

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. KEITH ONEIL MARTIN

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA**

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I. INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Keith Oneil Martin on December 9, 10 and 18, 2020. The members of the Hearing Tribunal were:

Dr. Vonda Bobart of Edmonton as Chair
Dr. Erica Dance of Edmonton and
Ms. June MacGregor of Edmonton (public member).

[2] Ms. Julie Gagnon acted as independent legal counsel for the Hearing Tribunal. Ms. Emma Banfield, Ms. Gagnon's associate, was also present.

[3] In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Dr. Keith Oneil Martin and Ms. Barbara Stratton, legal counsel for Dr. Keith Oneil Martin.

II. PRELIMINARY MATTERS

[4] Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.

[5] Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"), the hearing was open to the public.

III. ALLEGATION

[6] The Notice of Hearing listed the following allegation:

1. On or about April 6, 2013, you did inappropriately strike your patient, Patient A, on the head, during her attendance at the emergency room while she was being assessed and treated for head trauma from a slip and fall.

IV. EVIDENCE - EXHIBITS

[7] The following Exhibits were entered into evidence during the hearing:

1. Agreed Exhibit Book
a. Notice of Hearing dated January 31, 2020
b. Complaint Reporting Form dated May 9, 2018

- c. Letter of Response from Dr. Martin dated September 12, 2018
- d. Slave Lake Healthcare Centre Letter to College dated August 22, 2018, enclosing Emergency Record
- 2. Written Statement of F. Silvius dated May 24, 2018
- 3. CLPNA Code of Ethics and Standards of Practice dated June 18, 2018
- 4. Corporate Directive 2012 05 28 Keeping Patients Safe Abuse
- 5. Written Statement of C. Sloat dated May 19, 2018
- 6. CV of Kathy Sinclair
- 7. Expert Report of Nurse Kathy Sinclair
- 8. C. Garratt Written Statement - undated

V. EVIDENCE

The Complainant

Direct Examination

- [8] The Complainant is 49 years old and lives approximately 160 km from Slave Lake Healthcare Centre.
- [9] The Complainant indicated that she made a complaint to the College because she was abused when she presented at the emergency room of the Slave Lake Healthcare Centre.
- [10] She was at home one evening when a friend of hers asked for help to clean out a trailer. The Complainant stated that she had been relaxing at home and had consumed a few drinks before she went to the trailer which was located on the lot next door. As she walked into the trailer, she slipped on ice and fell to the ground, banging the right side of her head above her face.
- [11] Her friend and daughter came to assist her. Her head, by her temple area was swollen and bruised. She had a "massive headache", and was dizzy and vomiting. The Complainant, her friend, and her daughter all agreed that because of the severity of the injury, she should go to the hospital. The drive to the Slave Lake Healthcare Centre is over 160 km and about an hour and half drive one way.
- [12] When she arrived at the Slave Lake Healthcare Centre, she was examined by Dr. Martin. She indicated that she remembered feeling like she had a complete conversation in her head, but was having a hard time answering quickly or getting words out of her mouth. She

stated that "at some point he just up and slapped me. He just up and hit me on the side of the head."

- [13] The Complainant recalled feeling in "total shock", and thinking "what just really happened?" When asked about what she felt, she stated that it felt "almost like a dream-like effect." She recalled feeling shocked, in more pain, and aggravated.
- [14] The Complainant stated that she was sitting on the edge of the bed, with Dr. Martin in front of her, and there were "three ladies" to her right. She testified that after being slapped, she and the other occupants of the room gasped and looked around. She could not believe he had just hit her. She does not recall the exact words a nurse said, but recalled someone saying something, and then Dr. Martin calling for security.
- [15] When asked why Dr. Martin called for security, the Complainant could not remember saying anything. She recalled seeing someone in the doorway, perhaps her daughter or friend.
- [16] The Complainant was directed to the record which noted that she was becoming abusive and aggressive. The Complainant did not recall exactly what she said when Dr. Martin slapped her, but she indicated that she probably did get defensive.
- [17] The Complainant indicated that she did not stay overnight at Slave Lake Healthcare Centre, but was sent to University of Alberta Hospital in Edmonton. She was released from the hospital in Edmonton the next day, and made her way home with her daughter, who had accompanied her there.
- [18] Regarding why it took her so long to bring the complaint forward, the Complainant indicated that it was mainly fear of the authority of a doctor, a Royal Canadian Mounted Police (RCMP) officer, or anyone with higher authority. She feared for her children and her own safety if she were to attempt to go against that authority. The Complainant indicated that she had never feared doctors, but certainly feared RCMP, child welfare, and other authoritative figures.
- [19] After the incident, she refused to come back to Slave Lake for any medical care. The incident created a lot of fear and mistrust in her head. When her children needed medical care, she took them to other towns. However, when her oldest daughter suffered an infection, she was hospitalized in Slave Lake, and so the Complainant came to the

hospital to visit her. During that timeframe, she recognized one of the nurses, Carolyn Sloat, who had been present during her own incident, and the Complainant asked to speak with her. When she and Ms. Sloat discussed the incident, it verified to the Complainant that the incident had happened.

[20] When asked if she did not trust her own memory, the Complainant indicated that she did, but did not want to bring something up in case she was wrong. She was scared of the outcome.

[21] When asked about her alcohol consumption on the evening of the incident, the Complainant recalled having probably three drinks: "regular sized glasses" with coke "and a shot of rye". She did not feel inebriated and she stated she had not been drinking overly excessively. She did not consume any more alcohol after she fell.

Cross-Examination

[22] On cross-examination, the Complainant indicated that she had submitted her statement along with statements by Ms. Sloat and Freda Silvius. However, she could not recall how they got all the statements together, and indicated that she believed they had all been sent in separately. The Complainant confirmed that she had spoken with Ms. Sloat at the Slave Lake Health Centre, and then by phone on two occasions. The Complainant could not recall how many times she spoke with Ms. Silvius before the paperwork was submitted to the College, but thought it was twice.

[23] The Complainant confirmed that the complaint was submitted on May 9, 2018, five years after the incident on April 6, 2013. When asked how she remembered the date of the incident, the Complainant indicated that she used to keep journals, and that she verified the date in the ambulance reports.

[24] The Complainant also confirmed that she met with an investigator from the College on December 11, 2018.

[25] The Complainant also confirmed that she had spoken with Ms. Sloat not long before she prepared her written complaint of May 9, 2018. The Complainant also indicated that when speaking with Ms. Sloat, she had asked what could be done about the incident. In their next conversation, they discussed how to go about getting witnesses and their statements. However, the Complainant stated that she was the one who wanted to know how things were done, and that Ms. Sloat did

not insist or lead her. Rather, the Complainant stated that she was the one inquiring and wanting to know what could be done.

- [26] The Complainant was questioned about the use of the word "apparently" in the sentence "Apparently I told him that I was expecting to be helped and not abused by the Doctor" in her statement. She indicated that it was something she wrote many years previously, and just something she wrote. She did not recall that one of the nurses had told her what she said after she was hit.
- [27] She did not disagree with the accuracy of the times listed in the chart, but could not remember when she arrived at the Slave Lake Health Centre. The Complainant did not recall completing a urine test, but agreed that it was possible she had given a urine sample and that blood tests had been done.
- [28] The Complainant was questioned about her level of intoxication on the night of April 6, 2013. She indicated she was intoxicated, but that she was an alcoholic, and therefore had a high tolerance for alcohol and did not believe she would have been "hugely" intoxicated. She agreed that her memory is not as clear when she is intoxicated as when she is sober but the Complainant stated that she did recall a lot from that night.
- [29] The Complainant indicated that the injury from the fall was on the right side of her head before and above her ear. She stated that she felt dizzy and sick, and laid on the ground for a few minutes after falling because she was scared to get up without help. She confirmed that she vomited in the car on the way to the hospital. She recalled having difficulty saying what she was thinking, but did not recall having difficulty walking, although her daughter was there to help her. She did not deny the accuracy of the notes in the patient record about not responding verbally and being unable to weight bear. The Complainant stated that she believed the RCMP were not called until after she was hit. She disagreed with the characterization of her behaviour as aggressive, but indicated she might have been difficult, because she felt unable to answer questions on demand. The Complainant stated that although she did not remember, she probably calmed down when the RCMP were called because they were figures of authority.
- [30] She did not recall yelling, lashing out, kicking, or striking anyone, but stated that she was a naturally loud person. She also agreed that a patient kicking a stretcher and lashing out could cause injury.

- [31] The Complainant recalled being examined by Dr. Martin in an examination room. She confirmed that she was sitting on the bed in the examination room with her legs hanging down from the bed. She recalled Dr. Martin checking her head where she was hurt, as well as checking her eyes, ears, and reflexes. She did not recall him saying he would get an x-ray of her head to rule out a fracture, although she did recall getting an x-ray.
- [32] The Complainant recalled seeing blue, but only after she had been slapped. She recalled her leg twitching from side-to-side as well. She could not recall whether Dr. Martin had hit her with an open fist or an open palm, nor which hand he used. She recalled feeling stunned and losing consciousness after he struck her. The Complainant recalled that Dr. Martin hit her in the same place where she struck her head. She agreed that she had told the College investigator that the nurses who were present had gasped, and that the RCMP and security were called after that. Although she recalled seeing a security guard, she did not recall seeing the RCMP.
- [33] The Complainant did not recall returning to the Slave Lake Healthcare Centre the next day to get painkillers.
- [34] The Complainant agreed that she never complained to the Slave Lake Healthcare Centre about being hit by Dr. Martin. She stated that she did not return to the Centre very often after the incident, unless he was there for some of her children. She agreed that it was not until May 2018 that she spoke with Ms. Sloat about the incident. When asked if Ms. Sloat had indicated that she wanted to complain, the Complainant disagreed, stating that Ms. Sloat was apologetic for not doing more at the time. She indicated that she could not recall specific steps taken during the examination, but did recall getting hit or slapped.
- [35] When it was put to her that she was relying on other people's memories that Dr. Martin never did strike her, the Complainant stated that that part was real. She also stated that it has always been clear, it was just she did not want to believe it and had tried to block the incident out. She had described it to the College investigator as dreamlike because she did not want to believe it or endanger her family.

Re-Examination and Questions from the Hearing Tribunal

- [36] In re-examination, Mr. Boyer asked if the Complainant if the third nurse she described as present during the incident had provided a statement or not. The Complainant indicated she had seen two of them, but had no idea if there was a third.
- [37] The Hearing Tribunal asked the Complainant about her use of the word “apparently” in her statement in reference to what she said following the alleged incident. The Complainant indicated that she recalled saying she was expecting to be helped and not abused by the doctor.

Freda Silvius

Direct Examination

- [38] Freda Silvius is a Licensed Practical Nurse (LPN) who began practice in 1981 and has worked at the Slave Lake Healthcare Centre since 1987. She described the Slave Lake Health Centre as a small rural hospital with 25 beds total. Ms. Silvius indicated that the emergency room has a trauma room, an endo room, a gynecology room, three acute care stretchers, and a few other stretchers. She indicated that the trauma room is for serious traumas.
- [39] Ms. Silvius indicated that she knew Dr. Martin, who she recalled was the chief of the medical staff in April 2013. She recalled that Cathy Oulton was the site manager at the time.
- [40] Ms. Silvius stated that she knew the Complainant from work, but that she had not had much interaction with her over the last five or ten years, because the Complainant had not been an inpatient since the incident in April 2013, and Ms. Silvius mostly works with inpatients.
- [41] Ms. Silvius confirmed she had prepared her written statement dated May 24, 2018. Ms. Silvius indicated that Ms. Sloat sent their written statements to the College together.
- [42] When asked what she recalled about the incident in question, Ms. Silvius indicated that she recalled the Complainant staggering into the emergency room in an incoherent state accompanied by friends or family. She stated that Lin Garratt was the RN working in the emergency and that Ms. Silvius and Ms. Sloat went to help her. They had the Complainant in the trauma room, were starting an intravenous (IV) and had called Dr. Martin who was on call that night. Dr. Martin

came in and started asking the Complainant questions and she became unsettled. Ms. Garratt was trying to start an IV on her foot, and the Complainant moved her foot. Ms. Silvius indicated that she was looking at what Ms. Garratt was doing, when all of a sudden out of the corner of her eye, she saw Dr. Martin hit the Complainant. The Complainant said something like "I come here for help, not for this", and then she got agitated and tried to get up. Ms. Silvius indicated that once the Complainant settled down and Dr. Martin left, Ms. Silvius left.

- [43] Regarding who was in the room during the incident, Ms. Silvius indicated that there was Dr. Martin, Ms. Garratt, Ms. Sloat, and herself. She indicated that Ms. Sloat is an LPN, and Ms. Garratt is a Registered Nurse (RN), who retired five or six years ago.
- [44] Ms. Silvius stated that the Complainant was not admitted as an inpatient, and she was not sure if she was discharged or sent elsewhere, but thought she went for a computed tomography (CT) scan. When shown the nursing assessment, Ms. Silvius recognized Ms. Garratt's handwriting as well as that of Dr. Martin.
- [45] Ms. Silvius could not recall where Dr. Martin had been when he was called, but thought he might have been sleeping in the doctor's lounge.
- [46] Ms. Silvius stated that it was unusual that Dr. Martin hit someone and that although she had seen him get upset with patients before, she had never seen him hit a patient. Her reaction was shock that he would hit someone, especially someone with a head injury.
- [47] Regarding why she did not report the incident until May 2018, she indicated that she was trained many years previously, and had been trained to respect doctors and not go against their word. In addition, she stated Dr. Martin was intimidating toward nursing staff and that she was "kind of scared of him". She stated that she came forward in May 2018 because it had bothered her for years, because it was her obligation as a nurse to protect her patients. She stated that she wrote her statement because Ms. Sloat had stated that the Complainant was going forward and needed their support and had asked if Ms. Silvius would write a letter. As far as Ms. Silvius was aware, only she and Ms. Sloat had written letters to support the Complainant.
- [48] When asked if Dr. Martin's role as chief of staff affected her choice about whether to report the incident or not, Ms. Silvius indicated that

it did not at the time. However, she also stated that he referred to the hospital as his and that he was in charge, which she found intimidating.

- [49] Ms. Silvius stated that that she only had a work relationship with Ms. Oulton, and that she would have had enough confidence to bring a complaint to her, but did not because of a fear of repercussion for what would happen at her job. Regarding what created that fear, Ms. Silvius stated that although it had never happened to her personally, she had seen RNs and stronger nurses “taken down” by Dr. Martin and end up in tears.
- [50] Ms. Silvius indicated that in addition to herself, Ms. Sloat, and Ms. Garratt, there was a second RN working on April 6, 2013. She was not in the room. When asked if she knew Debra Sieben, Ms. Silvius indicated that Ms. Sieben is an LPN at the Slave Lake Healthcare Centre who was not working the night of April 6, 2013. Although Ms. Silvius thought Ms. Sieben would be appearing as a witness, she had not discussed the incident in question with her and did not know what she might have to offer. Ms. Silvius also indicated that Ms. Oulton was not at the Slave Lake Health Centre at the time of the incident.
- [51] Ms. Silvius stated that she had never made any complaints to Ms. Oulton about anyone in her work environment. She indicated that there would be no records she would have created related to the Complainant’s visit to the hospital that would form part of the hospital chart because it is usually the RN working in the emergency department who is responsible for charting, except for very serious trauma.

Cross-Examination

- [52] On cross-examination, Ms. Silvius was asked about being intimidated by Dr. Martin. Ms. Silvius could not recall when Dr. Martin started, but when it was suggested that another physician was the site lead at the time of the incident, Ms. Silvius did not recall that. She stated that even if he was not the leader, he was still intimidating. Ms. Silvius stated that she did not report to the site lead, but rather to her manager, who would have been Cathy Oulton at the time.
- [53] Ms. Silvius agreed that she was experienced, had dealt with many patients, physicians, and nurses over her career, and was a registered member of the College of Licensed Practical Nurses of Alberta (“CLPNA”). Ms. Silvius indicated that she was familiar with the CLPNA

Code of Ethics and Standards of Practice, which sets out expectations for its nurses to follow. Ms. Silvius agreed that a patient being struck by a health care giver is serious. She agreed that serious things need to be charted, but stated that the RN working in emergency is responsible for charting and documenting. She indicated that she understood that relevant observations should be charted by the RN. She stated that she felt bad and should have done something that day, but even now, if she were called to assist in emergency, she would not necessarily chart, as this is the responsibility of the person assigned to emergency. She indicated that it should have been her responsibility to write something in the chart, and that if she could go back and do it differently, she would, but in a small rural hospital, they cannot chart everything they should because of lack of time and staff.

[54] Ms. Silvius agreed that in general, the charting RN is responsible for charting patient symptoms, vital signs, patient concerns, observations about effects of treatments, relevant discussions with the patient an LPN might have, and a patient declining treatment especially against medical advice. She agreed that charting is to assist with continuity of care, and to provide a contemporaneous record of a clinical visit. Late charting is acceptable, but the time of the late entry must be recorded. Ms. Silvius agreed that incomplete records are problematic because then memories have to be relied on, which can fade over time and different people can have different memories.

[55] Ms. Stratton showed Ms. Silvius an Alberta Health Services (AHS) corporate directive which Ms. Silvius agreed was in place at the time of the patient encounter with the Complainant in April 2013. Ms. Silvius agreed that the policy required AHS employees who believed abuse was taking place were obliged to report it to their immediate report. She agreed that the policy contemplated investigations occurring when the complaint was made, that it said support would be provided to patients and immediate family members affected by the allegations, and that it said anyone who made a complaint about abuse would be protected. Ms. Silvius also agreed that she did not lose her job after she made the complaint in May 2018.

[56] Ms. Silvius agreed that a healthcare worker who witnessed another healthcare worker strike a patient would take steps first to protect the patient and to stop the behaviour if it was continuing, even if it meant confronting the person with the problematic behaviour. She further agreed that once the patient was safe, steps would be taken to report the problematic behaviour, although she noted that this is never easy in a small rural hospital. Ms. Silvius agreed that an incident report

should go to hospital administration, and that she was aware that AHS has an anonymous electronic complaints system as well, which is meant to make it less concerning to people making a complaint.

- [57] Regarding the shift of April 6, 2013, Ms. Silvius stated that Ms. Garratt had called her to assist because the Complainant was unsteady on her feet when her family brought her in. Ms. Silvius agreed that the Complainant was kicking her feet when Dr. Martin was talking to her and thrashing about when the nurses were trying to get an IV started, but did not remember if she was verbally abusive. She could not remember what the patient said. Ms. Silvius agreed that it was a risky situation for the healthcare providers because when patients kick, other people can get hurt.
- [58] In reviewing her statement to the College, Ms. Silvius agreed that she saw the patient being hit on the head out of the corner of her eye, and that the patient then ripped out her IV and left the trauma room. Her written statement noted that Dr. Martin hit the patient on the right side of the head. Ms. Silvius stated that was not sure what happened after the Complainant left the room because Ms. Silvius went back to her patients.
- [59] Ms. Silvius agreed that in her interview with the College investigator, she had said she was unsure if it was an open hand or closed fist hit, but that it was enough for the patient to recoil from the blow, and that the Complainant had then stated she came to the hospital to get help, and this is what you, meaning Dr. Martin, do. She agreed that she also stated that the patient then pulled out her IV, but could not recall that she had stated that the patient then left the hospital, although she agreed that she might have said this to the College investigator.
- [60] Ms. Silvius agreed that she remembered telling the College investigator that the patient was lying on the stretcher, and was not physically violent but was non-cooperative. She agreed that she had told the College investigator that after the patient left the hospital, Ms. Silvius did not deal with her again. She did not say anything about the patient losing consciousness, but did say that the patient pulled out her IV and left.
- [61] Ms. Silvius did not recall having any conversations with the Complainant by phone before the complaints were submitted. She did recall talking to her about a child who was in the hospital, but her only conversations to do with the letter were with Ms. Sloat. Ms. Sloat asked Ms. Silvius to write a letter and told her that the Complainant

was proceeding. Ms. Silvius reiterated that she never had any conversations with the Complainant about the complaint.

- [62] Ms. Silvius agreed that she recalled telling the College investigator that the Complainant had left the hospital against medical advice. Ms. Silvius stated that such an event would have been charted on the ambulatory client care record at the time of the incident in question. No such note was made in the Complainant's record, nor was there anything about her taking out her IV, and that the record actually indicated she was discharged at 0445 and transferred to the University of Alberta Hospital by ambulance. Ms. Silvius indicated that she did not know this because she had only been with the patient for approximately the first half hour.
- [63] Ms. Silvius stated she was not involved with the RCMP and did not see them arrive that night.
- [64] Ms. Silvius agreed that none of the writing on the patient record was hers.
- [65] Ms. Silvius agreed that by the time she made the complaint, Dr. Martin was the medical lead in the facility. She indicated that she felt like she had no choice. She agreed that she is more comfortable following than leading. She stated that when Ms. Sloat called her, she felt obligated to follow, but did not like participating in the process. Ms. Silvius stated that she left her statement with the unit clerk for Ms. Sloat to pick up and submit to the College with hers.
- [66] Ms. Silvius agreed that in her interview with the College investigator, she had described Dr. Martin as having a volatile temper with nurses. Ms. Silvius stated that she had seen him holler at psychiatric patients. She stated that she was scared to work with Dr. Martin and felt uncomfortable with him, but had nothing against him. She indicated that she likes Dr. Martin and he is a good doctor. She also stated that Dr. Martin was an asset to their hospital, and a skilled doctor who she would trust with her life. Ms. Silvius disagreed that nurses at the Slave Lake Healthcare Centre had pushed out a number of people, and that Dr. Martin was next to go.

Re-Examination and Questions from the Hearing Tribunal

- [67] In re-examination, Ms. Silvius indicated that to her, an example of a serious trauma would be a car accident, and in those circumstances, she would need to record an intubation or something similar. Although

Dr. Martin hitting the Complainant was serious, she viewed it was a different kind of trauma. Ms. Silvius also confirmed that she had not previously seen the physician assessment notes in the ambulatory care record before the hearing.

- [68] The Hearing Tribunal asked the witness how frequently in a typical year Ms. Silvius would be called to give support and help to emergency for a patient who was thrashing around like the Complainant. Ms. Silvius stated that there were frequently unsettled patients because of the large amount of drugs and alcohol in the community. She suggested that it would happen frequently, at least once a week, if not more often. Ms. Silvius confirmed that being called to assist with a patient like the Complainant was not unusual.
- [69] The Hearing Tribunal also asked Ms. Silvius how many of the comments in her statement came directly from her memory of witnessing the event, and how many were things she thought, heard, or assumed had happened. Ms. Silvius stated that the only thing she was unsure about was when the Complainant left, but the rest she remembered, including the Complainant pulling out her IV. She recalled that the Complainant and her companions left towards the waiting room, but she did not know whether they left the hospital or returned the next day.
- [70] In response to a question from the Hearing Tribunal, Ms. Silvius also indicated that she only had one phone conversation with the Complainant, which was about the Complainant's child, and that occurred because Ms. Silvius happened to be at the desk and answered the phone.
- [71] The Hearing Tribunal also asked Ms. Silvius why she felt obligated to write what her statement. Ms. Silvius indicated that she felt bad she had not done it previously, and felt that in line with her Code of Ethics, she needed to report the incident to help the patient. Ms. Silvius also stated that the event had always bothered her since it happened.

Carolyn Sloat

Direct Examination

- [72] Carolyn Sloat has been an LPN for thirty years. She has practiced at the Slave Lake Healthcare Centre for her entire career.

- [73] Ms. Sloat knew the Complainant because she had been a patient at the Slave Lake Healthcare Centre on numerous occasions, and because their children had been in the same class for a period of time.
- [74] Ms. Sloat stated that on April 6, 2013, the Complainant arrived at the Slave Lake Healthcare Centre with a friend and her daughter, who told Ms. Sloat that the Complainant had fallen between two trailers and hit the side of her head on a block of ice. Ms. Sloat stated that the Complainant was "obviously intoxicated", and that she was placed on a stretcher in the trauma room in a semi-Fowler position. Lin Garratt, now retired, was the RN working in the emergency department on that date. Ms. Garratt started the assessment of the Complainant and called Dr. Martin.
- [75] Ms. Sloat stated that she recalled Dr. Martin coming in, and trying to assess the Complainant, whose responses to questions were slow, and not necessarily prompt or thorough. Ms. Sloat stated that the Complainant could be difficult, especially if she had been drinking alcohol, although Ms. Sloat had never had any issues with her. Ms. Sloat recalled that the Complainant was on the stretcher and being assessed when Dr. Martin arrived. Ms. Sloat was getting IV supplies from the cart and then turned around, which is when she witnessed Dr. Martin hitting the Complainant on the cheek with his hand. Ms. Sloat described the hit as forceful. She could not recall anything specifically that would have led to that type of action. She could not recall the entirety of the conversation, because it was "chaotic". Ms. Sloat recalled that the Complainant said something like "I didn't come here to get fucking slapped" or "you fucking hit me". Ms. Sloat recalled that the Complainant was very vocal about it, and was going to leave. Ms. Sloat stated that it took quite a bit of persuasion from Ms. Garratt to get the Complainant to stay because she was quite angry. Ms. Sloat stated that Complainant did agree to stay, and Dr. Martin called Edmonton, where the Complainant was later taken for a CT scan.
- [76] Ms. Sloat stated that she had never witnessed something like this before. In the room at the time, Ms. Sloat recalled herself, Ms. Garratt, Ms. Silvius, the patient, and Dr. Martin. She stated that when nurses were not busy in one department, they would help other people.
- [77] Ms. Sloat was asked why it took her so many years to submit her written statement dated May 19, 2018, Ms. Sloat indicated that the Complainant had a child in the hospital and was going back and forth every day. One day, the Complainant stopped Ms. Sloat and asked if she remembered an incident in the emergency department when Dr.

Martin slapped her. The Complainant indicated to Ms. Sloat that "she wasn't sure in her own mind if it really happened", and needed affirmation that it really did happen. Ms. Sloat stated that she told her it had happened. The Complainant wanted to pursue the incident. Ms. Sloat stated that she declined to give the Complainant the contact information of other people, but indicated she could ask them to contact the Complainant.

- [78] Ms. Sloat stated that she contacted Ms. Garratt and Ms. Silvius to ask if they recalled the night in question, and to indicate that the Complainant was wondering if they would be willing to write a statement for her. Ms. Sloat recalled that Ms. Garratt "hummed and hawed", and that initially they all did. Ms. Sloat believed that eventually they all wrote statements, although Ms. Garratt had since retired.
- [79] Ms. Sloat could not recall if the written statements were mailed in to the College or whether they were given to the Complainant.
- [80] When shown the ambulatory patient record, Ms. Sloat recognized the handwriting on the document as belonging to Ms. Garratt and Dr. Martin, but her initials were under the lab work requisitioning. Ms. Sloat stated that because Ms. Garratt was the emergency room nurse, she was responsible for documenting.
- [81] Ms. Sloat was asked whether she had an obligation to report this type of incident to the hospital administration. Ms. Sloat stated that if she does something wrong, she is required to fill out an incident report. She stated that in this case, she probably should have filled out an incident report, but she "took the coward's way out". She decided not to pursue it because the Complainant was not pursuing it, and she did not want a confrontation. Ms. Sloat said it would have been awkward to work with Dr. Martin after reporting an issue, and she tries not to initiate confrontations. Her "excuse" was that she was respecting what the Complainant was doing.
- [82] Ms. Sloat stated that if she had reported it, it would have been to Cathy Oulton. Ms. Sloat indicated that she liked Ms. Oulton, who she thought was supportive of education, but she felt that sometimes if a concern was reported to her, it got ignored. By way of example, Ms. Sloat indicated that on one occasion, Dr. Martin had yelled at her for discussing staff issues in front of patients, although there were no patients present. On another occasion, she had gone to Ms. Oulton crying because she said that she and Dr. Martin had a problem, and

something had to be done, although she could not recall what the underlying problem was.

- [83] Ms. Sloat stated that she knew Debra Sieben because she was an LPN at the Healthcare Centre, although she was not working the night of the incident.
- [84] When asked what her impression of Dr. Martin was, Ms. Sloat stated that she could not praise him enough for the compassion and care he showed toward her and her family during a medical crisis. She stated that Dr. Martin was a good doctor, and that if the Healthcare Centre lost him, it would be losing someone very competent. She related another instance in which he sat with a patient's wife while the patient suffered from a very distressing condition and passed away.
- [85] Ms. Sloat stated that while she did not condone what Dr. Martin did to the Complainant, she understands that it is hard to work in Slave Lake because they are frequently short-staffed and can be overrun.

Cross-Examination

- [86] Under cross-examination, Ms. Sloat stated that she thought Dr. Martin was a good doctor. She indicated that the Complainant could be difficult when inebriated, and was challenging on the night of April 6, 2013. Ms. Sloat indicated that the notes in the ambulatory care record that indicated the Complainant had drunk alcohol, was unable to weight bear, and was very abusive and aggressive accorded with what she remembered from that night. She agreed that the RCMP were called and that the record showed the patient calmed. The record also showed that her ethanol level was high and the patient was very intoxicated. Ms. Sloat recalled that the Complainant was swearing, but could not remember if she was flailing her arms or kicking. She remembered that things were chaotic.
- [87] Ms. Sloat agreed that Dr. Martin was concerned enough about the Complainant's head injury to order an x-ray to see if there was a fracture, to order bloodwork and urinalysis, and to transfer her to the University of Alberta Hospital for a CT scan.
- [88] Ms. Sloat recalled that Dr. Martin hit the Complainant on the opposite side of her head from where she was hurt. She disagreed with the evidence of previous witnesses that he hit her where her injury was. She reiterated that the patient's injury was on the right side of her head, and the contact made by Dr. Martin was on the left cheek.

- [89] Ms. Sloat was also asked to review Exhibit 3, the CLPNA Code of Ethics and Standards of Practice dated June 18, 2008. She agreed that this reflected the obligations of an LPN in April 2013. She agreed that this including charting relevant observations and patient symptoms including vital signs, patient concerns, observations of the treatment, and relevant discussions with a patient including a patient declining treatment. She indicated that the Complainant was not her patient to chart, but rather Ms. Garratt's because she was in charge of the emergency department. She agreed that the purpose of charting is to provide a contemporaneous record of the visit, and that if late charting is done, the time must be recorded. Ms. Sloat agreed that if charting is not complete, memories need to be relied on, and they are known to fade over time.
- [90] Ms. Sloat was also asked to review Exhibit 4, the AHS Corporate Directive entitled Keeping Patients Safe from Abuse. She indicated that she was aware that this policy was in place in April 2013. She agreed that it stated that persons reporting abuse will not be penalized or retaliated against, and agreed that she still worked at the Slave Lake Healthcare Centre, and for Alberta Health Services.
- [91] Ms. Sloat indicated that in April 2013, her immediate report would have been Ms. Oulton. She understood that had she reported it, there would have been a review and investigation, and that the policy provided that for supports for patients and others. She agreed that if a health care worker saw another healthcare worker strike a patient, the first thing the nurse would do is protect the patient, and the next step would be to stop the behaviour. Once the patient was safe, the next step would be a report to the immediate supervisor, and that someone observing such behaviour would or should record it in the chart, or should at least provide an incident report to hospital administration.
- [92] Ms. Sloat stated that each person is responsible for what they do. She stated that the matter was being turned on her and the other reporting nurses, none of whom knew what to do. Ms. Sloat stated that her previous experiences with AHS were not favourable and that they did not protect their workers. As an example, Ms. Sloat indicated that the nurses had requested a security guard for years, but AHS had never provided one. She indicated that she understood she had a responsibility, but had never seen a physician do this before. She stated that she felt bad and had a lot of respect for Dr. Martin. She admitted not reporting it, but was in a degree of shock, and that AHS does not stand behind them.

- [93] Ms. Sloat agreed that there is a process for anonymous electronic reports, or that she could have reported the matter to Ms. Oulton, who dealt with numerous complaints. Ms. Sloat agreed it was not the happiest working environment.
- [94] Ms. Sloat agreed she had been interviewed by the College investigator, and told her that the Complainant was lying in a semi-Fowler position, because that is a safer position for people with head injuries. She agreed that she told the College investigator that when the Complainant left, she was transferred to Edmonton by ambulance for a CT scan. She agreed that in her statement she indicated that after Dr. Martin slapped the Complainant, they were able to convince her to stay for treatment. Ms. Sloat agreed that after she was convinced to stay, she did not believe she had any more involvement in the Complainant's care.
- [95] Ms. Sloat agreed that as part of her duties she typed the notes that appear in the lab report, including "diagnosis/clinical history ETOH, combative and contusion". Ms. Sloat stated that she typed it one time, which populated all the requisition forms. She agreed that urinalysis, blood work, and x-ray were done, and that none of the forms indicated that the Complainant wanted to leave the hospital, but was convinced to stay. She did not recall the RCMP arriving.
- [96] Ms. Sloat agreed that the Complainant approached her in May 2018 to discuss the events of April 6, 2013. Ms. Sloat indicated that she had seen the Complainant over the years in the hospital. However, she stated that this time, the Complainant's daughter was her patient, and that this was the first time the Complainant and Ms. Sloat had discussed the night of April 6, 2013.
- [97] Ms. Sloat did not gather statements from the other nurses, but rather they brought their statements to the hospital, and she thought they were all sent to the College together. She stated that the Complainant's statement was not sent with the statements from the nurses.
- [98] Ms. Sloat stated that she told Ms. Silvius that the Complainant wanted statements and was asking if the nurses remembered that night. She could not recall if it was by phone. She agreed that she called Ms. Garratt as well, and then let the Complainant know that she had these discussions. She could not recall if she had also talked to the Complainant on a third occasion. Ms. Sloat stated that one

conversation she had was about the Complainant going to court. She asked Ms. Sloat if she would be a character reference for her, which she never was.

- [99] Ms. Sloat indicated that in her interview with the College investigator, she had described a tendency by Dr. Martin to raise his voice and belittle nursing staff and physician colleagues. She agreed that she had said he occasionally berated nurses to the point where they were in tears, and that this could making working with him intolerable for some people. She agreed that she had said that nurses had complained, but the complaints were ignored or not appropriately acted on, and that people had left because Ms. Oulton did nothing. She recalled telling the investigator about the time Dr. Martin berated her over staffing issues. She recalled that it was a frustrating experience, and that she felt humiliated after working a long day and trying to help.
- [100] Ms. Sloat agreed that she felt intimidated by Dr. Martin at times. She agreed that when she spoke with the College investigator in October 2018, she was frustrated with how Dr. Martin had treated her in the past.
- [101] Ms. Sloat was asked whether she spoke to other nurses about bringing forward complaints about Dr. Martin. Ms. Sloat stated that she "passed on the information that if there were other people with concerns regarding him, to bring them forward". Ms. Sloat stated she could not recall telling Ms. Sieben that some people had concerns about Dr. Martin and they were going to do something about it. She did not remember asking another nurse the same thing, and disagreed that she had asked Ms. Oulton to make a written complaint against Dr. Martin.
- [102] An objection was raised about questions relating to an investigation conducted by Dr. Martin. A voir dire was held to determine if the questions would be put to the witness, and the Hearing Tribunal decided to allow the line of questioning. Ms. Sloat stated that she was aware of an investigation that took place around October 2014. She agreed that she commented on the fact that she thought that Dr. Martin's discussions with the family in relation to the investigation were disrespectful. Ms. Sloat became very emotional during this line of questioning.

Re-Examination and Questions from the Hearing Tribunal

- [103] In re-examination, Ms. Sloat stated that her statement to the College was all true, and that she had not worked with others to create a false story about Dr. Martin.
- [104] The Hearing Tribunal asked Ms. Sloat how often nurses are called from other areas of the hospital to help, and she indicated that it happened often. Regarding whether Ms. Sloat had turned around because she heard something, she stated she had finished what she was doing and was already turning around, but did not turn around for any specific event. Ms. Sloat stated that she could hear Dr. Martin was angry and raising his voice at the Complainant. Regarding when Ms. Sloat told other nurses about gathering concerns about Dr. Martin, she indicated this did not happen until after she met with the College investigator. She told the College investigator that Dr. Martin called nurses "uteruses" and that he was disrespectful to nurses. Ms. Sloat stated that the College investigator had told her that if anyone had concerns, they could pass it on to the College investigator.
- [105] The Hearing Tribunal also asked if Ms. Sloat, Ms. Garratt and Ms. Silvius had discussed the event that night. Ms. Sloat indicated that after she, Ms. Garratt, and Ms. Silvius left the trauma room, they discussed the event at the nursing station with the other nurse working that night. The four of them discussed what they were supposed to do, and decided that if the Complainant was not pursuing it, they would not either. She stated that she never would have pursued it had the Complainant not approached her and asked her to write a statement. Regarding how Dr. Martin treated patients, Ms. Sloat indicated that Dr. Martin was rude to Indigenous patients, but also to physicians of colour.

Dr. Keith Martin

Direct Examination

- [106] Dr. Keith Martin works as a physician at the Slave Lake Health Centre and the Slave Lake Family Care Clinic. He did a brief locum there in August 2012, and then started as staff in December 2012. He completed his medical degree at the University of British Columbia in 2010 and his residency in family medicine at the University of Alberta in 2012. Before medical school Dr. Martin was an emergency and intensive care nurse for three and a half to four years, before becoming a nurse educator. Prior to medical school, he obtained a

combined honours degree in chemistry and biology, and then a year of classified studies, before an honours degree in nursing. Dr. Martin stated that his past career in nursing made him a better physician, because nurses have much more patient experience.

[107] Regarding Slave Lake, Dr. Martin indicated that it has a population of about 8,000 people, but a catchment of about 17,000 people. When he arrived there after the fire in 2011, the community was in process of rebuilding its medical team. Dr. Martin testified that because it was a small community, far away from other hospitals, and with only one medical clinic in town, he sees the same patients in emergency and in the clinic. He also sees patients around town because it is a small community. Dr. Martin indicated that the Slave Lake clinic and Healthcare Centre are in the same building.

[108] Describing his work in 2013, Dr. Martin stated that he provided full service family medicine, including pregnancy, deliveries, and emergency. He testified that he dealt with a broad range of patients. When dealing with non-responsive or uncooperative patients, Dr. Martin stated that in situations where he could not get a good history, his philosophy was to rely on extra information from family, vital signs, general observations, a physical examination, and how the patient was behaving. When a patient is not competent, sometimes he has to give them medication or sedate them. With combative patients he tries to de-escalate the situation, which he stated he is quite good at. He testified that sometimes he has to raise his voice, but tries to be open, and make sure the staff are not in danger. Dr. Martin indicated that there is no security on site, and so if someone has to be called, it is the RCMP.

[109] In dealing with combative patients, Dr. Martin stated that he gives simple directions, tries to stay calm and sympathetic, and to get on their level. He stated that he works quite closely with his team in a charged situation. Again, he tries to give clear instructions, and because he frequently works with female nurses, some of whom are quite small, he will step in and let a patient know they need to calm down.

[110] Dr. Martin stated that if the RCMP are called, they have a different approach, which he characterized as more physical, and never pleasant for the medical staff or patient.

[111] Dr. Martin indicated that on a number of occasions he has dealt with patients who are intoxicated, and "out of control" and has been subject

to violent behaviour. He tries to defuse the situation with humour, by chatting with them, being understanding, and asking what he can do to help.

[112] Dr. Martin acknowledged that he has made mistakes, but he stated that he has always apologized, and tried to take accountability. He stated that he had never hit a patient.

[113] Dr. Martin stated that when he first arrived at the Slave Lake Healthcare Centre in 2012, deliveries had not been done for a few years, and AHS wanted him to bring them back, and he was passionate about that. He advocated to get more delivery services back in Slave Lake. Dr. Martin stated that although the nurses were initially enthusiastic, there was some pushback because they had not done deliveries in some time.

[114] Martin stated the relationship with physicians and nurses in Slave Lake was excellent when he first arrived and that was one reason he chose Slave Lake. He testified that there was a lot of socialization between the RCMP, Emergency Medical Services (EMS), nurses, and physicians. Dr. Martin stated that over the last few years, things had changed. The facility has lost more than twenty physicians and nurse practitioners to retirement and burnout since he arrived.

[115] When Dr. Martin first arrived, he testified that he was a regular physician, but his role changed at the end of 2014 or beginning of 2015 when he became the Medical Director.

[116] Dr. Martin indicated that he knew Ms. Sloat, and that although their relationship was initially quite good, it changed. He indicated that she can be volatile and can pushback. He stated that he had formed the impression she was a leader who never backed down from anything, and was a strong patient advocate.

[117] Dr. Martin indicated that he also knew Ms. Silvius. He stated that she is very quiet, and that he does not interact with her much, as she is rarely in emergency, and so he almost never works with her.

[118] Dr. Martin testified that the May 2018 complaint was not the first formal or informal complaint made by the nurses towards a physician. In fact, he stated that it happened all the time, and that if a nurse felt a physician did something wrong, they would go to every other physician until they got the answer they wanted. He stated that in his eight years at the Slave Lake Healthcare Centre, the atmosphere went

from collegial to "essentially a toxic atmosphere". Dr. Martin testified that he received complaints from nurses about physicians, nurses, management, himself, delivery, staffing, and more. He stated that he would try to address complaints right away. Dr. Martin indicated that some complaints were formal, others informal.

[119] Before the complaint in May 2018, Dr. Martin stated that the nurses would complain to Ms. Oulton, the nurse managers, each other, and to him. He indicated that Ms. Sloat had complained about him calling nurses "uteruses". Dr. Martin stated that he did say that in the past, but once he was told it was offensive, he never used it again. He also stated that he stopped giving feedback to nurses directly, and brought them to Ms. Oulton or the charge nurse after he was told to do so. Dr. Martin indicated he has tried to be a good medical lead and physician, including taking courses on conflict management and physician leadership, and has dedicated his life to the hospital.

[120] Dr. Martin testified that no nurses lost their work because of complaints they made, and that they "ruled the roost in Slave Lake". Dr. Martin stated that the physicians are scared and do not want to complain because they see what the nurses have done to him. Dr. Martin indicated that he had worked with Ms. Sloat and Ms. Silvius since the complaint to the College, but had never retaliated against either, although he is uncomfortable working with them because he is afraid of what they are going to say. Dr. Martin indicated that before May 2018, the nurses were willing and able to speak up, and that it was rare for a week to go by when he did not deal with some sort of complaint.

[121] Dr. Martin testified that he had treated the Complainant before April 6, 2013. He indicated that she was quite pleasant, but that when she was intoxicated, she could be quite violent and belligerent. Dr. Martin stated that he first became aware of the complaint when the College notified him in 2018. His immediate reaction was shock that someone could believe that about him. He stated that he thought of himself as a caring and compassionate physician, who was always available to colleagues. When he received the complaint, he felt like it was his turn after the nurses had successfully got rid of every other nurse manager and site lead. He stated that he could not believe they would go that far. Dr. Martin stated that there were no previous complaints, discussions, concerns, comments or innuendos raised with him about the Complainant prior to the complaint in 2018, including by the RCMP.

- [122] When asked about his comment that the nurses had pushed people out, he stated that when people in power tried to make changes, the nurses resented it and would push with relentless complaints. He cited Ms. Oulton as an example of someone who did an amazing job, but was pushed until she quit. Dr. Martin stated that the current manager was also looking for a new job. Dr. Martin testified that after Ms. Oulton departed, some of the nurses bought a cake that said "Congratulations" to celebrate that they had got rid of her, that she was quitting.
- [123] Dr. Martin indicated that he remembered his encounter with the Complainant on April 6, 2013. He recalled that he was in the call room that night and so was able to get to the patient bedside quickly. He indicated that the chart had not yet been created when he arrived. As he approached, he could hear a "ruckus in the endo room", which is a smaller room beside the trauma room. He recalled seeing the Complainant thrashing around and kicking the stretcher, which made him concerned. He remembered that she was not verbally responsive. Dr. Martin recalled being anxious and worried because he was told she had fallen and hit her head. He could not recall when she settled down, but that the RCMP came, and when she did settle down, he did a full exam from head to toe, including a neurological assessment, and he got a full history from someone accompanying her. Dr. Martin recalled that he was concerned someone was going to get hurt, and documented in the chart that the RCMP were called. He stated the hospital personnel do not call the RCMP for patients who are twitching their legs, or are only verbally abusive.
- [124] Dr. Martin reviewed the examination he did with her, as well as the tests he ordered, referencing his notes. He recalled that he was quite concerned, because alcohol was on board, she had a head injury, and he was worried something else was going on. As a result, he referred the Complainant for a head CT at the University of Alberta Hospital.
- [125] Dr. Martin stated that the endo room is a smaller room than the trauma room. He recalled that the Complainant was partially reclined in a semi-Fowler position, and would never have been sitting with her feet dangling over the side of the bed because of the risk she would fall over and injure herself further. Dr. Martin indicated he would have palpated her skull to determine if there was a skull fracture. Dr. Martin indicated that the Complainant received an IV, because someone in her state could deteriorate rapidly and need medications quickly.

[126] In reviewing his referral letter to Dr. Allan Ushko, the physician in Edmonton, Dr. Martin stated that Slave Lake does not have CT scanner, but he thought a CT was necessary because of her obvious head injury and because she was in and out of consciousness. In this case, he first spoke to Dr. Ushko to give him a synopsis of the case, and then they arranged for ambulance transport to Edmonton. Dr. Martin stated that there was no note in the chart that the Complainant had declined to go to the University of Alberta Hospital, or that the nurses had to talk her into going, or that she planned to leave.

[127] Dr. Martin read out his notes in the ambulatory patient care record for the record. He stated that the difference in times on the record was because when he went in, the chart had not yet been created. Dr. Martin stated that her lab results indicated the Complainant was quite intoxicated. The record showed he spent 2.25 hours with the patient. Which is time he spent with her and would include talking to family, going to x-ray, reviewing x-ray, writing notes and his letter, speaking to Dr. Ushko, and waiting for EMS to take her to Edmonton.

[128] Dr. Martin stated that he typed the referral letter to Dr. Ushko because he knows that his handwriting can be hard to read. He stated that that the letter summarized her visit, the lab results, and Dr. Martin's concerns.

[129] Dr. Martin recalled that the RCMP arrived before he was able to examine her, because she was so combative and agitated. He stated that he believed the nurses called the RCMP. He indicated he had no part in preparing the patient transfer information, which would have been done by a nurse. The information in the EMS record would likely have been provided by him and the nurses, although he could not remember doing so.

[130] Dr. Martin could only recall Ms. Garratt being present while he cared for the Complainant, but thought other nurses were likely present. He remembered Ms. Garratt starting an IV in the Complainant's foot. He recalled the Complainant's neighbour or daughter being in the room as well, but could not be certain of this.

[131] Dr. Martin recalled that when the Complainant returned the following evening complaining of headaches, he gave a verbal order for a prescription.

[132] Regarding his examination of the Complainant, Dr. Martin stated that he would have palpated her skull, which would have been painful and

irritating. He stated that he has wondered if that is what the nurses saw. He could not recall her reacting when he palpated her skull, but he stated he could not physically remember his examination of her skull. He indicated that his notes show he examined her eyes and ears, and that she had bruising on the right side of her head. He noted right-sided head pain and bruising present.

[133] Dr. Martin stated that he probably did raise his voice. He indicated that when someone is unresponsive and not following directions, he would definitely raise his voice, but not in anger. He stated that he is collected and methodical in situations like this, and never panics.

[134] Dr. Martin also stated that he treats all his patients equally, and if anything is aware of the trauma that a lot of the Indigenous population has in their past. He indicated that he tries to avoid medical jargon, and to carefully explain procedures so patients understand. Dr. Martin estimated that approximately 30 percent of his practice is Indigenous, because Slave Lake has three reserves around it. He stated that Ms. Sloat's comments that he was disrespectful of Indigenous people and persons of colour was completely false and inaccurate. He cited several examples of personal interactions with minority populations, and said he works well with everyone. Dr. Martin said he tries to have some fun, while staying professional, and goes above and beyond for his patients. Dr. Martin reiterated that he has never hit a patient, and never will. He stated that he could not even have done so inadvertently, because he would have apologized. He stated that he always apologizes when something is painful or uncomfortable, even if it is necessary.

Cross-Examination

[135] In cross-examination, Dr. Martin was asked about the endo room versus the trauma room, and he stated that his recollection of the patient's location came from his own memory.

[136] Dr. Martin was asked to review his letter of response to the College and agreed that it said he had very little recollection of the patient, what memory he did have was hazy, and that there was nothing about the attendance that was particularly memorable. Dr. Martin stated that since then he had reflected on the incident and more clear memories came up.

[137] Dr. Martin agreed the letter to Dr. Ushko was written after he had spoken to him on the phone, sometime between 4:00 and 4:45 am.

Dr. Martin agreed that he tried to treat patients like family members and was trying to ensure each patient got the best care possible. Dr. Martin agreed that he had written "Thank you for seeing this unpleasant 42 year old female" as the first sentence in his letter to Dr. Ushko. He rejected the idea that this was to give Dr. Ushko a negative impression of the Complainant before he ever met her. Instead, Dr. Martin stated it was to give Dr. Ushko a heads-up that the Complainant can be belligerent and violent. Dr. Martin agreed that it was unusual to use the term "unpleasant" to describe a patient, but he stated that at the time, she was not pleasant, and that he does not normally transfer belligerent, violent patients out.

[138] Dr. Martin was asked about using the term "uterus" to refer to a female chaperone. He did not remember the exact time frame. He stated that his comment was taken out of context, and that he could not know something was demeaning or dismissive until someone told him. When asked about other jokes that had gone bad, Dr. Martin agreed that on one occasion, he and a nurse were joking around in the charting room, when the nurse told him to "bite me". He leaned over and thought he was nipping her sweater, but accidentally pinched her skin. Dr. Martin stated that he apologized profusely. He apologized the next day, and the nurse asked for a formal apology, which he provided to her. Dr. Martin stated that he had also spoke to Ms. Oulton, the site lead about the incident, and about three months later to the north zone Medical Director, who told Dr. Martin that as the medical lead, we could not act like this. Dr. Martin stated that he provided another apology to the nurse. He stated that after the biting incident, a lot of the joking around disappeared, and he typically does not joke at work anymore. A lot of the socializing has also stopped, and he no longer thinks it is a safe environment where he can "goof off" with the other staff.

[139] Dr. Martin denied that he slapped the Complainant out of frustration. He said that joking around with friends is completely different from his professional capacity. As for a patient getting the best of him, Dr. Martin stated that he has worked long shifts and heavy schedules for years, and never received a complaint that a patient got the best of him.

[140] Dr. Martin denied that he wrote the letter to Dr. Ushko to sow doubt in his mind if she reported that she had been struck. He stated that the record showed the nurses charting that she was combative, aggressive, verbally and physically lashing out, but that this did not

show up in their letters to the College. He indicated he thought this behaviour would stand out much more in their memories.

Re-Examination and Questions from the Hearing Tribunal

[141] The Hearing Tribunal asked Dr. Martin why he thought the atmosphere at the Slave Lake Healthcare Centre changed over the years. Dr. Martin stated that all the nurses, physicians, EMS, and RCMP used to hang out, and if something bad happened, "it was all hands on deck". He said there was a lot of laughing and joking, but over the years the nurses became more disgruntled, frustrated, and angry. There were many complaints. It got so bad, the EMS and RCMP no longer joined them. Dr. Martin stated that he did not know how bad it had become until he started doing locums in the eight months preceding the hearing. He stated that the only reason he went back to Slave Lake Healthcare Centre was because of the COVID-19 pandemic. Dr. Martin indicated that turnover is high, people are depressed, and nurses and doctors are tired. He stated that they have asked for help repeatedly, but it has not been forthcoming. Dr. Martin stated that he used to love his job, but now, he does not want to come in. He stated that physicians do not want to hang out with nurses, and are scared to voice complaints because of what has happened to him.

[142] In response to a question from the Hearing Tribunal, Dr. Martin confirmed that he did not examine the Complainant until after the RCMP arrived. He stated that he tried to examine her before they arrived, but she was thrashing around, and it was not useful.

[143] The Hearing Tribunal asked if Ms. Silvius was present when he saw the Complainant on April 6, 2013. He clarified that he just does not recall whether she was there or not, but she could have been. He did not interact with her much on a regular basis.

[144] Finally, the Hearing Tribunal referred Dr. Martin to his reply letter to the College, in which he noted that it was "exceedingly rare that three nurses (two LPN's and an RN) would be in the room with a single patient". He was also reminded of previous testimony by other witnesses who said it was not unusual. Dr. Martin indicated that where there was a trauma, where multiple medications would be required, or a patient who had to be intubated, it would be all hands on deck, and then three people might be in the room. However, he also stated that the room is quite small and he did not see how three nurses could have been in the room. He stated that it is common that emergency nurses need extra help, but not typical to have them all with the same

patient, except in circumstances like those he previously mentioned. The only time so many people would be with one patient would be if they were agitated, and needed restraining. He did not recall that they were restraining the Complainant at any time. In the room with the Complainant, Dr. Martin could recall the Complainant on the stretcher, someone starting an IV, and a companion to the patient. Other nurses could have been present, he just does not recall them.

[145] In re-examination, Dr. Martin stated that he recalled Ms. Garratt as the nurse trying to start the IV in the Complainant's foot.

Cathy Oulton

Direct Examination

[146] Cathy Oulton graduated with a diploma of nursing in 1978, and then a Bachelor of Science in nursing in 1989. She worked as a frontline bedside nurse for six or seven years, before entering leadership and management roles. She started work at the Slave Lake Healthcare Centre in May 2013, and stopped being site manager there in April 2018, and did a six-month secondment with AHS until her retirement in October 2018.

[147] Ms. Oulton testified that the site manager position is an operational management position for the hospital and operating room. The site manager is responsible for overall workplace health and safety, and infection control. Ms. Oulton stated that she worked with physicians, but they did not report to her. Ms. Oulton stated that her role included dealing with issues between physicians and nurses. Ms. Oulton stated that she left the Slave Lake Healthcare Centre because she concluded that the staff had lost confidence in her ability to manage them, and that in her last six to eight months, they rarely came to talk to her, and then only with someone else. She considered the situation to be quite hostile.

[148] Ms. Oulton stated that most of the issues raised with her by the nurses were around safety and security, because there was no on-site security, and they were often short-staffed.

[149] On a typical overnight shift, there would usually be two RNs, two LPNs, and one physician on call. The LPNs and one RN were mostly in the inpatient spaces, and if the emergency got busy, one of the LPNs or the other RN could help out.

[150] Ms. Oulton recalled that the culture at the Slave Lake Healthcare Centre was not good. She stated that when she first arrived, it was not good, but they were able to fill some positions and improve some things. However, a change in the union leadership stirred things up. There was also low staff morale, and a feeling that they were overworked. Staff brought lots of complaints forward.

[151] Ms. Oulton stated that she often got the feeling that staff would choose someone they did not like. Sometimes they would talk and it would become a bigger situation than necessary. Ms. Oulton indicated that she tried to help them work it out themselves, as it did not work well with her stuck in the middle. Ms. Oulton indicated that sometimes the nurses would take a dislike to someone and make their work life very difficult by refusing to take breaks with them or talk to them. There was a complaint process, but staff members mostly came and talked to her if there was an issue between staff.

[152] Ms. Oulton stated that she and Dr. Martin were not friends, but that she knew him from work. She described him as high energy, a good doctor who was kind to patients and patients' families, and very thorough. She indicated that she had a good working relationship with him. She stated that Dr. Martin was occasionally frustrated and a bit terse with nursing staff. She was not aware of any complaints against Dr. Martin by patients, but did know about staff complaints. She indicated that staff did not like him providing direction. Ms. Oulton stated that she and Dr. Martin had conversations where she told him that if there was an issue, he should bring it to her so she could deal with it from a management perspective. Clinical knowledge was one thing, but directing them was not part of his role. Ms. Oulton stated that she never received any complaints or even comments about Dr. Martin's interactions with patients.

[153] Ms. Oulton described Ms. Sloat as a "big presence" and that some people were intimidated by her, and that she would occasionally shun people for a few shifts if someone reported something to Ms. Oulton. Ms. Oulton stated that Ms. Sloat was an excellent LPN and baby nurse, who was kind to patients and families. Ms. Oulton indicated that she did not think that Ms. Sloat responded well to direction, but "kind of did her own thing."

[154] Ms. Oulton thought that Ms. Sloat would have worked with Dr. Martin, especially when deliveries started to increase. Ms. Oulton indicated that Ms. Sloat would occasionally come to her with concerns about Dr. Martin's clinical judgment. Ms. Oulton occasionally received complaints

from other staff members about Ms. Sloat. On these occasions, Ms. Sloat would become quite defensive. Ms. Sloat also came to Ms. Oulton with concerns about the hospital and other staff, including decisions other people made, or work performance issues. Ms. Oulton agreed that Ms. Sloat could be described as an advocate for her patients and for other staff who were not willing to come forward. Ms. Oulton did not think Ms. Sloat would have been intimidated by physicians. Ms. Oulton did not recall Ms. Sloat ever referencing that Dr. Martin had hit a patient.

[155] Ms. Oulton indicated that she also worked with Ms. Silvius during her time in Slave Lake. She described Ms. Silvius as quiet, and that she did not like conflict. Ms. Oulton stated that Ms. Silvius would defer to RNs a lot, and preferred to provide care and did not have much confidence in the emergency department.

[156] Ms. Oulton did not recall ever hearing that Dr. Martin had hit the Complainant or any patient. She also stated that she did not hear about any investigation during her time in Slave Lake.

Cross-Examination

[157] In cross-examination, Ms. Oulton stated that if emergency got busy, it might be that all the nurses came to help, but this would go through the charge nurse, not her. Ms. Oulton agreed that the incident in question would have taken place on the overnight shift, and that she would not have been at the hospital at that time.

[158] Ms. Oulton stated that she was not aware of Dr. Martin referring to a nurse chaperone as a "uterus". Ms. Oulton stated she did know about the incident where Dr. Martin bit a nurse on the arm in response to her comment "bite me".

Re-Examination and Questions from the Hearing Tribunal

[159] The Hearing Tribunal asked Ms. Oulton if she physically saw Dr. Martin with family members, patients and staff, and she stated that she had. Ms. Oulton stated that Dr. Martin was receptive to feedback about not managing nurses. She agreed that she might have heard Dr. Martin refer to the hospital as "my hospital", but if he did, she soon corrected him. She also noted that this was typical of physicians working in an emergency department. Ms. Oulton stated that he was always respectful of Indigenous people.

Debra SiebenDirect Examination

[160] Debra Ann Sieben is an LPN who works at Slave Lake Healthcare Centre in acute care.

[161] Ms. Sieben knows Ms. Silvius, but they only work together if one of them picks up an extra shift.

[162] Ms. Sieben indicated that she knew Dr. Martin as a colleague, and has known him since he came to Slave Lake. She stated that they are not friends, just colleagues. Ms. Sieben stated that the healthcare centre was run differently after Dr. Martin arrived, because he was a patient advocate who wanted pregnant women to be able to deliver in Slave Lake. She recalled that the nursing staff reaction to the changes was mixed, and some of the nurses were uncomfortable with deliveries.

[163] Ms. Sieben described Dr. Martin's approach to dealing with the nurses as encouraging them to get more education. Ms. Sieben indicated that there are Indigenous patients treated at the Slave Lake Healthcare Centre and stated that Dr. Martin treats them no differently. She stated the same thing about people of colour, and indicated that the Slave Lake staff are multicultural, and he treats everyone the same way.

[164] Ms. Sieben indicated that she knew Ms. Sloat, who was her partner when she first worked in Slave Lake. Ms. Sieben stated that she worked with her fulltime for six years. Ms. Sieben testified that Ms. Sloat is a good nurse but she could be moody. Ms. Sieben stated that she had several confrontations with Ms. Sloat while they worked together. In one instance, Ms. Sloat told Ms. Sieben she could not help an RN who was struggling to keep up. Ms. Sieben stated that Ms. Sloat backed her into a corner and shook her finger in Ms. Sieben's face, but Ms. Sieben said "no, I'm going to help". Ms. Sieben stated that for the next three and half shifts, Ms. Sloat would not speak to her, which was difficult.

[165] Ms. Sieben stated that prior to 2018, Ms. Sloat had asked her if she had any concerns working with Dr. Martin. Ms. Sieben stated that she had no concerns and had a good rapport with Dr. Martin. Ms. Sieben indicated that Ms. Sloat came to her before the complaint, and Ms. Sieben told Ms. Sloat she had no concerns. Ms. Sieben thought this conversation would have taken place in late 2017 or early 2018. She

remembered thinking when she heard about the complaint, "oh, okay, that's what she was up to". Ms. Sieben recalled that Ms. Sloat said she wanted to do something about Dr. Martin. Ms. Sieben indicated that she thought that Ms. Sloat was asking other people if they had concerns about Dr. Martin, because her partner indicated that she had also been asked, and also had no concerns.

[166] Ms. Sieben confirmed that she was not present in the Slave Lake Health Centre on April 6, 2013. She did not hear about these allegations against Dr. Martin until 2018, and that she heard about them from Ms. Sloat.

Cross-Examination

[167] In cross-examination, Ms. Sieben indicated that she had no concerns in working with Dr. Martin. Regarding whether she had heard him use the term "uterus" when for a nurse chaperone, she stated he would not say that to her, he would just say he needed a female. She stated that he had never said that to her, but she had heard other people say Dr. Martin had said that.

[168] Ms. Sieben stated that she had heard a discussion about Dr. Martin's attempt at humour in biting a nurse who said "bite me".

[169] Ms. Sieben stated that stopped working with Ms. Sloat at the end of 2012 or early in 2013.

[170] Ms. Sieben agreed that on the overnight shift, there is usually one RN in emergency, one on the floor, and two LPNs. She agreed that when there was a crisis, it could be all hands on deck. She stated that she thought LPNs might be called to assist in the emergency room more than once a week. Ms. Sieben indicated that it happens both during day and night shifts, but that there is less staff at night, so she agreed that the need for help could be greater at night with a difficult patient or a trauma.

Re-Examination and Questions from the Hearing Tribunal

[171] The Hearing Tribunal asked the witness if she could be more specific about when Ms. Sloat asked her if she had any concerns about Dr. Martin, but Ms. Sieben indicated that she only knew it was before she heard about the incident and before she heard there was a complaint to the College.

[172] The Hearing Tribunal also asked if Ms. Sieben had asked Ms. Sloat why she wanted to do something to Dr. Martin. Ms. Sieben indicated that this was just Ms. Sloat's way. Ms. Sieben stated that her partner asked her if she had also been asked by Ms. Sloat if she had any concerns, and they both agreed they had none. Regarding how Ms. Sloat told Ms. Sieben about the complaint to the College, Ms. Sieben stated it was just a remark made at shift time. Ms. Sieben could not recall if others were there.

Julia Barker

Direct Examination

[173] Julia Barker currently works as a registered nurse in the emergency room and operating rooms at Slave Lake Healthcare Centre, where she started in 2008.

[174] Ms. Barker described the morale at the hospital as "not great" and stated that being a small town, it was "a very gossipy kind of community". Ms. Barker stated that she had seen instances where staff had tried to get people to leave, and agreed that a cake had been purchased to celebrate Ms. Oulton's departure. She stated that the cake was not for Ms. Oulton, but for others to celebrate her resignation.

[175] Ms. Barker stated that she has known and worked with Dr. Martin for five or six years. She described him as an amazing doctor, a great teacher, and very supportive. She indicated that some people did not like him much, while others agreed he was an amazing doctor. Ms. Barker stated that it is because he has expectations of nurses. She indicated that she and Dr. Martin are friendly colleagues who occasionally hang out together with their families.

[176] Ms. Barker stated that Dr. Martin can get frustrated with patients who do not comply with the care provided, but that she had never seen him angry or witnessed him lose control with a patient. She could recall only one instance when he became physical with a patient, and that was to protect staff from an uncontrollable child who was biting, kicking, and hitting. She stated that Dr. Martin turned the child's head sideways and held his head in place so he would not hurt staff or himself.

[177] Ms. Barker stated that at least half the patients at the hospital were Indigenous because of their proximity to a reserve, and that she had

never observed Dr. Martin to treat Indigenous patients or patients of colour differently from any other patients.

[178] Ms. Barker stated that she knew Ms. Sloat and had known her since 2008 when she started in Slave Lake. She stated that they were friendly colleagues, but that they did not hang out personally. Ms. Barker characterized Ms. Sloat as a good nurse, but stated that she did not trust Ms. Sloat personally. She stated "If you do something she doesn't like, you better lay low". Ms. Barker described Ms. Sloat as a leader by intimidation who was willing to share what she thought. Ms. Barker stated that she had an issue with Ms. Sloat in 2010, the specifics of which she could not recall, but she stated that afterwards, Ms. Sloat shunned her.

[179] Ms. Barker indicated that the reason she avoids social interactions with her work colleagues is because of the "rumour mill" at Slave Lake Healthcare Centre. She stated that she did not hear about the allegation that Dr. Martin had hit anyone until the investigation started. She indicated that it is still sometimes mentioned.

[180] Ms. Barker stated that in the weeks prior to the hearing, Ms. Sloat had come to her and others to say that she had nothing against Dr. Martin, but had previously been vocal about her dislike of him. Ms. Barker stated that when Ms. Sloat had talked to her recently, Ms. Barker had said that they were not allowed to discuss the proceedings, but that the rumour mill was still active.

[181] Mr. Boyer objected to a line of questioning about the relationship between Ms. Sloat and Dr. Martin as speculation and personal opinion. Counsel to Dr. Martin stated that the questions would go to Ms. Barker's beliefs about the animus between Dr. Martin and Ms. Sloat. The Hearing Tribunal permitted the witness to answer the questions, but restricted her answers to what she saw and observed. Ms. Barker testified that Ms. Sloat had told her she was upset with what Dr. Martin had said to a family.

[182] Ms. Barker indicated that she first heard about the allegation that Dr. Martin had hit a patient around 2018, and was shocked. She stated that she was surprised to hear about it so long after it had allegedly occurred and that with the gossip at the hospital, she would have expected to hear about it sooner.

[183] Ms. Barker recalled that the site administrator in April 2013 was Bev Velan, who she described as a great leader, and easy to talk to.

Cross-Examination

[184] In cross-examination, Ms. Barker stated that she knew Ms. Garratt, who she viewed as a mentor, and an amazing woman and nurse. Ms. Barker stated that she had never heard anything about Dr. Martin using the term "uterus" when asking for a chaperone. She had heard a rumour about Dr. Martin biting a nurse.

Re-Examination and Questions from the Hearing Tribunal

[185] The Hearing Tribunal asked Ms. Barker if she knew who bought the cake to celebrate Ms. Oulton's departure, but she stated that she did not.

[186] When asked to clarify why she said, "you better lay low" when talking about Ms. Sloat. Ms. Barker stated that she meant stay out of her reach, not physically, but verbally.

[187] The Hearing Tribunal asked what Ms. Sloat said when she was vocal about Dr. Martin, and if Ms. Barker knew why Ms. Sloat changed. Ms. Barker indicated that Ms. Sloat would make comments about things Dr. Martin had said to people, and how it was horrible. As to what changed, Ms. Barker stated she did not know.

Kathleen Margaret Sinclair

Direct Examination

[188] Kathleen Sinclair is a registered nurse who has been practicing for 32 years. She reviewed her qualifications and her curriculum vitae (CV). Counsel for Dr. Martin asked that Ms. Sinclair be qualified to give expert evidence in the area of nursing. There was no objection by counsel for the Complaints Director to the area of qualification and the Hearing Tribunal accepted Ms. Sinclair as an expert in the area of nursing.

[189] Ms. Sinclair confirmed that she had been asked, "If a nurse witnesses violence towards a patient, is there an expectation to chart the incident?"

[190] Ms. Sinclair summarized her understanding of the events of April 6, 2013. Ms. Sinclair indicated that she did not see anything in the medical documentation about Dr. Martin having non-medical contact

with the patient, and specifically nothing about him hitting, slapping, or striking the patient.

[191] Ms. Sinclair summarized her understanding of an LPN's obligations in Alberta for dealing with patient safety, which included reporting anything untoward. Similarly, she indicated that an LPN must chart what they witness, and that there should be an incident report. Ms. Sinclair disagreed with previous testimony, and stated that she thought everyone was responsible for documenting and report these situations. In her view, it should be done before the end of a shift, so the details are not forgotten.

[192] With the AHS Corporate Directive in mind, Ms. Sinclair stated that if a nurse witnessed an inappropriate act in an emergency department, she would expect the nurse to report it to their manager and to fill out an incident report. If a nurse saw a patient get hit or slapped, Ms. Sinclair would expect it to be documented in the patient chart as the patient was aggressive, or that the physician got frustrated that the patient was not responding to commands. She indicated that she would leave the details of the physician's specific behaviour to the incident report, which is not for medical records. Ms. Sinclair stated that she might talk about the patient becoming aggressive or confrontational, and then calming own before the RCMP arrived.

[193] Ms. Sinclair stated that she had reviewed the ambulatory client care record from April 6, 2013. Her reviewed indicated that it did not show anything about an incident. Ms. Sinclair stated that an incident report should be submitted in the same time frame as reporting to a manager. She stated that she would expect that to be reviewed quickly. If it were not, she stated "you go up the chain of command".

[194] Ms. Sinclair stated that in her view, the duties of an LPN and an RN are the same.

Cross-Examination

[195] In cross-examination, Ms. Sinclair agreed that she had reviewed the statement signed by Ms. Garratt as part of her review. Ms. Garratt's statement was marked as Exhibit 8.

[196] Ms. Sinclair agreed that it was possible for "alcoholics" can have higher blood alcohol levels with a lower appearance of intoxication.

[197] Ms. Sinclair agreed that she had not practiced in Alberta, in Slave Lake, or in the Slave Lake Healthcare Centre. She agreed that she had had very limited information about the hospital, staff, and interactions.

Re-Examination and Questions from the Hearing Tribunal

[198] The Hearing Tribunal asked Ms. Sinclair how she would advise a nurse who had witnessed a physician strike a patient to document that even in the medical record. Ms. Sinclair stated that if patient were struck in the face in the course of their medical treatment, it should not be documented verbatim in the patient record. It should be documented to the manager and as an incident report. She stated that she would not write that the physician struck the patient or that the patient was struck in the patient record. Ms. Sinclair stated that this was based on her experience of over 32 years, but also that there are no rules to say what to do in situations like this. She stated that there is only guidance on reporting to the manager and filling out an incident report.

[199] Counsel for Dr. Martin re-examined the witness to ask if there were an allegation of a slap or hit, what, if anything, would Ms. Sinclair expect to see in the patient record. Ms. Sinclair indicated the furthest a nurse could go would be to say "an altercation between patient and physician ensued". She did not see anything in the patient record related to the allegation, and in her view, had the allegation been true, there should have been something in the record to alert a reader that something happened.

VI. CLOSING SUBMISSIONS

Complaints Director

[200] Mr. Boyer for the Complaints Director emphasized that the Hearing Tribunal heard evidence from only four witnesses who were actually present on the morning of April 6, 2013. These were the Complainant, Ms. Sloat, Ms. Silvius, and Dr. Martin. The other witnesses were not present and could not speak to what did or did not happen.

[201] Mr. Boyer referred the Hearing Tribunal to the case of *Walsh v Council for Licensed Practical Nurses*. Mr. Boyer directed the Hearing Tribunal to the case of *Faryna v Chorny* to deal with issues of credibility.

[202] Regarding the appropriate standard, Mr. Boyer submitted that it was trite to say that it is inappropriate for a medical professional to strike a

patient. However, Mr. Boyer submitted that the real issue before the Hearing Tribunal was not the standard, but what happened. Mr. Boyer submitted that all the evidence from the Complainant, Ms. Sloat, and Ms. Silvius described Dr. Martin striking the Complainant on the side of the face when she was difficult to examine and nonresponsive. He noted that the Complainant admitted to being intoxicated and to having a problem with alcohol, and described her difficulty in trying to cooperate and respond to Dr. Martin. Both nurses described the patient as uncooperative and a challenge for Dr. Martin.

[203] Mr. Boyer submitted that the nursing assessment filled out by Ms. Garratt also described the Complainant as abusive and combative. Dr. Martin also recorded her as difficult and nonresponsive, and the blood tests showed a high volume of alcohol in her system. Mr. Boyer submitted however, that the record also showed that the Complainant settled and became cooperative with the assessment. The record went on to show that the Complainant stayed at the hospital until she was transferred to the ambulance, and that she was cooperative en route. Mr. Boyer submitted that in the referral letter to Dr. Ushko, Dr. Martin described the Complainant as "unpleasant" and included information about her consumption of alcohol, even though she had become cooperative with the examination and was settled throughout the ambulance transport to Edmonton. Mr. Boyer suggested that it was unusual to refer to a patient as "unpleasant".

[204] Mr. Boyer directed the Hearing Tribunal's attention to Dr. Martin's response letter to the College, in which he described his memory as hazy and indicated there was nothing about the attendance that was particularly memorable. He noted that there was no mention in the letter of the patient being treated in the endoscopy room and not the trauma room, as Dr. Martin later described in his testimony. Mr. Boyer also submitted that Dr. Martin stated it was exceedingly rare to have three nurses with one patient, but that the nurses, including Ms. Sieben, Ms. Barker, and Ms. Oulton, all testified it was a common experience to have several nurses present to assist with a chaotic situation or serious trauma.

[205] Mr. Boyer also stated that the Hearing Tribunal had heard how Ms. Sloat and Ms. Silvius were shocked when they saw Dr. Martin strike the Complainant, and how they had discussed it afterwards.

[206] Mr. Boyer submitted that Dr. Martin had only been at the hospital for four months when he saw the Complainant on April 6, 2013. He submitted that the shock the nurses felt when seeing the skilled and

passionate young doctor hit an intoxicated and combative patient with a head injury was understandable.

[207] Mr. Boyer submitted that, based on the evidence called by Dr. Martin and questions put to the college witnesses, it was likely that Dr. Martin was going to argue that there was no contemporaneous record of the strike, and that therefore the nurses were not credible, and their statements were lies. He argued this would also mean that the evidence of the Complainant was a lie. He stated that the defence theory assumed a conspiracy between the Complainant, Ms. Silvius, Ms. Sloat, and Ms. Garratt to create a false complaint.

[208] Mr. Boyer submitted that both Ms. Sloat and Ms. Silvius had acknowledged that that they should have made a note, or reported the event, or something. Mr. Boyer noted that even where there is a self-reporting obligation or an obligation on others to report, it sometimes does not come to the College's attention for many years. He submitted that the passage of time is not unusual.

[209] Mr. Boyer argued that Ms. Sinclair's expert evidence was unnecessary and not particularly helpful. Mr. Boyer submitted that Dr. Martin was using the Standards of Practice and the duty of the nurses to report as a basis for finding the nurses to be not credible. He further submitted that Dr. Martin had advanced evidence that Slave Lake was a hotbed of gossip and that everyone knew about everything right away. Mr. Boyer argued that this theory did not match the evidence. For example, he pointed to Ms. Oulton and Ms. Barker never having heard of Dr. Martin using the phrase "uterus". He argued that the gossip mill, if it existed, was not an efficient method of communication.

[210] Regarding the 2014 investigation that Dr. Martin was involved in, Mr. Boyer submitted that Ms. Barker stated that it was her opinion that this was Ms. Sloat's motivation for fabricating evidence against Dr. Martin, but that this was just her personal opinion and not the proper evidence of a fact witness. Mr. Boyer submitted that if it were a motivation to fabricate evidence against Dr. Martin, Ms. Sloat would have done so much earlier. He suggested to the Hearing Tribunal that this was part of strategy to make it appear that Ms. Sloat was explosive and easy to inflame. He argued that an emotional response from a witness on an irrelevant topic is not proof that the witness is lying.

[211] He emphasized the letter to Dr. Ushko and the language it contained. Mr. Boyer submitted that asked Dr. Martin if he wrote the letter to

create a negative impression of the Complainant before she arrived in Edmonton and might have told Dr. Ushko that Dr. Martin hit her.

[212] Mr. Boyer submitted that although Dr. Martin maintained he did not hit the Complainant, the evidence objectively demonstrated that she was difficult and challenging. Dr. Martin was likely tired. Mr. Boyer submitted that it was understandable for Dr. Martin to get frustrated with a patient of this demeanour, and that he lost his temper and slapped her. Although Dr. Martin was described as an excellent and caring doctor, Mr. Boyer submitted that this did not mean he could not have been human and made mistakes. As examples, Mr. Boyer cited evidence of mistakes made by Dr. Martin including biting a nurse and using the phrase "uterus" to refer to female chaperones.

[213] Mr. Boyer submitted that the evidence as a whole showed Dr. Martin working in an understaffed hospital with challenging patients. He argued that in that circumstance, it was possible to understand how Dr. Martin could lose his temper, how the nurses could be shocked but hope to ignore it, and how the Complainant might feel there was no hope for justice. Mr. Boyer submitted that it was possible to understand how years later, when the Complainant asked Ms. Sloat if it had happened, she agreed that it had. He submitted it was understandable that the Complainant might have then found the courage to bring the complaint forward, even if many years later.

[214] Mr. Boyer concluded that the evidence was clearly persuasive and more than enough to demonstrate on a balance of probabilities that Dr. Martin hit the Complainant as alleged.

Investigated Member

[215] Ms. Stratton submitted that there were points of agreement between the College and Dr. Martin, namely that the allegation was serious, patient safety is paramount, and patient abuse is unacceptable. However, Ms. Stratton submitted that they diverge on whether the allegation as alleged occurred.

[216] Ms. Stratton submitted that all the witnesses testified that Dr. Martin was an excellent doctor who was caring, empathetic and always strived to do his best. Further, Ms. Stratton submitted that Dr. Martin admitted he makes mistakes.

[217] Regarding the burden of proof, Ms. Stratton submitted that the burden lies on the College to prove that all the elements of the allegation on a

balance of probabilities. She argued that this meant that if the Hearing Tribunal was not more certain than not that the events occurred, the College had not met its burden.

[218] Ms. Stratton submitted that the Hearing Tribunal had heard evidence about an allegation of events that occurred seven and a half years previously, but had not called Ms. Garratt, who was the only person with a full view of the patient. She argued that this mattered, and that courts have found that an adverse inference should be drawn in such situations. Ms. Stratton also submitted that the nurses had apparently spoken to the other RN working on April 6, 2013 just after the event, but that the College had also not called her as a witness. Similarly, the daughter and the neighbour were also not called. Ms. Stratton also submitted that Ms. Garratt's charting did not describe anything that would cause someone reading it to wonder, as Ms. Sinclair had described.

[219] Although Ms. Garratt's written statement had been entered as an Exhibit because Ms. Sinclair had reviewed it in preparing her report, the written statement was hearsay and should not be considered.

[220] Ms. Stratton argued that there were significant discrepancies in the evidence of the witnesses, both between each other, and between their statements to the College and what they told the College investigator. She submitted that there was no contemporaneous charting of the event, and that Ms. Sinclair had stated that the chart would not look as it did, if such an event had occurred.

[221] Ms. Stratton argued that in this case, there was no suggestion that the College witnesses were lying, but that they might have convinced themselves this is what they saw. She submitted that their evidence was not reliable, and in the case of Ms. Sloat, not credible. There were fragile memories, witnesses buttressing each other's memories, a confirmation bias on the part of Ms. Sloat, and that the Complainant was suffering from an altered state due to her alcohol level and head injury.

[222] Ms. Stratton submitted that although the Complainant might believe what she stated, her evidence cannot be relied on for accuracy because of her head injury and inebriation.

[223] Regarding Ms. Silvius, Ms. Stratton argued that she admitted she only saw something out of the corner of her eye, charted nothing about it, and describes herself as a follower. Ms. Stratton submitted that her

testimony was inconsistent both within itself, and with the other witnesses.

[224] Ms. Stratton submitted that Ms. Sloat had described seeing the alleged hit as she turned. She submitted that the best that could be said about her evidence is that she convinced herself that what alleged occurred actually happened. She argued that Ms. Sloat was motivated to see the worst in Dr. Martin, and that there was a sudden shift in her attitude toward Dr. Martin in the hearing from her praise of his empathetic care of her family, to her yelling and cursing at him. Ms. Stratton submitted that this behaviour was referred to by Ms. Sieben in her evidence. Ms. Stratton submitted that Ms. Sloat had no difficulty acting in a confrontational or aggressive manner, and based on Ms. Oulton's evidence, no fear of retaliation.

[225] Ms. Stratton submitted that Ms. Oulton had testified that Ms. Sloat frequently complained about physicians and nurses, and was a leader among the nurses.

[226] Ms. Stratton submitted that Ms. Sieben described concerning behaviour that affects Ms. Sloat's credibility. Ms. Stratton submitted that this uncontroverted description of Ms. Sloat's behaviour called her evidence into question. When coupled with Ms. Silvius' description of herself as a follower, Ms. Stratton argued it brought the credibility of both witnesses into question.

[227] Regarding Ms. Barker, Ms. Stratton submitted that Ms. Barker had said she could not trust Ms. Sloat. Ms. Stratton submitted that Ms. Barker had also described the hospital as a gossipy place, but had never heard about the hitting allegation until the College complaint. Ms. Stratton submitted that it was unlikely that the three nurses who saw the event, and told another nurse, never said a word to anyone else in five years, and that this called their evidence into question.

[228] Ms. Stratton submitted that all the witnesses agreed that Ms. Sloat was competent and caring, and an advocate for her patients. But also, that she routinely complained about physicians and nurses. Ms. Stratton asked how a competent and caring nurse would not advocate for her patient, when she complained about many other practice and performance issues, physicians and nurses, including Dr. Martin. She argued that this called her evidence into question.

- [229] Ms. Stratton argued that there were contradictions between the witnesses. A chart was provided in the written submissions of Dr. Martin, setting these out.
- [230] Ms. Stratton submitted that this opinion by Ms. Sinclair was not a finding, but rather Ms. Sinclair detailing the problems she saw in the charting, and why it made the accuracy questionable.
- [231] Turning to credibility, Ms. Stratton submitted that case law indicates that the credibility of a witness is a finding of fact, and that a Hearing Tribunal must consider the credibility of witnesses and what weight to give their testimony, keeping in mind that a lack of credibility does not necessarily mean intentionally lying.
- [232] In summary, Ms. Stratton submitted that the evidence of the College's witnesses could not be relied on. She submitted that the Complainant's level of impairment and head injury, Ms. Silvius's testimony that she only saw it out of the corner of her eye, and was a follower, as well as the phone calls between the nurses and Complainant five years later, brought their evidence into question. Finally, the bias of a witness against someone, as Ms. Sloat had for Dr. Martin, can also make a person more likely to believe they saw something negative. Ms. Stratton argued that Ms. Sloat's testimony that she only saw the events as she turned around, her enmity toward Dr. Martin, the inconsistencies in her evidence, her bullying behaviour toward other nurses, and her gathering of information against Dr. Martin before submitting her complaint, all brought Ms. Sloat's evidence into question.
- [233] In contrast, Ms. Stratton submitted that Dr. Martin's description of events matched his physician assessment, and the nursing assessment. All witnesses agreed he was an excellent doctor, but he candidly admitted to mistakes. Ms. Stratton submitted that the chart showed that Dr. Martin's care of the Complainant was thorough.
- [234] Ms. Stratton submitted that it was reasonable for Dr. Martin to describe the Complainant as unpleasant based on her behaviour. She argued that it was not unnecessarily derogatory, and that it only related to the time when Dr. Martin was caring for her. The reference to the Complainant as unpleasant in a letter to another doctor had no relationship to the allegation at issue.
- [235] Ms. Stratton submitted that Ms. Sinclair reached an opinion that the lack of contemporary or any documentation by the three nurses and

the level of the patient's intoxication made the accuracy of the allegations questionable.

[236] Ms. Stratton concluded that when all the witness evidence along with the contradictions and inconsistencies, the well-known problems with memory, that a person's memories and perceptions can be affected by their view of someone, is considered, the Hearing Tribunal should find that the College had not met its burden on a balance of probabilities and that the charge ought to be dismissed.

Complaints Director Reply

[237] Mr. Boyer rejected any suggestion that there had been any unfair or improper questions put to Dr. Martin. Mr. Boyer submitted that he did not ask any witnesses about the "uterus" comment, or the biting incident. He submitted that this was raised by the witnesses themselves. For example, Mr. Boyer submitted that when he raised the "uterus" comment with Dr. Martin, he raised the biting incident as another example of an attempt at humour.

[238] Second, regarding the question of adverse inferences, Mr. Boyer submitted that the neighbour and daughter were not called, because they were not present, and were not firsthand witnesses. Responding to the question of calling the other RN on shift that night, Mr. Boyer submitted that she was not in the room, and her evidence would only have been hearsay. Further, Mr. Boyer submitted that he had offered to the other RN and Ms. Garratt to come and testify, but they declined. He argued that the question of whether an adverse inference could be drawn from failing to call Ms. Garratt could be addressed in two ways. First, there was no evidence through Ms. Garratt and the written statement was not being put forward for the truth of the contents, and second, that either party could have called Ms. Garratt. He argued that if she was helpful to Dr. Martin, she could have been served a Notice to Attend. Therefore, Mr. Boyer argued that no adverse inference should be drawn. He argued that the onus was on the College to call sufficient evidence to prove the charge, and that it called three witnesses who were in the room. Whether that evidence was sufficient, was up to the Hearing Tribunal to determine. Mr. Boyer agreed that credibility is a central issue, and that arguments from both sides were appropriate.

VII. DECISION

[239] The Hearing Tribunal considered the following allegation:

On or about April 6, 2013, you did inappropriately strike your patient, Patient A, on the head, during her attendance at the emergency room while she was being assessed and treated for head trauma from a slip and fall.

[240] The Hearing Tribunal considered all of the evidence and the submissions of the parties. The Hearing Tribunal finds that the allegation has not been proven on a balance of probabilities.

[241] Given this finding, there is no need for the Hearing Tribunal to further consider whether the allegation constitutes unprofessional conduct as defined in section 1(1)(pp) of the HPA.

VIII. REASONS AND FINDINGS

[242] The Hearing Tribunal considered the onus of proof and standard of proof. The Hearing Tribunal accepts that the Complaints Director bears the onus of proof and that the Complaints Director must establish, on the balance of probabilities, that the conduct in the allegation occurred.

[243] The Hearing Tribunal carefully considered the evidence in the Exhibits and the testimony of the witnesses, in particular the testimony of the Complainant, Ms. Silvius, Ms. Sloat and Dr. Martin, who were the only witnesses present on April 6, 2013 when the incident is alleged to have occurred. The credibility of each of the witnesses was considered.

[244] In assessing credibility, the Hearing Tribunal considered both the aspect of veracity, that is whether the witness is telling the truth as well as the aspect of reliability, that is whether the witness's version of events is accurate. The following passage from *Faryna v Chorny* on assessing credibility was reviewed (paragraph 11):

The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its 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.

Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

Findings – The Complainant

[245] The Hearing Tribunal believes the Complainant was trying to tell the truth to the best of her recollection. The Hearing Tribunal accepts that the Complainant believes that the incident happened.

[246] However, the Hearing Tribunal must also consider whether the Complainant's evidence was reliable. The Complainant was extremely vulnerable on April 6, 2013. She had been drinking alcohol and had suffered a head injury.

[247] A review of the Complainant's evidence indicates she does not have a clear recollection of the events around April 6, 2013. There were discrepancies between her testimony and the testimony of other witnesses and the records. Significantly, she stated she was sitting on the stretcher, with her legs hanging down when Dr. Martin struck her. The testimony of Ms. Silvius, Ms. Sloat and Dr. Martin indicate she was in a reclined or semi-Fowler position, with her legs on the hospital bed. This was a significant factor in terms of assessing the Complainant's ability to recollect the events.

[248] The Hearing Tribunal also considered the significant discrepancy in the evidence regarding where the Complainant was allegedly hit. The Complainant testified her injury was on the right side of her head and that Dr. Martin struck her where her injury was. Ms. Silvius's written statement indicated that Dr. Martin struck the Complainant on the right side of her head. Ms. Silvius indicated she only saw the incident out of the corner of her eye. Ms. Sloat was adamant that she saw Dr. Martin strike the Complainant on the left side of her face. Ms. Sloat had a clearer view than Ms. Silvius, however, her evidence diverged from that of the Complainant and Ms. Silvius on this important issue. This was another significant factor for the Hearing Tribunal.

- [249] Further, the Complainant does not recall yelling, lashing out, kicking, or striking anyone, although Ms. Silvius recalls her kicking. The Ambulatory Client Care Record states she “became very abusive and aggressive” which Ms. Sloat indicated accorded with her recollection. Dr. Martin indicated in his evidence that he was concerned that someone was going to get hurt and he recorded this in the patient record.
- [250] The Complainant believed security had been called and did not recall seeing the RCMP. The evidence was that there is no security on site at the Slave Lake Health Centre and that the RCMP were called to assist with her case.
- [251] Finally, the Complainant does not recall returning to the Slave Lake Health Centre the next day for a prescription, although the patient record notes indicate that she returned.
- [252] The Hearing Tribunal also considered the evidence that the Complainant asked Ms. Sloat several years later about the incident. Ms. Sloat’s evidence was that the Complainant indicated to Ms. Sloat that she “she wasn’t sure in her own mind if it really happened” and needed affirmation that it really did happen.
- [253] The Hearing Tribunal finds that the Complainant does not have a clear independent recollection of the events of April 6, 2013. The Hearing Tribunal finds that it is plausible that the Complainant may be remembering a painful physical examination by Dr. Martin rather than Dr. Martin striking her.
- [254] The Hearing Tribunal also considered that the Complainant’s recollection of events after the incident was not clear. She was not certain how many times she had spoken to Ms. Sloat and Ms. Silvius. There were also discrepancies in the evidence of the witnesses on this point. While the Complainant stated she spoke to Ms. Silvius about the incident, Ms. Silvius denied this.
- [255] The Hearing Tribunal finds that while the Complainant was trying to be truthful in giving her evidence and the Complainant truly believes that she was struck by Dr. Martin, her evidence is not reliable. She did not have an independent recollection of the events of April 6, 2013 and there were significant discrepancies in her evidence and that of the other witnesses, as well as the patient record.

Findings – Freda Silvius

- [256] The Hearing Tribunal considered the evidence of Ms. Silvius. Her evidence was that she saw the strike out of the corner of her eye. As such, she did not have a clear view of Dr. Martin's actions. In her testimony, she did not report hearing a slap. She acknowledged that she should have made a note of the incident and reported it.
- [257] Ms. Silvius confirmed she was more comfortable following and not leading. The Hearing Tribunal considered this in terms of Ms. Silvius potentially being influenced when Ms. Sloat approached her about making a statement.
- [258] There were discrepancies in the evidence of Ms. Silvius and that of Ms. Sloat. Ms. Silvius gave evidence that she never spoke to anyone about the events. Ms. Silvius stated that another RN was also working the night shift of April 6, 2013, but did not state that the incident was reported to the other RN. This was a significant discrepancy from the evidence of Ms. Sloat, who testified that she, Ms. Garratt and Ms. Silvius spoke to the other RN on shift on April 6, 2013 about the incident. According to Ms. Sloat, the four of them discussed the incident and what they were supposed to do.
- [259] The Hearing Tribunal also noted that Ms. Silvius made assumptions in her written statement with respect to the Complainant leaving the hospital, which did not occur. She also noted that the Complainant pulled out her IV, but this was not recorded in any of the records. The Hearing Tribunal considered this to be a significant discrepancy. This called into question whether Ms. Silvius made assumptions as well as to what she saw out of the corner of her eye.
- [260] In her evidence, Ms. Silvius also assumed that Dr. Martin was the chief of staff at the time of the incident, however, he was not and had only been a physician at the Slave Lake Health Centre a few months at the time of the incident. Ms. Silvius stated that he was still intimidating.
- [261] Ms. Silvius was not clear about how the written statements were provided to the College, which was also the case with both the Complainant and Ms. Sloat.
- [262] The Hearing Tribunal also considered that Ms. Silvius' memory may have been influenced by her discussions with Ms. Sloat several years after the incident. The Hearing Tribunal found that Ms. Silvius' evidence was not reliable.

Findings – Carolyn Sloat

[263] The Hearing Tribunal considered the evidence of Ms. Sloat. Ms. Sloat indicated that all three of them (herself, Ms. Silvius and Ms. Garratt) went to the other RN working on April 6, 2013 to ask what they should do. The Hearing Tribunal found it hard to believe that four health care professionals would fail to report an incident of patient abuse and fail to advocate for a patient in these circumstances.

[264] Ms. Sloat indicated that she probably should have filled out an incident report, but she “took the coward’s way out”. She decided not to pursue it because the Complainant was not pursuing it, and she did not want a confrontation. The Hearing Tribunal did not consider this explanation for not filling out an incident report to be credible. It would be extremely unlikely for a vulnerable patient with a head injury who is transferred to another facility after an incident happened to pursue a complaint at the time of the incident. The incident report should have been completed at the time of the incident and should be completed regardless of whether or not the patient plans to pursue a complaint.

[265] Ms. Sloat was described as a leader and intimidating. Ms. Sloat said she did not report the incident because it would have been awkward to work with Dr. Martin. However, Ms. Oulton’s evidence was that Ms. Sloat had raised issues about Dr. Martin with her previously. The evidence also suggested that nurses did complain about physicians.

[266] The Hearing Tribunal also noted Ms. Sloat’s anger exhibited during the hearing. She was very defensive in refusing to acknowledge responsibility for record keeping of the incident. She also exhibited anger towards Dr. Martin when questioned about other matters.

[267] The Hearing Tribunal considered Ms. Sloat’s evidence that she only asked other nurses about Dr. Martin after her interview with the investigator in late 2018. This was inconsistent with the evidence of Ms. Sieben who noted that it was in late 2017 or early 2018 that she was asked about any concerns with Dr. Martin by Ms. Sloat. Given the concerns with Ms. Sloat’s evidence, the Hearing Tribunal did not find her evidence to be reliable.

Findings – Dr. Keith Martin

[268] The Hearing Tribunal considered the evidence of Dr. Martin. In his testimony, Dr. Martin had a very specific recollection of events of April

6, 2013. However, in his written response to the College dated September 12, 2018, he indicated that it was an uneventful evening and that he did not have a specific recollection of the case. Because of this, the Hearing Tribunal placed less weight on Dr. Martin's testimony.

[269] Dr. Martin was described as an excellent physician who cared for patients. Except for the opinion of Ms. Sloat, there was no evidence to suggest racism or discrimination on the part of Dr. Martin towards Indigenous patients.

[270] The Hearing Tribunal also considered the evidence regarding Dr. Martin's references to female nurses as "uteruses" and that he had bitten a nurse. The Hearing Tribunal did not find that this made Dr. Martin more likely to have hit a patient. The actions are completely different. These incidents do not have any link to patient abuse and the Hearing Tribunal did not place any weight on these incidents in determining if it was more likely than not that the allegation was proven. In fact, the Hearing Tribunal accepted the submission from counsel for Dr. Martin that the evidence indicated that he accepted feedback, apologized when necessary, learned and changed his behavior after these incidents.

[271] The Hearing Tribunal also considered the use of the term "unpleasant" in the letter to Dr. Ushko. The Hearing Tribunal did not accept the suggestion that this was done to cover Dr. Martin's tracks in the event the Complainant reported abuse. There was no evidence to substantiate this suggestion.

Findings – Cathy Oulton

[272] The Hearing Tribunal considered the evidence of Ms. Oulton. The Hearing Tribunal found Ms. Oulton to be credible and her evidence to be reliable. However, her evidence was of limited use in that she was not present during the incident on April 6, 2013.

Findings – Debra Sieben

[273] The Hearing Tribunal also considered the evidence of Ms. Sieben. The Hearing Tribunal found Ms. Sieben to be credible and her evidence to be reliable. The Hearing Tribunal accepted her evidence about confrontations with Ms. Sloat and that Ms. Sloat had asked Ms. Sieben whether she had any concerns about Dr. Martin before the complaint was made to the College. Otherwise, her evidence was of limited use in that she was not present during the incident on April 6, 2013.

Findings – Julia Barker

[274] The Hearing Tribunal also considered the evidence of Ms. Barker. There was an objection by counsel for the Complaints Director to Ms. Barker giving her evidence, as he had not been advised she would be a witness. The Hearing Tribunal gave counsel for the Complaints Director the opportunity to recall witnesses if necessary after hearing from Ms. Barker. The Complaints Director did not recall any witnesses. The Hearing Tribunal found Ms. Barker to be credible and her evidence to be reliable. The Hearing Tribunal accepted her evidence that Ms. Sloat led by intimidation. Otherwise, her evidence was of limited use in that she was not present during the incident on April 6, 2013.

Findings – Kathleen Margaret Sinclair

[275] Finally, the Hearing Tribunal considered the evidence of Kathy Sinclair. Although the Hearing Tribunal accepted that the nurses should have reported an incident of patient abuse and created an incident report, her evidence was not relied on in determining whether the allegation had in fact been proven.

Findings and Other Considerations

[276] No weight was placed on Ms. Garratt's written statement. The written statement was very vague and there was no opportunity to cross-examine the witness.

[277] Although the Hearing Tribunal considered the submissions about the failure to call Ms. Garratt and the other RN on shift on April 6, 2013, the Hearing Tribunal found that it was not necessary to determine if an adverse inference should be drawn, given its findings on the allegation.

[278] The Hearing Tribunal considered the complete lack of any notes or records, either in the patient chart, in a separate incident report, or other notes. In addition, the Hearing Tribunal considered the evidence that no one in the Health Centre (and in particular the witnesses called by Dr. Martin) had apparently heard about the incident until 2018 when it was reported to the College. The Hearing Tribunal found this to be implausible given that four nurses working the shift of April 6, 2013 were allegedly aware of this.

[279] While the Hearing Tribunal considered all of the above, it placed the most reliance on the evidence of the four individuals who were called

to testify and who were present on April 6, 2013, that is, the Complainant, Ms. Silvius, Ms. Sloat, and Dr. Martin.

[280] To be clear, the Hearing Tribunal does not believe that the Complainant, Ms. Silvius and Ms. Sloat conspired to lie about the incident. However, it is possible that their memories were affected by each other and by the passage of time. It is also clear that certain assumptions were made by witnesses with respect to the events described in the allegation.

[281] In considering all of the above, the Hearing Tribunal does not find that the allegation has been proven on a balance of probabilities.

Signed on behalf of the Hearing Tribunal by the Chair



Dated: February 25, 2021

Dr. Vonda Bobart