination:

- Smith didn’t remember saying she didn’t always have a wonderful working relationship with other workers.

I – I - I’m sorry. I don’t remember saying that, so I am not sure I understand that. I have always had a good working relationship with other employees – and why I grieved is cause I felt it was unjust.

- Counsel said, “You said, ‘I am not going to say I have had a wonderful relationship with every worker’”. Smith said:

I don’t remember that.

- Counsel said, “You said you wanted to have chance to tell your side of the story.” Smith said:

That was when I was talking about not being pulled in to be told any of this happened. My old supervisors I have had through the years, there had been maybe a misunderstanding between staff. They have pulled them in – what’s going on. I have sat in numerous meetings as a shop steward when different staff have been pulled in – or, it could be anything, you get pulled in and let’s figure this out together.

- Counsel asked, “What about the meeting of September 19 wasn’t that chance to tell your story?” Smith said:

No I didn’t, because I was threatened. I felt threatened by Marie with harassment and fraud. The first words out of her mouth is that you have committed fraud and you are going to go to jail. She implied it that I had broken the law and that this was fraud.

- Counsel said, “That is your recollection?” Smith said:

Oh yah. I am not suggesting she threatened me with jail. I am saying she implied it. I remember saying to Coreen that I waited for the police to come the next day. I waited at home for the police to come the next day.

- Smith confirmed that she did not look for work when she was first terminated. She worked for a time for an MP and an MLA. Then she went for surgery on December 14, 2016 and wasn’t able to work for two months. In January 2017, Smith’s sister was diagnosed with terminal brain cancer, so Smith stayed home to take care of her sister. She received employment insurance benefits for family care for six months. At the time of the hearing, Smith was still caring for her sister. She had an understanding with her family that if she were to return to work, they would have to take over the sister’s care. “I’m not a millionaire. I have to work.”

Oscaris	<p>The idea of Smith being reinstated causes concern for Oscaris because:</p> <p style="padding-left: 40px;">I cannot work with her anymore. I know when she comes back she is going to get back to me. That is for sure.</p> <p>Oscaris is afraid Smith will do something to her.</p> <p>In cross-examination:</p> <ul style="list-style-type: none"> • Oscaris confirmed she has not had any issues with other co-workers at the Clinic and does not get frustrated with others. <p style="padding-left: 40px;">I am such a happy person when I am at work.</p> • Asked for an example of what she thought Smith might do to her if Smith was reinstated, Oscaris said: <p style="padding-left: 40px;">I am the only one who actually filed an actual complaint. When she was fired I was hearing something that it was because of me that is what she is telling everyone, so if you are on my shoe, you think she is going to get back after me. I heard from her sisters – her sisters are also working at the same area – and they are blaming me for that.</p>
Lerio	<p>Lerio would not be happy with Smith if she came back to the Clinic because he is afraid of her. He is afraid of her because of what happened to him. He said, “It affects me,” and then began to cry.</p> <p>In cross-examination, asked if he could work with Smith again if reinstated, Lerio said no.</p>
Purcon	<p>Asked how she would feel if Smith was brought back to work, Purcon said:</p> <p style="padding-left: 40px;">I think, for me, because I am intimidated of her, it was just a different environment while working with her, so I think it would be best if I would not be working with her. Ya, I just feel negative every time. Sometimes at work try to get a laugh and have some fun because of stress of work. Sometimes would be too loud and she would tell us I can’t hear, you guys are so loud, so we try to just not have much of a fun as we should sometimes – and ya – it’s just a different feel.</p>
Griffith	<p>With respect to possible reinstatement of Smith, Griffith said:</p> <p style="padding-left: 40px;">I don’t want to work with Carla. I don’t want to have anything to do with her. I have seen her in action with other patients and with other staff for a number of years. I don’t have any confidence that her behaviour in the future would be different. I would be worried about some kind of repercussion, subtle or otherwise. I don’t trust her and I would not feel comfortable around her. Reception and nursing are linked very closely and that is too close an association for my liking.</p>

III. The Collective Agreement and Employer Policy

12. Article 19 of the CBA reads:

ARTICLE 19 – REPRIMAND, SUSPENSION AND DISMISSAL

Preamble and Progressive Discipline

Progressive Discipline

The Union and the Employer agree that the principles of “Progressive Discipline” will be followed in addressing issues of work performance.

- 19.01 A Shop Steward must be present during Step (a), (b) and (c) of 19.02. An employee may request of Local #974 that a Shop Steward not attend at Step (a) of 19.02. The employee must present a release signed by Local #974 before meeting with the Employer at Step (a) of 19.02.
- 19.02 In cases where the work performance of an employee is unsatisfactory to the Employer the following steps must be followed:
- a) Record of Correction
 The **Director** will discuss the incident or particulars of the work performance which led to the dissatisfaction with the employee in a private place. In the case of a single incident the **Director** will meet with the employee within fourteen (14) days of the occurrence of the incident.

 In the event the incident results in the **Director** giving the employee a correction, the correction, including the reasons for it, will be given to the employee in a letter and the letter recorded in the employee's personnel file. If no further incident of a similar nature occurs within two (2) months, the record of correction will be removed from the employee's personnel file within two (2) months and ten (10) days of its issuance.
 - b) Should another incident arise within two (2) months of Step (a), the **Director** will give the employee a written reprimand within ten (10) days of the incident. This reprimand shall include particulars of the work performance which led to dissatisfaction and shall be given in a private place. A copy of the reprimand will be sent to the Union and the employee. The Employer's copy shall be signed by the **Director** and by the employee, to indicate that the employee has read it. The employee has the right to record her comments in writing.
 - c) Should a further incident be considered by the Employer to warrant dismissal, the employee shall not be dismissed, but suspended until the matter has been investigated by the Union. The suspension shall become a dismissal if a grievance has not been lodged by the Union within seven (7) working days of the effective date of such suspension.
- 19.03 Should an employee be suspended/dismissed and it is later established that such suspension/dismissal was unjust, or not in accordance with the provisions of this Agreement, she shall immediately be returned to her former status in all respects and shall be paid for any loss of earnings suffered by reason of such suspension/dismissal.
- 19.04 When an employee is dismissed, suspended or reprimanded, she shall be informed at the time in writing of the reasons for the action taken, and a copy shall be sent to the Union President at that time.
- 19.05 In cases of gross misconduct 19.02 (a, b, c) may be by-passed.
- 19.06 The record of an employee shall not be used against her at any time after eighteen (18) months following a suspension or disciplinary action, including letters of reprimand or any adverse reports. All reports concerning such actions, or written reprimands, shall be removed from the personnel file after eighteen (18) months.

13. The Employer's *Personal Conduct Policy*, in its entirety says:

CHSA is committed to cultivating an atmosphere of trust, respect, and dignity in all our relationships. This is demonstrated through a commitment to educate, enhance awareness, and encourage individuals to behave appropriately.

It is the policy of CHSA that no elected or appointed representative, staff member, contractor, physician, student, or volunteer shall display workplace behaviours that are inappropriate and/or create an unproductive atmosphere.

Everyone is expected to address workplace behaviours that are inappropriate.

Inappropriate behaviour is defined as verbal or non-verbal violation of the dignity, respect, and self-worth of another which is offensive, either mentally or emotionally, and results in humiliation, undue discomfort, elicits fear, takes unfair advantage of another staff member, or creates an adverse or unacceptable work environment.

Persons who experience distress as a result of the words or actions of another individual have the right to, and encouraged to, and will be supported in making their objections known to the individual with the expectation that the behaviour will stop.

Note: Performance management or corrective action does not constitute unacceptable behaviour unless it is delivered or expressed in a manner inconsistent with the principle of cultivating an atmosphere of trust, respect, and dignity in the workplace.

If necessary, any unresolved issues can be dealt with as outlined in procedures for Policy #26 – Harassment.

14. The Employer has a detailed *Harassment Policy* which begins with this policy statement:

Every worker is entitled to employment free of harassment. CHSA is committed to a harassment free workplace where everyone is treated with dignity and respect.

No form of harassment will be allowed in the workplace or in work-related situations. CHSA has a responsibility to ensure that steps are taken to prevent harassment and to deal with it appropriately if it occurs.

In settling grievances regarding harassment, every effort will be made to discipline and, if relocation is indicated, to relocate the harasser, not those who have been subjected to the harassment.

15. The *Harassment Policy* defines harassment under legislation and then goes on to specifically define Sexual harassment, Racial/Ethnic or Religious Harassment and Personal Harassment. Relevant here, the definition of Personal Harassment says:

Personal Harassment means any conduct, comment, or display of behaviour which abuses or humiliates someone, interferes with their work performance, or creates an intimidating or hostile work environment. It may include the following behaviours:

- verbal abuse (such as yelling, swearing, name calling)
- unwelcome gestures or touching
- actions that invade privacy or personal property
- spreading unfounded or misinformed rumours that damage people's reputations (gossip)
- refusal to communicate

Day to day managerial functions and activities such as work assignment, performance management and progressive discipline are not considered Personal Harassment under this Policy. Should, however, the behaviours listed above be employed in these functions, then the Policy comes into effect.

16. With respect to possible discipline, the *Harassment Policy* says:

It is a serious matter to violate the harassment policy or make unfounded allegations against a person. The discipline and penalties for violations and unfounded allegations will be determined by the facts of each case and severity of the violation, and will include warning, suspension, demotion, transfer or dismissal.

17. The *Harassment Policy* contains an elaborate complaint process including provision for formal investigations.

18. The Employer's *Policy on Confidentiality of Client Information* clearly states that all information regarding clients is confidential. Section 1.3 says:

Collection, Access and Use of Information: Clinic staff, students and volunteers will only collect, access, and be given access to patient information that they need-to-know to perform their job. Client information will only be used for the purposes for which it was gathered.

19. Section 1.4 makes it clear Clinic staff only have access to client information on a need-to-know basis. Section 1.8 sets out significant information on when client information can be disclosed without consent. Section 2 says that staff members who are uncertain of how to treat client information in a particular situation can and should consult their supervisors. Section 4 says that compliance with this Policy is a condition of employment. Section 5 says:

Confidentiality Agreement on Client Health Information: Staff, students, volunteers, and elected and appointed representatives are required to sign a statement acknowledging: (1) that they have received a copy of, read, and understand this policy; and, (2) that after they have left their employment or position at the Clinic they will continue to keep Clinic client information confidential.

20. The *Job Description for Clinical Office Assistant (Receptionist)* contains headings for *Core Function, Reception Duties, Special Duties, Clinical Duties, Extra Westside Duties, Qualification, Conditions of Work, Responsible to, Accountability, and Authority*. Some of the headings are relevant to this case:

Core Function:

To provide reception and clinical duties as required for physicians and other healthcare providers.

Reception Duties:

- answer telephones, switchboard and paging function
- direct all patient inquiries
- take and direct messages
- screen and prioritize patients
- assess telephone emergencies
- book appointments and procedures
- book appointments for Foot Care and other departments
- arrange referrals, ensuring the appropriate forms are completed and additional information attached
- communicate to patients any preparations needed for appointments
- Co-ordinate meetings
- Co-ordinate appointment times inside and outside the Clinic
- Co-ordinate supplies for areas i.e. paper and cartridges for fax machines, requisitions, envelopes and paper etc.
- input patient information into computer system
- book appointments using computerized scheduling system
- communicate with Health Records
- update and edit patient information
- print day sheets
- maintain prenatal list and ensure a copy is available for the weekend obstetrical call doctor
- call for charts
- ensure there is a chart for each patient prior to appointment or message taken

- return charts to health records throughout the day
- record charts in the area daily
- maintain an orderly flow of patients in a courteous manner, using discretion while being sensitive to special needs
- assess and deal with abusive or potentially abusive patients
- keep day sheets up to date and accurate
- complete day sheets before delivering to billing department
- operate office equipment, fax, photocopier, embosser, addressograph imprinters and laser printers
- facilitate emergency procedures

Special duties:

Front Desk:

- screen and direct all calls
- page overhead for staff
- retrieve message from answering service and distribute to the appropriate person or department
- greet and register new patients
- direct patients to appropriate areas
- assess and handle potential abusive or dangerous situations
- inform patients of clinic services
- update patient information
- do data entry for recall system
- prepare and input coding for billing of providers' day sheets
- handle Membership duties that consist of maintaining a database, membership mailings and membership information packages for new patients
- receipt memberships, foundation donations, non-insured medical services and reconcile cash reports
- arrange paging with answering service and handle all requests for all on call health workers
- program phones to Answering service and advise them of doctor on call rotations for evening and weekend after hours call
- deprogram from Answering service in the morning and handle messages from them
- compile forms for Meger Transportation and Doctors' Fund
- direct shipping and receiving to purchasing department
- have knowledge of staff members' schedules
- operate and balance debit machines
- do daily and monthly statistics for administration purposes as required
- facilitate emergency procedures
- assemble and maintain a supply of new charts
- assign new chart number and maintain new patient registration book
- maintain Department's Operation Manual
- delete inactive patient records

Clinical Duties:

- Soak, clean, wrap and sterilize (chemical sterilant, autoclave) all medical and surgical instruments, equipment and supplies as required
- Prepare dressing sets as required
- Prepare liquid nitrogen and wart tray each morning and as needed
- Ensure H₂O and juice available daily
- Porter clients needing assistance to and from lab, X-ray and pharmacy as required
- Porter lab specimens, EXGs, X-rays, and prescriptions to lab, X-ray, pharmacy as required
- Order and prepare pap supplies as required.
- Clean physician offices and exam rooms between clients ongoing and as needed
- Stock physician offices and exam rooms with supplies ongoing
- Distribute clean linen daily and change pillow cases weekly

- Set up clients for pap tests and adults for complete physical exams including BP, pulse, height, weight and WC, BMI and falls screening when appropriate
- Routine vital signs such as BP's, pulses, heights and weights as required
- Assist male physicians with paps and complete physicals on female clients
- Consult RN and/or physician immediately with client health concerns or abnormal value findings
- Most forms (including vision test and colour blind test). Excludes Insurance Medicals
- Assist with Minor Surgery as needed
- Instruction and technical application of 24 hour ABPM to clients as ordered by physician. Downloading data and informing physician of results when complete.
- Other duties as assigned.

Extra Westside duties:

- Needle exchange
- Urine collection including urinalysis, pregnancy test, etc.
- Spot blood sugars

IV. Positions of the Parties

A. Employer Position

21. The Employer submits that:

1. The Grievor was terminated as a result of a variety of gross misconduct which, individually and cumulatively, warranted dismissal. The misconduct included:
 - a. The Grievor performed tasks outside her job duties and improperly issued medical requisitions;
 - b. The Grievor personally harassed multiple co-workers;
 - c. The Grievor breached Clinic confidentiality and engaged in insubordination;
 - d. The Grievor inappropriately accessed confidential patient medical records.
2. The Grievor was well aware of the Employer's policies.

22. We will deal with the detail of the Employer's arguments under the appropriate headings below.

23. The Employer relies on the following authorities:

1. *Alcan Smelters & Chemicals Ltd. v. C.A.S.A.W., Local 1*, 1983 CarswellBC 2398, [1983] B.C.C.A.A.A. No. 363, 12 L.A.C. (3d) 324;
2. *U.S.W.A., Local 2894 v. Galt Metal Industries Ltd.*, 1971 CarswellOnt 922, 23 L.A.C. 33;
3. *Volvo Canada Ltd. v. U.A.W., Local 720*, 1984 CarswellINS 455, 16 L.A.C. (3d) 153;
4. *Rolland Inc. v. C.P.U., Local 310*, 1983 CarswellOnt 2471, [1983] O.L.A.A. No. 75, 12 L.A.C. (3d) 391

5. *Coca-Cola Refreshments Canada Co. and RWDSU (Morrison)*, Re, 2014 CarswellSask 828, 121 C.L.A.S. 303
6. *Royal Victoria Hospital v. O.N.A.*, 2011 CarswellOnt 8742, [2011] L.V.I. 3971-1, [2011] O.L.A.A. No. 396, 107 C.L.A.S. 277, 211 L.A.C. (4th) 363;
7. *University Health Network v. O.P.S.E.U.*, 2010 CarswellOnt 834, 100 C.L.A.S. 331;
8. *Extendicare (Canada) Inc. v. C.U.P.E., Local 2677*, 2006 CarswellAlta 1420, [2006] A.G.A.A. No. 29, 151 L.A.C. (4th) 84, 86 C.L.A.S. 37;
9. *Heartland Regional Health Authority and SEIU (Neumeier)*, Re, 2016 CarswellSask 98, 126 C.L.A.S. 71, 268 L.A.C. (4th) 109;
10. *Pictou County Health Authority v. C.U.P.E., Local 2525*, 2012 CarswellNS 287, [2012] N.S.L.A.A. No. 10, 110 C.L.A.S. 291, 218 L.A.C. (4th) 335;
11. *British Columbia Railway v. C.U.T.E., Local 6*, 1982 CarswellBC 2655, [1982] B.C.C.A.A.A. No. 527, 8 L.A.C. (3d) 233;
12. *I.B.E.W., Local 2228 v. NAV Canada*, 2004 CarswellNB 670, [2004] C.L.A.D. No. 617, 131 L.A.C. (4th) 429, 78 C.L.A.S. 433;
13. *de Havilland Inc v. CAW-Canada, Local 112*, 1999 CarswellOnt 5421, [1999] O.L.A.A. No. 767, 58 C.L.A.S. 78, 83 L.A.C. (4th) 157;
14. *A.U.P.E. v. Lethbridge Community College*, 2004 CarswellAlta 533, 2004 CarswellAlta 534, 2004 SCC 28, 2004 CSC 28, [2004] 1 S.C.R. 727;
15. *I.U.O.E., Local 870 v. Cindercrete Products Ltd.*, 2010 CarswellSask 736, [2010] S.L.A.A. No. 25, 104 C.L.A.S. 13;
16. *Cameco Corp. v. U.S.W.A., Local 8914*, 2008 CarswellSask 836, 2008 SKQB 499, 173 A.C.W.S. (3d) 1117, 179 L.A.C. (4th) 97, 327 Sask. R. 257.

B. Union Position

24. The Union submits that while some of the alleged behaviours are cause for some form of discipline, termination of employment was too harsh a penalty. We will deal with the detail of the Union's arguments under the appropriate headings below.

25. The Union relies on the following authorities:

1. *National Gypsum (Canada) Ltd. v. I.U.O.E., Locals 721 & 721B*, 1997 CarswellNS 554, 50 C.L.A.S. 144, 67 L.A.C. (4th) 360
2. *William Scott & Co. v. C.F.A.W., Local P-162*, 1976 CarswellBC 518, [1976] 2 W.L.A.C. 585, [1976] B.C.L.R.B.D. No. 98, [1977] 1 Can. L.R.B.R. 1;
3. *Air Canada v. C.A.L.E.A.*, 1981 CarswellNat 975, [1981] C.L.A.D. No. 7, 4 L.A.C. (3d) 68;
4. *Simon Fraser University v. A.U.C.E., Local 2*, 1990 CarswellBC 2019, [1990] B.C.C.A.A.A. No. 409, 17 L.A.C. (4th) 129, 20 C.L.A.S. 525;
5. Brown & Beatty, *Canadian Labour Arbitration*, 7:3612, 7:4422, 7:4428;

6. *U.N.I.T.E.-H.E.R.E., Local 75 v. Fairmont Royal York Hotel*, 2012 CarswellOnt 4830, [2012] L.V.I. 4003-2, 110 C.L.A.S. 202
7. *Veidt Enterprises Inc. v. I.A.T.S.E., Local 891*, 2011 CarswellBC 1849, [2011] B.C.C.A.A.A. No. 86, 107 C.L.A.S. 155, 209 L.A.C. (4th) 62;
8. *Tenant Hotline v. Peters*, 1983 CarswellOnt 2389, 10 L.A.C. (3d) 130.

V. The Issues

26. The parties agree that the three basic questions to be asked in a discipline case, based on *William Scott & Co. v. C.F.A.W., Local P-162*, (1976), [1977] 1 Can. L.R.B.R. 1 (B.C. L.R.B.), are:

- Has the employee given just and reasonable cause for some form of discipline?
- If so, was the discipline imposed an excessive response in all of the circumstances?
- If the discipline imposed is considered excessive, what alternative measure should be substituted as just and equitable?

27. The main issues here are:

1. Did the CHSA have just and reasonable cause for some form of discipline? Specifically:
 - a. Did Smith engage in aggressive and abusive behaviour towards Oscaris, Lerio and Griffith in violation of CHSA policy?
 - b. Did Smith disclose the fact of Dr. Szott's passing to a patient in violation of the CHSA's direction not to do so?
 - c. By creating and issuing a lab requisition, did Smith knowingly act outside her scope of practice as a Receptionist?
 - d. Did Smith enter and use CHSA's electronic medical records system for unauthorized purposes?
2. Was termination of Smith's employment an excessive response by CHSA in all the circumstances?
3. If termination was excessive, what alternative measure should be substituted as just and equitable?

VI. Analysis

A. Onus and Standard of Proof

28. The onus of proof in cases of discipline and discharge rests with the Employer. The Employer has the burden of establishing just and reasonable cause.

29. The standard of proof is the civil standard of balance of probabilities.

B. Issue #1 - Did the CHSA have just and reasonable cause for some form of discipline?

Credibility

30. Overall, we found CHSA's witnesses to be forthright and credible. They gave their evidence in a direct manner without exaggeration or embellishment. We will deal with the specifics of their evidence under the headings below.
31. We have difficulty with several aspects of Carla Smith's testimony and found her to be less than forthright. For example:
1. In her testimony, Smith twice said she had never had a poor performance review, once with respect to her original employment at the Clinic and once with respect to her employment between 2009 and March 2016. In giving this evidence, by implication, Smith suggested she had received good performance reviews. Smith then acknowledged in cross-examination that she never had any performance reviews, good or bad, because the Employer doesn't do performance reviews.
 2. When first asked to acknowledge that she knew she wasn't qualified to perform Clinical Office Assistant duties, Smith deflected from the question and said:

I had not been approved by anybody to be a COA, but if you look at my career, I had done almost everything the COA has done.

It was necessary for counsel to ask Smith a second time before Smith would acknowledge she did not have the training to do the Clinical Office Assistant job.
 3. On several occasions, when asked a question, instead of giving a direct answer, Smith gave a long explanation that didn't actually answer the question.
 4. Bruce and Usselman gave evidence about what occurred at the September 19, 2016 investigation meeting with Smith and her Union rep. Their evidence is largely corroborated by Usselman's meeting notes from that day. Smith's evidence at the hearing differs in several respects from what others have said happened at the meeting.
32. We will deal in more detail with our concerns about Smith's evidence as we address each issue.

Issue 1(a) - The First, Fourth and Fifth Complaints – Aggressive and Abusive Behaviour

33. The Employer submits Smith violated the *Personal Conduct Policy* and the *Harassment Policy* with respect to her behaviour towards her coworkers. Specifically:
1. Smith inappropriately created a message in the EMR and left a threatening message for Oscaris. When the Employer confronted Smith about this at the investigation meeting on September 19, Smith unapologetically acknowledged her misconduct and said, "That was Lanie and I did bully her."

When Marie Bruce asked Smith why she had not come to Bruce about the incident, Smith acknowledged her comment was just an idle threat.

2. Smith bullied and made threats against Jeff Lerio. When, at the September 19 meeting, the Employer asked Smith about the September 14 incident where she was angry with Lerio, Smith acknowledged this incident involved Lerio and unapologetically said, "I'm always angry at Jeff. He does not know his work at all." Smith was not Lerio's manager and regardless of how work is performed, there is a correct manner to deal with mistakes, and that does not involve becoming enraged to the point where co-workers feel intimidated.
3. On September 14, 2016, Smith was abrupt, aggressive and rude towards Dorothy Griffith with reference to the scheduling of an appointment for a patient.
4. These instances show Smith conducted herself in a manner that was personally harassing and abrasive towards a number of her co-workers. Smith's behaviour amounts to bullying because it involves persistently picking on individuals, acting towards others with a condescending attitude, demeaning, belittling and harassing, issuing hostile and threatening messages to others, threatening a person's job security, unwelcome remarks and written or verbal threats.
5. Aggressive and abusive behaviour is worthy of discipline. The allegations here are not largely in dispute. Smith has acknowledged that she bullied Oscaris. The pattern of harassment here is much more serious than some kind of momentary flare-up. The *Saskatchewan Employment Act* protects employees from harassment.
6. Smith had prior discipline for disrespectful behaviour and had been warned to be respectful in the workplace. Not only is Smith's behaviour worthy of discipline in and of itself, given that the employer had previously clearly instructed Smith to communicate with other staff in a respectful manner, Smith's behaviour also amounts to insubordination. The Employer gave Smith a clear order to be respectful, the order was given by a person in authority and Smith disobeyed the order.

34. The Union submits:

1. Smith merely left a note in the Task section of a patient chart to point out what had been done incorrectly with the patient and said that she would be talking to Marie, the manager. Smith was unable to speak to Bruce that day because Bruce did not work Fridays. Smith was away Monday and Tuesday and when she tried to speak to Bruce on Wednesday, Bruce said she was too busy and would come to find her when she had time. That did not happen. Smith acknowledged that she should not have written that note on the patient record.
2. The staff member, Lerio, said Smith became angry with him. Smith said that, yes, she did get frustrated with this co-worker from time to time as he did not seem to be catching on to his duties. Smith felt she continually had to take

time out of her work to go and help this co-worker complete his tasks. Lerio himself said Smith did not raise her voice or say she was angry. Lerio said Smith was probably more frustrated than actually angry.

3. Griffith felt Smith was rude when speaking to her and should not have been in a patient's chart. Smith testified that Dr. Bettin had previously told her that these results must be in the chart before the patient's appointment. Smith was asking Griffith if Griffith had talked to Sexual Health to find out if the results were in.
35. From time to time in the Employer's case, witnesses alluded to ongoing concerns about how Smith treated others, claiming that Smith is bossy, is a bully and violates rules. The Employer cannot rely on these vague allegations to justify discipline or termination. The only events the Employer can rely on to establish aggressive and belligerent behaviour on the part of Smith are the events the Employer relied on at the time of termination. Those include Oscaris' complaint about the message in the EMR, Lerio's complaint about Smith's angry and aggressive behaviour toward him, and Griffith's complaint about Smith's abrupt and aggressive manner.
36. While it should be obvious that aggressive and belligerent behaviour in the workplace will attract discipline, if authority is required for this proposition, Brown and Beatty, *supra*, deal with aggressive and abusive behaviour at para 7:3430:

Physically and/or verbally abusing, and acting aggressively towards others, is as deviant and unacceptable behaviour in the workplace as it is in the community at large. Assaults, harassment, and threats made in the course of a person's employment are universally regarded as being fundamentally at odds with an employer's interest in creating a positive and productive working environment, and with the health, safety, and general well-being of employees. Indeed, even where an incident occurs off premises, the imposition of discipline will be justified if the employer is able to prove that the employee's behaviour had the effect of undermining its authority, prejudicing its public image, and/or endangering the interests of other workers.
37. The First Complaint: We will begin with the First Complaint. This incident arose when the COA Oscaris forgot to ask for a patient's health card number when the patient booked an appointment. In those circumstances, Oscaris should have checked the SCI for the patient's number. Oscaris' failure to do this was a mistake which meant someone had to perform the task the next day. When Smith discovered the mistake, she placed a note directed at Oscaris on the patient's chart in the EMR and told Oscaris to complete the task. The entire note says:

Leilaine you are to go into SCI if a pt doesn't have their SHSP number on them at the time of booking. PLease complete this task and info pt of her u/s date and time I will be speaking to Marie concerning this
38. Oscaris reported this incident to Marie Bruce by email and later followed up with a statement about what occurred. Overall, there is no question Oscaris made a mistake and there is no question Smith made the notation in the patient's chart in the EMR.
39. The Employer had two concerns about this note. First, communications like this are what Bruce referred to as "workflow process" and should never take place in the patient's chart. Staff should communicate with each other about such things in

person or by email or they should speak to their manager. Secondly, Smith was threatening Oscaris.

40. At the hearing, Smith claimed she had tried to talk to Bruce about Oscaris' mistake. This claim was not put to Bruce at the hearing. Bruce's evidence is that at the September 19 meeting Smith acknowledged she had not come to Bruce about the matter and that Smith acknowledged her comment in the EMR was an idle threat. Usselman's notes from the meeting corroborate Bruce's evidence on this point. We are satisfied, on balance, that Smith did not try to speak to Bruce about the health card matter and that her notation in the EMR was intended to threaten Oscaris.
41. At the hearing, in an attempt to suggest she didn't know she shouldn't communicate with other staff in a patient's chart, Smith claimed she had been involved in a previous discussion with Bruce about staff communicating back and forth in the patient's chart. Smith claims Bruce was trying to figure out if or how staff could communicate with each other in the EMR without going into the patient's chart. Smith acknowledged that she knew Bruce was concerned about people having conversations in patients' charts, but insisted that Bruce said she would get back to Smith about the matter. In the meantime, Smith continued to make comments in patients' charts. Smith's evidence about the alleged conversation with Bruce was not put to Bruce at the hearing. There does not appear to have been any discussion about this at the September 19 meeting either. Erin Shingoose, who was the Union representative at the meeting and who attended the hearing, did not testify.
42. Oscaris very clearly testified that, "We're not allowed to write anything on a patient's chart." On all the evidence, we are satisfied Smith was well aware she should not be using a patient's chart to communicate with other staff about workplace issues.
43. Even if Smith thought it was acceptable for her to continue communicating with other staff in the patient's chart in the EMR (which we do not accept), there is a significant difference between communications back and forth with a physician about the date for a patient's appointment and leaving a threatening message for a co-worker.
44. We find it difficult to understand why Smith could not have just sent an email to Oscaris to let her know of the error and ask Oscaris to correct it. This was not some sort of transgression that would require management intervention unless it was a chronic problem. There is no evidence before us that this had ever happened before. Even if it had, then Smith should have gone to Bruce instead of threatening Oscaris in the EMR. Overall, we are satisfied Smith consciously went into the EMR and used it to write the note to Oscaris when Smith was well aware that it was not appropriate for her to put this type of communication into the patient's chart. Furthermore, Smith made the notation with the intention of intimidating and threatening Oscaris because Oscaris had made an error by not obtaining a patient's health card number.
45. Smith's behaviour on this occasion violated the *Personal Conduct Policy*. It was a verbal violation of Oscaris' dignity, respect and self-worth that was offensive because it was humiliating, threatening and caused undue discomfort and fear to Oscaris. It was misconduct worthy of some discipline both because of the message itself and because of the medium Smith used to deliver her message.

46. The Fourth Complaint: We now turn to the Fourth Complaint. Lerio's evidence was that he made a mistake in how he performed a task around identifying a case as WCB, SGI or something else. It is unclear on the evidence just precisely what Lerio's mistake was. Lerio's issue with Smith was that she became angry with him in her tone and actions, including aggressively motioning some papers towards the desk, making a slamming motion towards the desk, but not actually slamming the papers onto the desk.
47. Usselman and Bruce both testified that at the September 19 meeting, Smith immediately knew Lerio was the staff person who had complained. Both testified that Smith said she was always angry with Lerio because he doesn't know his work and that she wouldn't deal with him. Bruce testified that she told Smith that Lerio does know his job, but that he was new and didn't know everything yet. Usselman's meeting notes corroborate this testimony.
48. At the hearing, Smith did not deny the incident with Lerio. She denies she was always angry with Lerio and she denies that she said she was always angry with him. She denies saying she would not deal with Lerio. Smith claims she said she was frustrated with Lerio on occasion. It is important to note that at the hearing Smith did not at all address the specific instance Lerio reported. Lerio's credible evidence about what happened, including Smith's angry tone and her aggressive gesture, remains unchallenged. We are satisfied the incident occurred as Lerio described it. We are also satisfied that at the September 19 meeting Smith did make the comments to which Bruce and Usselman testified.
49. Smith's behaviour towards Lerio on this occasion violated the *Personal Conduct Policy*. It was disrespectful and humiliating, caused Lerio discomfort and fear, and created an unacceptable work environment. Smith's attitude towards Lerio at the September 19 meeting demonstrated lack of respect for her co-worker and an unwillingness to work with others in a cooperative way. This behaviour was misconduct worthy of some discipline.
50. The Fifth Complaint: We now turn to the Fifth Complaint insofar as it relates to Smith's behaviour towards her co-workers. We will deal with the allegation as it is relevant to Smith's access to the EMR elsewhere.
51. Dorothy Griffith testified that, on September 14, 2016, Carla Smith was abrupt and aggressive with Griffith with respect to what Smith saw as a mistake Griffith had made. Griffith says Smith came over to Griffith at the nursing desk and scolded Griffith and talked down to her. This was in a public setting. Griffith felt like a five year old being scolded in front of the patients.
52. Smith testified that she didn't think she was abrupt with Griffith. Smith said she ran over to Griffith and knelt down and, whispering, asked Griffith if she had talked to the Sexual Health Clinic about the patient's blood work. The detail of Smith's testimony on this point is in the Evidence Summary. Smith's tone in the hearing as she described her interaction with Griffith left no doubt that Smith was annoyed with Griffith during this conversation. Her scolding tone came through.

53. Usselman testified that, while there is nothing in the meeting notes about this, at the September 19 meeting, Smith acknowledged that she was rude and aggressive with Griffith. On all the evidence, we accept Griffith's version of the incident. We find it is more likely than not that Smith was abrupt and aggressive with Griffith on this occasion and that the incident occurred in a public setting at the nurse's desk. Even if Griffith had made a mistake, that did not warrant Smith behaving in a demeaning and aggressive manner.
54. Smith's behaviour towards Griffith on this occasion violated the *Personal Conduct Policy*. It was disrespectful and humiliating, caused Griffith discomfort and humiliation in a public setting, and created an unacceptable work environment.
55. In the end, within a short time, the Employer became aware that Smith engaged in at least three instances of aggressive and/or abusive behaviour towards co-workers. These behaviours not only violate the *Personal Conduct Policy*, they also violate the *Harassment Policy* because they involve both written and verbal abuse and unwelcome gestures. These behaviours were misconduct worthy of some discipline.

Issue #1(b) - The Second Complaint – Disclosure of Physician's Passing

56. The Employer submits that Smith engaged in insubordinate conduct when she disclosed the death of Dr. Szott to a patient in direct violation of her manager's instructions not to do that. This insubordination is worthy of discipline.
57. The Union submits the Employer provided neither proof as to whom Smith was speaking on the phone nor proof of who Smith booked an appointment for. This alleged incident was not reported for eight days and then, according to a written statement of September 20 (a day after Smith was terminated), it was not reported until Marie Bruce contacted the complainant.
58. In a telephone conversation on September 16, 2016, about matters unrelated to Carla Smith, Jennifer Purcon told Marie Bruce that on September 12, 2016, Smith had disclosed the fact of Dr. Szott's passing to a patient. While Purcon did not provide her written statement to Bruce until September 20, the evidence is clear that Bruce had the detail of the allegation at the September 19 meeting. How else could Bruce have even raised the issue at the meeting? We do not find it unusual that Purcon did not immediately report the incident, given her testimony that she found Smith to be intimidating. Purcon did, however, report the incident within four days, not an unreasonable period of time.
59. Purcon's evidence about this incident is that on September 12, 2016, after Bruce had told the staff not to tell patients about Dr. Szott's passing, Purcon heard Smith tell a patient that the doctor had passed away and that the patient could still see any doctor in the clinic.
60. In cross-examination of Usselman, the Union appeared to be suggesting that perhaps Smith spoke to someone about the doctor's passing before the staff were advised not to tell patients about it. While it was not entirely clear whether the telephone conversation Purcon overheard occurred before or after the email messages from Clatney and Bruce, Purcon's evidence was quite clear that Bruce came to the reception area on the morning of September 12 and told the staff not to

tell patients about the doctor's passing, and that shortly after that Purcon heard Smith on the phone telling someone of the doctor's passing and telling the person they could still see any doctor in the clinic. We are satisfied that the telephone call in question took place after Bruce told the staff not to tell patients about the doctor's passing.

61. Usselman and Bruce both testified that at the September 19 meeting, Smith's only response to Purcon's allegation was to say, "How does the staff know that I was talking to a patient?" The meeting notes corroborate this. Smith insists that at the meeting she told Usselman and Bruce that she had been talking to another staff member. At the hearing, Smith insisted that she was talking to another staff member from 424 (another CHSA facility). Smith says if Bruce had come to her the day after, she could have remembered the name. We find it incredulous for Smith to suggest that she remembers she had a telephone conversation with a staff person specifically from the 424 facility on September 12 and that one week later on September 19, she could not remember who in that building she had spoken to. If Smith had been speaking to a staff person, we are satisfied she would have immediately disclosed the name of that person to Bruce. Erin Shingoose who was the Union rep at the meeting, didn't testify. This suggests her evidence would not have supported Smith's version of what was said at the meeting.
62. While there is no direct evidence before us that the person Smith talked to was a patient, the inference from all the evidence is that Smith was talking to a patient on September 12, 2016 and that she did disclose the fact of the doctor's death to the patient. This is insubordinate behaviour in direct violation of instructions from management. It is misconduct worthy of some discipline.

Issue # 1(c) - The Third Complaint – Creation of Lab Requisition

63. The Employer submits:

1. Smith's creation of the requisition was misconduct by Smith that was well beyond Smith's scope of practice. Improperly creating requisitions could result in required tests not being performed, tests being performed on a routine basis that are actually urgent (and vice versa), unnecessary samples (blood, urine, stool) being taken from a patient, a patient being required to fast when it is not medically necessary, and many other potential issues.
2. There are countless reasons why requisitions need to be completed as directed by a physician because medical knowledge is necessary. In this particular case, it may also have been that Dr. Bettin or the patient could have had other medical follow-up beyond the completion of the requisition.
3. Individuals working in the healthcare field have consistently been held to very high standards when it comes to practising within their scope. Regardless of whether or not any harm resulted from Smith's clear deviation from the scope of her job, and regardless of whether Smith was merely trying to help, healthcare workers are held to a very high standard on scope of practice issues. Smith's actions fall on the most serious end of the misconduct

spectrum because Smith unilaterally determined that she could “play doctor” on August 29, 2016.

4. Smith clearly understood that she was not permitted to issue a requisition without a request from a physician. This was even brought her attention by Oscaris at the time Smith was creating the requisition, and in spite of this she continued to do it. It should also have been clear to Smith that she could not do the requisition because she clearly did not know how to do it, needing to ask Oscaris if she was doing it right.
5. While Smith may have underestimated the significance of her breach or have done it for good reasons, that does not change the nature of the problem or the risks created for patient care. In the medical field, scope of practice rules are serious because people die when the rules are bent.
6. This misconduct did not come to light by Smith own actions, and had to be reported to the Employer by a coworker. It is also clear Smith understood that she did not have the training, qualifications, or authority to provide a requisition.

64. The Union submits:

1. Smith admitted to creating the requisition. Smith spoke to Dr. Bettin after creating the requisition and giving it to the patient.
2. Dr. Bettin testified that although she doesn’t remember exactly what she said to Smith, she would have been happy that the requisition and subsequent blood work was done.

65. The evidence before us is that on September 12, 2016, on Bruce’s return from vacation, Smith’s co-worker, Oscaris, reported to Bruce that on August 29, 2016 Smith had created a blood work requisition under Dr. Bettin’s name without Dr. Bettin’s knowledge, direction or consent. Oscaris saw Smith ticking the box for the requisition, but did not get the name of the patient. Smith asked Oscaris if she was “doing it right”. Oscaris told Smith she didn’t know because when she is working as a COA, COAs aren’t allowed to do requisitions for a patient other than for “urine stat”.

66. The evidence is clear that completing a requisition to order tests is not within the scope of practice of a Receptionist. Smith acknowledged that she knew it was outside her scope of practice to create a lab requisition. Smith attempted to deflect from her responsibility in this regard in various ways. She claims she had to do the requisition because the patient needed the blood work and there was no doctor or nurse practitioner there to order it. She seeks to excuse having done the requisition by claiming that the patient was upset and worried about her job. Smith says Dr. Bettin wasn’t at work at the time and then Smith forgot to talk to her. Smith suggests this was not a big issue because Smith knew which tests the patient needed. Dr. Betting was happy the blood work had been done.

67. Smith claims she made the requisition at 8:00 in the morning. The records from the EMR, which leave a “fingerprint” and cannot be altered, show that Smith was in the patient’s chart at 4:34 p.m. on August 29, 2016, at which point Smith created the lab requisition, and that she was in the patient’s chart again at 4:36 p.m., at which point

she signed off on the requisition. On checking the Employer's records, Bruce confirmed that there was a Registered Nurse on duty at the time and that Dr. Bettin was in the Clinic at that time. The record shows Smith created the requisition in Dr. Bettin's name.

68. The medical requisition form in evidence clearly shows there must be a requesting physician. In this case, the form says the requesting physician is Dr. Bettin. The physician ordering the test must decide whether the test is required on a Stat, Urgent or Routine basis. There are close to 100 possible check boxes on the form for the physician to complete depending on what tests the physician deems necessary. For some of the tests there are fasting requirements. Some tests require the physician to complete start and end times.
69. The medical requisition Smith created for the patient was not a pre-made form. Smith went into the EMR system and created the requisition using Dr. Bettin's name. During the investigation meeting, Smith acknowledged that she did not have a direction from Dr. Bettin to create the requisition and that she did not consult with Dr. Bettin or anyone else before she created the requisition.
70. In *Royal Victoria, supra*, a registered nurse with 13 years seniority and no disciplinary record went beyond her scope of practice on a single occasion. The employer required that upon a patient's admission to hospital, vital signs be taken, a wristband be issued, and except potentially in extreme medical circumstances no medical procedure was to be performed on a patient without a written order from an attending physician. In this case, the nurse replaced the nasogastric feeding tube of a pre-mature baby without the patient being admitted, without written order of the physician, without documenting the visit, and using a tube from an unknown source. The nurse acknowledged at arbitration that she knew her actions fell outside of the hospital's policies. The patient did not experience any medical harm. The arbitrator found the nurse's actions to be misconduct worthy of discipline.
71. This situation is similar to *Royal Victoria*. Smith was well aware that it was beyond her scope of practice to complete and issue a lab requisition for a patient. Indeed, Smith didn't know how to fill out the form and asked her co-worker Oscaris for assistance. Even when Oscaris reminded Smith that they were not supposed to do that, Smith went ahead and did it anyway. Smith's attempts at deflection are troublesome. This is serious misconduct worth of discipline.

Issue #1(d) - The First and Fifth Complaints – Access to and Use of Medical Records

72. The Employer submits:

1. Smith improperly communicated within a patient's electronic medical record when she made the bullying and threatening comments to Oscaris. Smith improperly used the EMR as a medium to bully her co-worker. Medical records should only be used to keep track of patient medical information. They should not be littered with irrelevant information like that Smith entered.
2. Smith confronted Griffith regarding a perceived error which Smith only knew about because Smith was looking at a patient's medical record. During the investigation, Smith admitted she did not have any tasks from Dr. Bettin

regarding the patient in question and admitted she was in the chart looking for the patient's lab results. Smith had simply proactively gone into the chart without a reason to do so.

3. The Employer's *Policy on Confidentiality of Client Information* makes it clear that individuals are to only access medical information on a need-to-know basis. Smith violated this policy and accessed information beyond what she needed to know. To make things worse, she then used that information to bully a co-worker.
4. The *Policy on Confidentiality of Client Information* also references *the Health Information Protection Act* ("HIPA") which makes the Employer a trustee under HIPA charged with a variety of obligations regarding confidentiality and collection of personal health information. Accessing health information on a need to know basis only is also covered in HIPA.
5. The integrity of medical information is paramount in the medical field. The Employer has a wide range of duties and obligations it owes to the public. Smith's actions in accessing medical records without a reason is a serious breach of confidentiality. It is a serious violation of trust.
6. While the scope of Smith's improper access to and use of medical records is not as significant as in some cases dealing with this issue, a breach of policy in this regard warrants discipline. Smith not only breached clear policies and expectations regarding the use of and access to medical records, to make matters worse, she did so as a method to further her bullying of co-workers. This is a serious breach worthy of discipline.

73. The Union submits:

1. Smith did acknowledge the note to Oscaris should not have been written in the patient's chart.
2. With respect to the incident involving Griffith, Dr. Bettin had previously told Smith that the test results must be in the patient's chart before the patient's appointment. Smith was merely asking Griffith if Griffith had talked to Sexual Health to find out if the results were in.

74. In the circumstances of the First Complaint, Smith entered the patient's chart in the EMR and left a message there about a workflow related matter which included the threat of talking to the manager about the incident. There was no reason for this message to be placed in the EMR and Smith's deliberate action in going into the EMR to leave the inappropriate message was improper access to and use of the patient's chart.

75. In addition to Smith's behaviour towards Griffith, the Fifth Complaint also involves Smith's access to the EMR. Dorothy Griffith's testimony was that there was no reason for Smith to be in the patient's chart in the EMR. As the Registered Nurse, Griffith had already talked to the Sexual Health Clinic about test results and had "tasked Dr. Bettin about the patient's appointment". No one had assigned any task to Smith and there was no reason for Smith to be in the patient's chart. Griffith testified it was not normal for a receptionist or even a CAO to be in a chart to check a

patient's file for blood work or ultrasound results. That was the nurse's job. The only legitimate reason for Smith to be in a chart would be if someone had assigned her a task in the system.

76. Smith admitted no one had assigned her a task in the EMR. Smith's evidence about why she went into the EMR is troublesome. Smith went on in detail about her encounter with Griffith and then finally attempted an explanation for why she was in the EMR. She said Dr. Bettin strongly suggested "it is our job to make sure the lab work and ultrasound are there."
77. In cross-examination, Smith was not so clear. It appears Dr. Bettin had come out a couple of times to ask where the test results were and ask the receptionists to call the lab. Smith said she never called the lab. She always tasked the nurse to call the lab. Smith could not explain why she called Sexual Health about this patient rather than "task" the nurse to do that. Smith said she felt her access to the patient's chart to find out if the test results were back was a "need to know" situation because Dr. Bettin had asked staff to make sure the results were in the chart before Dr. Bettin saw the patient. Smith would not acknowledge that confirmation of test results was the nurse's job, not the receptionist's job. Smith insisted she was just following doctor's orders.
78. Dr. Bettin testified at the hearing. Smith's story that Dr. Bettin had asked the staff to find out if the test results were back, thereby implying the doctor had given a direction to reception staff to do this, was not put to Dr. Bettin.
79. Brown and Beatty, *supra*, speak to breach of confidentiality at para 7:3330 under the heading *Unethical Conduct*:

An employee's trustworthiness can be called into question by acts of dishonesty that do not involve deprivation of property or a financial loss. Indeed, some behaviour is so unethical and so inconsistent with the goals and objectives of an enterprise that it raises real doubts about the employee's capacity and/or willingness to adhere to the most fundamental rules of honesty and loyalty. ...

Violating rules of confidentiality are also considered serious acts of dishonesty that can rupture the trust that holds employment relationships together, just like an act of theft. Arbitrators are agreed that employers have just cause to discipline employees who: examine confidential files, bank accounts, databases, etc., listen in on or tape telephone conversations, or access other people's e-mail. The unauthorized disclosure of patients' medical records falls within the same principle.

80. The Employer's *Policy on Confidentiality of Client Information* is clear that employees will only have access to patient information on a need to know basis to perform their job. In the case of the message left for Oscaris, Smith accessed the patient's information by going into the EMS when she had no reason to be there. While she does not appear to have used the patient's information for some unauthorized purpose, she went into the EMR for an unauthorized purpose and left an intimidating message for her co-worker. In the case of the incident with Griffith, Smith had no task in the system and had no reason to be in the system. Whether or not Dr. Bettin wanted to know whether the lab results were in, verifying lab results was the nurse's job, not Smith's job. Again, Smith went into the EMR for an

unauthorized purpose and in this case, she used lab information from the EMR to challenge her co-worker in a rude and aggressive manner.

81. On all the evidence, we are satisfied that on both these occasions, Smith knowingly went into the EMR without a legitimate reason to be there. This is misconduct worthy of discipline.

Issue #2 - Was termination of Smith's employment an excessive response by CHSA in all the circumstances?

82. The Employer notes that in Krashinsky and Sack's *Discipline and Discharge* (Toronto: Lancaster House, 1989, at 7-9, the authors set out the usual factors in for determining the appropriate penalty for employee misconduct:

1. The seriousness of the conduct;
2. Seniority;
3. Disciplinary record;
4. Correction, rehabilitation and deterrence;
5. Provocation;
6. Employee's state of mind/personal circumstances;
7. Admission of misconduct;
8. Consistency of discipline/condonation.

83. The Union points to *Wm. Scott, supra*, for the oft-quoted passage where Arbitrator Weiler asks the questions this way:

12 Normally, the first question involves a factual dispute, requiring a judgment from the evidence about whether the employee actually engaged in the conduct which triggered the discharge. But even at this stage of the inquiry there are often serious issues raised about the scope of the employer's authority over an employee, and the kinds of employee conduct which may legitimately be considered grounds for discipline. (See for example *Douglas Aircraft* (1973), 2 L.A.C. (2d) 56.) However, usually it is in connection with the second question — is the misconduct of the employee serious enough to justify the heavy penalty, of discharge? — that the arbitrator's evaluation of management's decision must be especially searching:

(i) How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?

(ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?

(iii) Does the employee have a record of long service with the employer in which he proved an able worker and enjoyed a relatively free disciplinary history?

(iv) Has the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?

(v) Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which seems to arise particularly in cases of discipline for wildcat strikes)?

84. As relevant, arbitrators will take into account the factors noted in these authorities as well as any other factors relevant to the specific case.
85. The Employer submits the termination of Smith's employment was reasonable in the circumstances because of Smith's prior discipline for inappropriate behaviour, her unwillingness to improve her attitude and communicate in a respectful manner with other staff members, her direct disregard for authority and her scope of practice, and the need to deter similar conduct in the future.
86. The Union submits it took the Employer less than ten minutes after their investigation meeting to consider Smith's answers and decide to terminate a 40 year employee. Within ten minutes they considered the matter, decided to terminate Smith and prepared the Termination Letter. This short time frame leads the Union to the conclusion that the termination was already planned, the determination already made and the Termination Letter already written, before the meeting with Smith and her Union rep. Termination was too harsh a penalty and the Employer should have used progressive discipline.
87. To determine whether termination was an appropriate remedy in the circumstances, we will review the relevant factors.

The Employer's investigation

88. Within a few short days, several people brought forward to Bruce the complaints with respect to which the Employer terminated Smith. None of these complaints involved complicated matters that required lengthy investigation. The issues were fairly straightforward. Bruce obtained the information from the employees who complained and arranged for the September 19 meeting. Smith had Union representation at the meeting. Bruce put each of the allegations to Smith and asked for her explanation. On the face of it, none of Smith's responses were such that further investigation was warranted. Based on the information from the complaining employees and Smith's responses, it didn't take Bruce and the other management employees long to decide termination was the appropriate response. While in some cases it is precipitous for the employer to quickly reach a decision to suspend or terminate an employee, even if the Employer in this case had taken longer to discuss and reflect on the situation, the result would have been no different.

The seriousness of the conduct – pre-meditated, repetitive or momentary

89. The Employer submits that in a relatively short period of time Smith engaged in serious and gross misconduct:
1. Smith used a requisition outside her scope of practice. Smith is not a medical doctor and her actions had the potential to cause serious harm.
 2. Smith engaged in a pattern of bullying and intimidating co-workers. The negative impact on the workplace and her colleagues is serious and undermines the ability of the Employer's operations to function.
 3. Smith was blatantly insubordinate when, against instruction, she disclosed the death of one of the Employer's doctors.

4. Smith accessed and used medical information in an entirely inappropriate way in breach of the Employer's policies and procedures and in breach of broader obligations under HIPA. She accessed and used medical information to further her pattern of bullying in the workplace by leaving a threat to a co-worker in a patient record and by inappropriately accessing medical records to catch mistakes of a co-worker (who was then aggressively confronted).
5. Each instance on its own is serious and the seriousness is only increased when the misconduct is viewed as a whole.

90. The Union submits that the offences Smith is accused of are referred to in the Termination Letter as "inappropriate actions and disrespectful behaviour" "breach of confidentiality, working outside your scope of practice, and violation of CHSA's Personal Conduct Policy." The Union does not condone Smith's behaviour, but it was not so serious as to warrant termination. Specifically:

1. The breach of confidentiality regarding Dr. Szott's passing has not been proven.
2. Smith did give a patient a lab requisition, but after 40 years she would have printed hundreds if not thousands of requisitions just like this one. The patient told Smith what the doctor wanted, Smith checked the box. Only one box. Smith did not order numerous tests that were unnecessary or that were extremely invasive to the patient. The patient said the doctor said she needed to check her blood levels and that is what Smith ordered. This was out of her scope of practice, but is caused no harm, was not meant to be fraudulent, nor did Smith try to hide it from Dr. Bettin who was happy that Smith had done this because they had experienced difficulty tracking the patient down. Smith should not have done the requisition and she admitted that. She did not try to deny it.
3. It seems odd that, with no previous complaints, there would suddenly be six unsolicited complaints in three days. The fact that no one bothered to raise these issues with Smith, offer her an opportunity to resolve the issues, offer her the opportunity to change what others considered inappropriate behaviors or offer any support, raises more questions as to whether there was some sort of plan to get rid of Smith.

91. We will begin here with addressing the Union's last point. There is nothing in the evidence before us to suggest there was any plan afoot to get rid of Smith. There is no evidence to suggest any of the misconduct before us was manufactured or embellished. We are satisfied that the reason, and the only reason, the five complaints came to the Employer's attention when they did was because five things happened in close succession that warranted complaints to the Employer. A plan to get rid of Smith did not generate the issues. Smith's own conduct generated them.

92. The first area of misconduct before us is Smith's misconduct towards her co-workers. The Employer had before them three instances of what can be described as bullying behaviour in breach of the *Personal Conduct Policy*: 1. Smith's threat to

Oscaris in the EMR; 2. Smith's angry, aggressive behaviour towards Lerio; and 3. Smith's rude and aggressive behaviour towards Griffith.

93. Brown and Beatty, *supra*, say this about penalties for aggressive and abusive behaviour at para 7:3430:

In most cases involving allegations of abuse or intimidation, there is no dispute about whether the grievor mistreated another person or about the wrongfulness of the behaviour. The only issue is the appropriate sanction. In assessing what measure of discipline is justified in each case, arbitrators look at a variety of factors relating to the intention of the grievor, the identity of the victim, and the nature and extent of the abuse involved.

The motivation that lies behind the misconduct is perhaps the most important consideration in determining what penalty is just and reasonable in all the circumstances. Not surprisingly, a history or pattern of coercion, fighting, and/or harassment is regarded as more serious than a momentary flare-up or something that was more in the nature of horseplay. On the other hand, provocation is generally considered to be a mitigating factor, as are personal and emotional problems that can be shown to have contributed to the way the grievor misbehaved. Depending on the circumstances, being an alcoholic and/or coming to work intoxicated may or may not reduce the gravity of an offence. Typically, where it is found that the grievor had no malicious intention, arbitrators have been inclined to substitute some form of discipline short of discharge. As a general principle, where arbitrators are satisfied that there is little likelihood of a recurrence because, for example, the employee has apologized and/or shown real remorse, they typically favour a suspension without pay for some period of time, rather than a conclusion that the grievor must lose his or her job. The converse of this principle is that, in the absence of extenuating circumstances, arbitrators usually do not reinstate employees who continue to deny they did anything wrong, or who refuse to take responsibility for the harm they caused.

In many cases, the identity of the victim and/or grievor also figures importantly in how seriously an arbitrator regards acts of physical and/or verbal abuse. Although any bullying or brutality against any employee, customer or client, member of the public (or even an animal), will merit some disciplinary response, arbitrators have typically been even less tolerant of attacks on supervisors and other managerial personnel where they undermine the employer's authority to keep order in the workplace. Similarly, mistreating patients, inmates, students and others over whom the employee has custody or responsibility is considered especially abusive because it violates a special trust. On the other hand, where the roles are reversed, and the aggressor is a member of management and the victim is an employee, if it can be established that the employer tolerated the abuse, an arbitrator may order it to compensate the person or persons bringing the complaint and/or transfer the supervisor to another job. The length and quality of a grievor's employment record are, more often than not, also important factors in determining what penalty will be imposed.

The third major factor that determines how arbitrators judge workers who harass or act aggressively towards others is the nature and quality of the act or acts for which discipline was imposed. The severity of disciplinary sanctions usually varies with the extent of the injuries, anxiety and/or humiliation which the victim has had to endure. Unless there are extenuating circumstances, deliberate acts of physical aggression, especially when dangerous weapons are involved, are generally treated more seriously than harassment and verbal assaults and, depending on the circumstances, threats of violence typically fall somewhere in between.

In some cases, the toleration of aggressive language, inappropriate behaviour and low-level harassment in a workplace has been found to be a mitigating factor, and sometimes profanity and rudeness may not merit any discipline at all. On the other hand, profanity aimed at a member of management and/or expressed in a hostile and angry manner is almost always found to be deserving of some discipline. Occasionally, arbitrators have found that a complainant has overreacted.

94. Smith engaged in bullying behaviour on three occasions within a very short period of time. While these behaviours were not of the most serious kind imaginable, they were nevertheless inappropriate and demonstrated a pattern of conduct on Smith's part. Smith's conduct shows a disregard for and disrespect for her co-workers. In the absence of the other issues that came to the Employer's attention all within a short time, however, without more, the appropriate Employer response might have been a lengthy suspension or perhaps a last chance agreement, perhaps with additional training or coaching, to give Smith the opportunity to change her behaviour. The issues, however, involved more than the bullying.
95. The second area of misconduct relates to the insubordinate breach of confidentiality in relation to the information about Dr. Szott's death. Again, if this situation had occurred in the absence of any of the other matters at issue, then perhaps a lengthy suspension would have been sufficient response to this behaviour if Smith had acknowledged her misconduct.
96. The third area of misconduct relates to Smith's unauthorized entry into the EMR system on two occasions, first to leave the threatening message for Oscaris and secondly to find out information about lab results when she had no reason to be in the system. This is not a case like *Heartland, supra*, where the employee repeatedly entered the system for the specific purpose of gaining access to confidential information. However, entering the EMS for purposes other than legitimate tasks related to the Clinic's work is still unauthorized entry and could easily result in the person entering the system inadvertently accessing other confidential information.
97. While this was not a case where Smith accessed the EMR to obtain information and then disclose it to others, her behaviour shows a disregard for the importance of accessing the patient chart only when necessary which in the case of CHSA is when she received a task requiring her to enter the EMR. This was misconduct which on its own was worthy of significant discipline and perhaps termination.
98. The fourth and last area of misconduct is the most serious. Smith deliberately went into the EMR and not only accessed patient information, but created a lab requisition for blood work for a patient without authorization and outside her scope of practice.
99. The arbitrator in *Royal Victoria, supra*, decided the misconduct was worthy of discipline and that it justified termination because the misconduct destroyed the essential trust of the employment relationship. In paragraph 1 of the award the arbitrator says:
- This is an unfortunate case about a highly skilled, experienced and obviously compassionate paediatric unit nurse who breached several standards of practice and Hospital policies on a single occasion resulting in her termination. She admits her wrongdoing and asks that I exercise arbitral discretion to reduce the penalty of discharge. The factual circumstances raise the important and very difficult question of whether an employee's seemingly good intentions, particularly in the sometimes emotionally charged setting of a public hospital where quick decisions are often necessary, is enough to outweigh the significant harm that could have but didn't occur in this case. In short, do good intentions trump potentially dire consequences in assessing accountability for one's improper actions?
100. The arbitrator speaks of the high standard of care to which healthcare professionals are held at para 35:

35 The standard of conduct expected of a registered nurse, along with other healthcare professionals, whose actions may have life or death consequences, has long been recognized as a necessarily high one, even when no harm as a result of a nurse's negligence or willful wrongdoing has in fact occurred. In *Re Oshawa General Hospital*, supra, where a nurse's negligent failure to follow proper identification procedures resulted in her transfusing a patient with blood intended for another, the fact that the patient suffered no ill-effects did not diminish the seriousness of her misconduct. In upholding the discharge of the nurse who had eight years of service and a record of discipline for medication and other errors on eight separate occasions in that interval, Arbitrator O'Shea stated this at p. 187:

We cannot accept the argument that consideration should be given to the grievor in view of the fact that the patient suffered no adverse effect. The grievor cannot accept any credit for this fact. The nature of her offence is the same as it would have been had the wrong blood proved fatal. Not only did the grievor offer no excuse for her error, we are unable to imagine what possible excuse there could be for such a dereliction of duty in view of the very serious consequences which might have flowed from her neglect of duty. The seriousness of her default was known to her. Her dereliction of duty in these circumstances can only be described as gross negligence.

101. Smith may have had good intentions when she created the lab requisition for the patient in question, but what she did was clearly outside her scope of practice. She knew it was outside her scope of practice, but she did it anyway. As we have noted, Smith had various explanations for why she did the requisition. The patient was upset. The patient knew what the doctor wanted. Smith was well aware of what test was needed. The doctor was happy Smith had done it. Given the serious potential consequences if someone other than the physician orders lab tests, however, we believe it would be difficult to conceive of a situation where this sort of breach of scope of practice could be justified; yet Smith still maintains she was justified in doing it. We note here as well that it is alarming that Dr. Bettin was "happy" that Smith had ordered the blood work. Any physician should be alarmed that a receptionist would without authorization issue a lab requisition using the physician's name, whether the patient needed the lab work or not.

102. Smith knowingly did something completely outside her scope of practice. It was something only a doctor or nurse practitioner was authorized to do. The fact no one was hurt by what Smith did is beside the point. Issuing a lab requisition without the required medical knowledge and without knowledge about the specific patient was a very serious matter. We are satisfied that this action alone, absent some special mitigating circumstance, would justify dismissal.

103. All the misconduct taken together is also troublesome. In a short period of time, Smith demonstrated an attitude that overall was dismissive of the Employer's policies and standards of conduct. We are satisfied, therefore, that unless there is some serious mitigating circumstance that would call for a lesser penalty, the Employer's decision to terminate Smith in all the circumstances was an appropriate one. We will now examine the other factors.

Seniority

104. The Employer submits:

1. Seniority is not a mitigating factor here. Although Smith was previously employed, she retired in 2008. This severed her employment relationship and

seniority. For purpose of calculating Smith's seniority, her seniority begins in 2009.

2. Even if one views Smith's prior employment as evidence of high seniority, the length of service is a two-edged sword for Smith. Smith's length of service actually makes her discipline more severe. She was a receptionist at the Main Clinic for almost 40 years in total. This being so, Smith failed to be an appropriate role model for other employees and instead engaged in harassing behaviour, actively disobeying authority and performing tasks well beyond the scope of her practice. As a longer serving employee, the expectation Smith would follow workplace policies and behave appropriately would be higher. This factor weighs in favour of termination.

105. The Union submits Smith has been a dedicated employee at the Saskatoon Community Clinic for over 40 years, coming in early and staying late when needed.

106. In *Pictou Country, supra*, at paras 118-119, Arbitrator Slone speaks to the relevance of seniority in assessing the appropriate penalty:

118 Length of service is something of a two-edged sword. On the one hand, a longer-term employee has more of a vested interest in his or her employment and is entitled to greater consideration before having his or her livelihood taken away. On the other hand, more may be expected of a longer-term employee, and a consistent failure to follow procedure over a longer time may be deserving of greater punishment than would be handed out for a rookie mistake. The key question, as posed by arbitrator Larson in *University of British Columbia v. C.U.P.E., Local 2950 (2001)*, 96 L.A.C. (4th) 38 (B.C. Arb.) at p.47, is that length of service is to be "weighed in the balance on the question whether there can be any assurance that the grievor will not commit further acts of misconduct or that the employment relationship has irretrievably broken down."

119 In my view, the grievor's twelve years of service have only demonstrated that he has had that long to get a firmer grip on the need to follow procedure, and yet he has not done so. It is as much an aggravating factor as it is a mitigating one.

107. Whether one considers Smith to be a forty year employee or a seven year employee, Smith had significant service with CHSA. She was an experienced receptionist who had actually helped to develop both the job description and the checklist for the receptionist booking UPP patients. In all that she did, Smith cannot suggest she made any rookie mistake. Her actions were deliberate and in some cases in actual defiance of the Employer's directions and policies. As in *Pictou*, length of service here is as much an aggravating factor as a mitigating one and it does not assist Smith in mitigating against termination.

Grievor's prior record of discipline and progressive discipline

108. During Coreen Usselman's cross-examination, the Union representative began to question Usselman about the details of the two instances of previous discipline. The Employer objected to this evidence on the basis that the Union did not grieve the previous discipline. The Union took the position that evidence of these previous instances is relevant because the Employer is relying on those instances to argue they followed progressive discipline. The Board agreed to allow the evidence on the basis that we would address the relevance of any of the evidence in our award.

109. In argument, the Employer submits:
1. Smith had a disciplinary record that warned her about disrespectful language and behaviour. This included a three day suspension.
 2. Smith does not have a clean disciplinary record and she engaged in further misconduct in spite of warnings in her previous discipline.
110. In argument, the Union submits:
1. Smith had a clear disciplinary record from 1975 to 2008 when she retired. She also had a clear record from her return in 2009 until March of 2016.
 2. The Reprimand Letter with respect to the EDOs was the first discipline Smith received. The unacceptable performance in the Reprimand Letter was that Smith had not scheduled her EDOs. If the EDOs were not scheduled, then why would Smith have asked to meet with Marie Bruce to discuss changing the date of one of the scheduled EDOs. Smith was only asking to move one of the EDOs a week further out so the two EDOs would be in two different pay periods. When Smith had discussed EDOs previously, she had been told to use her overtime hours first, so she couldn't schedule her EDOs because she had to take her overtime. It is hard to rationalize that the Reprimand Letter was warranted for not scheduling EDOs when in fact there were already at least two EDOs scheduled for that month. The EDOs were already scheduled, so there shouldn't have been any discipline.
 3. At the discipline meeting about the EDOs, Smith became upset and expressed this frustration in a way that she admits was not professional. Smith did not swear at anyone at the meeting. She just stated how she was feeling – that all of this felt to her like it was a “big f you”. Smith had a right to be upset because she was disciplined for something that hadn't happened yet and she had tried to deal with the situation the day before and was given a blanket “no”.
 4. Smith admits she used language that was inappropriate, but despite numerous verbal apologies at the meeting and a written apology, the Employer suspended Smith for three days. The Employer had choices and unfortunately they chose discipline over corrective action. Smith's behaviour warranted some form of discipline, but not a three day suspension. The three day suspension was excessive discipline for a 40-year employee who was rightfully frustrated after receiving a letter of reprimand for something she tried to work out with her manager. Unfortunately, Smith used profanity to express her frustration. This was not a five minute rant with a string of expletives. This was one word. The language was not intended to be a threat to anyone, nor was it directed specifically at any one person. It was an emotional outburst that happened in the heat of the moment. Smith was feeling very emotional and vulnerable at the meeting. After 40 years of putting her heart and soul into the Clinic, she felt that she was being treated like she meant nothing to the Clinic – that all the time she had put into the Clinic meant nothing to the Employer. It was at that point that Smith stated this whole thing felt like a “big

f you". The language was inappropriate. Smith apologized. The Employer didn't seem to take this into account.

5. Although the Union may have had many questions regarding these discipline measures, Smith chose not to grieve them and hoped that her relationship with Marie Bruce would improve.
 6. The Employer is using this discipline handed out in March 2016 as support for the termination, saying that termination was the final step in progressive discipline. The Union has shown the discipline handed out in March was unsupported and excessive considering all the circumstances. Therefore, to use the previous discipline as rungs on a ladder of progressive discipline was in violation of the language of Article 19 of the CBA. Subsequently, the termination can only be viewed as unsupported and excessive.
111. The Union is essentially arguing that the Employer's previous discipline consisting of the Reprimand Letter and the Suspension Letter was not justified.
112. Brown & Beatty, *supra*, at 7:4314 say this :
- ... arbitrators have consistently held that employees will not be allowed to adduce evidence to explain away such penalties if they did not object to them or did not file a grievance at the time.
113. The Union did not grieve the two previous instances of discipline and cannot now say the discipline was not warranted.
114. The previous discipline, however, is significant here for at least two reasons. First, it shows there is a record of discipline for insubordinate and insolent behaviour, including a warning in the Suspension Letter that any future occurrence would result in termination of employment. Secondly, even though the Union did not grieve the Reprimand Letter or Suspension Letter, Smith demonstrated at the hearing that she has taken little responsibility for the actions which resulted in the discipline. With respect to the Reprimand Letter, Smith still claims there was no reason for discipline because her EDOs had been scheduled. The evidence actually shows it was the Employer who scheduled the EDOs because Smith had refused to do so, following which Smith wanted to change the dates that had been scheduled. With respect to the Suspension Letter, Smith continues to insist she was not swearing at Bruce and Usselman.
115. The fact remains there was already discipline on Smith's file for insubordinate and insolent behaviour when the events of late August/early September 2016 came to the Employer's attention. While the Union suggests the Employer did not give Smith any opportunity to modify her work performance or her behaviour, the existing discipline says otherwise.

Progressive Discipline and Article 19 of the CBA

116. The Union submits:
1. The Union does not dispute that staff at the Clinic need to work as a team and that part of that team atmosphere must include mutual respect. Bullying and harassment are serious offenses. None of the staff who made allegations

against Smith spoke to Smith directly regarding their allegations. None of them asked her to stop what they felt was inappropriate behaviour.

2. The Employer did not speak to Smith about the behaviours and offer her the opportunity to change. There was no conflict resolution training or mediation attempted. It is difficult for someone to change their behaviour when they are not told that it is seen as inappropriate. Some of Smith's behaviours were inappropriate but termination was excessive in all the circumstances.
3. Article 19 of the CBA required the Employer to use a progressive discipline process.

117. The Employer submits:

1. Progressive discipline was not required under Article 19.02 because Article 19.05 permits the bypassing of progressive discipline in cases of gross misconduct.
2. Smith's misconduct here amounts to "gross misconduct" both commutatively and individually. The ability to skip progressive discipline and go to termination exists for those clear where there is enough egregious misconduct to clearly justify termination. The Grievor's misconduct here clearly warrants termination and amounts to gross misconduct.

118. We agree with the Employer on this point. Smith's bullying behaviour and insubordination, and especially her unauthorized creation of the lab requisition, are all gross misconduct that did not require the Employer to go through the steps in Article 19.02 (a), (b) and (c) of the CBA. Furthermore, the Employer did engage in progressive discipline in the sense that there was already discipline on Smith's personnel file that warned her that any future occurrence would result in termination of employment. That is not to say that we would have found any minor instance of misconduct to have justified termination, but the message was clear on March 21, 2016, that the Employer was not going to tolerate further misconduct.

Correction, Rehabilitation and Deterrence

119. The Employer submits:

1. The Employer acknowledges the primary purpose of discipline in the workplace is correction and that the degree of discipline must be commensurate with the seriousness of the conduct it is aimed at correcting.
2. Smith's misconduct here was extremely serious in a variety of ways. It undermined the Employer's ability to trust Smith to not practice outside her job duties, to trust her to work well with others, and to trust her with access to and use of confidential information. These actions warrant termination of employment.
3. It is clear Smith is beyond correction and the only option to correct the issue is to remove her from the workplace.
4. Moreover, certain conduct is so inimical to the employment environment such that serious discipline is warranted as a means of general deterrent. Serious

disciplinary action was required for the Employer to maintain a productive workforce and for the Employer to trust Smith to perform her duties to the standard and in the manner required.

5. If the Employer had not disciplined Smith or had only disciplined her with another suspension or warning, this would have undermined the very serious rules surrounding scope of practice, harassment in the workplace, and use of and access to confidential patient information. Ultimately, anything short of termination of employment would undermine the Employer's ability to manage its clinic.
 6. Failure to uphold Smith's termination would provide no deterrence whatsoever to other employees. This would undermine the Employer's efforts to emphasize the importance of proper conduct in the workplace.
120. The Union submits the goals of rehabilitation, correction and deterrence could have been met through progressive discipline.
121. In *BC Railway, supra*, at para 60, the following appears:
- 60 That concept of the employer-employee relationship is totally out of balance with the vigilante approach that was employed for the expression of employee discontent in the work equipment shop. It seems inevitable that further discipline will follow against other employees if that misconception with respect to labour relations is not corrected. It is in that context that I see deterrence as a significant element of the resolution of this dispute. In that regard I adopt the comments with respect to the factor of deterrence expressed by Professor Adams in *E.B. Eddy Forest Products Ltd. and Lumber & Sawmill Workers Union*, February 24, 1978, unreported. In that decision Professor Adams said:
- ... on the other hand, some forms of conduct are so serious and so fundamentally opposed to the requirements of a productive work-force that an overriding concern for general deterrence may well be justified. In these situations boards of arbitration had to decide whether the concept of progressive or corrective discipline must give way to an approach that will impress upon members of the work-force the seriousness of misconduct. In these cases then, and this grievance is one of them, the issue is one of determining the extent to which the employer's interest in general deterrence should properly override the aforementioned principle that discipline should be corrective.
122. If most of the complaints had each occurred in isolation, a lengthy suspension or other significant discipline might have met the goals of correction, rehabilitation and deterrence. The creation of the lab requisition, however, stands alone as a breach of trust that cannot be remedied through corrective action. Furthermore, if Smith was willing to go into the EMS and use it to engage in intimidating tactics against co-workers, create a lab requisition completely out of her scope of practice, and breach confidentiality by violating a direct order, we are satisfied the bond of trust with the Employer was so fractured, no amount of corrective or rehabilitative measures could have restored that bond.
123. In coming to this conclusion, we have disregarded Bruce's hearsay evidence about a conversation she had with a staff person who reported comments Smith allegedly made about what she would do if she came back to work. The staff member in question was never named and did not testify at the hearing. There is therefore no proper evidence before us on this point.

Provocation

124. The Employer submits there is no evidence of any actions taken by the Employer to provoke Smith's actions. The Union has not suggested there was any provocation.

Grievor's State of Mind/Personal Circumstances, Admission of Misconduct, Remorse, Apology

125. The Employer submits:

1. Smith cannot rely on any "personal excuse" or "state of mind" defence for her misconduct. There is no evidence Smith made any effort to communicate any excuse at the time of any incident, during the investigation or when she was disciplined. At the September 19 meeting, Smith never provided any explanation or personal reasons for why she behaved the way she did.
2. In any event, there is nothing in evidence about Smith's personal circumstances that would mitigate in favour of substituting a lesser penalty.
3. A grievor who has failed to apologize for their misconduct is not entitled to ask a board of arbitration to mitigate a penalty. Smith has not apologized for any of the behaviour leading to her termination. This suggests a higher disciplinary penalty is warranted.
4. Smith admitted certain misconduct, but that is not a mitigating factor in the absence of an actual apology. In any event, given the very serious incidents, an apology would not mitigate Smith's very serious and gross misconduct.

126. The Union says Smith agreed she would never do a lab requisition again.

127. In *Discipline and Discharge, supra*, at 8, the authors say this:

An employee who recognizes his or her faults is more likely to correct them in the future. Hence, an important factor considered by arbitrators is whether the grievor has frankly acknowledged the alleged misconduct. An apology is regarded favourably by some arbitrators. Conversely, where an employee repeatedly denies the act of misconduct, he or she is likely to forfeit all sympathy.

128. With respect to this factor, we note, first, that there is no evidence before us to suggest there were any special personal circumstances that would help to explain Smith's behaviour. Secondly, we must examine the evidence to see if Smith has frankly acknowledged any of her misconduct.

129. The evidence with respect to Smith's acknowledgement or not of her misconduct does not show a person who is regretful or remorseful for what they have done. For example:

1. On September 19, Smith admitted she had "bullied" Oscaris by leaving the note with the threat to go to her boss. At the hearing, Smith denied that admission. At the September 19 meeting, Smith admitted she had not actually gone to Bruce and that the notation was just an idle threat. At the hearing, Smith denied having said this at the meeting and insisted that she had gone to try to talk to Bruce about the matter. At the hearing, Smith never

- acknowledged she had done anything wrong in relation to her communication to Oscaris.
2. Smith never admitted to having told a patient about Dr. Szott's death. At the September 19 meeting, Smith challenged her co-worker's report by asking, "How does the staff know that I was talking to a patient?" At the hearing, Smith insisted she had told Bruce at the meeting that she had been talking to another staff member. At the hearing she insisted she was talking to another staff member. Smith did not accept responsibility for this behaviour.
 3. With respect to the lab requisition, at the September 19 meeting Smith acknowledged she had done the lab requisition. After questioning, Smith said she understood she was not authorized to complete a requisition and said she would not do it again. At the hearing, Smith never did admit that she was wrong in doing the requisition. We have already noted several ways in which she attempted to justify her actions. She even went so far as to suggest that someone went into the EMR and changed the entry she made. She showed no remorse for her actions.
 4. At the September 19 meeting, Smith knew the person who had complained about the WCB/SGI matter was Jeff Lerio. She said she was always angry with Lerio, that he didn't know his work and that she wouldn't work with him. As with other complaints, Smith backtracked at the hearing and insisted she did not say any of these things.
 5. At the meeting, Smith acknowledged she had been rude and aggressive towards Griffith. At the hearing, Smith denied she made this admission and denied that she was rude or aggressive with Griffith.
 6. During the September 19 meeting when Bruce confronted Smith with the allegations, Smith never apologized for any of her behaviours. At the hearing Smith offered no real apologies. The closest Smith came at the hearing to acknowledging any wrongdoing or offering an apology was when she said, "and I know I cannot do the lab work – and you know – I was trying to help the patient, sorry." Smith said the word "sorry" in a tone that conveyed anything but an apology.
 7. Smith tried to deflect blame by suggesting this was all a scheme to get rid of her, thereby implying she had done nothing wrong.
 8. Smith only reluctantly admitted that she did not have the training to be a COA, and more than once made it clear she felt she knew how to do the job even if she didn't have the credentials.
 9. Smith's continued insistence that there was no need for discipline over her refusal to take her EDOs shows lack of acknowledgment of misconduct. While Smith said she accepted the discipline for her offensive language, she continued to maintain she had not directed her comments at Bruce and Usselman.
130. Often between a suspension or termination and the arbitration hearing, a grievor comes to understand and accept the inappropriateness of the behaviour that

resulted in the discipline. In those cases, at the hearing, the grievor often acknowledges their misconduct, apologizes for it and gives assurances that it will not happen again. In this case, if anything, between September 19, 2016 and her testimony at the hearing, Smith regressed. She admitted less at the hearing than she had at the meeting in September 2016. She gave no frank acknowledgement that any of her behaviour was wrong, no indication she understood why it was wrong and no indication that she was sorry for what she had done.

Consistency of Discipline/Condonation

131. The Employer submits that there is no suggestion whatsoever of inconsistent discipline or condonation. The Employer treats all like incidents of insubordination very seriously, taking into account all relevant considerations.
132. The Union submits that the fact Smith (who had a previous forty year clean record) received two letters of discipline in two days in March and then was suddenly confronted with six complaints and fired on the spot can only lead one to believe that Smith was being singled out. The Union suggests this may have been because Smith was the Union President, or because management wanted to get rid of the “old guard” or because of a personality conflict with the manager.
133. There is no suggestion in the evidence that any of these circumstances account for the Employer’s actions. The instances of misconduct that came to the Employer’s attention were serious and required a serious response. To suggest ulterior motives undermines the seriousness of what Smith did and shows her continued refusal or inability to accept that her conduct was inappropriate.

Summary

134. The Employer points out, and we agree that unless the penalty imposed is, viewed objectively, manifestly unjust or unreasonable in all the circumstances, no substitution of penalty ought to be made: *Galt Metal, supra*, at para 20. The question is whether the penalty is within the range of reason having regard to all the circumstances: *Volvo, supra*, at para 15.
135. Having reviewed all the circumstances, we are satisfied CHSA’s decision to terminate Carla Smith’s employment was within the range of reason and was not unjust or unreasonable. For the reasons set out herein, absent some significant mitigating circumstance, the misconduct itself was sufficiently serious to warrant dismissal. The misconduct was serious. The behaviour was not spur of the moment and in the case of Smith’s behaviour toward management and her co-workers, the behaviour was repetitive. These were not momentary lapses in judgment. Smith’s seniority is as much an aggravating factor as it is a mitigating one. Smith had a prior record of discipline for insubordination by refusing to follow Employer policy with respect to the EDOs and for insolence in the use of abusive and disrespectful language towards her manager and the Employer. Smith had been warned that termination would result if the behaviour continued. The nature of Smith’s conduct was such that the bond of trust with the Employer was so fractured that no amount of corrective or rehabilitative measures could have restored that bond. There was no provocation for any of Smith’s behaviour. Smith did not frankly acknowledge that any

of her behaviour was wrong, that she understood why it was wrong, or that she was sorry for what she had done.

136. In all these circumstances, termination of employment was an appropriate Employer response.

VII. Conclusion

137. In conclusion:

1. We have found the following misconduct:
 - a. Carla Smith engaged in aggressive and abusive behaviour towards three of her co-workers, Oscaris, Lerio and Griffith.
 - b. Smith disclosed the fact of Dr. Szott's passing to a patient in violation of the Employer's direction not to do so.
 - c. Smith knowingly acted outside the scope of her practice as a Receptionist by creating and issuing a lab requisition in Dr. Bettin's name.
 - d. Smith entered and used the Employer's EMR system for unauthorized purposes on two occasions.
2. Termination of Smith's employment was not an excessive response by the Employer in all the circumstances.

138. In the result, we uphold the termination of Smith's employment and deny the Grievance.

139. We wish to thank the parties for their thorough presentations in this very difficult case.

Dated at Saskatoon, Saskatchewan, May 8, 2018.



Anne M. Wallace, Q.C.
Panel Chair

"Eric Saraurer"
Eric Saraurer
Employer Nominee

I do not agree with the majority of the Board. I feel termination was too excessive a penalty in this case.

"Dolores Douglas"
Dolores Douglas
Union Nominee