

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, c. H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. VICTOR TAYE FADAYOMI

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
December 11, 2023**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Victor Taye Fadayomi on October 24 and 25, 2023. The members of the Hearing Tribunal were:
 - Dr. Don Yee as Chair (and physician member);
 - Dr. Neelam Mahil (physician member);
 - Mr. Douglas Dawson (public member);
 - Ms. Shelly Flint (public member).

Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.

Also present were:

- Ms. Stacey McPeck, legal counsel for the Complaints Director;
- Dr. Victor Taye Fadayomi;
- Mr. Philip Nykyforuk and Ms. Emily McCartney, legal representatives for Dr. Fadayomi.

II. PRELIMINARY MATTERS

2. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing.
3. The hearing was open to the public pursuant to section 78 of the *Health Professions Act* ("HPA"). There was no application to close the hearing.

III. CHARGES

4. The Notice of Hearing listed the following Allegation:
 1. On or about September 18, 2021, you touched the breast of [the Complainant], one of the medical office staff, without her consent, which:
 - a. contravenes the CMA Code of Ethics and Professionalism;
 - b. contravenes the Standard of Practice: Boundary Violations: Sexual; and
 - c. is conduct that harms the integrity of the medical profession.
5. In his testimony, Dr. Fadayomi admitted that he did touch the breast of the Complainant on September 18, 2021, but that the contact was entirely accidental and unintentional and therefore does not represent unprofessional conduct.

IV. EVIDENCE

6. By agreement, the following Exhibits were entered into evidence during the hearing:
- Exhibit 1:** Agreed Exhibit Book containing Tabs 1 through 13:
- Tab 1:** Notice of Hearing dated February 14, 2023
 - Tab 2:** Letter of Complaint from the Complainant dated November 3, 2021, enclosing text messages
 - Tab 3:** Letter of response from Dr. Fadayomi dated December 15, 2021
 - Tab 4:** Supplementary Response from Dr. Fadayomi, dated March 30, 2022
 - Tab 5:** Supplementary Response from Dr. Fadayomi, dated April 6, 2022
 - Tab 6:** Letter from J. Ellis to Whom it May Concern, dated April 13, 2022
 - Tab 7:** Monterey Medical Clinic Day Sheet for September 18, 2021
 - Tab 8:** AHS Billings for Dr. Fadayomi on September 18, 2021
 - Tab 9:** Pictures of Monterey Medical Clinic
 - Tab 10:** Map of Monterey Medical Clinic location
 - Tab 11:** Email from S. Attwood to S. Price regarding FOIP request
 - Tab 12:** CMA Code of Ethics Excerpt – B. 31
 - Tab 13:** Standards of Practice: Boundary Violations: Sexual
7. Counsel for the Complaints Director also filed the following cases:
- i. *Ontario (College of Physicians and Surgeons of Ontario) v. Rabiou, 2020 ONCPSD 15 (CanLII)*
 - ii. *Stetler v. Ontario (Agriculture, Food & Rural Affairs Appeal Tribunal), 2005 CarswellOnt 2877, [2005] O.J. No. 2817, 141 A.C.W.S. (3d) 157, 200 O.A.C. 209, 36 Admin. L.R. (4th) 212, 76 O.R. (3d) 321; and*
 - iii. *Faryna v. Chorny, 1951 CarswellBC 133, [1951] B.C.J. No. 128, [1951] B.C.J. No. 152, [1952] 2 D.L.R. 354, [1952] 4 W.W.R. 171, 4 W.W.R. (N.S.) 171.*
8. In her opening submission, Ms. McPeek indicated the Hearing Tribunal would be asked to determine if the single allegation is proven on the balance of

probabilities. Specifically, if on September 18, 2021, Dr. Fadayomi touched the breast of the Complainant without her consent. She pointed out that when the touching incident occurred, only the Complainant and Dr. Fadayomi were present and as such, the Hearing Tribunal would have to as a primary task determine the credibility of the witnesses.

9. Ms. McPeek indicated that the Complaints Director would call two witnesses: the Complainant and her father. She stated the Hearing Tribunal should focus on the Complainant's description of the incident and how her version fits with other evidence presented in others' testimony and the Exhibit Book and if her version of the events appears reasonable when considered alongside the other evidence. She stated the Hearing Tribunal should focus on the Complainant's father's evidence and if it fits with the evidence from his daughter.
10. Ms. McPeek stated the Complaints Director would be asking the Hearing Tribunal to make a positive finding that the Allegation is proven and that the proven conduct contravened both the CMA Code of Ethics and Professionalism as well as the CPSA Standard of Practice-Boundary Violations: Sexual and that the conduct is conduct that harms the integrity of the medical profession and therefore constitutes unprofessional conduct as defined by the *Health Professions Act* and is worthy of sanction.
11. In her opening submission, Ms. McCartney stated Dr. Fadayomi is a family physician with over 30 years' clinical experience. He has a busy family medicine practice in northeast Calgary, and the Complainant was one of his medical office assistants (MOAs) between July 2021 and September 2021. She stated that the Complainant alleges on Saturday September 18, 2021, Dr. Fadayomi intentionally touched her breast sometime between clinic patients, but Dr. Fadayomi contends the contact was with his elbow and purely an accident.
12. Ms. McCartney stated this matter hinges on the credibility and reliability of the Complainant and Dr. Fadayomi. She compared and contrasted the concepts of credibility versus reliability and stated credibility relates to a witness' honesty to speak the truth as they believe it to be, while reliability relates to the accuracy of the evidence and the witness' ability to observe, recall and recount the events.
13. Ms. McCartney stated the Hearing Tribunal would have to conduct an analysis of the credibility and reliability of the two individuals present at the touching incident and also consider the surrounding circumstances and the context. She anticipated that the Hearing Tribunal would hear that the Complainant's description of the events varies widely from her written complaint to what she told her father to what she told the College Investigator. She also stated that the Hearing Tribunal would hear that the Complainant's telling of the circumstances surrounding and related to the alleged incident are also inconsistent and unreliable.

14. Conversely, Ms. McCartney stated Dr. Fadayomi's description is consistent throughout his response to the complaint and what he would testify. She stated another one of the clinic MOAs will provide testimony that is inconsistent with the Complainant's and therefore the incident is improbable. She also stated that the general context and surrounding circumstances make it improbable that the incident occurred as the Complainant believes that it did.
15. Ms. McCartney stated the burden of proof lies with the Complaints Director, and here the standard of proof is the balance of probabilities. The Allegation must be proven by evidence that is clear, cogent and convincing. Strong and unequivocal evidence within this standard of proof is required, as in this case the consequence for the physician can be very serious. She indicated the defence will ask the Hearing Tribunal to find that the incident more than likely did not occur, and therefore Dr. Fadayomi is not guilty of unprofessional conduct.
16. A summary of the witness testimony is below. Counsel for the Complaints Director called two witnesses: the complainant and her father. Counsel for Dr. Fadayomi called three witnesses: Dr. Fadayomi, MOA 1, and MOA 2.

Complainant – Examination by Counsel for the Complaints Director

17. ■ confirmed she is the complainant. She stated she was an MOA in the Monterey Medical Clinic at the time of the alleged incident. She was hired in July 2021 and stopped working at the clinic in September 2021. Her tasks as an MOA included answering phones, scheduling appointments, greeting patients, recording vital signs, and assisting doctors as a chaperone for gynecologic exams. Prior to this job she had no previous MOA jobs.
18. For this job she received training in linking documents in the electronic medical record, greeting patients, taking vital signs, and prepping samples such as urine and Pap smears. She described linking documents as incorporating documents from different clinics or pharmacies into the clinic electronic medical record to send to each doctor's inbox.
19. The Complainant described the clinic as having two doctors and three MOAs. One MOA went on maternity leave. The clinic hours were Monday to Friday, 9:00 a.m. to 6:00 p.m. and Saturday 9:00 a.m. to 5:00 p.m. The clinic accepted walk-ins and phone consultations, and depending on the day they can be very full and booked. She worked on Saturdays. On Saturdays there was one doctor and one MOA staffing the clinic. She confirmed the photos in Tab 9 of Exhibit 1 to be of Monterey Medical Clinic including photos of the clinic reception area, patient waiting room, front entrance, work area for the MOAs and exam room hallways.
20. The Complainant stated before September 18, 2021, she had received no performance reviews of her work.

21. The Complainant confirmed Tab 7, Exhibit 1 as the clinic list or day sheet for September 18, 2021. She outlined the various terms and abbreviations and what they meant including consult (a doctor consult for new issue), recall (follow-up visit), M+G (meet and greet), phone consult (not in person visit, conducted via phone), and CPX (complete physical exam).
22. The Complainant confirmed that on September 18, 2021, she was working as the clinic MOA, and Dr. Fadayomi was the doctor. She arrived at work before 9:00 a.m., and everything was all right. She signed in to her computer, prepped examination rooms and checked the first patient in. After the first patient left, Dr. Fadayomi came out to her desk holding some documents and stood behind her on the left side as she was linking documents into the computer. He leaned forward and said something that the Complainant could not recall. Then he leaned back, and the Complainant continued working. He then suddenly reached over her left shoulder and touched her left breast and pinched her nipple. She pushed his hand, and Dr. Fadayomi tried touching her a second time. The Complainant then said, 'What are you doing?'. Dr. Fadayomi then walked away through the patient waiting area towards the other clinic hallway not in use that day. While he walked away Dr. Fadayomi was laughing and said, 'Succulent breast'. She stated Dr. Fadayomi touched her breast by reaching over her left shoulder and she pushed his hand up and away with her right hand. She recalled there were no patients in the waiting room at the time.
23. When reviewing the clinic day sheet, the Complainant estimates the incident occurred around 9:15-9:30 a.m. The second patient on the list is a friend of hers, and he had already left the clinic before the touching incident occurred.
24. The Complainant recalled being shocked at what happened and initially did not know how to react. She had a thought to leave the clinic that day but then thought about how fully booked the day was. The Complainant chose to finish her shift and went home at around 5:00 p.m. She had no further discussion with Dr. Fadayomi about the incident that day. She stated that Dr. Fadayomi did not say that it was an accident that day.
25. The Complainant stated that the following day, she and her family went to church and then they went home. On the following Monday she went back to work at Monterey Medical Clinic. Dr. Fadayomi asked to speak with her in one of the exam rooms and apologized to her for touching her and stated a devil made him do it. She did not speak to Dr. Fadayomi during this meeting, but she stated that she found this reason unacceptable and left the room after he stated this reason. The Complainant stated the reason Dr. Fadayomi offered triggered her.
26. The Complainant stated she left the exam room and did not say much. She did not accept Dr. Fadayomi's reason. She wanted to contact her father, as she was afraid it would happen again. The Complainant was scheduled to work at the clinic the following Saturday. She tried to call her father, but he

did not pick up. She then texted him and explained Dr. Fadayomi touched her breast the previous Saturday. Her father advised he would call the police and told her to leave work early that day and come home. The Complainant stated that before or after lunch that Monday she asked Dr. Fadayomi if she could leave work early that day to help her mother, and Dr. Fadayomi approved this request. She could not recall what time she left work.

27. The Complainant stated she did speak with a colleague at the clinic about the incident and that she was thinking of not going back to work because of what happened. The Complainant did not mention this to the College Investigator, as she did not want to involve her colleague in the matter. She stated she did not tell anyone else of the touching incident other than her colleague at work and her father.
28. The Complainant went home and then went to the police station with her father. There she was given a phone number to call and was advised to get counselling when she called the number. That evening two police officers came to the Complainant's house to get a report. The officers came to the house around 7:00 p.m. that evening, and the Complainant documented the events for them on paper. The officers advised that it was up to her if she returns to work and that they would provide an update to her every 60 days. She did not recall anything else from that visit.
29. The Complainant eventually received a letter from the police with a website to visit which listed various counselling options available to her. She does not recall getting any more updates or communications from the police, and that is when she decided to contact the CPSA about the incident.
30. The Complainant confirmed the text message in Tab 2, Exhibit 1 as a text she sent Dr. Fadayomi on Tuesday September 21, 2021. She informed him that she would not be returning to work because his reason was unacceptable. The Complainant clarified she was referring to the explanation of the devil made him do it, as the reason Dr. Fadayomi touched her. The Complainant stated she was traumatized and that this was the first time such an event happened to her.
31. With his first response, the Complainant thought Dr. Fadayomi was sorry for something he was aware was not an accident. She stated she did not answer repeated phone calls from Dr. Fadayomi that day. Dr. Fadayomi sent further text messages on September 22, 2021. The Complainant's interpretation of these messages is that Dr. Fadayomi is acknowledging what he did was wrong. She did not respond to these texts or speak further with Dr. Fadayomi.
32. The Complainant learned of the CPSA complaints process from a friend's mother after she told her friend's mother of the incident. Her friend's mother told her the police would not do anything further for her but that there was an option to file a complaint with the CPSA. The Complainant did not recall specifically when she spoke with her friend's mother about this.

Complainant - Cross-Examination by Counsel for Dr. Fadayomi

33. The Complainant confirmed her job at Monterey Medical Clinic was her first MOA job. She had had no prior work experience in the medical field. She graduated from CDI College in 2019 and had worked at McDonald's for five years. The Complainant stated it was hard finding work as an MOA because many clinics prefer applicants with two to five years' prior experience.
34. The Complainant confirmed she filed the complaint with the CPSA on November 3, 2021 (Tab 2, Exhibit 1). She is not sure what she did for work after the incident and she left her Monterey Medical Clinic job. She confirms she still remembers the incident and was truthful in making the complaint to the CPSA. She understands the importance of being accurate and thorough in her reporting. While she did grasp the importance of doing her best to describe what happened, the Complainant stated that she was still in shock and traumatized.
35. The Complainant confirmed she had several interviews with the College Investigator where she was truthful and did her best to describe what happened. Her first interview was on June 5, 2022. She stated she was truthful in the interview and conveyed exactly what happened. She stated she was also truthful at her second and third interviews on August 26, 2022, and December 3, 2022.
36. The Complainant stated that after she was hired at Monterey Medical Clinic in July 2021, MOA 2 was the office manager and did her initial training for a few days and then went on maternity leave, which left the Complainant and MOA 1 as the two clinic MOAs working Monday to Friday. MOA 1 had previous MOA experience, so she could ask MOA 1 occasionally for help on weekdays. She was not friends with MOA 1 outside of work. She and MOA 1 would alternate working on Saturdays but never worked together on Saturday.
37. When the Complainant was hired, she was aware of the camera on top of the printer machine. She mentioned the camera to the College Investigator but does not recall if she mentioned it in her written complaint to the CPSA.
38. During the Complainant's training, MOA 2 showed her how to link documents including x-ray and ultrasound reports, consult notes and lab reports. She stated Dr. Fadayomi was particular in the way he wanted these reports linked for him. If not done correctly, she found Dr. Fadayomi to be rude, and he would yell at her, sometimes even in front of patients.
39. The Complainant denies ever wearing ripped jeans or jeans at all to work. She recalls Dr. Fadayomi telling her on her first day of work that proper work attire was scrubs. She recalls when she once made a billing error for a privately billed patient, Dr. Fadayomi was upset that he had to correct her error after she had left work. She recalls that at times when she was on the phone with patients Dr. Fadayomi would listen to what she was saying while he stood at the fax machine. The Complainant stated at her third interview

with the College Investigator that Dr. Fadayomi would at times come to the front of the clinic and listen to her speak with patients on the phone. She described how Dr. Fadayomi would get upset and yell at her if she made a mistake. At least once Dr. Fadayomi yelled at her in front of a patient, which was upsetting for her. The Complainant stated sometimes Dr. Fadayomi would be in a very bad mood, and other times he would seem okay.

40. The Complainant recalled on September 18, 2021, she arrived at the clinic before 9:00 a.m. opening, set up, clocked in, and prepped exam rooms. There was no expectation of a specific arrival time. Dr. Fadayomi would arrive before the clinic opened, but other times he would show up at 9:00 a.m. or 9:15 a.m. She does not recall when Dr. Fadayomi arrived on September 18, 2021.
41. The Complainant drove to clinic on September 18, 2021, and parked in an area in front of the clinic and not in the patient parking area, which is directly in front of the clinic. The Complainant did not recall if Dr. Fadayomi was there when she arrived.
42. When shown clinic photos in Tab 9, the Complainant explained her usual seat was at the end of the desk near the clinic front door. The clinic has interior and exterior doors that are both unlocked at 9:00 a.m. and remain unlocked throughout the day. The clinic welcomes walk-ins Monday to Saturday.
43. There were 38 patients booked into the clinic on September 18, 2021, which is a busy day. The first walk-in patient was at 10:15 a.m. The first patient arrived at 9:00 a.m. Between the first and second patients, Dr. Fadayomi came to her desk. It was pointed out that in her written complaint, the Complainant stated this occurred between 9:30 a.m.-10:00 a.m., and in her June 5, 2022, interview she stated the incident occurred after the first patient of the day. The Complainant stated she did not have access to the clinic day sheet at this interview. The Complainant confirmed that 'meet and greet' clinic visits are in-person, and that 'complete physical exam' visits are booked for 30 minutes.
44. The Complainant explained she does not need to link documents for visits for ear infections or strep throat, but there would be documents to link for a visit to follow up on an ultrasound. While the second booked patient on September 18, 2021, was coming to review an ultrasound result, the Complainant disagreed with Ms. McCartney's suggestion that when Dr. Fadayomi came to speak with her on September 18, 2021, it was about ultrasound reports that had been linked incorrectly.
45. In the Complainant's first interview with the College Investigator in June 2022, the Complainant stated that Dr. Fadayomi grabbed her breast. When she tried to push him away, he tried grabbing a second time. It was pointed out that she did not mention the second attempt in her written complaint to the CPSA. The Complainant stated that at the time she submitted her written complaint to the CPSA she was still in shock from the incident, which

affected her recall of all the details of the event. She agreed that she submitted her written complaint about Dr. Fadayomi about six weeks after September 18, 2021, and had her first interview with the College Investigator about eight months after September 18, 2021.

46. It was pointed out that in her written complaint the Complainant described 'tapping' Dr. Fadayomi's hand, but at her June 2022 interview with the College Investigator she stated she grabbed his hand and tried to push it away. The Complainant does not recall stating this. The relevant portion of the June 2022 transcript was shown to the Complainant and the Hearing Tribunal. In this transcript the Complainant describes Dr. Fadayomi 'kind of pinching my nipple' but this was not mentioned in her written complaint. The Complainant confirmed that she did not grab his hand but instead tried to push it away. She apologized for her wording as English is her second language.
47. The Complainant described Dr. Fadayomi pinching her nipple in a claw-like fashion. When he attempted to touch her breast a second time, she pushed his hand away. Dr. Fadayomi then walked away, laughed, and said, 'succulent breast'. It was pointed out that this comment was not described in her written complaint.
48. In her interview with the College Investigator, the Complainant said she turned to face Dr. Fadayomi before he grabbed her. Dr. Fadayomi was holding papers she thought he needed faxed. The Complainant asked if the papers needed to be faxed, and Dr. Fadayomi stated no. The Complainant then turned back to face her computer, and that is when Dr. Fadayomi grabbed her breast.
49. A couple of days later, the Complainant told her father about the incident. She did not demonstrate to her father what happened and just told him Dr. Fadayomi touched her left breast. Her father listened to her as she described what happened to the police officers, but she does not recall what specific words she used. The Complainant did not mention the nipple pinch to her father and does not recall telling her father of the second attempt to grab her breast. She did not tell her father that immediately after the incident Dr. Fadayomi said he was just joking or kidding. The Complainant did not recall if she told her father she tried to swat Dr. Fadayomi's hand away.
50. The Complainant recalls telling the College Investigator that on another occasion when she was changing over one of the exam rooms in the clinic, Dr. Fadayomi brushed up against her buttocks. She did not mention this in her written complaint. She confirmed that she was not able to tell the College Investigator any details about when this occurred or how many times.
51. The Complainant told her father of another staff member telling her that Dr. Fadayomi touched her and had told her that previous MOAs had experienced Dr. Fadayomi brushing up against their buttocks. The transcript

from the interview states that this other staff member was MOA 1. The Complainant stated that MOA 1 told her that Dr. Fadayomi brushed up against her buttocks after she told MOA 1 of the incident with Dr. Fadayomi. This conversation occurred at the Monterey Medical Clinic after the Complainant had a conversation with Dr. Fadayomi in one of the clinic exam rooms. The Complainant told MOA 1 that she might not come back to work at the clinic because of the touching incident.

52. After Dr. Fadayomi touched her breast, the Complainant stayed at work as she felt with a full day sheet she was needed. She stated she and Dr. Fadayomi did not say another word about the touching incident for the rest of the day. The following day she went to church with her family. The Complainant mentioned this to the College Investigator at her final interview with him on December 3, 2022.
53. The Complainant returned to work September 20, 2021. Around lunchtime she agreed to speak with Dr. Fadayomi at his request in an exam room. She said Dr. Fadayomi explained that a devil or demon made him do it. She recalls being shaken and traumatized after their conversation. She describes it as 'feeling nervous' inside.
54. The Complainant left work early that day just before closing time. She told the College Investigator at her June 5, 2022, interview that she texted her father before she left the clinic that Dr. Fadayomi's reason for the touching incident was 'not right'. She had tried phoning her father, but when he did not pick up, she texted him. She reported the touching incident to the Calgary Police the evening of September 20, 2021.
55. At her June 2022 interview with the College Investigator, the Complainant stated her father had filed the police report, but the Complainant confirmed she was the one to file the report with the police, and her father was the person who phoned the police initially. They went to the police station together, and there they were provided a phone number to call. She recalls two police officers then came to the house that evening to interview her. She could not recall their names. She was advised there was an update to come after September 20, 2021. A letter came providing a website to visit to access counselling. The Complainant stated she has not heard anything further from the police on the matter. Despite Tab 11 showing the police stated they made multiple attempts to contact the Complainant, the Complainant stated she did not receive any further calls from the police after she provided her statement.
56. The Complainant stated that a friend's mother told her of the CPSA complaints process. She felt that the complaint form was going to be the only opportunity she would have to describe the incident.

Questions from the Hearing Tribunal

57. The Complainant clarified that Dr. Fadayomi walked away after his second attempt to touch her breast. The Complainant pushed his hand away after the first touch and he tried touching her breast again. She then asked him 'What are you doing?' and then he walked away through the front waiting area of the clinic, laughing and said, 'succulent breast'.
58. The Complainant stated that at no time did Dr. Fadayomi communicate with her that his touching of her breast was an accident.

The Complainant's Father – Examination by Counsel for the Complaints Director

59. ■ confirmed that the Complainant is his daughter and that they live together in southeast Calgary.
60. The Complainant's father confirmed that he is aware that on September 18, 2021, Dr. Fadayomi grabbed his daughter's breast while she was seated at a computer at her workplace. Dr. Fadayomi was behind her when he touched her.
61. The Complainant's father stated the Complainant texted him from work on September 20, 2021, and told him what happened. He was at home. He received the message around 3 or 4 in the afternoon. He asked the Complainant to come home. When she did, they discussed the incident and then went to the police station together.
62. The Complainant's father recalls the incident occurred at Monterey Medical Clinic. His understanding of the incident is Dr. Fadayomi grabbed the Complainant's breast and she pushed his hand away. Dr. Fadayomi then walked away laughing. The Complainant's father is aware that Dr. Fadayomi later texted the Complainant with his apology.
63. The Complainant's father recalls feeling very angry when the Complainant told him of the touching incident. He was concerned for her safety. That is why on September 20, 2021, he advised her to come home and told her to quit her job at the clinic. He did not feel she was safe at the workplace anymore.
64. On September 20, 2021, he advised the Complainant to make an alibi and leave work early and come home. When the Complainant got home, they discussed the incident further and then went to the police station together. At the police station, the Complainant was given a phone number to call. That evening two police officers came to their house and interviewed the Complainant. The Complainant's father was present, but he was in another room in the house. He did not attend the interview. He recalls the interview lasted about 30 minutes.

65. The Complainant's father described his relationship with his daughter as 'normal'. He stated they are close, and they travel together. The Complainant is old enough to move out, but she chooses to live with her father.
66. The Complainant's father stated he feels he can tell if the Complainant is sad or happy. After September 18, 2021, he feels she was sad and lonely. That evening he did wonder why she did not go out with friends, as that is her usual behavior. Instead, the Complainant just stayed home in her room. At the time he thought perhaps she was tired. He asked her if anything was wrong, but she said nothing. He confirmed on September 19, 2021, they went to church together, but he observed that something was not right with the Complainant, and she still seemed lonely. He stated that normally his daughter is outgoing, and after church she would usually go out with friends.
67. When they spoke on September 20, 2021, the Complainant's father could tell that the Complainant was nervous and upset by her voice and actions. He advised her to quit her job.
68. The Complainant's father confirmed that his daughter has zero history of fabricating stories. He was unsure about how the Complainant felt about not returning to work but thought she would not like to return to work at Monterey Medical Clinic.

The Complainant's Father - Cross-Examination by Counsel for Dr. Fadayomi

69. The Complainant's father confirmed he has never met Dr. Fadayomi or spoken with him. He confirmed he has never been to Monterey Medical Clinic.
70. The Complainant's father stated that before September 20, 2021, his daughter had never complained to him about being touched inappropriately by Dr. Fadayomi.
71. The Complainant's father confirmed that he learned of the September 18, 2021, touching incident from his daughter. He was not at Monterey Medical Clinic that day and therefore did not witness any event at the clinic on that day. His only knowledge of the incident was from the Complainant's description she gave him September 20, 2021.
72. At the time of the touching incident, the Complainant was living with him. On September 18, 2021, he saw the Complainant after work. That evening the Complainant did not mention anything about the incident.
73. On September 19, 2021, he and the Complainant went to church together.
74. The Complainant's father recalls being interviewed by the College Investigator on October 25, 2022. He acknowledged the importance of being honest, accurate and complete in answering questions during such an interview and that is what he did.

75. The transcript from the interview indicates that the Complainant's father stated that his daughter stayed in her room the entire day of September 19, 2021, and that he thought she was sick. The Complainant stated he felt his daughter was sad that day.
76. Sometime on September 20, 2021, the Complainant called him on the phone. He was at home. He stated that the Complainant texted first and then he called her. She stated she could not talk as she was working. The Complainant's father confirmed that he advised his daughter to leave work and come home that day.
77. When the Complainant arrived home, she described to him the touching incident from September 18, 2021. During this conversation she demonstrated Dr. Fadayomi touched her chest with two hands. The Complainant's father stated that the Complainant said she pushed Dr. Fadayomi's arm away and said Dr. Fadayomi told her he was just kidding and joking with her. The Complainant did not mention anything about nipple pinching to him or that Dr. Fadayomi made a second attempt to touch her breast.
78. The Complainant's father confirmed that his daughter told him Dr. Fadayomi was laughing after he touched her breast.
79. From the interview with the College Investigator, there is no indication that the Complainant's father mentioned Dr. Fadayomi was laughing at the end of the touching incident.
80. The Complainant's father stated his daughter told him on September 20, 2021, that the clinic had surveillance cameras. He stated that the Complainant told him that another staff member told her that Dr. Fadayomi touched her inappropriately. The Complainant did not identify who the staff member is or where Dr. Fadayomi touched this other staff member.
81. The Complainant's father stated when his daughter came home on September 20, 2021, and told him of the touching incident, he told her she should go to the police. He stated he did not take steps to report the incident to the police. The Complainant's father drove himself and the Complainant to the nearest police station to their house located near a T&T store in the Marlborough community. When they got there, he waited while the Complainant went in. The Complainant spent about five minutes inside, as the station was already closed. When she got back to the car, the Complainant told him the office was officially closed and was just given a phone number to call to arrange for officers to gather a report.
82. When it was pointed to him that in his interview with the College Investigator on October 25, 2022, he indicated that the Complainant had provided the police with details at that visit to the station, the Complainant's father stated that was a mistaken comment and that there was another incident, a car accident, that the Complainant had provided a statement to police about.

83. The evening of September 20, 2021, two officers came to the house. The Complainant spoke with them, and the Complainant's father did not hear the conversation. The conversation lasted about 30 minutes.

The Complainant's Father - Redirect Examination by Counsel for the Complaints Director

84. The Complainant's father clarified that on September 19, 2021, the Complainant did go to church with him but that afterwards she stayed in her room the rest of the day.

Dr. Fadayomi – Examination by Counsel for the Complaints Director

85. Dr. Fadayomi stated he is 58 years old. He graduated from medical school in Nigeria in 1991. From there he completed an internship in Nigeria from November 1991 to October 1992. During this time, he did rotations in internal medicine, general surgery, pediatrics and obstetrics and gynecology (12 weeks each). After internship he practised in Nigeria from 1992 to 1997. His first language is Yoruba. He left Nigeria to practice in South Africa from 1997 to 2002. He then moved to Australia to practice from April 2002 to December 2002. He then moved to Canada in December 2002 and became a registered physician in Alberta in January 2003.
86. Dr. Fadayomi then practised in Wabasca-Desmarais Hospital for five years (2003 to 2007) and then moved to Calgary in December 2007. He has practiced family medicine in Calgary since. He has also worked as an ICU outreach physician at Peter Lougheed Centre from 2008 to 2012. Dr. Fadayomi has worked as a rural locum physician at various rural hospitals through the Alberta Medical Association rural locum program. He is a licentiate of the Medical Council of Canada and fellow of the College of Family Physicians of Canada.
87. Dr. Fadayomi's current practice is at the Monterey Medical Clinic in northeast Calgary. He has practised there since 2018. In September 2021 there was one other physician practising at the clinic with three office staff including MOA 2. MOA 2 started working there in 2019, and her job is an MOA and clinic manager. She was employed at the clinic in September 2021 but had gone on maternity leave July 2021. She returned to work August 2022. She left the job on July 28, 2023. Dr. Fadayomi has never discussed the alleged incident or the Complainant's allegations with MOA 2.
88. Dr. Fadayomi stated MOA 1 is another MOA at the clinic and was the acting clinic manager in September 2021. He stated he never discussed the incident from September 18, 2021, with MOA 1.
89. Dr. Fadayomi stated the Complainant was hired as an MOA at the clinic in July 2021. Her job duties included answering the phone, booking appointments, linking documents into the EMR, rooming patients, making up exam rooms, acting as a chaperone and assisting with manual procedures in

the clinic. He stated MOA 2, in her role as clinic manager, trained the Complainant in linking documents in July 2021.

90. Dr. Fadayomi confirmed that the Complainant has never been a patient of his, and he has never provided medical treatment for her.
91. Dr. Fadayomi confirmed the photos in Tab 9 of Exhibit 1 are photos of the Monterey Medical Clinic and that they accurately depict the layout of the clinic. These are photos the College Investigator took in 2022. Dr. Fadayomi stated that between September 18, 2021, and the date the pictures were taken, no significant changes were made to the clinic.
92. Dr. Fadayomi stated Photo 1 is the main clinic reception desk with three chairs for the MOAs to sit in. At the time of the September 18, 2021, incident, the Complainant was seated at the end of the reception desk nearest the front entrance to the clinic where there is a lowered desk surface.
93. The photo on page 23 of Exhibit 1 is the patient waiting area, reception desk and one of the hallways in the clinic.
94. Photo 3 on page 24 of Exhibit 1 is the clinic reception desk and patient waiting area. The Complainant's seat at the desk is where the touching incident occurred.
95. Dr. Fadayomi stated the five front windows of the clinic did not have coverings on September 18, 2021. They also were not tinted that day. Therefore, one could see into the reception area from outside the clinic. Immediately outside the clinic windows is a sidewalk and parking stalls.
96. Photo 15 on page 36 of Exhibit 1 shows the interior clinic entry adjacent to the patient washroom. One can see into the clinic reception area through the interior and exterior entry doors. These doors did not have blinds on September 18, 2021. They also were not tinted that day. Dr. Fadayomi stated the large window next to the exterior clinic door did not have blinds or tint on September 18, 2021.
97. Photo 20 on page 41 of Exhibit 1 shows the hallway to patient rooms and the TV behind the reception desk. Dr. Fadayomi explained the clinic is located in a strip mall called Monterey Square Mall in northeast Calgary.
98. An overhead view of the strip mall is on page 44 of Exhibit 1. Dr. Fadayomi confirmed this is an accurate depiction of his clinic location. He was able to identify several of the neighboring businesses next to Monterey Medical Clinic. On Saturday mornings several of these businesses are open including the Co-op, Pet Valu, Subway, Monterey Park physiotherapy clinic, and Dollarama.

99. One can see the Subway and Pet Valu businesses outside the clinic in photos 5 and 14 in Exhibit 1 (pages 26 and 35).
100. Dr. Fadayomi stated in September 2021, Monterey Medical Clinic was open 9:00 a.m. to 5:00 p.m. on Saturdays. Usually, the first patient on a Saturday would be at 9:00 a.m., with the final patient at or shortly after 5:00 p.m. A typical Saturday in summer/fall of 2021 was very busy with both booked and walk-in patients. The clinic is staffed with one physician and one MOA on Saturdays.
101. Dr. Fadayomi recalls the clinic being very busy on Saturday, September 18, 2021. There were booked patients, walk-ins, and phone consults. He would have arrived at the clinic at around 8:45 a.m. and was the only physician there that day. The only MOA working that day was the Complainant.
102. Dr. Fadayomi confirmed page 16 of Exhibit 1 contained the clinic day sheet for September 18, 2021. Thirty-eight patients were booked that day. The first patient was at 9:00 a.m. Dr. Fadayomi did not take a lunch or break that day. The final patient was booked at 4:45 p.m. There were no clinic openings that day and certain times have multiple patients booked to accommodate for walk-in patients (10:15, 10:45, 12:30, 1:00, 3:15).
103. During that morning, booked patients were seen from 9:00 a.m. to 10:00 a.m. Walk-in patients were seen at 10:15 and 10:45 a.m. On a Saturday the most common walk-in times were in morning or afternoon. There were walk-in patients booked September 18, 2021, at 10:45 a.m., 12:30 p.m., 1:00 p.m., 3:15 p.m.
104. Dr. Fadayomi clarified some of the nomenclature on the day sheet. CPX stands for complete physical exam. M+G is meet and greet. WI is walk-in. He confirmed he spoke with or saw all patients booked on the September 18, 2021, day sheet.
105. Dr. Fadayomi recalled that earlier patients that day were for test results. The 9:15 patient was in for review of an ultrasound, and this visit requires a document to be linked into the EMR. Other documents that require proper linkage include x-ray, CT scan and MRI reports, as well as specialist consultations. He stated that proper documentation linkage was not done on September 18, 2021.
106. Dr. Fadayomi stated he had a good working relationship with the Complainant before September 18, 2021. He recalls reprimanding her twice. Once was for wearing ripped jeans to work on her first day. He spoke with her with MOA 1 present and explained proper clinic attire was scrubs. MOA 1 and the Complainant were at the reception desk for this conversation. The second time was the manner in which she processed a third-party payment. The Complainant had already left the clinic when the error was found and he had to correct the error.

107. On September 18, 2021, he finished with the first patient. He had trouble with the second visit as the document he needed to discuss with the patient was not in the EMR. The patient left. He spoke with the Complainant about the missing linked document and tried to explain what he needed to be linked.
108. At this time the Complainant was seated at the reception desk. He leaned forward to take her computer mouse. She leaned forward to see and when he stood to return to the exam room his right elbow touched her left breast. He acknowledged she asked him, 'What are you doing?'. He apologized and said the contact was accidental. He said the Complainant said 'okay' and he then left the reception area and went back to seeing patients.
109. When he approached the Complainant to speak with her, he had his stethoscope, a NETCARE form around his neck and a pulse oximeter in his hands. He stated he is right-hand dominant. The front door was unlocked, and the front and side windows were unobscured. After the incident, there were no further discussions of the incident with the Complainant that day.
110. The clinic was not open the following day (Sunday), and there was no contact between Dr. Fadayomi and the Complainant that day.
111. Dr. Fadayomi returned to work Monday, September 20, 2021. The Complainant was also at work that day. She arrived a bit late that day, which was unlike her. Sometime between 10:00 a.m. and noon he called her into an exam room to speak. He explained the incident on September 18 was accidental, and he did not mean to hurt or abuse her in any way. He told her that he did not want to see her quit her job. The Complainant just went out of the exam room and continued working. Between 4 and 5 p.m. that day, the Complainant asked to leave work early to help her mother with a flat tire, and Dr. Fadayomi approved this.
112. At the conversation with the Complainant on September 20, 2021, the Complainant did not say anything. MOA 1 was also working at the front desk, and the second clinic physician was at work too.
113. Dr. Fadayomi stated linking documents properly was important so that one can know what has been done for a patient and relevant results and details. Before September 18, 2021, the Complainant was trained by MOA 2 in linking documents. Dr. Fadayomi stated linking document training was an ongoing process, and the MOAs also learn on the job. He stated that the Complainant is not the only MOA who needed repeated training in document linkage.
114. Dr. Fadayomi confirmed he received the September 21, 2021, text message from the Complainant, and he responded. MOA 1 had told him that the Complainant did not show up for work on September 21 and was not answering her calls. Dr. Fadayomi started phoning the Complainant, as he was concerned the clinic would be short-staffed. He called two or three

- times. He stated that he was trying to say sorry and reassure her that his touching of her breast was purely accidental and that she should return to work. He stated he was embarrassed to have bumped into a private part of her body and could tell she was upset, and that is why he asked her to forgive and forget.
115. Dr. Fadayomi stated he was trying to reassure the Complainant that the next time he would be more careful, and it would not happen again and that she should return to work as the clinic is short-staffed.
 116. Regarding his 'I am not proud of this' comment in his text messages, Dr. Fadayomi stated this meant that the touching incident was accidental and not purposeful and that he did not mean to hurt her. He at the same time was trying to reassure the Complainant to come back to work.
 117. Dr. Fadayomi stated the Complainant never responded to his text messages from September 21, 2021. He texted her again that evening to see if she would come back to work the next day but got no response. He texted her again September 22, 2021, as he needed to provide some assurances to the other MOA and perhaps adjust the clinic schedule if the Complainant was not going to return. The Complainant did not respond.
 118. Dr. Fadayomi texted the Complainant again September 22, 2021. Regarding his comment 'I am not proud of what angered you', Dr. Fadayomi stated this comment was made because he wanted to reassure the Complainant that what happened was accidental. He felt embarrassed about the touching incident and did not want the Complainant to quit her job.
 119. After September 22, 2022, he made no further attempts to contact the Complainant. There were no further discussions, text messages or emails. He has never been contacted by Calgary Police or spoken with Calgary Police about the incident from September 18, 2021.
 120. Dr. Fadayomi received a letter from the CPSA in November 2021 informing him of the Complainant's complaint against him and requesting a response. He is not aware of the Complainant's version of events. There is no mention of clinic cameras in the CPSA complaint. He was provided a copy of the Complainant's written complaint in his letter from the CPSA requesting a response.
 121. Dr. Fadayomi heard from the College Investigator around March 2022 when the College Investigator requested footage from the clinic camera. Dr. Fadayomi responded to this request by letter (page 13, Exhibit 1). Dr. Fadayomi had no role in the selection or installation of the clinic camera, as the system was in place before he joined the clinic. Dr. Fadayomi stated his understanding is that the cameras allowed him to view the clinic via an app on his phone when he was not there. He was not under the impression that the cameras produce any recordings at all.

122. Dr. Fadayomi stated he responded and answered the College Investigator's inquiries in a timely manner. He learned that the cameras do record to a VCR in the doctors' room. An IT specialist (██████████) confirmed there is no footage available from the camera from September 18, 2021, due to the small amount of memory available on the VCR which causes it to record over prior footage. He sent the letter from Mr. █████ explaining this to the College Investigator. Prior to discussing this issue with Mr. █████ in April 2021, Dr. Fadayomi did not believe the clinic camera stored images.
123. Dr. Fadayomi stated on September 18, 2021, he did not intentionally grab or touch the Complainant's breast. He did not then laugh and say, 'succulent breast'. He did not subsequently tell the Complainant that a demon made him do it. He states he has never rubbed up against the Complainant's buttocks or MOA 1's buttocks.

Dr. Fadayomi - Cross-Examination by the Complaints Director

124. Dr. Fadayomi stated the Complainant was unfamiliar with the clinic cameras and had nothing to do with them. He confirmed that he is also the owner of Monterey Medical Clinic and that was the case in September 2021. Therefore, he was the Complainant's supervisor and had a position of power over her.
125. Dr. Fadayomi stated the Complainant started her job at Monterey Medical Clinic in July 2021 and by September 18, 2021, she had been working there about two months. He stated that linking documents training was given at the start of her job but was ongoing.
126. On September 18, 2021, he went to the reception desk to speak with the Complainant about how to properly expand documents linked into the EMR. The accidental bumping of her breast occurred during this interaction. He acknowledged she did not consent to be touched but that the contact was not intentional.
127. Dr. Fadayomi disagreed with the suggestion that touching a person's breast intentionally could be considered sexual harassment. He stated in the context of his accidental touching of the Complainant's breast, he would not have thought he was harassing the Complainant in any way.
128. Dr. Fadayomi stated, as owner and employer, he does not believe touching someone's private body parts is allowed but that at the same time, he is not a legal person but thought it could be legally termed sexual harassment.
129. Dr. Fadayomi had a brief discussion with the Complainant after the contact occurred but then went back to seeing patients. He stated the Complainant did not raise the issue for the rest of the day and that there was no communication between the two of them the following Sunday. He noted for the rest of the day the Complainant was not forthcoming in her clinical interactions with patients and from this he concluded she was still upset about the touching incident. He confirmed the Complainant said 'what are

you doing' at the time her breast was touched. He told her the contact was purely accidental.

130. On September 20, 2021, Dr. Fadayomi noted it was uncharacteristic for the Complainant to be late for work. He noticed she was not acting normally. She was not as active in her interactions with everyone that day as she usually is. He recalled when he met with the Complainant in an examination room, nobody else was present in the room. He did not include the office manager because he did not know she was going to accuse him of sexual assault. He stated the contact with the Complainant's breast was accidental.
131. Dr. Fadayomi stated the Complainant was still new to her job and had no prior working experience as an MOA. She was still employed on a probationary basis and in his view still had room for improvement. Overall Dr. Fadayomi stated the Complainant was not a good employee, and he was not completely satisfied with her work thus far.
132. Dr. Fadayomi sent the Complainant text messages September 21 and 22, 2021, because he wanted her to return to work. Even though he felt she was not a good employee, he felt there was room to improve.
133. Dr. Fadayomi addressed the Complainant's text message comment 'We talked about it yesterday but your reason for doing it was not acceptable'. He stated he did not address the suggestion that he had provided a reason for the touching because he had already verbally told her on two occasions it was accidental. He stated that he verbally told her the contact was accidental on September 18 and September 20, 2021.
134. Dr. Fadayomi stated that he believes this text message comment is when he learned the Complainant believed that he had provided her with a reason for the touching incident because when they spoke about it on September 18, 2021, she did not say anything about it.
135. Dr. Fadayomi acknowledged that he did not address this new information in any of his text messages afterwards.
136. It was put to Dr. Fadayomi that to not address his reason for his contact with the Complainant's breast in those text messages is not how a reasonable person would have proceeded. If it was purely accidental and someone suggested there was intent, to not address it is not a reasonable reaction. Dr. Fadayomi reiterated it was because he had already told the Complainant verbally that the contact was accidental. He stated he did not know at the time of the text messages that the Complainant would accuse him of intentionally touching her breast.
137. Dr. Fadayomi agreed that while the Complainant believes he gave her a reason for touching her breast, he did not attempt to correct her by addressing it in any of his subsequent text messages to her.

138. Dr. Fadayomi stated he texted 'It will never happen again' to try and re-assure the Complainant that he would be more careful in the future, and he was actually concerned about what she felt.
139. Dr. Fadayomi stated his text comment 'I'm not proud of this' meant he was not arrogant about what happened as he felt the Complainant was a little upset. He felt embarrassment and felt bad about the incident and how it made her feel. He admitted this was a bad choice of words.
140. It was put to Dr. Fadayomi how one can assure someone else that something that occurred accidentally would never happen again.
141. Dr. Fadayomi stated he used the word 'proud' to describe how he was not proud of what happened. When it was put to him how could pride or ego be a part of an accidental occurrence, he clarified he used the wrong choice of words in this part of his text message. It was put to Dr. Fadayomi that if the touching incident was purely accidental and unintentional there would be no reason for him to say he is not proud.
142. Dr. Fadayomi repeated that the incident was not intentional and his text messages to the Complainant were intended to let her know that he did not mean for it to happen.
143. It was put to Dr. Fadayomi that if the touching incident were purely accidental there would be no reason for the Complainant to think Dr. Fadayomi was proud of his actions.
144. Dr. Fadayomi was asked if when he texted 'I share your concerns' if he meant he shared a concern about another accidental bump occurring in the future.
145. Ms. McPeek pointed out that if the contact with the Complainant's breast was unintentional, Dr. Fadayomi would not need to ask for another chance as he did in one of the text messages he sent the Complainant. Dr. Fadayomi stated he did not want the Complainant to quit her job and used the word 'chance' to refer to her continuing to work at the clinic. He continued to assert that the contact was accidental, but it was pointed out that he did not mention the word 'accidental' or 'unintentional' at all in his text messages to the Complainant. He stated this was because he had already told the Complainant verbally that the touching was accidental.
146. Dr. Fadayomi did not agree with Ms. McPeek's assertion that Dr. Fadayomi's text messages to the Complainant reflect his regret over an intentional act. He stated one can feel bad about something even if it was unintentional.

Dr. Fadayomi – Redirect Examination

147. Dr. Fadayomi stated his understanding of what the Complainant was referring to when she mentioned 'your reason' in her text to Dr. Fadayomi is

that this does not mean his touch of her breast was intentional. He stated none of his text messages to her state the contact was intentional in any way.

Dr. Fadayomi – Questions from the Hearing Tribunal

148. Dr. Fadayomi confirmed that one is looking eastward when looking out the five large front windows of Monterey Medical Clinic.
149. Dr. Fadayomi was unable to summarize employer obligations in relation to an employee who experiences unwanted touching in the workplace.
150. Dr. Fadayomi is not aware of pre-existing tint treatments on the windows provided by the builder of Monterey Medical Clinic that may have been installed to mitigate warming effects from the sun.

MOA 1 - Examination by Counsel for Dr. Fadayomi

151. MOA 1 currently is employed as an MOA at Monterey Medical Clinic. She works Monday to Friday, 9:00 a.m. to 6:00 p.m. and every other Saturday 9:00 a.m. to 4:00 p.m. or 9:00 a.m. to 5:00 p.m., depending on the doctor. For Dr. Fadayomi it is 9:00 a.m. to 5:00 p.m. on Saturday. Her general duties at work include faxing, answering phones, booking appointments, being a chaperone during exams, and assisting doctors during procedures. She started work at Monterey Medical Clinic in July 2021. She previously worked as an MOA at two other clinics. In the Philippines she has worked as a veterinarian. In Canada, she has worked as a unit clerk, medical transcriptionist, and MOA.
152. MOA 1 stated that on a Saturday clinic, the busiest time for walk-ins is at the opening and at the end of the day. She confirmed the front door is never locked while open. MOA 1 confirmed Photo 5, Tab 9 is of the reception desk at Monterey Medical Clinic. She sits at the far right side closest to the wall. MOA 1 confirmed the accuracy of the overhead photo of the clinic with adjacent businesses in Tab 10. She stated patient parking is right in front of the clinic, and one can see the patient waiting and parking areas when seated at the reception desk.
153. MOA 1 stated that on Saturdays, the businesses adjacent to Monterey Medical Clinic are open, including Co-Op, Dollarama, Pet Valu and Subway.
154. MOA 1 stated in September 2021, the other MOA working at Monterey Medical Clinic was the Complainant.
155. MOA 1 stated she has a good working relationship with Dr. Fadayomi, and that he has never behaved inappropriately with her, touched her inappropriately or made her uncomfortable.

156. MOA 1 confirmed she knows the Complainant and they have a co-worker relationship. They worked together at Monterey Medical Clinic from the third week of July, 2021, until September 2021. She did observe the Complainant and Dr. Fadayomi working together. As far as she knows, Dr. Fadayomi treated the Complainant like he treated herself.
157. MOA 1 confirmed she has seen Dr. Fadayomi reprimand the Complainant for her attire. This happened a couple of times when the Complainant came to work wearing sweatpants and cropped tops.
158. The witness stated that on Monday September 20, 2021, the Complainant told her of the touching incident with Dr. Fadayomi. She was unsure of the time of day she was told. She recalls the story conveyed was that the previous Saturday, Dr. Fadayomi touched the Complainant's breast. She was surprised and recalls saying 'Really?', but the Complainant confirmed it. She denies telling the Complainant Dr. Fadayomi had previously brushed up against her buttocks and stated Dr. Fadayomi has never done that to her. She stated she has never spoken to the Complainant about how Dr. Fadayomi behaved towards herself.
159. MOA 1 has never spoken with Dr. Fadayomi about the touching incident with the Complainant.

MOA 1 - Cross-Examination by Counsel for the Complaints Director

160. MOA 1 confirmed that, from the reception area of Monterey Medical Clinic, she cannot see into the clinic's neighboring businesses including Co-Op, Dollarama, Pet Valu and Subway.
161. MOA 1 confirmed she works at Monterey Medical Clinic, but she is currently on medical leave. She confirmed Dr. Fadayomi works at this clinic too.
162. MOA 1 confirmed she was hired at Monterey Medical Clinic around the same time as the Complainant was. She stated in her time there, her role has not changed. She stated she has never been the office manager at the clinic.
163. MOA 1 acknowledged being interviewed by the College Investigator on October 4, 2022. She stated her understanding of the importance of being forthright and honest in such an interview and confirmed that she was truthful.
164. MOA 1 stated she was not scheduled to work in the clinic on September 18, 2021. Only one MOA works Saturdays, and she was not there that morning. She was unaware of what happened there that day but did discuss the touching incident with the Complainant on September 20, 2021.
165. MOA 1 stated the Complainant disclosed to her that Dr. Fadayomi touched one of her breasts with his hand. She does not remember what the Complainant said about what she said at the time of the touch. It was

pointed out to her the transcript of her interview with the College Investigator shows she stated the Complainant told her she said 'what are you doing' when Dr. Fadayomi touched her breast. MOA 1 agreed that the Complainant told her that as she was truthful in the interview with the College Investigator. The Complainant told her she worked the rest of the day on September 18, 2021.

166. MOA 1 recalled the Complainant stating Dr. Fadayomi walked away after touching her breast and said, 'succulent breast'. She has had no further discussions with the Complainant about the touching incident since September 20, 2021.
167. MOA 1 recalled her reaction to what the Complainant disclosed about the touching incident as being surprised and said 'really'. She stated that she was not concerned if something similar would happen to her.
168. MOA 1 stated on September 20, 2021, she arrived at clinic around 9 a.m. The Complainant would usually arrive around 10 a.m. She recalled the Complainant seemed to behave normally that day and looked calm as she went about her work. She was texting on her phone throughout the day but that was her usual practice. MOA 1 was unaware of who the Complainant was texting.
169. MOA 1 was aware that Dr. Fadayomi had called the Complainant into an exam room to talk on September 20, 2021. She could not recall if the door was open or closed. She stated it was a usual occurrence for Dr. Fadayomi to speak with a staff member in an exam room. She never asked Dr. Fadayomi for details about this meeting.
170. When the Complainant left the exam room, MOA 1 could not recall if the Complainant discussed with her what the meeting was about. The Complainant had told MOA 1 when she got to work that day about the touching incident, but MOA 1 could not remember the exact time or part of the day this happened.
171. It was pointed out to MOA 1 that the transcript from her interview with the College Investigator indicates she had told the College Investigator that the Complainant told her after the meeting with Dr. Fadayomi that the meeting was about the same touching incident. She recalled that the Complainant told her during the meeting Dr. Fadayomi said sorry and that 'This will not happen again'. She does not recall if the Complainant told her that Dr. Fadayomi stated the breast touch was accidental, but the interview transcript did not convey that the Complainant mentioned this to MOA 1.

MOA 1 - Questions from the Hearing Tribunal

172. MOA 1 is 5 feet tall. She sets her desk chair high in the clinic and is able to see the patient waiting area and outside parking lot in front of the clinic. She estimates that the Complainant is 5 feet, 4 inches tall.

173. MOA 1 is unaware of a clinic policy or process to follow to address employee concerns.
174. MOA 1 stated she has never seen Dr. Fadayomi train an MOA, but he does correct them on occasion.

MOA 2 – Examination by Counsel for Dr. Fadayomi

175. MOA 2 currently works as an occupational health nurse at Cargill. She did work at Monterey Medical Clinic from January 2020 to August 2023. Before 2020 the clinic was called Humana Medical Clinic, and she started working there in August 2018. During her time at both clinics, Dr. Fadayomi was working there.
176. MOA 2 was absent from work while on maternity leave starting from the end July 2021 until August 2022.
177. MOA 2 clarified that in 2021 she was employed as an MOA and was not a manager. Her job duties included patient reception, answering phone calls, checking supplies, and assisting physicians. The most senior MOA would train the new MOAs. She does understand that she was regarded as the clinic manager, but her official role was MOA.
178. MOA 2 stated if a senior MOA is off work, the next in seniority does the managerial tasks. She confirmed that she did train new MOAs at times.
179. MOA 2 stopped working at Monterey Medical Clinic around the end of July 2023 to pursue her new career as a nurse.
180. While at Monterey Medical Clinic MOA 2 worked Monday through Friday and alternating Saturdays. While seated at the reception desk, she could see the patient waiting area and parking area from her seat. She stated she could see into the clinic reception and waiting area from outside.
181. MOA 2 described her working relationship with Dr. Fadayomi as 'okay' and same as the rest. She stated he treats all of the MOAs equally.
182. MOA 2 confirmed she has worked alone with Dr. Fadayomi on Saturday or if an MOA could not come in on a given weekday.
183. MOA 2 stated Dr. Fadayomi has never brushed up against her and never behaved inappropriately around her or made her feel uncomfortable.
184. MOA 2 confirms she knows the Complainant. She worked with the Complainant at Monterey Medical Clinic for about a month before she went on maternity leave in 2021, and she helped train the Complainant.

185. MOA 2 confirmed she has seen Dr. Fadayomi correct MOAs if there is a mistake with handling a document, such as faxing or receiving important documents.
186. MOA 2 confirmed she has seen Dr. Fadayomi interact with the Complainant during the time she worked at Monterey Medical Clinic. She never felt any of the interactions she saw were inappropriate or made her feel uncomfortable.
187. MOA 2 stated she has never spoken with Dr. Fadayomi about his touching incident with the Complainant.

MOA 2 – Cross-Examination by Counsel for the Complaints Director

188. MOA 2 confirmed she was on maternity leave on September 18, 2021, and that her maternity leave started in August 2021.
189. MOA 2 confirmed she was not at the Monterey Medical Clinic on September 18, 2021, for any reason and was not scheduled to work there that day.
190. MOA 2 stated she was not aware of what happened that day at Monterey Medical Clinic.
191. MOA 2 stated she spoke with MOA 1 about the touching incident about a day or two after September 18, 2021. She recalled MOA 1 was brief and started the conversation with, "Do you know what happened to the Complainant?" MOA 2 confirmed she later reached out to the Complainant to ask her what happened.
192. MOA 2 stated MOA 1 told her Dr. Fadayomi touched the Complainant's boobs. She does not recall MOA 1 telling her about Dr. Fadayomi later meeting with the Complainant to discuss the incident. She does remember MOA 1 telling her about how Dr. Fadayomi said, 'Succulent breast' after he touched the Complainant's breast.
193. MOA 2 confirmed she reached out to the Complainant the same day she and MOA 1 spoke. This occurred one or two days after the touching incident. She stated the Complainant told her the same thing MOA 1 said, particularly, that Dr. Fadayomi had touched her boobs and then said, "Succulent breast".
194. MOA 2 did not recall if either MOA 1 or the Complainant said the touching incident was an accident.

MOA 2 - Questions from the Hearing Tribunal

195. MOA 2 confirmed she was on maternity leave in September 2021 and that she spoke with both MOA 1 and the Complainant by phone a day or two after the touching incident.

196. MOA 2 stated her understanding was that at Monterey Medical Clinic any employee concerns were to go to Dr. Fadayomi. She was unaware of an official clinic policy if an employee had a concern about a physician. In the previous clinic the MOA who had a concern went to a clinic manager.
197. MOA 2 described Dr. Fadayomi's treatment and conduct around the clinic MOAs as serious. He does not joke around. If there was a mistake, he would approach the MOAs. She has witnessed him getting mad if MOAs consistently made mistakes, even if it was a senior MOA. At times she has seen Dr. Fadayomi direct his anger at an MOA. At times MOA 2 has seen Dr. Fadayomi shout at an MOA.
198. MOA 2 feels MOA 1 phoned her as a friend to discuss the touching incident. She stated that MOA 1 knows Dr. Fadayomi was the office manager. MOA 2 stated she reached out to the Complainant as a friend to discuss the touching incident.
199. MOA 2 stated before September 18, 2021, there were no other conversations with co-workers about workplace issues or concerns about Dr. Fadayomi.
200. MOA 2 stated she told the Complainant to report the touching incident to police and to the CPSA.
201. MOA 2 said co-workers would call her during her maternity leave about clinic job duties if there was a question. The calls were not common.
202. MOA 2 stated she was not aware of any other MOA with concerns about Dr. Fadayomi touching them inappropriately.

V. SUBMISSIONS

Submissions by Counsel for the Complaints Director

203. Ms. McPeek outlined the three functions of the Hearing Tribunal as summarized in *Walsh v. Council for Licensed Practical Nurses*, a Newfoundland Court of Appeal decision from 2010. These functions include:
 - a. To make findings of fact about what did or did not occur.
 - b. Identify the standard of conduct expected in the factual circumstances.
 - c. Apply the identified standard to the established events that occurred.
204. Ms. McPeek stated it is more likely than not that Dr. Fadayomi intentionally touched the Complainant's breast on September 18, 2021, without her consent and that his action does constitute unprofessional conduct.
205. Ms. McPeek summarized some of the Complainant's testimony. The Complainant testified that the breast touch occurred between the 9:15 a.m. and 9:30 a.m. clinic appointments on September 18, 2021, and that her reaction was saying, "What are you doing" and pushing Dr. Fadayomi's hand

away when he tried to touch her breast a second time. Dr. Fadayomi then walked away and laughed and said, "Succulent breast". The touching did affect the Complainant, but she worked the rest of the day.

206. The Complainant returned to work on Monday, September 20, 2021, and told MOA 1 of the touching incident, and MOA 1 confirmed this. MOA 1 also confirmed that the Complainant told her that she reacted to the touching by saying, 'What are you doing?' MOA 1 also confirmed she was told about Dr. Fadayomi making a comment to the effect of 'succulent breast'.
207. MOA 2 confirmed MOA 1 called her after learning of the incident and said, 'Did you hear what happened to the Complainant?'. MOA 1 then told her of the breast-touching incident, including Dr. Fadayomi's comment, 'succulent breast'. MOA 2 testified she then phoned the Complainant who conveyed the same information that MOA 1 had.
208. The Complainant testified that when she and Dr. Fadayomi spoke at work shortly before lunchtime on September 20, 2021, Dr. Fadayomi apologized and said the devil made him do it. MOA 1's testimony confirmed the Complainant told her of this meeting and apology and Dr. Fadayomi's comment that it wouldn't happen again.
209. The Complainant texted her father that day. This was confirmed by MOA 1 who testified she saw the Complainant texting on her phone throughout the day. Her father told her to leave work and go home and that they would report the incident to the police. This was confirmed in the Complainant's father's testimony. They both then went to a police station where the Complainant was provided a phone number to call to make an arrangement. The Complainant called the number provided, and that evening two officers went to their house to interview her. This was confirmed by her father in his testimony.
210. The Complainant never went back to work at the Monterey Medical Clinic after September 20, 2021. Her September 21, 2021, text message to Dr. Fadayomi corroborates this. In this message she told Dr. Fadayomi she would not be returning to work because his reason for the touching incident was not acceptable. Dr. Fadayomi's text reply stated, 'It will never happen again' and that he was 'not proud of this' and urged her to return to work.
211. The Complainant testified she interpreted these text messages as an acknowledgement that he regretted what he did and wanted her to return to work. Dr. Fadayomi asked that the Complainant call him, but she did not.
212. Dr. Fadayomi sent the Complainant further text messages asking when she would return to work and indicating that he 'shared her concerns and regret all that happened to you'. He asked the Complainant to 'give me another chance'. The Complainant did not respond to these messages or return to work, and there have been no further communications between the Complainant and Dr. Fadayomi.

213. Ms. McPeek summarized Dr. Fadayomi's testimony where he stated he had struggled to view a patient's results on the EMR and was showing the Complainant something on her computer using her mouse. He reached across her to use her mouse and when he pulled his arm back, his elbow bumped against her breast accidentally. The Complainant reacted by saying, 'What are you doing', and he indicated the contact was purely accidental. Both of them continued to work the rest of the day.
214. Dr. Fadayomi testified that he noticed on September 20, 2021, the Complainant was clearly bothered by something. MOA 1 testified that the Complainant did not seem bothered that day at work and that she was focusing on her work. The Complainant also testified she tried to focus on her work that day. He asked to speak with the Complainant and told her the contact was purely accidental. He did not want her to quit because the clinic was short-staffed.
215. Dr. Fadayomi confirmed that the Complainant asked to leave work early that day to help her mother, and he allowed her to do so. He confirmed that the Complainant never returned to work at Monterey Medical Clinic after September 20, 2021.
216. The Complainant testified that she texted Dr. Fadayomi on September 21, 2021, and indicated that she would not be returning to work.
217. Dr. Fadayomi testified that his texts to the Complainant sent on September 21 and 22 were attempts to convey the touching was accidental and that she should return to work. The Complainant never responded or returned to work.
218. Ms. McPeek stated the touching incident occurred in private and therefore the issue comes down to an assessment of credibility and reliability between the parties who testified, given their conflicting stories.
219. Ms. McPeek summarized credibility versus reliability. She stated credibility relates to the honesty of a witness and their willingness to speak the truth as they believe it. Reliability relates to the accuracy of the evidence and the witness's ability to observe, recall, and recount events.
220. Ms. McPeek stated the *Faryna v Chorny* case is a British Columbia Court of Appeal case which is the cornerstone of assessing credibility. She summarized the highlighted paragraphs 9 to 11 that state several factors combine to produce what is called credibility. The judge summarizes a test to examine the testimony for consistency with the probabilities that surround the currently existing conditions. That is, the real test of truth of a witness is the harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions. Ms. McPeek suggested that whether a practical and reasonably informed person would recognize their version of events as reasonable given the circumstances ultimately is the test.

221. Ms. McPeek pointed out the provided College of Physicians and Surgeons of Ontario case (*Rabiu*) that outlines a list of questions that the committee in that matter used to assess credibility and reliability.
222. Ms. McPeek pointed out the uncontroverted facts that appeared in both the Complainant's and Dr. Fadayomi's versions of the touching incident. These include:
- a. They were the only two staff members working on September 18, 2021.
 - b. In between the second and third patient visits that day Dr. Fadayomi approached the Complainant.
 - c. Dr. Fadayomi ended up making physical contact with the Complainant's breast and the contact was not consensual.
 - d. Following the contact the Complainant asked, "What are you doing?" Dr. Fadayomi then walked away, and both worked for the remainder of the day without discussing the incident further.
 - e. On Monday, September 20, 2021, both the Complainant and Dr. Fadayomi worked at the clinic. Dr. Fadayomi called the Complainant into an exam room to discuss the incident. Following the meeting the Complainant gave Dr. Fadayomi an excuse and left work early. The Complainant did not return to work after that day.
 - f. Over the next few days Dr. Fadayomi and the Complainant exchanged text messages.
223. Ms. McPeek pointed out the Complainant and Dr. Fadayomi providing differing testimony on three main points which include:
- a. The Complainant stated the touching was intentional, while Dr. Fadayomi maintains it was accidental.
 - b. The Complainant stated the contact was a grab or pinch, while Dr. Fadayomi stated it was an accidental bump.
 - c. The Complainant testified Dr. Fadayomi apologized and told her a demon or devil made him do it, while Dr. Fadayomi denied this.
224. Ms. McPeek stated that the Complaints Director submits that taking into the consideration the evidence and preponderance of circumstances, the Hearing Tribunal should find that the Complainant's version of the touching incident is more credible and reliable than Dr. Fadayomi's. Using the questions outlined in *Rabiu*, she summarized:
- a. The Complainant was honest as she recalls it, and there is no indication she was not truthful in her testimony.
 - b. The Complainant had no reason to be dishonest in her testimony. She was in her first job as an MOA and was happy. She was worried she would have to quit the job because of the incident. Ultimately, she ended up leaving her job, and Ms. McPeek argued she had more reason

not to complain as she suffered the biggest immediate consequences of Dr. Fadayomi's actions.

225. Contrarily, Ms. McPeek stated Dr. Fadayomi has reason to not tell the truth. If proven as being unprofessional, the incident would have significant consequences for him. The Complainant has no incentive to give unfavorable testimony against Dr. Fadayomi, and she gets no benefit from reporting the incident or being at a hearing. She merely agreed to be a witness to have her story heard.
226. Ms. McPeek stated the Complainant was as accurate as possible in her testimony. She encouraged the Hearing Tribunal to keep in mind that the incident was traumatic for the Complainant, and this was not challenged by Dr. Fadayomi, as he noted and testified that she seemed very affected by the incident. Ms. McPeek stated from trauma-informed training, the Hearing Tribunal will have learned that trauma may affect the ability to recall full details. A witness who has suffered trauma should not be seen as less credible simply because they did not remember every detail exactly.
227. Ms. McPeek stated the Complainant acknowledged when she could recall something and suggested that she was genuine in this regard. She pointed out that the incident occurred two years ago, and it would be unreasonable for any witness, including Dr. Fadayomi, to be expected to recall absolutely everything from such a remote event. The Complainant reported what she recalled from her personal experience, as she was present, and acknowledged that is the same for Dr. Fadayomi.
228. Ms. McPeek stated that the Complainant's version of events is consistent with issues at the heart of the matter. These issues include: Dr. Fadayomi entered the Complainant's work area and touched her left breast, she tried to push his hand away and asked him, "What are you doing?" and then Dr. Fadayomi walked away and laughed. These details are contained in every prior statement the Complainant has made.
229. Ms. McPeek urged the Hearing Tribunal not to regard potential omissions from the Complainant's original CPSA complaint form. This is for several reasons including:
 - a. The Court in *Faryna v Chorny* was clear that a finding of credibility should not be based on one element only to the exclusion of others. It must be based on all of the elements, and the Hearing Tribunal should be considering that in its entirety.
 - b. As noted by the panel in the *Rabiu* matter, the issue of consistency is whether the witness said something different on another occasion. Ms. McPeek noted that not saying something or not including a specific detail is not the same as saying one thing and then changing the story later.

- c. Most significantly, Ms. McPeek cautioned the Hearing Tribunal about the suggestion that the complaint or allegation is confined to what is written in that half-page square when the complaint is submitted. That is not what the law is and does not reflect the CPSA process or legislation surrounding it.
 - d. Page 6 of the Agreed Exhibit Book contains instructions above the complaint details section stating the team will review the information and contact the complainant if additional details are needed. This implies there is potential to provide additional details later, which is what occurred in this investigation via several interviews.
 - e. The suggestion does not conform with the HPA, section 55(2), where the options for the Complaints Director are set out upon receipt of a complaint form, including conducting an investigation or appointing an investigator to conduct an investigation. An investigation in itself suggests that further information must be gathered and that they would apply to the complainant being able to provide further information.
 - f. Further, section 61(1.1) of the HPA requires the investigator to make reasonable efforts to interview the complainant unless in the investigator's opinion either an interview is not possible or the complainant declines to be interviewed. If the complainant were confined to what they said in the complaint form, there would be no reason for a further interview to occur. Ms. McPeek submitted that the confines of the HPA suggest that more information can come out through later interviews.
 - g. Ms. McPeek stated that it would be improper for the Hearing Tribunal to deem the Complainant to be not credible or unreliable simply because she did not capture everything in her original complaint form. The HPA and concept of investigation suggests otherwise. The complaint form is not the equivalent of making a statement to the police on a criminal matter. It is the document that starts the College's process and that document makes it clear that further information may be required, and that is what the HPA sets out.
230. Ms. McPeek stated if one took away what was not included in the Complainant's original complaint, there is no evidence the Complainant was inconsistent with her testimony regarding Dr. Fadayomi's second attempt to touch her breast or his 'succulent breast' comment afterwards. The Complainant was consistent in mentioning these details to her father, MOA 1 and MOA 2. Two different witnesses called by Dr. Fadayomi were told of the 'succulent breast' comment nearly two days after the incident and testified to this. Neither had any reason to lie about this, and therefore the Complainant did not invent this at a later interview.
231. Ms. McPeek stated the Complainant was only inconsistent in her wording choices when she described at different times the specific details of how Dr. Fadayomi touched her breast and how she subsequently attempted to

push his hand away. The Complainant did testify that English is not her first language. However, she was still clear in her testimony that Dr. Fadayomi touched her breast with his hand, pinched her nipple and she reacted by pushing his hand away. Ms. McPeek stated that inconsistent word choices from a non-native English speaker do not make the Complainant an unreliable witness. Ms. McPeek pointed out per *Rabiu*, this issue was framed as to consider whether there is an explanation for the inconsistency and whether that explanation makes sense and suggested that an inconsistent word choice from a non-native English speaker is an explanation that makes sense.

232. Ms. McPeek stated when the Complainant was asked to testify to the time of the touching incident, she did not have the benefit of seeing the clinic day sheet at the time of the incident. She stated the Complainant was generally consistent in her description of the timing of events she was asked about. She pointed out that both the Complainant and Dr. Fadayomi agreed that the touching incident occurred between 9:15 a.m. and 9:30 a.m. and that both needed to see the clinic day sheet to estimate the time of the event. She pointed out that it is not rare for a medical office to not run entirely on schedule and noted that the Complainant was able to provide a better estimate of the timing of the touching incident when she reviewed the clinic day sheet, as a friend of hers was the second patient booked, and he had left the clinic just before the incident occurred.
233. Ms. McPeek stated it would be unreasonable to expect the Complainant to know the exact time that the incident occurred. When considered as an estimation and that it was confirmed by additional information suggests her explanation made sense for her inconsistency.
234. Ms. McPeek stated the only remaining inconsistencies in the Complainant's testimony are irrelevant. These would include the name of the co-worker who told the Complainant about Dr. Fadayomi brushing up against her buttocks and whether the Complainant's father filed the police report himself. Per *Rabiu*, Ms. McPeek argued that these details do not relate to the main points of the Complainant's testimony and that the Hearing Tribunal should not give significant weight to these inconsistencies. The Complainant did clarify that her father did not file a police report, and she was clear when she acknowledged she did name the individual in her interview.
235. With respect to credibility, Ms. McPeek stated the Hearing Tribunal could accept some, all or none of a witness' testimony and argued that these two inconsistencies do not affect the finding that the alleged conduct occurred or if it constitutes unprofessional conduct.
236. Ms. McPeek reminded the Hearing Tribunal that the main issue is whose version of events is more reasonable. She stated there is little evidence apart from the testimony of the Complainant, and Dr. Fadayomi about what occurred on September 18, 2021.

237. Ms. McPeek pointed out the text messages exchanged between Dr. Fadayomi and the Complainant related to and inform the Hearing Tribunal of which version of events is more reasonable. These are the surrounding circumstances referred to in *Faryna v. Chorny*.
238. Ms. McPeek stated the Complainant and Dr. Fadayomi both agree there were text messages exchanged between them. She stated the context of these text messages fit the Complainant's version of events and not Dr. Fadayomi's. She stated Dr. Fadayomi's version of events does not concord with the text messages. She pointed out that the Complainant raised that not only did Dr. Fadayomi provide her a reason for the contact with her breast but that they also discussed it the day prior. Dr. Fadayomi made no attempt to address what the Complainant is referring to when she states "his reason" in her September 21, 2021, text message to him.
239. Ms. McPeek stated it was put to Dr. Fadayomi that if such a discussion had not occurred, this would have been the first time Dr. Fadayomi had heard of this. She pointed out that Dr. Fadayomi stayed silent about the suggestion that they even discussed a reason. She submitted that Dr. Fadayomi's assertion that he did not interpret this as saying it was intentional is not a reasonable interpretation.
240. She stated that Dr. Fadayomi's explanation of the meaning behind his text messages was conveying the unintentional nature of his touching and stated this was not a reasonable reply given the circumstances.
241. Ms. McPeek stated the plain meaning of 'reason' implies cause, explanation, justification, or motivation for something. She indicated there cannot be motivation behind an unintentional, accidental act and that Dr. Fadayomi would not have reacted the way he did if the touching was truly an accident. She stated this implies the Complainant's version of events is more reasonable. She stated there cannot be motivation behind an unintentional act, and that reason implies intention.
242. Ms. McPeek suggested that a reasonable person receiving such a text message that implied that they had a reason for doing something that they believed was accidental would not react in the way Dr. Fadayomi did, particularly when Dr. Fadayomi remained adamant that they did not discuss any reason. However, had there been a prior discussion about this reason, such as a demon or devil made him do it, Dr. Fadayomi's response would seem reasonable. Ms. McPeek suggested that this implies that the Complainant's version of events is likely more reasonable in these circumstances.
243. Dr. Fadayomi texted that this 'will never happen again', and Ms. McPeek stated a reasonable person would not feel the need to clarify their pride over an unintentional act. She suggested that one cannot commit to an accident never happening again and stated that conduct that was intentional would be the reasonable reason for Dr. Fadayomi to state it would not happen again.

She suggested that Dr. Fadayomi's words imply that his conduct in touching the Complainant's breast was intentional, and it affected the Complainant.

244. Ms. McPeek stated that Dr. Fadayomi was unable to clarify what concerns he shared with the Complainant. She stated a reasonable person would not have concerns about something that was accidental and unintentional. However, they would demonstrate concern for intentional conduct. Ms. McPeek stated Dr. Fadayomi's words imply that he did something that reasonably affected the Complainant and that he agreed that her concerns were valid. She pointed out that Dr. Fadayomi was unable to clarify why he would need another chance for conduct that was unintentional. She suggested that this comment is only reasonable if the conduct was intentional.
245. Dr. Fadayomi texted that he was 'not proud'. Ms. McPeek stated that one does not need to clarify pride over an unintentional accident, and therefore it is more likely the touching incident was intentional.
246. Ms. McPeek pointed out that Dr. Fadayomi was unable to clarify why he stated he needed a second chance if his touching the Complainant was purely an accident.
247. When the wording of his texts was put to Dr. Fadayomi and he was asked to respond to the suggestion that his reaction was unreasonable, his justification was that all of his text replies were his attempt to try to assure the Complainant that the incident was purely unintentional and accidental. However, these two words do not appear anywhere in his text messages, and nothing even remotely close to suggesting that something was unintentional or accidental appears in those text messages.
248. Ms. McPeek suggested that a reasonable person when trying to convey something is accidental would usually say something like, it was an accident, or, I did not mean to do it. Dr. Fadayomi says nothing close to that. She asked the Hearing Tribunal to contemplate if these were the same words they would use if it was an unintentional accident.
249. Ms. McPeek stated *Faryna v Chorny* suggests that where a version of events is not reasonable, it weighs against the Hearing Tribunal accepting the version of events as credible. Therefore, Dr. Fadayomi's text messages do not make sense, and there are strong reasons to reject his testimony that his touching the Complainant's breast was accidental. Dr. Fadayomi's words in his text messages to the Complainant would not be perceived as meaning a lack of intention or an accident. She stated the Complainant's version of events is more believable, and the evidence supports each element of the Allegation and that the conduct is unprofessional conduct.
250. Ms. McPeek stated that when all of the factors are considered for assessing credibility as outlined, she suggests that the Hearing Tribunal prefer the Complainant's evidence and find that the contact between Dr. Fadayomi's hand and the Complainant's breast was intentional, there was no

unintentional or accidental bump, and that Dr. Fadayomi told the Complainant a demon made him do it.

251. Ms. McPeek stated that Dr. Fadayomi's touching can fall into three different definitions of unprofessional conduct as per the HPA. His proven conduct breaches the CPSA Standard of Practice pertaining to sexual boundary violations with colleagues or staff members and satisfies the definition of sexual abuse in this Standard. It is fully admitted that the Complainant was never a patient of Dr. Fadayomi. However, this standard confirms that if a regulated member engages in sexual abuse or sexual misconduct with a person who is a colleague, staff or others, this conduct may be considered unprofessional conduct. By breaching this standard, Dr. Fadayomi's conduct is unprofessional conduct.
252. Ms. McPeek stated that Dr. Fadayomi's touching also breaches the CMA Code of Ethics and Professionalism at page 46 of Exhibit 1. Precept 31 states all physicians must treat colleagues and members of the health care team with dignity and respect, with colleagues including all learners, health care partners and members of a health care team. She stated an MOA is a member of the health care team, and unwanted sexual touching is not treating someone with either dignity or respect. Therefore, the proven conduct is a breach of the CMA Code of Ethics and Professionalism.
253. Ms. McPeek stated that Dr. Fadayomi's non-consensual sexual touching of the Complainant also harms the integrity of the medical profession. Physicians are placed in a position of trust and have access to very sensitive areas of people's lives and bodies. Knowing that a member has violated that trust with any person would cause a reasonable member of the public to lose faith in the medical profession.
254. Therefore, Ms. McPeek argued that Dr. Fadayomi's conduct meets all three sub-criteria of the definition of unprofessional conduct per the HPA, section 1(1)(pp)(ii) and (xii) and that there is sufficient evidence for the Hearing Tribunal to find Dr. Fadayomi guilty of unprofessional conduct.

Submissions by Counsel for Dr. Fadayomi

255. Mr. Nykyforuk thanked the Hearing Tribunal for their attentiveness. He stated that the charge against Dr. Fadayomi in the Notice of Hearing is serious. He stated his intent to review some relevant case law, comment on some of the evidence presented in the context of the case law and provide submissions as to why the evidence does not support a finding of guilt.
256. Mr. Nykyforuk stated the leading case in Canada with respect to the civil burden of proof is *F.H. v. McDougall*, a 2008 case of the Supreme Court of Canada. In this case, the Supreme Court made clear the burden of proof is on a balance of probabilities and that it must be accepted that the evidence was sufficiently clear, cogent and convincing. The onus is on the Complaints Director to satisfy the balance of probabilities test.

257. Mr. Nykyforuk stated the *Rabiu* case is instructive. It also involved an allegation of sexual assault against a physician. The CPSO discipline committee made clear the burden of proving the allegations in a disciplinary hearing is on the College and that the standard of proof was confirmed by the Supreme Court of Canada in *McDougall*. They repeated that the allegations must be proven on the balance of probabilities by evidence that is clear, cogent, and convincing.
258. The discipline committee also commented on the importance of considering both credibility and reliability of witness evidence. Factors to consider include whether the testimony seemed reasonable and consistent, and whether the witness said something different on another occasion.
259. The committee in *Rabiu* found Dr. Rabiu not credible in several material aspects of his testimony and while it accepted portions of the complainant's evidence, it declined to accept the complainant's testimony regarding the touching of her breasts because it was deemed to be internally inconsistent and inconsistent with prior statements.
260. The *Stetler v Ontario* case is a 2005 Ontario Court of Appeal case which emphasized that within the administrative context, it is accepted that strong and unequivocal evidence within the civil standard of proof is required where either the issues or the consequences for the individual are very serious. The court noted that the balance of probabilities test was the correct standard in administrative proceedings, absent clear statutory language to the contrary.
261. Mr. Nykyforuk stated the *Faryna v Chorny* case of the British Columbia Court of Appeal from 1951 comments primarily on witness credibility and reliability. The court commented that the test must reasonably subject a witness's story to an examination of its consistency with the probabilities that surround the currently existing conditions. The court explained this test requires the truth of the story of a witness must be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. The court noted that a witness may testify about what they sincerely believe to be true but may be quite honestly mistaken.
262. Mr. Nykyforuk summarized that with respect to case law, the Complaints Director has the burden of proving the charge set forth in the Notice of Hearing. The burden imposed on the Complaints Director is that the charge be proven on the balance of probabilities with clear, cogent, and convincing evidence.
263. Mr. Nykyforuk stated the case law makes clear the importance of carefully considering both the credibility and reliability of each witness, in particular the Complainant and Dr. Fadayomi. Cases suggest that this consideration involves an examination of the reasonableness and consistency of the evidence.

264. As per the Court of Appeal in *Faryna*, for a trial judge to say, "I believe him because I judge him to be telling the truth" is considering only half of the problem. An appearance of truthfulness is not enough, and the Court stated "opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors..." must also be considered.
265. Mr. Nykyforuk reviewed the evidence provided. Tabs 9 and 10 in Exhibit 1 are pictures and an overhead map of the Monterey Medical Clinic. These show the five windows on the front wall and glass front entry door. On the date of the touching incident, the windows had no coverings, and there is no knowledge of the windows having any tint. There is a sidewalk adjacent to the five front windows and many neighboring businesses that open on Saturday. This suggests the likelihood of people being in the vicinity of Monterey Medical Clinic at any moment.
266. Mr. Nykyforuk pointed out the consistent portions of testimony including the clinic door being unlocked at the time of the incident, the Complainant was seated at her desk in front of the clinic windows, the Complainant was seated at the lower portion of the reception desk and that the interior of the clinic was visible from the outside.
267. Mr. Nykyforuk reviewed the clinic day sheet from September 18, 2021 (Tab 7, Exhibit 1), which confirmed a busy fully booked day. The first patient was booked for 9:00 a.m., and the final patient was booked at 4:45 p.m. On that day, Dr. Fadayomi saw or spoke with 38 patients who occupied 42 available clinic slots including some walk-in and some double-booked patients. He took no breaks at all that day.
268. Mr. Nykyforuk submitted that Dr. Fadayomi is both a credible and reliable witness and that his description of the events of the touching incident given in his December 15, 2021, response to the CPSA is consistent with evidence heard at the hearing. He submitted that there are no significant discrepancies in Dr. Fadayomi's testimony.
269. Dr. Fadayomi testified the clinic door was unlocked when the incident occurred, the Complainant was seated in the chair closest to the clinic door, that he approached the Complainant to give her instructions regarding proper documentation linking. He positioned himself beside her and when he turned, he accidentally contacted her left breast. He apologized and said the contact was accidental. He apologized again to her on September 20, 2021.
270. Mr. Nykyforuk pointed out that MOA 1 testified that many of the neighboring businesses to Monterey Medical Clinic do open on Saturday and that she could see outside the clinic from her seat at the front clinic reception desk. He stated that one can see inside the clinic from the front parking lot. She testified that Dr. Fadayomi never behaved inappropriately with her or made her feel uncomfortable or touched her inappropriately. He stated MOA 1

never told the Complainant about any inappropriate touching committed against her by Dr. Fadayomi.

271. MOA 1 testified she had seen Dr. Fadayomi correct the Complainant about her clinic attire. She never spoke with Dr. Fadayomi about the touching incident.
272. Mr. Nykyforuk pointed out that MOA 2 also testified that she could see out into the front parking lot from her seat at the Monterey Medical Clinic reception desk. She was working at the Monterey Medical Clinic during the time the Complainant worked there. She also testified that from the outside one could see through the front windows into the clinic reception area.
273. MOA 2 testified that she worked alone with Dr. Fadayomi some Saturdays, and he never brushed up against her in the clinic, behaved inappropriately or made her feel uncomfortable. She testified that she never witnessed Dr. Fadayomi interact inappropriately with the Complainant or make her feel uncomfortable.
274. MOA 2 testified that prior to September 2021 she has never had conversations with other clinic MOAs about workplace issues or incidents. She confirmed that she has not spoken with Dr. Fadayomi about the touching incident.
275. Mr. Nykyforuk stated that the Complainant's father testified that the Complainant did not mention anything of the touching incident to him on September 18, 2021. Then, on September 20, 2021, she told him of Dr. Fadayomi grabbing her chest the previous Saturday in the clinic. The Complainant described the event to him in person on September 20, 2021. In his interview with the College Investigator, the Complainant's father demonstrated his daughter had showed him two hands grabbing her chest. The Complainant's father did not report the incident to the police.
276. Mr. Nykyforuk stated that the Complainant gave differing versions of what occurred to her father (via text and in person at their home), MOA 1 and in her written complaint to the CPSA. She had three interviews with the College Investigator from the CPSA, the longest on June 5, 2022. From work, she told her father that Dr. Fadayomi touched her chest but there was no mention of a nipple pinch or second attempt to touch her breast. In her written complaint to the CPSA, she stated Dr. Fadayomi suddenly touched her left boob, she then tapped his hand, looked at him and asked, 'What are you doing', he then laughed. These details were not given to the Complainant's father. The detail of Dr. Fadayomi then saying 'succulent breast' was not conveyed to the Complainant's father. The Complainant's father testified he did not report the incident to the police.
277. Mr. Nykyforuk pointed out that the Complainant did not mention any prior touching or brushing up against her buttocks in her complaint to the CPSA. She did not mention this to MOA 1 either.

278. Additionally, in her June 4, 2022, interview with the College Investigator, the Complainant said Dr. Fadayomi grabbed her breast and when she pushed his hand away, he tried again to touch her. She stated he 'kind of pinched my nipple' and that Dr. Fadayomi said 'succulent breast' after the touching occurred. She stated in this interview that she was turned to face Dr. Fadayomi when he grabbed her, and then later in the interview said she was facing her computer.
279. Mr. Nykyforuk pointed out an inconsistency in the Complainant's reported timing of the touching incident. Her written complaint states it occurred between 9:30 a.m. and 10:00 a.m. In her June 5, 2022, interview with the College Investigator, she stated it occurred after the first patient was seen. In her verbal testimony during the hearing, she stated it occurred after the second patient around 9:15 a.m. Mr. Nykyforuk stated these inconsistencies call into question the Complainant's reliability in her recollection of events and her perception of what occurred.
280. Mr. Nykyforuk explained that credibility and reliability are separate concepts. A credible witness can be truthful but can still give unreliable evidence in their testimony. He stated there are significant discrepancies in the Complainant's testimony that contradict evidence from others and raises questions about her reliability in her evidence on key points.
281. Mr. Nykyforuk submitted that one of the most troubling aspects of the Complainant's verbal testimony is her assertion that on September 20, 2021, MOA 1 told her Dr. Fadayomi touched her buttocks inappropriately at work. This was conveyed in the Complainant's and the Complainant's father's verbal testimony at the hearing. The only other staff member working with the Complainant in September 2021 was MOA 1, as MOA 2 was on maternity leave at that time, and MOA 2 denied such contact in her testimony.
282. In her June 5, 2022, interview with the College Investigator, the Complainant stated MOA 1 told her about Dr. Fadayomi brushing up against her buttocks. Both Dr. Fadayomi and MOA 1 denied this occurred, and MOA 1 denied ever telling the Complainant about such conduct. Mr. Nykyforuk submitted this seriously undermines the reliability of the Complainant's description of events.
283. Additionally, the Complainant denied that when she went home on September 20, 2021, and told her father about the touching incident, she demonstrated to him with a two-handed grabbing motion. In his testimony, the Complainant's father indicated that the Complainant demonstrated to him a two-handed grabbing motion.
284. Additionally, the Complainant denied ever being reprimanded at work for her clothing. Dr. Fadayomi and MOA 1 both testified that this occurred with MOA 1 stating that there were two occasions.

285. The Complainant testified that she told the College Investigator that her father filed the police report. The Complainant's father testified that he did not make the report to the police.
286. The Complainant testified that after she spoke with the two police officers on September 20, 2021, she received a letter from the police. After that there was no further contact with the police. This contradicts evidence in Tab 11, Exhibit 1 where the representative from the Calgary Police states the police made several attempts to contact the Complainant that went unanswered.
287. Mr. Nykyforuk addressed the text messages between Dr. Fadayomi and the Complainant. Dr. Fadayomi testified that he feared that the Complainant would leave her job, which would leave the clinic short-staffed. He stated he felt bad about what happened as it upset the Complainant. Mr. Nykyforuk stated Dr. Fadayomi's comment of 'I am not proud of this' is not surprising as his touching of the Complainant's breast was accidental. For similar reasons, his comment of 'I am not proud of what angered you' is not a surprising comment. He had carelessly bumped the Complainant's breast, which made her angry and uncomfortable.
288. Mr. Nykyforuk indicated that Dr. Fadayomi did not reference that his contact with the Complainant's breast was accidental in his text messages because by the time of these texts, he had spoken with her twice where he told her the contact was accidental. While the text messages do not state the contact was accidental, they also do not make reference to the contact being intentional. Mr. Nykyforuk suggested that the Hearing Tribunal keep in mind that at the time of the text messages he had not received any CPSA complaint with details of any allegation against him. He submitted that if Dr. Fadayomi was unaware that the Complainant perceived the contact to be intentional, he would not necessarily repeat his prior verbal statements that the contact was accidental.
289. Mr. Nykyforuk submitted that it is not unexpected or unusual for one to seek forgiveness and express regret over an accident. It is a normal human reaction to not be proud about something or an action that upsets someone else and that it is not unexpected to reassure someone it won't happen again after such an accident has harmed someone. He submitted that Dr. Fadayomi's text messages reflect an intention to be more careful in the future.
290. Mr. Nykyforuk stated that Dr. Fadayomi testified he did not interpret the Complainant's use of the word 'reason' in her September 21, 2021, text message to him to indicate intention. He stated that at the time of their text message exchange, Dr. Fadayomi had no idea as to the Complainant's interpretation of the touching incident. He urged the Hearing Tribunal to view Dr. Fadayomi's text messages coming from the perspective of someone who bumped the breast of a young female and knows she is upset and is worried she will quit and leave the clinic short-staffed. He stated it is only appropriate

to view the text messages through the lens of an assault allegation if that has been proven to have occurred.

291. Mr. Nykyforuk indicated that the Hearing Tribunal has had the opportunity to hear from the Complainant in her testimony, and they can judge her proficiency in the English language. He stated that Dr. Fadayomi's first language is Yoruba, but counsel has not sought for the Hearing Tribunal to offer the same benefit of the doubt in this respect when considering the text messages.
292. Mr. Nykyforuk pointed out that in her testimony, the Complainant stated Dr. Fadayomi approaching her while she was seated at her computer had nothing to do with document linkage. Both parties did agree that the incident occurred after the second clinic patient, who was the only patient in that time frame, coming in to review test results that needed proper documentation linkage in the EMR. He submitted that this lends support to Dr. Fadayomi's testimony that he approached the Complainant because of his dissatisfaction with the way a document was linked and wanted to provide some further instruction.
293. Mr. Nykyforuk acknowledged that the HPA does provide for further steps like an investigation and interviews to gather more information regarding a complaint, and therefore the complaint document is not a comprehensive statement. However, he submitted that there is no evidence that the Complainant knows and understands the HPA, its various sections and the CPSA complaints process. He pointed out that the Complainant testified that she did not understand that there would be further opportunity to elaborate or expand on her initial complaint.
294. Mr. Nykyforuk acknowledged that Dr. Fadayomi does have some motivation to provide a certain version of the events but submitted that this is true of every physician in a contested hearing. They have a vested interest in a particular outcome.
295. Mr. Nykyforuk spoke about whether the Complaints Director has met the burden of proof in this case and submitted Dr. Fadayomi has never denied making contact with the Complainant's breast. He has provided a different version of how the contact occurred and what happened. He submitted that Dr. Fadayomi provided a reasonable and plausible account of why he approached the Complainant at her computer, stood close to her and accidentally bumped her left breast with his elbow.
296. Mr. Nykyforuk submitted that Dr. Fadayomi provided consistent explanations without significant discrepancies. This is contrary to the Complainant's evidence, and he submitted that, due to the discrepancies in her recollections of specific details that contradict other witnesses, she is mistaken in her recollections of events. He submitted that the Complainant had many inconsistencies in her testimony to the heart of the alleged conduct, along

with a number of peripheral matters, that make her an unreliable narrator of events.

297. Mr. Nykyforuk stated there is clear evidence before the Hearing Tribunal regarding clinic layout, the visibility of the area where the incident occurred and the nature of the day when the contact occurred. He stated the Hearing Tribunal should consider if the nature of this conduct makes sense under these known circumstances. Dr. Fadayomi had a very busy clinic booked on September 18, 2021, and was the only physician working that day. The Complainant was the only MOA. Many patients were booked before the day began, and they were accepting walk-in patients. The front door was unlocked at all times, and the clinic interior was highly visible through large windows and glass doors. The area where the Complainant was sitting when the event occurred was highly visible. Mr. Nykyforuk submitted that it is inconceivable that early on a busy clinic day with an unlocked clinic door and full day sheet Dr. Fadayomi would have contacted the Complainant in the manner alleged.
298. Mr. Nykyforuk submitted that if all the evidence is carefully considered along with the credibility and reliability of the witnesses, the Complaints Director has not established on the balance of probabilities with clear, cogent, and convincing evidence that Dr. Fadayomi is guilty of the offence as charged.

Submissions by Counsel for the Complaints Director

299. Ms. McPeek cautioned the Hearing Tribunal that just because something is visible, someone who is choosing to take advantage of a power imbalance is not necessarily going to be affected by the fact they could be seen. There were no patients in the room at the time Dr. Fadayomi came to the Complainant. It was uncontested that the incident was very brief along with the conversation that happened. It was not a situation that was prolonged. She cautioned the Hearing Tribunal against accepting that such an event could never occur in a public situation like this.
300. Ms. McPeek stated what the Complainant understands or does not understand about the HPA ultimately does not change that the complainant is not confined to material in the complaint. If ultimately the Hearing Tribunal confines the initial complaint as to being the entirety of the complaint, this would be a dangerous precedent to set. It is not a question of what the Complainant ultimately believed at the time she filled out the complaint form; it is what starts the matter and there are further opportunities to provide additional information. When one looks at these opportunities, the Complainant is relatively consistent.

VI. DECISION OF THE HEARING TRIBUNAL ON THE ALLEGATION

301. The Hearing Tribunal has reviewed and considered the evidence and the submissions of the parties. The Hearing Tribunal finds that the Allegation is

factually proven and finds that the conduct constitutes unprofessional conduct. The Hearing Tribunal's findings and reasons are set out below.

VII. FINDINGS WITH REASONS

302. The Notice of Hearing contains one Allegation against Dr. Fadayomi that centered around an incident that occurred between Dr. Fadayomi and the Complainant. The incident was unwitnessed.
303. Given the circumstances where the alleged touching incident occurred unwitnessed, the Hearing Tribunal gave greatest consideration to the testimony from Dr. Fadayomi versus that of the Complainant with respect to their individual versions of the touching incident. The remaining witnesses are individuals who were not present at the incident but were told of the event.
304. Dr. Fadayomi, the Complainant, the Complainant's father, MOA 1 and MOA 2 presented evidence that was consistent on a number of key main points pertaining to the incident. Where the evidence of the witnesses was not consistent, the Hearing Tribunal preferred the version of events presented by the Complainant and the evidence presented that corroborated it. To come to this conclusion, the Hearing Tribunal carefully considered the evidence presented by each witness to make a determination of each witness' relative credibility and reliability.
305. The Hearing Tribunal also analyzed the evidence presented and testimony to formulate the most likely set of circumstances surrounding the touching incident as a setting for whose version of events provided the best fit.
306. The Hearing Tribunal considered the factors set forth in the cited *Rabiu* case as a framework for factors to consider in the analysis of each witness' testimony in their assessment of a witness' credibility and reliability. This analysis is summarized below.
307. These factors are highlighted on pages 15-16 of the CPSO decision and include:
 - a. Did the witness seem honest? Is there any reason the witness would not be telling the truth?
 - b. Did the witness have an interest in the outcome of the case or any reason to give evidence that is more favorable to one side or the other?
 - c. Did the witness seem able to make accurate and complete observations?
 - d. Did the witness seem to have a good memory? Did any inability or difficulty that the witness had in recalling events seem genuine or did it seem made up as an excuse to avoid answering questions?

- e. Did the witness seem to be reporting what they saw or heard or were they putting together an account based on information from other sources?
 - f. Did the testimony seem reasonable and consistent? Did the witness say something different on another occasion?
 - g. Did any inconsistencies in their evidence make the main points of the testimony more or less believable or reliable? Is there an explanation for any inconsistency, and does the explanation make sense?
 - h. What was the witness's manner or demeanor when testifying? In considering demeanor, the Committee was aware that while this is a relevant factor, there are many variables, and it did not make any findings of credibility based solely or primarily on the demeanor of any witness?
308. The Complainant did the most reporting of the incident to other people including her father, two police officers, the CPSA investigator (the College Investigator), MOA 1 and MOA 2. The Complainant's version of the details of the touching incident matched Dr. Fadayomi's on several points including:
- a. date and location where the incident occurred,
 - b. estimated time of day the incident occurred,
 - c. the physical interior layout of Monterey Medical Clinic and where the Complainant was seated at the time of the incident,
 - d. that Dr. Fadayomi approached her while she was seated in front of her computer,
 - e. that Dr. Fadayomi made physical contact with her left breast that was not consensual,
 - f. the Complainant then asked, 'What are you doing?'
 - g. they both worked the rest of the day without discussing the incident,
 - h. they both worked at the clinic September 20, 2021,
 - i. they discussed the incident in an exam room on September 20, 2021,
 - j. the Complainant left work early on September 20, 2021,
 - k. the Complainant did not work again at Monterey Medical Clinic after September 20, 2021,
 - l. the Complainant and Dr. Fadayomi exchanged some text messages after September 20, 2021.
309. Under cross-examination the Complainant clarified some inconsistencies between details in her written complaint to the CPSA versus details she supplied during interviews with the College Investigator. These inconsistencies included how many attempts Dr. Fadayomi made to touch her breast, whether or not Dr. Fadayomi also pinched her nipple, the nature of how she touched Dr. Fadayomi's hand after he touched her breast (tap

versus grab versus push), whether or not Dr. Fadayomi said 'succulent breast' after he touched her breast, whether or not she turned to face Dr. Fadayomi at the time of the touching incident, if she or her father filed the report of the incident with the police, and a previous alleged incident of Dr. Fadayomi brushing up against her buttocks while she changed over a patient exam room. It was pointed out that the Complainant gave details about the incident to her father that differed slightly from what she testified and documented in her written complaint.

310. The Hearing Tribunal found the Complainant to be quiet, soft-spoken, honest and sincere in her testimony. She stated the incident upset her, but she did not come across as angry or vengeful. She apologized at one point during her testimony for her English, as it is not her first language.
311. However, the Hearing Tribunal found her to be clear and believable in her recounting of the touching incident. Considering the touching incident was very brief and the immediate shock and surprise of the touching, the Hearing Tribunal found the Complainant to have given reliable testimony of the main details of this event. She relayed the main details of the touching incident consistently to several people including her father, MOA 1 and MOA 2.
312. The Hearing Tribunal did consider the details summarized above where the Complainant gave slightly differing accounts of some of the specific details of the touching incident to various parties, including the College Investigator and her father. Counsel for Dr. Fadayomi argued that these variations in her testimony severely undermined her credibility and reliability.
313. Considering factors such as shock and trauma and their potential effect on a victim's ability to recall every specific detail surrounding a traumatizing event and the potential awkwardness in how a child recounts an instance of unwanted sexual touching to their parent, the Hearing Tribunal found that the inconsistencies between details the Complainant provided in her written complaint to the CPSA versus her interview with the College Investigator were peripheral to the main details she consistently provided to several people that were details at the heart of the allegation: that Dr. Fadayomi reached over her left shoulder and grabbed her left breast without her consent in clinic on September 18, 2021.
314. The Hearing Tribunal was presented evidence of a text message the Complainant sent to Dr. Fadayomi where she stated she is traumatized by the touching. The Complainant also provided testimony describing her feelings of shock and trauma and feeling 'nervous inside' immediately after and in the days that followed the touching incident. She also testified in the weeks after the touching incident she remained traumatized, and because of this she could not recall what she next did for work after she left her job at Monterey Medical Clinic. The Hearing Tribunal heard testimony from the Complainant's father about how she was withdrawn and not her usual outgoing self on September 18 and 19, 2021. Dr. Fadayomi testified that the

Complainant was uncharacteristically late for work on September 20, 2021, and he observed her to not be acting normally that day. The Hearing Tribunal found that the testimony from various parties on this point was consistent with the Complainant's reaction to having experienced a significant traumatic event.

315. Considering the evidence to this point, the Hearing Tribunal accepted that the touching incident had a significant traumatic effect on the Complainant and that this trauma may have affected her recall of specific peripheral details surrounding the touching incident. The Complainant told her father about the touching incident two days after it occurred. She filed her complaint to the CPSA about Dr. Fadayomi approximately six weeks after the touching incident, and her first interview with the College Investigator was approximately eight months after the incident. The Hearing Tribunal accepted that the initial shock and trauma from the touching incident may have affected the Complainant's recall of specific details surrounding the incident at the time when she told her father and when she filed the complaint with the CPSA. The time between the incident and her first interview with the College Investigator may have allowed for some of the acute trauma and shock to subside so that she could reflect upon what happened. With this in mind, the Hearing Tribunal found that in her disclosure of the incident to her father and the details she wrote in her written complaint to the CPSA, the Complainant gave a consistent account of the main details of the touching incident.
316. The Hearing Tribunal accepted that the lasting effect of the trauma of the touching incident may have affected the Complainant's ability to recall every minute detail surrounding the touching incident. The Hearing Tribunal accepted her completeness and accuracy in her recounting of the touching incident are as much as one would expect from a reasonable person given the shock and trauma of the incident on the Complainant. The Hearing Tribunal also considered that while the Complainant has a close relationship with her father, there may have been a degree of awkwardness and perhaps embarrassment that prevented her from disclosing every minute detail of how Dr. Fadayomi touched her breast when she described the incident to him. The Hearing Tribunal accepted these factors as reasonable explanations for why the Complainant did not disclose specific details of the incident to her father, including how Dr. Fadayomi walked away, laughed, and said, 'succulent breast'.
317. The Hearing Tribunal did not put significant weight on the variations in the Complainant's recounting of specific details of the touching incident in her written complaint versus the various people she relayed the incident to, including her interviews with the College Investigator. The Hearing Tribunal found that given the circumstances of experiencing an unwanted touching that occurred within a very brief span of time, it is acceptable to believe that a reasonable person who is the victim of this would not have the presence of mind to observe and take note of every detail including the manner in which

they were touched and the specific manner in which they physically responded.

318. Despite these slight inconsistencies, the Hearing Tribunal found that the Complainant consistently conveyed the details at the heart of the incident to those she gave disclosure to.
319. The Hearing Tribunal therefore accepted the Complainant's version of details at the heart of the touching incident, including how Dr. Fadayomi touched her left breast with his hand and then walked away and said, 'succulent breast'. These main details were corroborated in the testimony from MOA 2 and MOA 1 who are individuals the Complainant relayed the incident to in the days following September 18, 2021.
320. The Hearing Tribunal found that the fact that the Complainant went to the police to report the incident shortly after it occurred another indication of the significant effect of the touching incident on the Complainant and consistent with her version of events that she experienced an unwanted intentional touching of her breast. Therefore, the Hearing Tribunal found the Complainant to have a high degree of credibility and reliability in this respect.
321. For the reasons set out above, the Hearing Tribunal rejected the argument that the variations in peripheral details and descriptive wording used had a negative impact on the Complainant's credibility and reliability.
322. Counsel for Dr. Fadayomi pointed out the Complainant's testimony that Dr. Fadayomi at another time brushed up against her buttocks along with her claim that one of her MOA colleagues told her the same had happened to them while the same colleague (MOA 1) denied such an event. Counsel for Dr. Fadayomi argued that this discrepancy further eroded the Complainant's credibility. The Hearing Tribunal rejected this argument as it found MOA 1's testimony to this point may have been impacted by her ongoing employment at Monterey Medical Clinic (summarized below). Additionally, buttock touching is not a part of the Allegation set out in the Notice of Hearing, and the Hearing Tribunal accordingly gave low weight to portions of the evidence pertaining to this.
323. The Hearing Tribunal accepted that the Complainant does not stand to gain by filing such a complaint against Dr. Fadayomi and found her filing a report with the police and ultimately leaving her job as factors that speak to the severity of the touching incident. The Complainant testified it was difficult for her to find work as an MOA given her level of experience.
324. While portions of the transcripts of the Complainant's interviews with the College Investigator from the CPSA were briefly shared on the Zoom link during the cross-examination of the Complainant, the Hearing Tribunal was not provided with the entire transcripts, and none of the transcripts were entered into evidence. Without the opportunity to review these transcripts in their entirety along with the context surrounding the presented transcript

portions, the Hearing Tribunal gave lesser weight to this portion of the cross-examination.

325. The Hearing Tribunal was presented evidence in an email from the Calgary Police Service that indicated that they made repeated attempts to contact the Complainant that were not returned. This is contrary to testimony from the Complainant that she never heard back from the police after the letter she received from them outlining counselling options available to her. The Hearing Tribunal was not presented with evidence of how many and when these contact attempts were made by the police and applied lower weighting on the impact on the Complainant's credibility from this evidence.
326. Dr. Fadayomi gave testimony that did not match the Complainant's regarding the touching incident. He testified that she did say, 'What are you doing?' when the touch occurred but asserted his touching of her breast was entirely accidental and that he did not walk away after and say, 'succulent breast'. He did not relay the details of the incident to anybody else, and as such there were no witnesses to corroborate his version of the event.
327. The Hearing Tribunal found Dr. Fadayomi to be direct in his testimony. He presented testimony that at times the Hearing Tribunal found to be inconsistent, however.
328. Dr. Fadayomi testified that on the morning of September 18, 2021, he went to the Complainant's desk to provide some training on how to properly link documents into the clinic EMR. He and the Complainant both testified that this particular clinic day was very busy and was fully booked, and the clinic day sheet presented in Exhibit 1 confirmed this. Dr. Fadayomi testified he did not take any breaks on this clinic day due to how busy he was.
329. The Hearing Tribunal accepted testimony from MOA 2 and MOA 1 that Dr. Fadayomi did not give training to the MOAs and instead the more senior MOAs provided training on document linkage and the other MOA duties to the newer MOAs. The Hearing Tribunal therefore found that on the balance of probabilities the likelihood of Dr. Fadayomi approaching the Complainant at her workstation on September 18, 2021, when the clinic was fully booked to provide document linkage training as he testified to be low.
330. Dr. Fadayomi testified that MOA 2 was the office manager and when she went on maternity leave, MOA 1 was the acting office manager. This conflicts with the testimony from MOA 1 and MOA 2 that indicated that neither of them was the office manager and that Dr. Fadayomi was the owner and manager of the clinic. They testified that any workplace concerns went to Dr. Fadayomi.
331. Dr. Fadayomi testified that he had a good working relationship with the Complainant. However, he later testified he thought overall the Complainant was not a good employee and described how he previously reprimanded her at work for her attire and recounted another incident where he was not

happy with how she processed a billing for a patient and had to correct her error.

332. The Hearing Tribunal heard testimony from MOA 1 and MOA 2 regarding the working environment at Monterey Medical Clinic where Dr. Fadayomi was known to be serious and to direct his anger at an MOA if he felt they made a mistake. They both testified witnessing Dr. Fadayomi reprimand an MOA in the workplace and at times shout at them, sometimes in front of patients. Dr. Fadayomi was also known to listen in while an MOA would talk with patients on the phone.
333. Dr. Fadayomi testified he had no prior knowledge of the cameras in the Monterey Medical Clinic as they were installed there before he started working there. However, he later testified that he had an app on his phone that allowed him to remotely see inside the clinic via the cameras.
334. The Hearing Tribunal found that a large power imbalance existed between Dr. Fadayomi and the Complainant. He is a senior physician who owns the clinic and was her direct manager, while the Complainant was still on probationary status three months into her first MOA job.
335. Dr. Fadayomi and the Complainant provided matching testimony to the point that they exchanged text messages in the days following the September 18, 2021, touching incident. Dr. Fadayomi testified his motivation behind these text messages was to confirm whether or not the Complainant was going to return to work, as he and the other MOAs were concerned that if she did not return the clinic would be short-staffed.
336. While he does mention returning to work two times in these text messages, Dr. Fadayomi asks for forgiveness for the touching incident four times. Dr. Fadayomi testified that by the time the text messages between him and the Complainant started, he had at least told her twice in person that the touching incident was an unintentional accident. The Hearing Tribunal found it unlikely that an employer such as Dr. Fadayomi, who was in the position of great power over his employees and was accustomed to imposing his policies onto them, would be asking for forgiveness for an incident that he truly felt and had already expressed was accidental.
337. Instead, the Hearing Tribunal preferred the Complainant's interpretation of these text messages as being reflective of Dr. Fadayomi knowing his touching her breast was an intentional act and was texting to ask for her forgiveness. Therefore, the Hearing Tribunal found these text messages to be a part of the surrounding circumstances that fit the Complainant's version of the touching incident better than Dr. Fadayomi's version.
338. Dr. Fadayomi testified he did not mention the touching was an unintentional accident in any of his text messages to the Complainant because he had already verbally explained this twice to her. He testified he did not feel the need to repeat this point, as he was unaware that the Complainant felt the

touching was intentional and eventually would file a complaint with the CPSA about the incident. He also testified that on September 20, 2021, he observed that the Complainant was not behaving normally and he acknowledges that the Complainant is upset and angry about the incident in his text messages to her.

339. The Hearing Tribunal found that Dr. Fadayomi's responses in his text messages and to questions about the motivation and meaning behind these messages to be unacceptable and unbelievable. The Hearing Tribunal found that the text messages are not messages a reasonable person would send if they truly felt such a touching incident was an accident. The Hearing Tribunal also found Dr. Fadayomi's explanation of his motivation behind the text messages does not fit the type of working relationship Dr. Fadayomi had with his clinic MOAs, where he was known to yell and reprimand them sometimes in front of patients if he felt they were not doing something correctly. Instead, the Hearing Tribunal found on the balance of probabilities these text messages fit the Complainant's version of events and not Dr. Fadayomi's and that they are more likely to be messages from someone who intentionally did a hurtful action to someone else and is now asking their forgiveness.
340. Due to these inconsistencies in his testimony, the Hearing Tribunal did not find Dr. Fadayomi's version of the touching incident to be believable and therefore found Dr. Fadayomi to have low credibility and reliability in his version of the touching incident that occurred on September 18, 2021.

The Complainant's Father

341. The Hearing Tribunal noted from portions of his interview transcript that were presented that the Complainant's father's interview with the College Investigator was conducted with an interpreter present. Despite this, the Hearing Tribunal found that the Complainant's father expressed himself clearly in his testimony.
342. The Hearing Tribunal found the Complainant's father to be genuine and believable in his testimony. He testified that when the Complainant told him of the touching incident, he was angry and concerned for her safety. He later advised her to leave her job and testified it was because he did not believe she was safe at the workplace anymore. The Hearing Tribunal found this testimony to be consistent with a father who has a close relationship with their child. It also fit the Complainant's version of events surrounding the touching incident where she described an intentional non-consensual touching of her breast.
343. The Complainant's father gave testimony about September 18 and 19, 2021, and that he noticed his daughter being withdrawn and not her usual outgoing self. The Hearing Tribunal believed this testimony and found that it was consistent with the Complainant's testimony that she was traumatized by Dr. Fadayomi's intentional touching of her breast.

344. There were some inconsistencies between the Complainant's father's interview transcript with the College Investigator and his verbal testimony with respect to factors such as Dr. Fadayomi laughing after the touching incident and who made the incident report to the police. The Hearing Tribunal felt a reasonable explanation for these inconsistencies may be the effect of trauma and perhaps even embarrassment on the Complainant's recounting of the event to her father as summarized above.
345. Nonetheless, the Hearing Tribunal found these inconsistencies were peripheral details that do not take away from the consistency in the details of the central core of the touching incident and do not take away from the believability of the testimony the Complainant's father gave surrounding the heart of the touching incident.
346. Therefore, the Hearing Tribunal found the Complainant's father to be a credible and reliable witness in his testimony on the main points surrounding the touching incident that occurred.

MOA 1

347. The Hearing Tribunal found MOA 1 to be honest in her testimony but at the same time not very forthcoming in the information she disclosed. She did not mention that she phoned MOA 2 after the Complainant told her of the touching incident that occurred on September 18, 2021, a detail that was revealed in MOA 2's testimony. She also replied to several questions by saying she simply could not recall specific details going back to an event from over two years ago.
348. MOA 1 was also interviewed by the College Investigator, and at various times during her verbal testimony she was referred to the transcript from her previous interview to refresh her memory on points that she said she could not recall. She deferred to the information in the interview transcript and confirmed she provided honest answers during that interview.
349. The Hearing Tribunal accepted MOA 1's testimony regarding the Complainant's disclosure to her regarding details of the touching incident, including how Dr. Fadayomi purposely touched her breast on Saturday, September 18, 2021, prompting the Complainant to say, 'What are you doing?' followed by Dr. Fadayomi walking away and saying, 'succulent breast'. These details match the Complainant's description of the main points of the touching incident and also MOA 2's testimony as to what MOA 1 and the Complainant disclosed to her.
350. MOA 1 also testified that the Complainant told her she and Dr. Fadayomi met in a clinic exam room on September 20, 2021, where Dr. Fadayomi apologized and told her it would not happen again.
351. The Hearing Tribunal also accepted MOA 1's testimony that Dr. Fadayomi does not train the clinic MOAs and her comments about an office policy to

manage employee concerns as further evidence of the nature of the workplace environment and structure for MOAs at Monterey Medical Clinic. Her testimony on these points matched MOA 2's, and the Hearing Tribunal found her a credible witness on these focused points.

352. MOA 1 denied ever telling the Complainant that Dr. Fadayomi had previously brushed up against her buttocks in clinic, a point that contradicted the Complainant's testimony. Given that MOA 1 is still employed at Monterey Medical Clinic, the Hearing Tribunal found that she is in a potentially vulnerable position if she were to give negative testimony regarding Dr. Fadayomi.
353. Overall, the Hearing Tribunal found MOA 1 to be a credible witness in her testimony, but her overall reliability may have been impacted by her ongoing employment at Monterey Medical Clinic.

MOA 2

354. The Hearing Tribunal found MOA 2 to give honest and believable testimony. She had more accurate recall in her answers to questions compared with MOA 1.
355. MOA 2 was the most senior MOA at Monterey Medical Clinic at the time of the touching incident. While she was not the official clinic manager, the Hearing Tribunal's impression from her testimony was that she was trusted and respected by her MOA colleagues. While on maternity leave, she was still taking phone calls from her MOA colleagues about various work-related questions.
356. MOA 2 testified MOA 1 called her and told her about the touching incident after the Complainant disclosed it to MOA 1 at work. MOA 2 then subsequently phoned the Complainant as a friend to check in on her. She confirmed that she advised the Complainant to report the incident to the CPSA. The Hearing Tribunal found this testimony to be consistent with the severity and intention behind Dr. Fadayomi touching the Complainant's breast.
357. The Hearing Tribunal accepted MOA 2's testimony regarding the workplace environment at Monterey Medical Clinic, in particular Dr. Fadayomi's angry outbursts directed at the MOA staff. This testimony was consistent with testimony from the Complainant and MOA 1 to this point.
358. At the time of her testimony, MOA 2 was no longer employed at Monterey Medical Clinic, as she had moved on to her next career as an occupational health nurse. Due to this, the Hearing Tribunal found that MOA 2 has no vested interest in the outcome of the hearing.
359. Overall, the Hearing Tribunal found MOA 2 to have a high degree of credibility and reliability in her testimony.

Witness Credibility/Reliability

360. The Hearing Tribunal accepted testimony from the Complainant, MOA 1 and MOA 2 regarding aspects of their work environment and reporting structure at Monterey Medical Clinic and how Dr. Fadayomi treated the clinic MOAs. Dr. Fadayomi was serious with the MOAs and was very particular in how he wanted aspects of the workplace, such as how documents were linked into the EMR. There was a clear power imbalance between Dr. Fadayomi and his MOAs, and the working relationship between them featured times where he would yell and openly reprimand them in clinic. The Hearing Tribunal found the testimony to these repeated events suggests an individual who prioritizes having things their way with low regard for treating his clinic MOAs respectfully and collegially. The Hearing Tribunal found that these descriptions depict a workplace that was at times hostile and not respectful towards the MOAs and provided some insight into the overall circumstances and workplace dynamic existing at Monterey Medical Clinic on September 18, 2021.
361. As owner and manager of the clinic, Dr. Fadayomi did not have a clearly defined clinic policy or process to hear and address any employee workplace concerns. When the Complainant texted him on September 21, 2021, and said she was 'traumatized' by his touching her, he did not mention any steps he can take as her employer to address a workplace incident that left his employee traumatized. Taken together, the Hearing Tribunal found that on the balance of probabilities Monterey Medical Clinic was not a workplace that promoted openness, transparency or wellness for its employees and that Dr. Fadayomi took a stance with his employees that his processes and policies were right, and they were strictly imposed onto his employees.
362. The overall surrounding workplace environment for the Monterey Medical Clinic MOAs gave the Hearing Tribunal further reason to not accept Dr. Fadayomi's explanation for the meaning behind his text messages to the Complainant from September 21 and 22, 2021. Dr. Fadayomi testified that he mentioned that he was 'not proud' about the incident to mean that it was an accident. Given the testimony the Hearing Tribunal heard and accepted from several witnesses of the directness with which Dr. Fadayomi communicated with his MOAs, the Hearing Tribunal did not accept this explanation. The Hearing Tribunal found that, with his communication approach with his MOAs, Dr. Fadayomi would have more likely specified the accidental nature of the incident if he truly believed that. The Hearing Tribunal felt it more likely that on the balance of probability this comment reflects Dr. Fadayomi knowing his touching of the Complainant's breast was intentional.
363. Furthermore, the Hearing Tribunal found that Dr. Fadayomi's explanation for the wording of his texts to be unbelievable from the standpoint of how a reasonable person would have communicated if they genuinely felt such a touching incident was accidental. Dr. Fadayomi stated his intention behind

the text messages was to assure the Complainant the touching was an unintentional accident and to try get her to return to work. The Hearing Tribunal found however that a reasonable person would have communicated that the touching was an accident, especially when being told that the incident traumatized an individual who is under their employ.

364. The Hearing Tribunal did not accept the argument that Dr. Fadayomi did not mention the word 'accident' because he was unaware that ■ perceived the touching to be intentional or that the Complainant would ultimately complain to the CPSA and police. The Hearing Tribunal found that once they are told an incident left someone traumatized, a reasonable person would not need knowledge of a complaint to their regulatory body or the police, but instead if they truly believed the incident in question was accidental, they would take immediate steps to point this out.
365. Additionally, the Hearing Tribunal found that the repeated instances in his testimony where Dr. Fadayomi declined to clarify the specific meaning behind some of the wording in his texts such as his 'reason' for the touching incident, the concerns he shared with the Complainant, and asking the Complainant for a 'second chance' further have negative impact on his credibility and made his version of the event less believable.
366. Dr. Fadayomi's counsel argued several physical factors make it unlikely that Dr. Fadayomi would have intentionally grabbed the Complainant's breast on September 18, 2021. It was argued that the reception area where the Complainant was seated is highly visible through the uncovered and untinted clinic windows from the outside parking lot, sidewalk, and neighboring businesses and that the front door to the clinic was unlocked at the time of the incident.
367. While there remains some uncertainty as to what specific treatments the clinic windows may have had on that day, the Hearing Tribunal did not accept the argument that these physical factors would have made it inconceivable that Dr. Fadayomi to have touched the Complainant's breast intentionally. The Hearing Tribunal heard testimony that the neighboring businesses are open on Saturday, but there was no evidence presented regarding what time each business would have opened that day, especially in light of the agreed testimony between Dr. Fadayomi and the Complainant that the incident occurred sometime between 9:00 a.m. and 10:00 a.m., which is a time that may be outside of business hours on a Saturday.
368. The Hearing Tribunal also accepted testimony from MOA 1 that from the reception area of Monterey Medical Clinic one cannot see into the neighboring businesses. Upon review of the clinic photos in Tab 9 of Exhibit 1, the Hearing Tribunal also noted that the desk and computer where both the Complainant and Dr. Fadayomi stated the Complainant was seated at the time of the touching incident is situated behind the higher portion of the desk counter. Both testified she was in front of the monitor at the time of touching

incident, and the Hearing Tribunal found that in this position, the high portion of the desk and computer monitor would have obstructed the sightline to the Complainant from the outside and patient waiting area.

369. The Hearing Tribunal therefore rejected the argument that the setting of windows in the clinic is a valid reason for Dr. Fadayomi to more likely not have intentionally touched the Complainant's breast. The touching incident occurred in a brief moment, and the Hearing Tribunal found it more reasonable to believe that it was an action borne out of perceived opportunity and exploitation of a clear power imbalance between a business owner and his most junior employee. The Hearing Tribunal therefore put less weight on this portion of the argument from Dr. Fadayomi's counsel.
370. The Hearing Tribunal found that it is reasonable to believe that the alleged incident could have occurred in the described physical setting given the surrounding circumstances of the workplace environment and Dr. Fadayomi's attitude towards his MOAs. There was a large and clear power dynamic between Dr. Fadayomi and his MOAs, and at times Dr. Fadayomi treated his MOAs poorly to get what he wanted. The Hearing Tribunal heard and accepted testimony from all of the clinic MOAs to the point that Dr. Fadayomi was at times emotional and spontaneous when he was upset about how an MOA was doing their job. Therefore, on the balance of probabilities, rather than being a calculated premeditated event, it is more likely the touching incident was an opportunistic act of emotion and impulsiveness, and that visibility was likely not a significant consideration on the part of Dr. Fadayomi.
371. The text message exchange between Dr. Fadayomi and the Complainant was the only evidence presented of specific communication between the two regarding the touching incident. For the reasons summarized above, the Hearing Tribunal found the text messages fit the Complainant's version of events in a more harmonious fashion as opposed to Dr. Fadayomi's version. The Hearing Tribunal put greater weight on the impact of these text messages in helping to establish the surrounding events of the touching incident compared to the details of the physical layout of the clinic on September 18, 2021.
372. Given the analysis summarized above in the context of the Hearing Tribunal's analysis of the witness' relative credibility and reliability, especially that of the Complainant and Dr. Fadayomi, the Hearing Tribunal prefers the Complainant's version of events regarding the touching incident that occurred on September 18, 2021, over that of Dr. Fadayomi. It was argued that Dr. Fadayomi, in all of his responses including his verbal testimony, gave a consistent version of the events. However, for the reasons outlined above, the Hearing Tribunal simply did not find Dr. Fadayomi's version of events to be credible.

373. With consideration of the testimony and evidence presented, the Hearing Tribunal found that the Complainant's evidence had more credibility than Dr. Fadayomi with respect to each of their versions of the touching incident. The factors supporting each of their respective versions heavily favored that of the Complainant's over Dr. Fadayomi's (corroborating testimony from fellow MOAs, text message exchange interpretation, surrounding workplace dynamics versus physical setting of Monterey Medical Clinic on September 18, 2021). At the same time, the factors potentially eroding their relative credibility levels were more prominent for Dr. Fadayomi (explanation of text message meaning versus slight discrepancies in peripheral details disclosed to various parties).
374. For the reasons summarized above, the Complainant provided more believable and credible testimony to the main points of the incident and the surrounding preponderance of circumstances including workplace environment, text message exchange between Dr. Fadayomi and the Complainant and reporting to MOA co-workers, the Hearing Tribunal finds that, on the balance of probabilities, Dr. Fadayomi did intentionally touch the Complainant's left breast without her consent on September 18, 2021.
375. With respect to the Allegation set forth in Notice of Hearing in Exhibit 1, the Hearing Tribunal finds that on the balance of probabilities the Allegation is factually proven and that the touching was intentional on the part of Dr. Fadayomi. In his testimony Dr. Fadayomi did not dispute the fact that he made physical contact with the Complainant's left breast while in the clinic on September 18, 2021. He argued that the contact was purely an unintentional accident, but for the reasons summarized above, the Hearing Tribunal rejects Dr. Fadayomi's arguments while preferring the Complainant's version of events on this point. The Hearing Tribunal therefore finds that Dr. Fadayomi's touching of the Complainant's left breast was an intentional act.
376. The Hearing Tribunal finds that all sub parts of Allegation 1 are factually proven and that Dr. Fadayomi's proven conduct constitutes unprofessional conduct, as it satisfies all three aspects of unprofessional conduct set out in the Allegation. These aspects are summarized below.
377. The CMA Code of Ethics and Professionalism B.31. outlines that a physician must treat their colleagues with dignity and as persons worthy of respect. Colleagues are defined as all learners, health care partners and members of the health care team. The Complainant was employed as an MOA at Monterey Medical Clinic in September 2021 and was the MOA working with Dr. Fadayomi at that clinic on September 18, 2021. She clearly was part of the health care team working with Dr. Fadayomi, and the proven intentional unwanted sexual touching was a complete egregious departure from what would be considered treating someone with dignity and respect. Therefore, the Hearing Tribunal finds that Dr. Fadayomi's proven conduct contravenes the CMA Code of Ethics and Professionalism.

378. The Hearing Tribunal considered the relevant CPSA Standard of Practice which is the Standard of Practice pertaining to Boundary Violations: Sexual. The Hearing Tribunal finds that Dr. Fadayomi's proven conduct satisfies the definition of "sexual abuse" as defined in section 1(1)(nn.1) of the HPA, specifically as "touching of a sexual nature of a patient's genitals, anus, breasts, or buttocks by a regulated member". In addition to patients, this Standard of Practice contemplates if a member engages in sexual abuse and/or misconduct with a person who is a colleague or staff. While the Complainant is not a patient of Dr. Fadayomi's, she was a member of the health care team at Monterey Medical Clinic where Dr. Fadayomi was her direct supervisor and employer on September 18, 2021. Therefore, the Hearing Tribunal finds that Dr. Fadayomi's proven conduct contravenes the CPSA Standard of Practice pertaining to Boundary Violations: Sexual.
379. The Hearing Tribunal finds that Dr. Fadayomi's proven conduct does harm the integrity of the medical profession. Physicians have a place of respect and trust in our society, and Dr. Fadayomi's unwanted sexual touching of the Complainant is an egregious betrayal of that trust committed against an individual who he serves as an employer and manager. A reasonable and informed person when learning of such an incident would most likely have a lower impression of the medical profession because of it.
380. Unprofessional conduct is defined at s. 1(1)(pp) of the HPA, in relevant part, as: (ii) a contravention of a code of ethics or standards of practice; and (xii) conduct that harms the integrity of the regulated profession.
381. As noted above, the Hearing Tribunal finds that Dr. Fadayomi's conduct breached the CMA Code of Ethics, and the Standards of Practice: Boundary Violations – Sexual. The breach was serious and constitutes unprofessional conduct. The Hearing Tribunal also found the conduct harms the integrity of the medical profession.
382. Accordingly, Dr. Fadayomi's conduct with respect to the Allegation constitutes unprofessional conduct as defined by the HPA in section 1(1)(pp)(ii) and (xii).

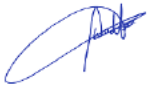
VIII. ORDERS

383. As a result of the Hearing Tribunal's finding of unprofessional conduct against Dr. Fadayomi for the Allegation, the Hearing Tribunal will need to determine what, if any, orders it will make pursuant to section 82 of the HPA.
384. The Hearing Tribunal will receive submissions on penalty from the parties. The Hearing Tribunal requests that the parties discuss the timing and method of providing submissions on penalty to the Hearing Tribunal and write to the Hearings Director with the proposal for making submissions on sanction.
385. If the parties are unable to agree on a proposed procedure and timing, the Hearing Tribunal will make further directions on this point.

386. Due to circumstances that arose following the Hearing, Hearing Tribunal Member Dr. Neelam Mahil, who participated in the Hearing and subsequent deliberations and decision-making for this matter, did not participate in this written decision. The sanction hearing will continue with three members pursuant to section 16(3) of the HPA.

Signed on behalf of the Hearing Tribunal:

X



Dr. Don Yee, Chair

Signed by: Jennifer White (Hearings Coordinator)

Dated this 11th day of December, 2023.