

Final

MEMORANDUM OF SETTLEMENT

FILE COPY

BETWEEN:

WE CARE HEALTH SERVICES "SARNIA" INC.

(hereinafter referred to as the Employer)

* and *

ONTARIO NURSES ASSOCIATION

(hereinafter referred to as the Union)

WHEREAS the Employer recognizes the Union as the sole and exclusive bargaining agent for all registered and graduate nurses employed by We Care Health Services "Sarnia" Inc. in the City of Sarnia save and except supervisors and persons above the rank of supervisor;

AND whereas the Employer will cease the delivery of nursing services in City of Sarnia effective October 11, 2002;

AND whereas the undersigned representatives of the parties wish to agree to the following terms and conditions as a collective agreement between the parties;

NOW THEREFORE, the parties agree as follows:

1. The respective bargaining teams and or representatives agree to unanimously recommend to their principals acceptance of the following terms as a collective agreement between the parties.
2. The parties agree this Collective Agreement is entered into to resolve the terms and conditions under which the Employer shall terminate the employment of all employees in the bargaining unit.
3. The Employer recognizes the Union as the sole and exclusive bargaining agent for all registered and graduate nurses employed by We Care Health Services "Sarnia" Inc. in the City of Sarnia save and except supervisors and persons above the rank of supervisor.

4. During the term of this agreement there shall be no lock-out by the Employer or no strike by the Union as defined by the *Ontario Labour Relations Act*.
5. It is recognized and agreed by both parties that the Employer is a private organization dependent upon public and private funding. Nothing in this Agreement shall be intended or interpreted as limiting the ability of the Employer to respond to the need of the community or the requirements of obtaining or continuing to obtain funding from various sources. The Union acknowledges and recognizes that all matters concerning the management of the Employer's operations and the direction of the working forces are fixed exclusively with the Employer except as specifically limited by an express provision in their Agreement. Without restricting or limiting the generality of the foregoing, the Union acknowledges that it is the exclusive function of the Employer to:

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- a) maintain order, discipline and efficiency;
- b) Hire, retire, assign, direct, promote, demote, classify, transfer, layoff, recall and, for just cause, to suspend, discharge or otherwise discipline employees subject to the right of the employees to grieve to the extent and manner provided therein if the provisions of this Agreement are violated in the exercise of these rights;
- c) discipline or discharge of probationary employees for reasons of performance, skill, ability and suitability and provided the Employer does not act in a manner which is arbitrary, discriminatory or in bad faith, such discipline or discharge is not subject to the grievance procedure;
- d) determine the nature and kind of business conducted by the Employer, the methods and techniques of work, the schedules of work, number of personnel to be employed, to make studies of and to institute changes in jobs and job assignments, increase or decrease work assignments, the extension, limitation, curtailment or cessation of operations and to determine all other functions and prerogative here before invested in and exercised by the Employer which shall remain solely with the Employer;
- e) make and enforce and alter from time to time reasonable rules and regulations governing the conduct of the employees and to be observed by the employees

provided such rules are not inconsistent with this Agreement;

- f) have the sole and exclusive jurisdiction over all operations, buildings, facilities and equipment;
 - g) to take all steps as may be deemed available by the Employer to carry out the Employer's mandate to provide quality services to the community and obtain funding to provide such services.
 - h) The Employer agrees not to exercise these functions in a manner *that is arbitrary, discriminatory, in bad faith or* inconsistent with the provisions of this collective agreement.
6. The Employer agrees to deduct an amount equal to the regular *monthly* dues from each employee in the bargaining unit. The amount of the Union dues shall be those authorized by the Union in accordance with the provisions of its By-laws and Constitution. In consideration of the deducting and forwarding of Union dues by the Employer, the Union agrees to indemnify and save harmless the Employer against any claims or liabilities arising or resulting from the operation of this Article.
7. (a) For purposes of this Agreement, a grievance is defined as a difference arising between the parties relating to the interpretation, application, administration or alleged violation of the Agreement including any question as to whether a matter is arbitrable.
- (b) For the purpose of this Article, reference to "days" relating to Steps in the grievance and arbitration procedure shall exclude Saturdays, Sundays and paid holidays.
- (c) A grievance shall identify the nature of the grievance, the remedy sought, and should, where possible, specify the provisions of the collective agreement which are alleged to have been violated.
- (d) It is the mutual desire of the parties hereto that complaints of employees shall be adjusted as quickly as possible. It is understood that an employee has no grievance until she has first given her immediate supervisor the opportunity of resolving her complaint. If an employee has a complaint she shall discuss it with her immediate supervisor within five (5) days after the circumstances giving rise to the complaint have occurred or have or ought to

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binding upon the parties hereto and the employee or employees concerned. The parties shall share the costs of an arbitrator.

- (i) **Policy grievance:** It is agreed that a grievance arising directly between the Employer and the Union concerning the interpretation, application or alleged violation of the Agreement must be originated by the Union at Step 2 within ten (10) days following the circumstances giving rise to the grievance. Failing settlement under Step 2, the grievance may be submitted to arbitration.
- (j) **Group grievance:** Where an issue relating the interpretation, application or alleged violation of the collective agreement directly affects more than one (1) employee such that they would each be entitled to grieve, the employee may file a group grievance signed by each of the affected employees. A group grievance shall be filed at Step 1 within five (5) days of the occurrence of the circumstances giving rise to the grievance have occurred or ought to have reasonably come to the attention of the employees.
- (k) A claim by an employee who has completed her probationary period that she has been unjustly discharged or suspended in writing shall be treated as a grievance if a written statement of such grievance is lodged with the Employer Step #2 of the grievance procedure within five (5) days after the date the discharge or suspension is effected.

Such special grievance may be settled under the grievance or arbitration procedure by:

- a) confirming the Employer's action in dismissing or suspending the employee, or.
 - b) reinstating the employee with or without *loss of seniority and with or without full compensation for time lost, or*
 - c) by any other arrangement which may be deemed just and equitable by the parties or the Arbitration Board.
- (l) Where no written answer has been given within the time limit specified, the grievance may be submitted to the next step of the foregoing procedure, including arbitration.

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- (m) The parties acknowledge that the time limits set out in both the grievance and arbitration procedures must be strictly complied with except by written agreement to extend them and failure to so comply shall result in the grievance being deemed to have been abandoned subject only to the provisions of Section 48(16) of the Labour Relations Act.
- (n) The Employer may dismiss a probationary employee for reasons of performance, skill, ability and suitability provided it does not act in a *manner that is arbitrary, discriminatory or in bad faith* and this shall constitute a lesser standard for the purpose of the Ontario Labour Relations Act.

8. The wages applicable during the term of this agreement are summarized on Schedule A attached.

9. The Employer agrees, during the term of this agreement, to pay its share of the cost of premiums for coverage under the benefits plans currently in effect for eligible employees in the active employ of the Employer and who elect coverage under such plans. Employees must work a minimum of twenty-five (25) hours per week averaged over rolling three (3) month period in order to be eligible to participate in the benefit plan. It is agreed and understood that enrolment and benefit entitlement under any individual plan shall be subject to the respective terms and conditions of the individual plans. It is understood that the Employer does not in any way act as the insurer in respect of these benefits, nor does the Employer bear any responsibility in the event of a dispute between an employee and the insurer.

10. During the term of this agreement, vacation ~~and holiday pay~~ shall be paid in accordance with ~~the Employer's usual practice.~~ Appendix I

11. This agreement shall be in effect until October 11, 2005.

12. It is agreed and understood that the employment of each member of the bargaining unit shall terminate effective October 11, 2002, or at such earlier time as directed by the Employer and dependent upon service needs.

13. It is agreed that each member of the bargaining unit has been provided with notice of termination effective September 23, 2002, and in addition to such working notice, upon termination of employment, each member of

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the bargaining unit shall be paid severance pay calculated at the following rate;

- | | |
|---|----------------|
| Less than one year of service | one week's pay |
| More than one year of service
and less than two years of service | two week's pay |

For purposes of clarity, for part-time employees, one week's pay shall be calculated on the basis of the average number of hours actually worked by the employee during the 13 week period immediately preceding September 23, 2002 multiplied by the employees' regular, non-overtime rate. For full-time employees, one week shall constitute 40 hours work.

14. An employee who continues in active employment until October 11, 2002, or such earlier date as determined by the Employer shall be entitled to a lump sum bonus of \$750 less deductions required by law.

For the purposes of clarity bargaining unit employees who have resigned from employment prior to October 3rd 2002 shall be entitled to receive the forgoing bonus.

15. It is agreed and understood that should the Employer employ registered or graduate nurses in the future, employees terminated in accordance with the provisions of this agreement shall be recalled beginning with those employees who have the most service provided the employees in question have the qualifications, experience, skill and ability to perform the available work. Any and all recall rights shall forever expire effective October 11, 2003, or in the event that a employee is recalled to work and does not respond to the recall notice within 7 calendar days.

16. It is agreed and understood that should the Employer employ registered or graduate nurses in the future, the Employer will advise the Union of such employment, and the parties will jointly apply for consent of the Ontario Labour Relations Board pursuant to section 58(3) of the Labour Relations Act for early termination of the agreement and cooperate in expediting the process.

17. Union acknowledges and accepts on its own behalf and on behalf of each and every member of the bargaining unit that the termination pay provisions provided for herein fully satisfy any and all entitlements under the law, specifically the *Employment Standards Act* and agrees that no

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complaint by the Union or any employee shall be filed with the Ministry of Labour.

18. On behalf of itself, its successors, members, their, executors, administrators, and assigns, it subsidiaries and affiliates the Union hereby releases and forever discharges the Employer, its subsidiaries and affiliates, and each of its respective officers, directors, employees, servants agents successors and assigns, jointly and severally, from any and all actions, causes of action, contracts and covenants, whether express or implied, claims and demands for damages, indemnity, costs, interests, loss or injury of every nature and kind whatsoever, including any matter related to the *Labour Relations Act*, or the *Employment Standards Act* which the Union or its members may heretofore had, may now have, or may hereinafter have, in any way arising out of the termination of nursing services, and the termination of the employment of the current employees represented by the Union.

19. This agreement represents a complete and full settlement of all outstanding matters between the parties.

Dated at Sarnia this 01st day of October, 2002.

P. H. [Signature], BA.
For the Employer

[Signature], LRO
For the Union

[Signature]

Mureen Carson Regd

[Signature]

Schedule 'A'

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Registered Nurses in the
Bargaining Unit

~~October 1, 2002~~

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	Name	Status	Salary \$
1	Serina Alberts	PT L1	24.50
2	Sandra Archambeault	PT L1	24.50
3	Krysal Barnier	PT L1	24.50
4	Chris Biggs	PT L1	24.50
5	Deb Cadieux	FT L5	28.50
6	Nicole Caron	PT L1	24.50
7	Maureen Carson	FT L6	29.50
8	Shelley Cleary	FT L2	25.50
9	Diane Gamelin	PT L1	24.50
10	Donna McRae	PT L0	23.50
11	Nina Meeks	PT L1	24.50
12	Anissa Miseiko	PT L0	23.50
13	Tracey Moore	PT L2	25.50
14	Margaret Otten	PT L3	26.50
15	Catharina (Ineke) Reckman	FT L2	25.50
16	Elizabeth Runciman	FT L4	27.50
17	Ellenor, Lynda	PT L0	23.50
18	Bernadette Willemsen	PT L2	25.50

Schedule B

Settlement, Release and Indemnity

I, _____ (the "Employee") agree to accept the following terms and conditions of the termination of my employment with We Care health Services "Sarnia" Inc. (the "Employer"):

1. The Employer agrees to pay the sum of \$ _____, less all deductions required by law.
2. The Employee acknowledges that the Employer has provided 4 weeks working notice, and _____ week(s) pay in lieu of notice.
3. In consideration of the provisions of paragraphs 1-2 above, the Employee hereby release and relinquish and forever foregoes any and all claims, actions, complaints disputes or other issues, including a proceeding of any nature in any court, tribunal or any other administrative or judicial body or agency, whatsoever, including complaints pursuant to the Employment Standards Act, or the Labour Relations Act, against the Employer, its subsidiaries and affiliates, and each of its respective directors, officers, agents, successors, assigns, or employees, jointly or severally, relating to the Employee's employment except with respect to their recall rights.
4. The Employee further agrees that the monies referred to in paragraph 1-2 are paid in complete and full satisfaction of all liabilities damages, notice of termination or pay in lieu of notice thereof.
5. I further agree to indemnify and save harmless the Employer with respect to any claims, charges or demands properly eligible which might be made upon it in respect of my obligations pursuant to the Income Tax Act of Canada and/or the Employment Insurance Act of Canada.
6. The Employee hereby acknowledges that the Employee has carefully consider the terms of this settlement and confirm that the Employee has been given the opportunity to discuss this matter with the Employee's union representative.
7. This agreement is made pursuant to the provisions of the collective agreement between the Employer and the Employee's representative, namely the Ontario Nurses Association.

Dated at _____, this _____ day of _____.

For the Company

Employee

Appendix 1

10. During the term of this agreement, vacation entitlement shall be as follows:

Start of employment	3 weeks or 6%
Three years	4 weeks or 8%
Ten years	5 weeks or 10%

Part-time & Casual, Relief

Start of employment	4%
Three Years	6%
Ten years	8%