

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. WYNAND WESSELS

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

I. INTRODUCTION

[1] The hearing on sanction involving Dr. Wynand Wessels, a regulated member of the College of Physicians and Surgeons of Alberta (the “College”) took place on June 14, 15 and 16, 2021. The hearing was held by videoconference.

[2] In attendance at the hearing were:

Members of the Hearing Tribunal:

Dr. Colm MacCarthy, Chair
Dr. Robin Cox, member
Ms. Pat Matusko, public member

Also in attendance were:

Mr. Fred Kozak, independent legal counsel for the Hearing Tribunal

Dr. D. Hartfield, Assistant Complaints Director
Mr. Craig Boyer, legal counsel for the Complaints Director
Ms. Stacey McPeck, legal counsel for the Complaints Director

Dr. Wynand Wessels, investigated person
Mr. James Heelan, legal counsel for Dr. Wessels
Ms. Renee Gagnon, legal counsel for Dr. Wessels
Ms. Elizabeth Northup, student

Allison Porter, Hearing Facilitator

Members of the public and members of the media were also in attendance.

II. PRELIMINARY MATTERS

[3] There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no other preliminary matters raised by the parties.

[4] The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the “HPA”).

[5] The Hearing Tribunal issued its decision on the merits on December 18, 2020 (“Merits Decision”). The Hearing Tribunal found Dr. Wessels guilty of unprofessional conduct as alleged in the Notice of Hearing as follows:

You did, on or about June 24, 2016, demonstrate conduct that harms the integrity of the medical profession, by tying a piece of rope into a shape that could be perceived as being a hangman’s noose and hanging it on a door leading to an

operating room at the Grande Prairie Queen Elizabeth II Hospital where other medical and hospital staff could see the rope.

ALL OF WHICH is contrary to the provisions of the *Health Professions Act*, RSA 2000, c. H-7 as amended, including the Canadian Medical Association Code of Conduct, constituting unprofessional conduct.

- [6] In the Merits Decision, the Hearing Tribunal responded to the request from both parties to make a determination about Dr. Wessels' motivation and, in particular, whether Dr. Wessels intended to tie the rope as a joke, as a racist symbol or message, or for a different reason. The Hearing Tribunal found that on a balance of probabilities, there was insufficient evidence to prove Dr. Wessels was motivated by racism. However, the Hearing Tribunal also found that his actions were more than a mere joke and were not simply an attempt at team building. The Hearing Tribunal found Dr. Wessels was motivated by the discord in the hospital and that he hung the rope on the door with the intention of sending a threatening message or warning to one or more individuals. The hearing to determine an appropriate sanction arising from these findings was scheduled for June 14, 15 and 16, 2021.
- [7] In May, 2021, prior to the sanction hearing, the Hearing Tribunal was advised that counsel for Dr. Wessels objected to the Complaints Director's proposal to call a witness (Dr. Hershcovis) to provide expert testimony at the sanction hearing scheduled in June. The parties were each directed by the Hearing Tribunal to provide written submissions on the issue of admissibility of the proposed expert evidence. The submissions were reviewed by the Hearing Tribunal at a meeting convened for that sole purpose on May 26, 2021. Following discussion and deliberations, the Hearing Tribunal determined that the testimony would be permitted, and it directed independent legal counsel, Mr. Fred Kozak, to communicate that decision to the parties. Prior to the communication of that decision of the Hearing Tribunal, counsel for Dr. Wessels advised Mr. Kozak (independent legal counsel to the Hearing Tribunal) by email that Dr. Wessels was withdrawing his objection to the proposed expert evidence.

III. DOCUMENTS BEFORE THE HEARING TRIBUNAL

- [8] The following were entered as additional exhibits during the sanctions hearing:
- Exhibit #4: Letter dated November 17, 2016, from Dr. Richard Beekman to Dr. Scott Wiens
- Exhibit #5: Windowpane Report
- Exhibit #6: AHS Notes recorded by Holly Ljuden
- Exhibit A (for identification): AHS Notes of Interview with Dr. Lafontaine
- Exhibit #7: Curriculum Vitae of Dr. Sandy Hershcovis
- Exhibit #8: Report of Dr. Sandy Hershcovis

IV. WITNESS TESTIMONY

[9] The following witnesses were called by the Complaints Director.

Dr. Scott Wiens

Examination in Chief

- [10] Dr. Wiens began by reviewing his education and work history, which culminated in his taking a locum position in Grande Prairie in February 2013, which later became permanent. Dr. Wiens later became certified by the American Board of Orthopedic Surgery as an orthopedic surgeon.
- [11] When asked by Mr. Boyer, Dr. Wiens confirmed that he had taken pictures of a noose on a door in relation to an event on June 24, 2016. The noose was hanging on the door of operating room 4, which was the room he was working in that day. Dr. Wiens recalled that there were five other people working in the room that day including Dr. Oduche Onwuanyi, Dr. Alika Lafontaine, and three nurses.
- [12] Mr. Boyer referred Dr. Wiens to a letter from Dr. Wessels addressed to Dr. Wiens which was described as an apology letter. Dr. Wiens agreed that in the letter Dr. Wessels indicated he had never used symbolic gestures to convey messages. Dr. Wiens stated that he saw the noose as conveying a message which he interpreted as a racist act and a threat to the personal safety of the people working in the room that day.
- [13] Dr. Wiens stated that the noose incident still affected him and read out a statement in which he stated that he was utterly shocked when he saw it, and that his mind immediately went to the black assistant and indigenous physician he was working with. Dr. Wiens stated that everyone present interpreted it as a racist act. He stated that Dr. Denkema had taken Dr. Wessels aside and yelled at him, which was something Dr. Wiens had never seen Dr. Denkema do before or since. Dr. Wiens stated that the act has caused people to pick sides and created a divide in the orthopedic department. Dr. Wiens viewed the incident as having caused irreparable harm to the patients, staff, and orthopedic team at the hospital.
- [14] Dr. Wiens stated it had also caused him harm as a surgeon and father and made him fear Dr. Wessels' ability to interact with staff and patients. He expressed concern that Dr. Wessels had lived in Canada since 1994 and in Grande Prairie for more than 12 years, yet still denied understanding the North American interpretation of a noose.
- [15] Dr. Wiens stated that on June 24, 2016 he had watched Dr. Wessels tie the noose and place it on the door of the operating room. When Dr. Wiens asked him who it was for, Dr. Wessels said it was for Dr. Wiens's assistant. Dr. Wiens stated that his fear increased when he heard Dr. Wessels testify under oath on October 14, 2020 that the noose was against anyone who misbehaves. Dr. Wessels quoted from a placard hanging in the operating theatre which indicates all individuals should be treated with respect and dignity, that an abuse-free environment is promoted, and that acts of abuse will not be tolerated.

- [16] Dr. Wiens stated that since the incident, Alberta Health Services had not supported the people affected. Dr. Wiens expressed fear for his personal safety after Dr. Wessels acknowledged that the noose could be perceived as a symbol of death.
- [17] Dr. Wiens stated that the noose initially made him feel shock and disbelief, and he took the photo to show it was real. It also made him angry that someone would do this or create this atmosphere in the operating room.
- [18] Dr. Wiens testified that he notified Dr. Lafontaine immediately, and Dr. Lafontaine took the noose and reported it. Dr. Wiens stated that later the same day, Dr. Wessels confronted him, indicating he knew Dr. Wiens had reported him and he was not pleased. These actions made Dr. Wiens feel intimidated. Dr. Wiens stated that over the following days, Dr. Wessels told nurses that Dr. Wiens was a “back stabber” and shortly thereafter Dr. Wiens was shown a smoking gun cartoon which Dr. Wessels alleged was sent to a friend. Dr. Wiens testified that Dr. Wessels makes no secret of the fact that he owns guns and goes shooting with friends.
- [19] Dr. Wiens stated that he still feels as if Dr. Wessels is gaslighting him and other victims by blaming them. Dr. Wiens felt that Dr. Wessels believed that people who disagree with him should have a noose hung at them, which Dr. Wiens found frightening at the time, and even more frightening when the actions were still being justified five years later. Dr. Wiens stated he felt the threat was not just against Dr. Onwuanyi, but also against him. Dr. Wiens expressed his concern that Dr. Wessels’ behaviour could escalate.
- [20] Dr. Wiens described the price he has paid for being a witness and his feeling that he is the target of Dr. Wessels and his associates, and is known as the person who spoke out against Dr. Wessels’ racist act. Dr. Wiens feels he has paid a high price in his professional career for reporting Dr. Wessels, and that it has affected his mental and physical health, as well as his relationships and his family. He also stated that it affected patients who now refer to the hospital as the “noose hanging centre”. Dr. Wiens indicated that he felt people had been supporting Dr. Wessels and harassing those who were present during the incident, which has affected patient care. In Dr. Wiens’ opinion the environment at the hospital is toxic, and “Dr. Wessels’ actions poured gasoline onto a fire that was already burning.” Nevertheless, Dr. Wiens stated that he stands by his position that the act in question is neither ethical or in keeping with the morals of Canadian citizens.
- [21] In response to questions from Mr. Boyer, Dr. Wiens indicated that he did not smile or giggle when Dr. Wessels told him the noose was for his assistant. Dr. Wiens also stated that when Dr. Wessels spoke to him later in the day, Dr. Wessels blamed him for lodging a formal complaint.
- [22] Dr. Wiens confirmed he is the Dr. SW identified in the Merits Decision. He stated that the characterization of their relationship was misrepresented and indicated that in 2013, he and Dr. Wessels were friendly enough that Dr. Wessels presented him and his wife with a gift at a baby shower. He stated that even after the incident in June 2016, he and Dr. Wessels and Dr. Akinbiyi were looking to purchase commercial properties together, although Dr. Wessels decided by the end of 2016 that he did not want to invest. Dr. Wiens stated that

even in 2017, he and Dr. Wessels were texting each other in friendly ways. As late as 2019, they texted each other to share information in a collegial fashion.

Cross-Examination

- [23] Dr. Wiens agreed that when he first arrived in Grande Prairie in 2013, he understood there was a partnership between Dr. Denkema, Dr. Wessels, and Dr. Akinbiyi. Dr. Wiens however claimed that he was unaware of the terms of the contract between the three doctors when he joined the clinic. He joined, not as an owner, but paid 25% of the rent and expenses, and had never signed a formal agreement. He confirmed he was neither part of the partnership nor had any say in how the clinic was run.
- [24] Mr. Heelan asked Dr. Wiens if he recalled any unhappiness with how the clinic was run, and specifically about him not being made a partner. Dr. Wiens recalled that there was a meeting about hiring, but denied shouting at others at the meeting. Dr. Wiens admitted that in relation to the partnership between the three doctors, the fact that he had zero say in office issues became a factor in his decision to leave the clinic. Dr. Wiens also felt that it was unfair that the ownership buy-in was \$20,000 for the original members, but was \$60,000 two or three years later if he had wanted to become a partner. Dr. Wiens recalled that at the meeting with Dr. Wessels, he was told that Dr. Denkema and Dr. Wessels were a majority and did not need Dr. Akinbiyi's vote, and could proceed with the hiring as planned. Dr. Wiens stated that he felt the partnership treated both him and Dr. Akinbiyi unfairly. Dr. Wiens indicated that he and Dr. Akinbiyi later went into practice together, and are friends and partners.
- [25] Mr. Boyer brought an application under s 78 of the *Health Professions Act* to have a portion of the hearing in-camera, to allow a line of questioning that Mr. Heelan intended to follow with Dr. Wiens. Following a discussion between counsel and the Hearing Tribunal, the Hearing Tribunal determined that given the importance of the proceeding remaining open and transparent, and the boundaries of the intended line of questioning, the hearing would continue in an open session.
- [26] Dr. Wiens indicated that Alberta Health audited his billing practices, and that as a result he had to pay back money to Alberta Health, but had not had to change the way he billed. Dr. Wiens stated that he believed that there was a potential that either Dr. Wessels or other orthopedic surgeons in Grande Prairie had some knowledge or involvement in the initiation of this audit. He indicated that when the matter was raised before colleagues and a patient, he was upset.
- [27] Dr. Wiens agreed that he had raised concerns about patient care and best practice regarding orthopedic care and stated that it was not until July 2020 that any colleague in the orthopedic department raised any comment about his conduct.
- [28] Dr. Wiens disagreed with the suggestion that he had ever stated he wished he "could take Dr. Wessels outside and smash his face in". He disagreed that he had stated he would "get Dr. Wessels" or that he had shouted at Dr. Wessels in front of others. He stated that he had not shouted at another doctor in a meeting, and indicated he always speaks with a monotone

voice, and did not raise his voice. He denied shouting at Dr. Denkema. When asked if he gave the silent treatment to colleagues, he indicated that he is, at times, focused on patient care and will not speak to others.

- [29] When Mr. Heelan put it to Dr. Wiens that he had fabricated how emphatically Dr. Wessels told him the rope was for his assistant, Dr. Wiens disagreed. Dr. Wiens agreed that he was the only one who saw the noose on the door, and that he removed it and threw it in the garbage. He disagreed that he later removed it and reattached it to the door so he could take a photo. Rather, Dr. Wiens indicated he took the photo before removing it and placing it in the garbage. He stated that he then walked into the room and told Dr. Lafontaine about the incident, and Dr. Lafontaine retrieved the noose from the garbage. Together, they took the noose to the operating room manager. Dr. Wiens agreed that Dr. Lafontaine learned about the noose from him.
- [30] Dr. Wiens agreed that he later showed Dr. Onwuanyi the photo after Dr. Onwuanyi approached him to ask about it. He stated that he spoke to Dr. Akinbiyi about the incident by phone on June 24, 2016, and later showed him the photo. He agreed that he told other people about the incident and showed them the pictures, including Dr. Richard Beekman, with whom he met to discuss the incident and who asked him to email a copy of the photo.
- [31] Dr. Wiens agreed that he received a letter from Dr. Wessels a few weeks after August 5, 2016, which was the date on the letter. He agreed that the first sentence of the letter included the word “apology”. Dr. Wiens agreed that he met with AHS administration and discussed the incident on June 30, 2016 and October 14, 2016. He agreed that in a letter of November 17, 2016 from AHS, it stated that the incident was closed. Dr. Wiens did not consider the matter closed until after a teambuilding event in January 2017, but disagreed that he wanted the story to carry on and cause difficulties for Dr. Wessels.
- [32] Dr. Wiens indicated he was aware of a report from an inquiry conducted for the Ministry of Health by Windowpane Management, but had not read it. He agreed he was interviewed for the purposes of the report. He stated he had read only very minimal parts of the report. When shown paragraph 146, Dr. Wiens indicated he had not read it before.
- [33] Dr. Wiens indicated he was friendly and a colleague of Dr. Carrie Kollias. He recalled discussing the noose with her at a meeting about bullying and intimidation at the Grande Prairie hospital. He agreed that he knew she was going to speak to the media. He stated he knew on June 30, 2020 that the story would run, and that he was interviewed for the story on July 2, 2020. He denied submitting the photo of the noose, but indicated that the photo in the article was the one he took. Dr. Wiens denied telling another doctor just before the article was published that he should “just wait as something was going to happen”.
- [34] When asked by Mr. Heelan, Dr. Wiens did not recall treating a black man in need of knee surgery in the later months of 2020 or early months of 2021. He did recall stating in July 2020 that he needed to operate on the man because the orthopedic surgeon taking over call the following morning would not operate on a black man, but disagreed with Mr. Heelan’s characterization of the conversation.

Re-examination

- [35] On re-examination, Dr. Wiens stated that he thought someone's finances and an audit should remain confidential. He indicated that following the comments made before a patient and nursing staff, Alberta Health sent a letter indicating that breaches of confidentiality need to be addressed at the facility. He indicated that when speaking with AHS in June 2016, he was told that it was not an AHS issue. He originally was told someone would speak to the physicians who might have been sharing the information.
- [36] Dr. Wiens stated that he understood in July 2016 that Dr. Wessels had been speaking to nurses about the noose incident. He understood several nurses and physicians had no knowledge of the incident until the media article was published in July 2020.

Questions from the Hearing Tribunal

- [37] The Hearing Tribunal asked Dr. Wiens if he considered the noose being hung on the door by Dr. Wessels to be an unexpected act, or in keeping with previous behaviour he had witnessed from Dr. Wessels. Dr. Wiens stated that Dr. Wessels' behaviour had been increasingly erratic over the few weeks preceding the incident. He stated that he believed this was due to complaints that had been made about Dr. Wessels' care of patients and comments Dr. Wessels had made to a female nurse, the result of which was that she could no longer work with him. In addition, Dr. Wiens indicated that Dr. Wessels had made negative comments regarding other doctors, specifically about their religious backgrounds, and had decided to hold a pig roast to celebrate the departure of one such doctor.

Additional Questions Arising

- [38] Mr. Heelan suggested to Dr. Wiens that the statements he made regarding sexual harassment, discrimination, and racism on the part of Dr. Wessels were untrue. Dr. Wiens disagreed.

Dr. Oduche Onwuanyi

Examination in Chief

- [39] Dr. Onwuanyi began by describing his education and work history, which culminated in his being appointed to the hospital in Grande Prairie in 2014 as a surgical assistant, where he still works. He indicated that he is a member of the College of Physicians and Surgeons of Alberta.
- [40] Dr. Onwuanyi stated that he was working in the hospital on June 24, 2016. He was supposed to assist Dr. Wiens in operating theatre number 4. He could not recall all the nursing staff, but believed that Dr. Lafontaine was the anaesthetist in the room that day.
- [41] Dr. Onwuanyi stated that he did not see the rope, but later saw a picture of it. When asked if the rope noose had any particular meaning to him, Dr. Onwuanyi stated that it is a warning sign that says "blacks need to be cautious". To him it meant that "you are not

entitled to any freedom of expression or thoughts or actions within these confines”. He stated that it was also a reminder of race.

- [42] Dr. Onwuanyi stated the incident had changed his life forever. He stated that he cannot forget what he thinks Dr. Wessels was trying to convey. Dr. Onwuanyi stated that during the investigation he was stuck in Nigeria due to Covid, and was not able to do a further interview. He did not think that the Hearing Tribunal had the full benefit of his written response to the investigators, and in particular, that when Dr. Wessels made apologies, it was only to Dr. Akinbiyi and Dr. Wiens, but not to him. Dr. Onwuanyi stated that he felt he was the real victim and was left out.
- [43] Dr. Onwuanyi indicated what he had expressed in a letter to the investigator dated October 4, 2019: that he did not have an open discussion with Dr. Wessels about what happened. He stated that on June 24, 2016, when he was to assist in Dr. Wiens’s theatre, a hangman’s noose was placed on the glass pane of the door to operating room 4, visible to anyone passing by. Dr. Onwuanyi stated that Dr. Wessels was working in operating room 5 that day, and if the noose was placed to warn everyone, it should have been placed on his door. Dr. Onwuanyi therefore interpreted it as a deliberate and intentional act to place the noose on the door of operating room 4. Dr. Onwuanyi stated that if Dr. Wessels was truly remorseful, he should have made a full and sincere apology early on.
- [44] Dr. Onwuanyi recalled writing in his letter to the investigator that about two weeks after the incident Dr. Beekman, the medical director, spoke to him in a meeting with someone taking notes. Dr. Onwuanyi recalled being asked what the object represented to him, and he indicated it was a threat, a racial insult, and a slur directed to black people. It had insinuations of slavery and segregation. Dr. Onwuanyi agreed that his October 4, 2019 letter was in the exhibit book before the Hearing Tribunal.
- [45] Regarding the workplace environment, Dr. Onwuanyi stated that after he first arrived in May 2014, he noted over time that not everyone was fully friendly. He stated that the noose incident only made it more obvious that it was a difficult environment and that the ability to work and go home happy was missing.
- [46] Dr. Onwuanyi indicated that he was aware of the Windowpane Management report, but that no-one spoke to him or offered him the opportunity to speak. He considered it embarrassing that the report did not hear directly from him, and that it did not represent him. He indicated he was proud of his work and his experience, and was unhappy with how it represented him.
- [47] Dr. Onwuanyi stated that he had looked at the Merits Decision, and agreed that he was Dr. OO referenced in the decision. Mr. Boyer asked if Dr. Onwuanyi would like to add or clarify anything in the decision attributed to him. Dr. Onwuanyi stated that he disagreed with the Hearing Tribunal’s finding that the incident was not racially motivated. He stated that he believed it was a racial slur, and intended to be threatening and intimidating against him.

- [48] Dr. Onwuanyi stated that in 2010, he applied for a job in Grande Prairie, and Dr. Wessels, as head of surgery, did not offer him the position. When he applied again in 2014, Dr. Denkema was the head, and he was offered a position as surgical assistant. Dr. Onwuanyi stated that on one of his first days assisting Dr. Wessels, Dr. Wessels asked him why he came back. Dr. Onwuanyi recalled a later incident when Dr. Wessels was aggressive and angry toward him in the surgical room. He also recalled a time when Dr. Wessels told him that black pilots are all drug dealers. Dr. Onwuanyi stated that he was tortured and embarrassed, but could not force himself to tell Dr. Denkema. Dr. Onwuanyi stated that he believed Dr. Wessels placed the noose because he did not want Dr. Onwuanyi there. Dr. Onwuanyi stated that Dr. Wessels told him after the event that he could see his house when he was flying.
- [49] Dr. Onwuanyi stated that it has been difficult to continue to work with Dr. Wessels, but that he is a committed professional, and is waiting to find another job, because he finds continuing to work where he is to be toxic.

Cross-Examination

- [50] Dr. Onwuanyi agreed that he learned about the noose incident from Dr. Wiens and Dr. Akinbiyi, and that he had received the picture from Dr. Wiens. Dr. Onwuanyi agreed that he did not see the noose actually hanging on the door.
- [51] Mr. Heelan showed Dr. Onwuanyi notes from the meeting he had in July 2016 with Dr. Beekman. Dr. Onwuanyi said that the notes did not record his actual words. He indicated that he had stated that Dr. Wiens had seen the noose, and thought it was disgusting to leave it there and had taken it down. Dr. Onwuanyi stated that Dr. Wiens told him a complaint had been made to Medical Affairs. Dr. Onwuanyi agreed that he said that had he found the noose, he would have asked Dr. Wessels what he meant by it. He agreed that he would have been interested in what Dr. Wessels was thinking when he placed it there.
- [52] Dr. Onwuanyi agreed that in the meeting he stated he had not yet seen the pictures taken by Dr. Wiens. He agreed that since the meeting he was able to carry on working with Dr. Wessels because he has to take care of his family and pay his bills.
- [53] Dr. Onwuanyi agreed that the meeting notes stated he had never received an apology from Dr. Wessels. He only recalled that the day after the incident, Dr. Wessels stopped him and asked if he had seen anything on the door of the operating room. When Dr. Onwuanyi indicated he had not, Dr. Wessels told him not to worry about it. Dr. Onwuanyi stated that working with Dr. Wessels is part of his contract and that he had trusted the complaint process would address the issue of the noose hanging.
- [54] Dr. Onwuanyi disagreed that he had stated that he would have confronted Dr. Wessels and asked him to explain if he felt it was targeted at him. He stated that his own statement showed that he felt targeted. He disagreed that that statement was much later and that the meeting notes might have recorded his feelings at the time. Dr. Onwuanyi stated that he knew he was being targeted and the passing years did not diminish what he felt on that day. When asked if he had an explanation for why Ms. Holly Ljuden, who took the notes, might

have misunderstood him, Dr. Onwuanyi stated that he believed the preparation for the meeting was not good enough, and the words recorded were not his. When asked if he had called the incident a childish event, Dr. Onwuanyi stated he would never call such a serious incident childish.

[55] Dr. Onwuanyi agreed he met with Dr. Beekman in July 2016, and wrote his letter to the College three years later in 2019. He would have preferred if Dr. Beekman had requested a written response from him.

[56] Dr. Onwuanyi recalled having a conversation with the College investigator, and being asked if he had anything further to add to his written response to the College. When a portion of the memo was read to him, Dr. Onwuanyi stated it was inaccurate. First, Dr. Onwuanyi stated that he did not tell the investigator he had nothing else to say, but in fact, he told the investigator that he wanted to give a verbal description of the types of things he faced by saying them to the Hearing Tribunal. Second, Dr. Onwuanyi stated that if Dr. Wessels thinks he has not even caused Dr. Onwuanyi injury, then Dr. Onwuanyi feels injured twice over. Finally, Dr. Onwuanyi stated that he told the investigator he had not spoken to any reporters about the incident.

[57] Dr. Onwuanyi stated that he has made every effort to behave professionally with Dr. Wessels following the incident, including having casual conversations with him.

[58] Dr. Onwuanyi recalled discussing the noose incident with Dr. Wiens on the day of the incident. He also recalled that Dr. Wiens had asked him if he got an apology letter. Dr. Onwuanyi understood that Dr. Wessels was supposed to write three, but only wrote two and left Dr. Onwuanyi out. Dr. Onwuanyi recalled that the final time the matter was addressed between him and Dr. Wiens was when Dr. Wiens told him the case had been moved to the College. Dr. Onwuanyi confirmed he never made a formal complaint to AHS or the College. Dr. Onwuanyi disagreed that there are some people he chooses not to work with.

Re-examination

[59] Mr. Boyer asked if Dr. Onwuanyi was ever asked to review Ms. Ljuden's notes of his meeting with Dr. Beekman, and Dr. Onwuanyi stated he was not. He further stated that he had never seen the notes until the hearing.

Questions from the Hearing Tribunal

[60] The Hearing Tribunal asked Dr. Onwuanyi if he could recall how many operating rooms were being used on June 24, 2016. Dr. Onwuanyi recalled that there were five. He also stated that Dr. Wessels would definitely have known which room he was working in that day because it was published. He also stated that Dr. Wessels would have had to go through the small outer room to get to the door of operating room 4 and put up the noose. Dr. Onwuanyi indicated he was the only other visible minority working that day. Dr. Akinbiyi, who is the only other black physician was not on that day.

Dr. Tosin Akinbiyi

Examination in Chief

- [61] Dr. Akinbiyi began by summarizing his education and work experience and indicated he had worked as an orthopedic surgeon in Grand Prairie since July 2011. He indicated he was aware of the noose rope hung on the operating room door by Dr. Wessels on June 24, 2016. Dr. Akinbiyi indicated he never saw the actual rope on the door, and had only seen pictures as he was away from the hospital at the time.
- [62] Dr. Akinbiyi recalled Dr. Wessels had written him an apology letter in August 2016. Dr. Akinbiyi stated that he attributed certain symbolism to a noose, in that in most cultures worldwide, for hundreds of years, it has been the symbol of hanging someone. To Dr. Akinbiyi that is a symbol of violence. He stated that having read the transcript from the Merits hearing, even Dr. Wessels admitted it is a symbol of a deterrent in South Africa. Dr. Akinbiyi stated that in North America, there is a history of lynching and the noose as a message to “know your place in the world”. In his view, this meant that in a disagreement with a white person, he as a black man should not get too uppity, and should not have a voice. He characterized it as having an historical link to lynchings, which were described as “mob justice” and the noose was a reminder to know your role and shut up.
- [63] Regarding how the events had affected him, Dr. Akinbiyi stated that he was shocked by the event after having worked with Dr. Wessels for five years. Although there had been micro-aggressions, he did not think anyone would so blatantly and obviously cross that line. He said it made him sad, and watching how it has been dealt with both locally and by other people has saddened him, because to him, even if the intent was not there, the symbolism was blatantly obvious to all. Dr. Akinbiyi said it has made him feel there is a double standard and has made him worry for his own career.
- [64] Regarding how the incident affected his workplace, Dr. Akinbiyi stated that it has had a detrimental effect. Although there were disagreements, as in any workplace, Dr. Akinbiyi stated that people would still switch schedules, and work in a semi-collegial way. He stated that since the incident, there has been more polarization in the workplace and there is no longer any trust. He stated it has definitely affected the call schedule in that it now results in much more time on call with each doctor having to look after their own patients, even on weekends, which results in no time off. Dr. Akinbiyi felt a wedge had been created in the group. Dr. Akinbiyi stated that he did not ask for the letter of apology from Dr. Wessels.
- [65] Dr. Akinbiyi stated he had read most of the transcript from the first hearing and that he was the person referred to as TA. He stated that he thought his portrayal as overly distraught and upset was incorrect, as his personality is not aggressive, angry or confrontational. Dr. Akinbiyi stated that reading the transcript played a part in his decision to look for work elsewhere, although it was not the only reason.

Cross-Examination

- [66] Dr. Akinbiyi confirmed that he first heard about the incident from some nurses, and then spoke to Dr. Wiens. He also agreed that it was Dr. Wiens who told him it was directed at

Dr. Onwuanyi. Dr. Akinbiyi agreed he was shocked, and that this behaviour was uncharacteristic of anyone.

- [67] Dr. Akinbiyi stated that he told the College that he had not noticed prior incidents of racism directed toward him, but was aware of other incidents of racism directed at others, and had passed that information on to the College. He also stated that he had shared other incidents of racist behaviour from Dr. Wessels with the College by email. Dr. Akinbiyi disagreed with the accuracy of the interview notes made by Mr. West and stated that he had forwarded an email outlining statements made to him by others. One involved someone prepping a patient's limb for surgery with iodine, which is brown and was running down her arm. Dr. Wessels told her not to stress about it as it was the same colour as her arm and as shit. The individual was upset and ran from the room crying. In a second incident, the same person was working with Dr. Wessels when he reportedly told her that "all you brown people are useless". When she said "excuse me", he said he was speaking to someone else at the time and not her. In a third incident, also mentioned to the investigator, Dr. Wessels had reportedly told a nurse "those people are vermin" when referring to his experiences of Apartheid. Dr. Akinbiyi could not explain why this information was not included in the summary of his interview.
- [68] Dr. Akinbiyi also indicated that at some point he and Dr. Wiens moved to a separate office and formed a separate partnership. He agreed that notwithstanding the noose incident, there was a discussion about Dr. Denkema and Dr. Wessels joining his clinic space, but that since then, he and Dr. Wiens had become business partners and friends. He also agreed that he and Dr. Wiens had discussed the incident on numerous occasions.
- [69] Dr. Akinbiyi agreed he was an acquaintance of Dr. Kollias and that he did briefly discuss the incident with her. He stated that he did not know she was bringing the story to the media, but had heard she was thinking of doing so or potentially had done so, but it had gained no traction. He agreed that ultimately, he did know the media story was coming because he gave an interview about it.
- [70] Dr. Akinbiyi stated that he had been asking people if they are uncomfortable with Dr. Wessels because individuals had approached him to tell him about situations. He stated that he had asked one individual directly after being told that person might be uncomfortable. Dr. Akinbiyi stated he did so only as an informal conversation with someone he understood was a friend. He stated that he had done so because the individual had opened up to him unprompted in the past, and he did not do it as an interrogation or investigation.

Re-examination

- [71] Mr. Boyer asked Dr. Akinbiyi if his inquiries were made with any malice toward Dr. Wessels. Dr. Akinbiyi indicated they were not. He stated that once the person responded, he did not pursue the matter further.

Re-cross-examination

- [72] Mr. Heelan asked if the person Dr. Akinbiyi had inquired of was Suneeta Whiteside, and he agreed it was. He also stated it would not surprise him if she was of the view that Dr. Wessels was not racist.

Questions from the Hearing Tribunal

- [73] The Hearing Tribunal asked Dr. Akinbiyi if he recalled the date of the email to the College investigator, and he stated it was sent on Friday, July 4, 2020. He stated that he believed he received a reply from the investigator, who stated he would speak to the individuals mentioned. Dr. Akinbiyi could not recall when he heard back from the investigator.
- [74] The Hearing Tribunal also confirmed that the email or the exchange was not part of the record before the Hearing Tribunal as it did not deal with the noose incident.

Dr. Alika Lafontaine

Examination in Chief

- [75] Dr. Lafontaine began by summarizing his education and work experience. He indicated that he will be the first indigenous president of the Canadian Medical Association starting in the fall of 2021.
- [76] Dr. Lafontaine stated that he was working at the hospital on June 24, 2016, which was the day the noose was placed on the operating room door. Dr. Lafontaine stated he was working with Dr. Wiens in his operating room along with a nursing team and surgical assistant. He recalled that the surgical assistant was Dr. Onwuanyi.
- [77] Dr. Lafontaine recalled that on the day in question, he came out to wash his hands after induction, as was his usual practice, and that Dr. Wiens showed him the noose and told him what had happened. Dr. Lafontaine stated the noose was off the door at the time, but Dr. Wiens told him it had been on the door.
- [78] When asked what a noose hanging on the door meant to him, Dr. Lafontaine stated that it could not be distilled down to a single moment. He stated the trauma experienced by a person will be different for each individual concerned but especially for the black physicians it was directed toward. He stated that for him, the harm has been compounded by the fact that he has been written out of the story by different investigators.
- [79] Dr. Lafontaine stated he never expected to see a noose hung on an operating room door in an Alberta Health Services facility. He recalled that the first thing he thought was, who could have done this, and the second thing he thought was, what will happen to me for reporting it? Dr. Lafontaine stated that he took the noose to the operating room manager and explained what had happened based on his own recollection and what Dr. Wiens had shared with him. He stated that later that night he woke his wife up to tell her he thought he had just lost his job and they cried together. He stated that to people who do not live a life impacted by racism that might seem like an overreaction. Dr. Lafontaine stated that he

knew he was involved in important high-profile leadership roles at a local and national level, but he also knew what often happens following the reporting of a racialization event. He stated that often the victim and offender roles get reversed, and he had seen it multiple times. Dr. Lafontaine stated that he decided to submit the report and wait. He stated that he did not speak to anyone about it, including Dr. Wessels. Dr. Lafontaine stated he did not even talk to Dr. Akinbiyi or Dr. Wiens because he feared retaliation.

[80] Dr. Lafontaine stated that he has been trying to process his feelings about the Windowpane report. He stated that he was not involved in what went into that report perhaps because it was perceived he had an adversarial relationship with Dr. Wessels. In fact, however, he thinks Dr. Wessels is a good surgeon who performs his work in an efficient manner. Dr. Lafontaine stated that he treats him with the same collegiality and consideration he extends to all the surgeons he works with. However, Dr. Lafontaine said his professionalism should not be conflated with the idea that he had nothing to say or was unaffected by what happened.

[81] Dr. Lafontaine stated that the Windowpane report was frustrating for him in that it did not challenge Dr. Wessels' narrative of events. He stated that the Windowpane report excluded him and that he was only able to share some of his information when the College reached out to him in November 2019. He stated that his experience in these proceedings only reinforced his lifetime experience of racialized erasure, despite his privilege.

[82] Regarding specific examples of how the noose incident affected the workplace at the hospital specifically, Dr. Lafontaine stated that the incident has normalized unhealthy behaviour within the hospital and emboldened some people to be even more hostile and dysfunctional. He expressed concern that some individuals appear to escape punishment in situations like this one.

[83] Dr. Lafontaine stated that he had reviewed the Merits Decision and saw two references to himself in there. In the first instance it stated that he had taken the noose with Dr. Wiens to the operating room manager, and in the second, that Dr. Wessels talked to him and apologized to him on the day it occurred. Dr. Lafontaine agreed with the first statement, but said the second part was incorrect. Dr. Lafontaine stated that there seemed to be an understanding that the perpetrator in this event was proactive in initiating a response, but it was in fact only after the event was reported to management that any response on the part of Dr. Wessels occurred. Further, Dr. Lafontaine stated that he was not involved in any investigation that was instigated to investigate Dr. Wessels' actions. He stated that Dr. Wessels published a letter which was taken as the truth, and he did not think the circumstances behind the letter were investigated. When the investigation moved forward, it was based on a narrative that did not ring true with Dr. Lafontaine's experience.

Cross-Examination

[84] Mr. Heelan presented a memo from Bonny Nelson to Dr. Lafontaine. Dr. Lafontaine stated that he had not discussed the incident with Ms. Nelson, and would have remembered doing so. Mr. Heelan asked Dr. Lafontaine if he had ever had a conversation with someone at AHS in which he stated that the noose on the door, referring to Dr. Onwuanyi, was a joke

misconstrued. Dr. Lafontaine stated that it was difficult for him to understand why he would say that, given his history. He also denied stating that he was a disinterested third party who played no part in it or did anything. He also stated that he would not have said he did not believe Dr. Wessels intended any malice. Dr. Lafontaine reiterated that because he was not involved in the official investigation, he was not aware of the full scope of events until recently.

- [85] Dr. Lafontaine disagreed that his evidence had the benefit of reflecting on the matter over time, and stated instead that there were events outside the investigation that led him to learn things he did not previously know. He agreed that there was an aggregated understanding of what happened. Dr. Lafontaine agreed that he thought Dr. Wessels is a good surgeon, but did not think that was linked to his choice to place the noose on the door.
- [86] Mr. Heelan asked Dr. Lafontaine if he thought that as part of a rehabilitation for Dr. Wessels, it would be beneficial for him to engage in an exploration of the post-Colonial history of First Nations people in Canada. Dr. Lafontaine answered that as an expert in the area, he would not recommend rehabilitation as a first step, because of the aggregated harm over many years.
- [87] There were no questions on redirect or from the Hearing Tribunal.

Dr. Sandy Hershcovis

Examination in Chief

- [88] Dr. Hershcovis began by reviewing her curriculum vitae and stated that she is currently the associate dean at the Haskayne School of Business. Regarding her teaching and research experience in workplace harassment, Dr. Hershcovis stated that her PhD dissertation examined the causes and consequences of workplace harassment and she has continued to publish extensively in the area, including more than 20 research papers, and editing a book on the topic. She has also presented her work at more than 15 national and international conferences, including as a keynote speaker, and has published book chapters. She stated that she has been inducted as a member of the Royal Society College of New Scholars, Artists and Scientists and this year became a fellow of the Society of Industrial and Organizational Psychology for outstanding contributions in the field of workplace harassment. She stated that her teaching focusses primarily on the PhD program, which includes advanced teaching on workplace harassment, including a focus on workplace bullying, abuse of supervision, sexual harassment, power, and employee wellbeing.
- [89] No objection was raised to Dr. Hershcovis' qualification as an expert providing opinion evidence on workplace harassment.
- [90] Dr. Hershcovis agreed that she had prepared a report on the incident of June 24, 2016. In that report, she addressed two questions: first, how would Dr. Wessels' conduct be viewed on a spectrum of workplace harassment; and second, what would be the impact of the conduct on the workplace, including on teams. Dr. Hershcovis stated that in preparing her report she reviewed the Merits Decision, as well as its exhibits, and the academic literature on workplace harassment.

- [91] Regarding the first question, she stated that the conduct in question was the placing of the noose on the surgical room door. She reviewed different definitions of workplace harassment, and stated that in the *Occupational Health and Safety Act* of Alberta, it is defined as “a single or repeated incident of objectionable or unwelcome conduct, comment, bullying or action intended to intimidate, offend, degrade, or humiliate a particular person or group.” She stated that workplace violence is defined separately.
- [92] Dr. Hershcovis stated that workplace harassment behaviours can range from minor psychological acts to threats and physical violence. She stated that although there are different measures to assess harassment, the three most common scales all ask questions related to threats of violence. She also stated that workplace expectations around courtesy and conduct are commonly understood by employees across virtually all organizations. In the medical profession, it is explicitly stated in the Canadian Medical Association’s Code of Ethics that all employees must understand what constitutes appropriate workplace conduct and act accordingly.
- [93] Regarding Dr. Wessels’ behaviour, Dr. Hershcovis stated that she looked at four factors to assess where it stands on the spectrum of workplace harassment. Those four factors were perceived intentionality of the act, frequency or persistence of the act, intensity of the act, and the power of the harasser relative to the victim.
- [94] Regarding intentionality, she stated that hanging a noose would likely be viewed by victims as intentional, both in the intent to commit the act, and in the intent to cause harm. She assessed this as an exacerbating factor in this case.
- [95] Regarding persistence or whether the behaviour was ongoing, she stated that the documentation refers to at least one prior incident in which Dr. Wessels asked Dr. Onwuanyi not to work for him for a while, and there are also allusions to a culture of “lack of cooperation”. However, she stated that these are not enough to infer harassment, and therefore, based on the information she had, she characterized the incident as an isolated act, which would be a mitigating factor.
- [96] Regarding the third factor of intensity, she considered the display of the noose to imply a threat of violence. She considered the conduct consistent with the definition of workplace violence in that it would be considered a threat in workplace literature. She considered the hanging of the noose to be on the high or severe end of the mistreatment spectrum, which made it an exacerbating factor.
- [97] Regarding the final factor of power as the ability to exert influence over the behaviour of others, her research indicates that when the source of harassment has more power, the consequences for the victims is worse. She assessed Dr. Wessels as having formal power over Dr. Onwuanyi by virtue of his higher status position, and therefore she found this to be an exacerbating factor.
- [98] Overall, in answer to the first question, she found the evidence showed the act was perceived as intentional, intense, and that the perpetrator had higher power than the victim, which were all exacerbating factors. She found that the one mitigating factor was that Dr.

Wessels had perpetrated only one known incident of workplace harassment. On balance, Dr. Hershcovis evaluated the incident as a severe form of workplace harassment consistent with the definition of workplace violence.

- [99] Regarding the second question, Dr. Hershcovis broke her analysis down into two broad categories: individual outcomes and team outcomes. Regarding individual outcomes, Dr. Hershcovis said that workplace harassment affects victim attitudes, behaviours, and health and that it results in lower job satisfaction, lower organizational commitment, and higher intention to quit the job. Research has shown this is true for witnesses as well as direct victims. It also affects victim job performance and creates counterproductive work behaviour. Dr. Hershcovis stated that victims of harassment also have poorer performance and are less creative. She stated that the adverse outcomes of workplace harassment extend beyond the victim to others in the workplace. Dr. Hershcovis stated that workplace harassment also leads to negative health outcomes for victims including burnout, depression, headaches, and stomach aches. Victims can also exhibit symptoms of post-traumatic stress disorder. Witnesses also experience negative health effects including exhaustion and emotional drain.
- [100] Regarding team outcomes, Dr. Hershcovis stated that workplace harassment can lead to higher levels of group harassment, worse team processes and lower team performance. She cited studies showing that even mild harassment such as rudeness creates adverse effects on team processes and performance. Her inference was that therefore more severe forms of harassment would likely create even stronger adverse effects.

Cross-Examination

- [101] Dr. Hershcovis agreed that she was not a legal scholar, had no training or expertise in commenting on sentencing in professional disciplinary matters, and that her research into workplace harassment was generalized, and might not apply to a specific workplace. Dr. Hershcovis further agreed that she was not experienced in workplace investigations and assessments which would involve investigations into specific workplaces and their problems.
- [102] Dr. Hershcovis agreed that in forming her opinions she did not conduct a workplace investigation or interview with any of the staff at the hospital in relation to this matter. She stated she was not aware of the media articles when she reviewed the matter. She indicated that although she had inferred that the noose could have been intended for Dr. Onwuanyi, she also was not 100 percent clear on that and understood that it could have been targeted at anyone in the room.
- [103] Dr. Hershcovis agreed that her research showed harassment is contagious, and that this effect is stronger in groups that perceive they will not be punished for their behaviour. Dr. Hershcovis agreed she had not read the Windowpane report and did not have it when she prepared her report. Ms. Gagnon put to Dr. Hershcovis that the Windowpane report concluded the hospital was plagued by a culture of bullying and that she was not aware of this finding. Dr. Hershcovis agreed she was not aware of this conclusion. Dr. Hershcovis

agreed she also could not have considered the Windowpane report conclusion that the behaviour had been tolerated because of a fear of losing physicians.

Re-examination

[104] Dr. Hershcovis agreed that she was not surprised by the conclusions in Windowpane report, given the research and literature she had reviewed.

Questions from the Hearing Tribunal

[105] The Hearing Tribunal asked Dr. Hershcovis if the solitary nature of the event was a mitigating factor in assessing the severity of what happened. Dr. Hershcovis stated that the more frequent and ongoing workplace bullying is, the more severe it is. She stated that a single incident can be understood as a mistake, or as something that can be forgiven and worked on. She indicated that the more ongoing and persistent it is, the more difficult it becomes to correct and the more severely it is viewed. Dr. Hershcovis agreed that the evidence she was provided indicated that there had been only the one incident.

Dr. Dawn Hartfield

Examination in Chief

[106] Dr. Hartfield began by explaining her role as complaints director for the College. She stated that she had received correspondence from Dr. Osei-Tutu on behalf of the Black Physicians Association of Alberta on June 13, 2021 which included his curriculum vitae as well as a statement by his Association to the College.

[107] Dr. Hartfield indicated that Dr. Osei-Tutu had requested that the statement be read in its entirety in the proceedings, and she proceeded to read his letter. In the letter, Dr. Osei-Tutu introduced himself and his Association before commenting on two concerns raised by his review of the Merits Decision. First, he asked about the message a noose sends. The letter indicated that Dr. Wessels' intentions can only be known by him, but everyone can judge the impact of those actions. The letter stated that the Association, like the Hearing Tribunal, rejected Dr. Wessels' argument that it was intended to promote team building. Instead, the letter stated that the noose is a globally recognized symbol of death, violence, and racial terror. The letter also discussed the history of violence against black people in South Africa and in the United States. The letter also addressed the effect of the noose incident on public trust and noted that while Dr. Onwuanyi did not receive an apology, the white doctors present did. The letter addressed the effect on black doctors generally and on black patients and how it erodes their trust in the system. The letter also indicated that the sanction chosen by the Tribunal will also send a message.

[108] The following witnesses were called by Dr. Wessels.

Dr. Raubenheimer Denkema

Examination in Chief

- [109] Dr. Denkema began by reviewing his work history and indicated that he had been employed at the Grande Prairie hospital since 2006 as an orthopedic surgeon and (that he) became head of the orthopedic department in 2011. Around 2012, he became chief of surgery for the surgical unit in the operating room, and still holds those positions. Two or three years ago, he also became chief of orthopedic services in the whole North Zone. However, he stated that he was appearing before the Tribunal as a private physician and did not represent AHS.
- [110] Dr. Denkema indicated that he and Dr. Wessels both started working at the Grande Prairie hospital at around the same time. Dr. Denkema indicated that he and Dr. Wessels are friends, partners, and colleagues. He indicated that the two of them share a practice with patients and finances. Dr. Denkema stated that Dr. Ewen Jones is also a member of the practice. Dr. Denkema stated that his friendship with Dr. Wessels would not affect his testimony, as he was present to tell the truth.
- [111] Regarding the noose incident, Dr. Denkema stated that on June 24, 2016, he was in another operating room and when he came out to dictate his notes, Dr. Wessels came and told him what he had done. Dr. Denkema recalled that their conversation was in Afrikaans, as they both speak that language. Dr. Denkema recalled that Dr. Wessels explained he had hung a rope, and in translation it would be a lasso used to capture or herd animals. Dr. Denkema recalled that when he asked Dr. Wessels why he had done that, Dr. Wessels stated that it was to herd people together to move in the same direction. Dr. Denkema did not think Dr. Wessels indicated that it was aimed at any specific individual, but was more general. Dr. Denkema stated that he recalled Dr. Wessels' demeanour as being embarrassed and apologetic. Dr. Denkema recalled that later Dr. Wessels told him there might be racial connotations to it.
- [112] Dr. Denkema recalled that Dr. Wessels was embarrassed and apologetic and that he wanted to make it right by apologizing to people. He stated that Dr. Wessels wrote him a formal email to apologize for what happened, and Dr. Denkema indicated he forwarded that to Medical Affairs.
- [113] In Dr. Denkema's opinion, the hanging of the rope fashioned like a noose was completely out of character for Dr. Wessels, who has never expressed any aggressive behaviour or tendencies since he has known him. Dr. Denkema stated Dr. Wessels is a good physician who cares deeply for his patients and has tried to make the system better. Dr. Denkema stated that when Dr. Wessels is frustrated by things, he gets involved and finds solutions. Dr. Denkema provided examples of Dr. Wessels' involvement in purchasing equipment and improving patient flow.
- [114] Dr. Denkema was asked to recall the reaction of the operating room staff on the day in question. He stated that, as chief of surgery, he has a good feel for what happens, and in his recollection, the rest of the day was just like any other. He stated that he had told the

College he was surprised that it became a big thing, because usually people come to talk to him about very trivial things, and in this case, no-one said anything to him.

- [115] Regarding impact on the hospital staff now, Dr. Denkema stated that there is a greater awareness globally of racism and systemic racism. Dr. Denkema stated that although he has seen a big impact on Dr. Wessels and how he is treated and how he now “has to pussyfoot around other people”, he has not noticed a major change in the operating room. Dr. Denkema acknowledged that there are problems with the culture in the operating room, but that this was just one of many small things.
- [116] Dr. Denkema stated that he did not think the noose hanging incident impacted the discord between the orthopedic surgeons. Rather, he stated that discord predated the incident and started when Dr. Wiens joined the group. Initially the discord was between Dr. Wiens and Dr. Wessels, and later between Dr. Wiens and Dr. Denkema. Dr. Denkema stated that the issues related to money and patient care. He stated that Dr. Wessels insists on good notes for patient handover, and that when he calls this out it creates tension. Dr. Denkema stated that since the noose incident, the same problems with physicians constantly breaking rules, bullying and creating a toxic work environment with concerns about patient safety continues.
- [117] Regarding the discord between Dr. Wiens and Dr. Wessels, Dr. Denkema stated that he thought Dr. Wiens was a bully who gets angry, shouts and exhibits aggressive behaviour. Dr. Denkema stated that when calm, Dr. Wiens has a very monotonous flat affect, but when he disagrees or becomes passionate, he shouts, yells, points his finger, and leaves meetings. He stated that he had witnessed Dr. Wiens shouting at physician leaders including himself and one department manager, even in front of patients, to the point where other staff had asked them to break it up.
- [118] Regarding why Dr. Akinbiyi and Dr. Wiens left the practice they shared with Dr. Denkema, Dr. Denkema stated that he and Dr. Wessels were not comfortable continuing with Dr. Wiens in particular. It started at a meeting at which Dr. Wessels told Dr. Wiens that since he was not a partner he had no say in the management of finances and patients. Dr. Denkema stated that when they were looking at expanding to a bigger office space, Dr. Wiens and Dr. Akinbiyi wanted to purchase a building, while Dr. Denkema did not. Dr. Denkema recalled that this process was in 2016 or 2017. The last meeting they had was in May 2018. Dr. Denkema recalled Dr. Wiens and Dr. Akinbiyi bought a place and offered to lease it with Dr. Denkema and Dr. Wessels in 2018.
- [119] Dr. Denkema did not believe that the decision to separate the practices had to do with the noose incident. He stated there were always personality issues, but they had to get along. The noose incident changed nothing in his view and he stated it was never raised in any meetings or business discussions with either Dr. Wiens or Dr. Akinbiyi.
- [120] Regarding the Windowpane report, which was commissioned by the Minister of Health to look at the discord at the Grande Prairie hospital, Dr. Denkema indicated he had read it and found it a good comprehensive report. He stated that there was nothing in it that he had personal knowledge of that he disagreed with. When asked to review a list of the offending

behaviours that the report identified as taking place at the hospital, Dr. Denkema stated that within the operating room, and the orthopedic surgeons' group in particular, he agreed that he had seen or heard of colleagues being yelled at, especially in front of other colleagues or patients and that this type of behavior was typical of Dr. Wiens. He had not seen or heard other orthopedic colleagues do this same thing. Regarding threatening complaints against colleagues, he stated that Dr. Wiens had threatened to make complaints against colleagues, but he was not aware of other orthopedic surgeons doing so.

[121] Regarding not following established protocols and procedures, he stated again that Dr. Wiens did this, and Dr. Akinbiyi to a lesser extent, but no one else. He had no knowledge of anyone threatening or actually physically harming a colleague, but was aware of passive-aggressive behaviours by Dr. Wiens, but not other orthopedic surgeons. He did not recall instances of people talking about others behind their backs. He did acknowledge that he and Dr. Wessels frequently speak Afrikaans to each other, but that it has never been done to exclude anyone, and he stated that they switch to English if anyone joins the conversation.

[122] He stated that Dr. Wiens will ignore or not speak to both Dr. Jones and to himself, Dr. Denkema. He had heard of instances of doctors speaking about a colleague to others as if the colleague was not there. Dr. Denkema stated that Dr. Wiens would rearrange the established order of things, but could not speak to anyone else requiring things that did not need to be done or not being responsive. Dr. Denkema had not seen anyone targeting other colleagues or encouraging others to do so, but wondered if that is what was happening to Dr. Wessels. Dr. Denkema had not observed any physicians throwing things.

Cross-Examination

[123] Mr. Boyer showed Dr. Denkema two photos of the noose in question. Dr. Denkema stated that to him, a noose is a symbol of racism and something used to hang people. He stated that he was not sure that in 2016 he was as culturally aware, because in South Africa, a noose is not a symbol of racism. Dr. Denkema stated that Dr. Wessels told him he had fashioned it as a lasso which has the same mechanism, but is used to catch animals.

[124] Dr. Denkema agreed that the noose can be perceived as a very threatening, intimidating, and violent symbol, and that he would have understood it as threatening in 2016, although he might not have understood it as an instrument of death.

[125] Dr. Denkema agreed he learned of the incident second hand, and would not have hung a noose on the door of an operating room himself. He also stated that he did not think it could be justified in any circumstances, especially now. When asked if the existence of workplace discord could justify hanging a noose on a door, Dr. Denkema reiterated that he did not think a noose should be hung.

Questions from the Hearing Tribunal

[126] In response to a question from the Hearing Tribunal, Dr. Denkema agreed that he was aware that Dr. Wessels hung the noose on the door of a specific operating room. Dr. Denkema stated that he is not sure if he knew at the time which surgeons were working in

the room. He agreed that it was obviously aimed at one or more individuals who were working in that particular room.

- [127] Dr. Denkema stated that when Dr. Wessels came to him about the incident, he was very apologetic, but did not think he apologized to him. Dr. Denkema stated that Dr. Wessels had expressed the same regret to others after the fact, but was not sure what he said to them at the time. When asked hypothetically how he might have interpreted seeing the noose on the door himself, he stated that he would have thought it was a silly joke, although he might now feel differently. Dr. Denkema stated he would not have considered it a team building exercise. If he had seen it on his office door, he would need to know who placed it and what their intention was, but just seeing it would not have evoked any response or emotion. Without knowing who placed it, he stated he would certainly have seen it as maybe intimidating.

Dr. Liam McGowan

Examination in Chief

- [128] Dr. McGowan began by reviewing his history at the Grande Prairie hospital. He stated that he worked as a fulltime anaesthesiologist in Grande Prairie between 2001 and 2019, when he moved to Victoria.
- [129] Dr. McGowan stated that his relationship with Dr. Wessels was professional and friendly. He stated they were both interested in aviation and in doing things better at the hospital. Dr. McGowan stated that his friendship with Dr. Wessels would have no impact on his evidence.
- [130] Dr. McGowan stated that after reading the Merits Decision he contacted Dr. Michael Caffaro, who was then Complaints Director for the College. Ms. Gagnon showed the witness a memo dating from February 19, 2021 from Mr. Boyer to Dr. Caffaro. Dr. McGowan confirmed he had seen the text before, because Dr. Caffaro sent him a copy of it after their conversation. Dr. McGowan stated that he had made some corrections and sent it back, and Dr. Caffaro had sent him a final version. Dr. McGowan stated that Dr. Caffaro had sent it to him to confirm that it accurately reflected the information he had relayed in the phone call on or around February 19, 2021.
- [131] Ms. Gagnon read out part of the memo which stated that between cases, the surgeons and anesthesiologists would tie knots, including nooses, to show each other they could. Dr. McGowan confirmed that in the past, orthopedic surgeons would use traction to stabilize fractures, and he distinctly recalled taking some of the cord used in the traction mechanism and tying it into knots, including occasionally into a noose. He recalled telling a now retired orthopedic surgeon that if he continued to bring him cases afterhours, he would use the noose on himself as an exit strategy. Dr. McGowan stated he would hang it on the anaesthesia machine. Dr. McGowan indicated he did not do it often, maybe 4 or 5 times over the years, and he thinks the last time would have been in 2014, which was the photo he sent to Dr. Caffaro. Dr. McGowan was confident Dr. Wessels would have seen the nooses he hung, because he recalled Dr. Wessels saying he knew how to tie one too. Dr.

McGowan stated that when he hung a noose his intent was never to threaten anyone but that it was meant as a joke.

- [132] Regarding joking in the operating room, he stated there is a lot of joking, but it has become more difficult over the years. He stated he has seen things that could be considered unprofessional. However, a lot of the joking he considered not unprofessional, but building a sense of community and alleviating tension.
- [133] Returning to the memo, Dr. McGowan affirmed comments in there that he viewed Dr. Wessels as a good surgeon, and neither racist nor discriminatory. Dr. McGowan described Dr. Wessels personality as very professional and a team player. Dr. McGowan explained that he was concerned that raising this issue again after many years was being used by some surgeons who were getting a lot of complaints and felt picked on. He cited Dr. Wiens as his principal concern, although he still viewed Dr. Wiens as a friend. However, he stated that Dr. Wiens was “getting a lot of heat” and after the noose incident, it seemed to him that Dr. Wiens was trying to redirect the attention.
- [134] Regarding June 24, 2016, Dr. McGowan recalled that he was working in the operating room and had already anaesthetized the patient, and was waiting for the case to begin. He recalled someone coming in looking anxious, and being told Dr. Wessels had taped a small cord noose to the window between the two operating rooms. Dr. McGowan recalled that everyone then went on with their day. He did not recall any other impact on the hospital in the following years.

Cross-Examination

- [135] Dr. McGowan agreed that he had not actually seen the noose taped on the door on that day, but had seen pictures since in the news articles. He agreed it looked exactly like a hangman’s noose. When asked what it meant to him, Dr. McGowan stated that it was used for executing criminals. He agreed that even when he was joking with his now retired colleague, he recognized that a noose was an instrument for death used for capital punishment and suicide in Canada. Dr. McGowan also acknowledged that in the southern United States it has further connotations of racism.
- [136] Dr. McGowan agreed that he would not hang a noose on the door of an operating room, and that it would be difficult to justify. He agreed that even with discord in a workplace, the hanging of a noose would send a message to the person with whom one had the discord and that would be neither appropriate nor justified.

Questions from the Hearing Tribunal

- [137] When asked about the person who came into the operating room and said there was a fuss, Dr. McGowan stated that there seemed to be some tension between the rooms. When asked to describe the tension or fuss, Dr. McGowan stated it was an anxiety and it was a negative stress rather than a team-building anxiety, which he stated was very common during the day in an operating room. Dr. McGowan stated he thought it was more a negative tension.

Dr. Ewen Jones

Prior to testimony being given by Dr. Jones, Mr. Kozak, Independent Legal Counsel for the Hearing Tribunal, advised the parties that Dr. Jones had consulted with his firm previously about an unrelated issue. After an in-camera discussion, all parties confirmed that they were content to proceed with an appropriate ethical barrier in place as Dr. Jones testified.

Examination in Chief

- [138] Dr. Jones began his testimony by stating his history and positions he has held. He stated that he has worked at the Grande Prairie hospital for the last six years, first as a private locum, and more recently in a permanent position as an orthopedic surgeon.
- [139] Dr. Jones stated that he first met Dr. Wessels in 2014 when he did his rotation as a resident. He characterized his relationship with Dr. Wessels as collegial, and with an element of shared interests. Dr. Jones stated that his relationship with Dr. Wessels would not influence his testimony.
- [140] Dr. Jones indicated that he had reviewed the Merits Decision and he understood that the current process was to determine the sanction. He further understood that the determination to be made, related to Dr. Wessels having hung a noose on the operating room door on June 24, 2016.
- [141] Dr. Jones stated that he first learned of the incident on the date it happened, when he was in a different operating room. Dr. Jones stated that Dr. Onwuanyi approached him and started laughing, asking Dr. Jones if he had heard about the incident. Dr. Jones stated that when he asked “what incident?” Dr. Onwuanyi told him that someone hung a rope up on the door. Dr. Jones stated that he thought Dr. Onwuanyi’s laughter was pretty normal, as Dr. Onwuanyi often starts “with a little bit of a chuckle when he talks to you about things”. Dr. Jones perceived nothing untoward about it, and did not know more about the incident until a few days later.
- [142] Dr. Jones stated that at the time, he did not know it was Dr. Wessels who had hung the noose, and did not find out until the media story. Dr. Jones stated that he was surprised to hear Dr. Wessels had done it because Dr. Wessels seems to Dr. Jones to be an upright and moral person who is direct and will say what is on his mind. Dr. Jones stated that Dr. Wessels is honest about everything, and approaches everyone the same way. He stated that he had never seen Dr. Wessels behave in such a way in his previous experience.
- [143] Dr. Jones could recall no reaction in the operating room on the day of June 24, 2016 to the noose having been hung. He stated that a few days later, when Dr. Onwuanyi was working as his assistant, Dr. Onwuanyi let Dr. Jones know he would have to go down to the office and that he was being made to write a complaint. Dr. Jones could not recall having any further discussion with anyone regarding the incident until it “blew up again”.
- [144] Dr. Jones indicated that when it did arise again, things did start to change. For example, everything became more divided, with people forming cliques based on similar opinions.

However, he recalled it was just a few individuals until the investigation started and then AHS got involved. He stated that there was more animosity within the orthopedic department, and less collegiality. Dr. Jones recalled there was less give and take in discussions, and more opposition. He recalled that this change occurred in 2020 after the media reports about the incident.

- [145] Dr. Jones agreed that there was ongoing discord in the orthopedic department. He recalled that when he first joined the department, it was obvious that Dr. Wiens held a grudge against Dr. Wessels. Dr. Jones stated that Dr. Wiens had told him this was because he believed Dr. Wessels had reported him to Alberta Health for billing malpractices. Dr. Jones stated that Dr. Wiens told him the audit took more than two years and made his life hell, for which he blamed Dr. Wessels. Dr. Jones stated there were other issues as well, relating to Dr. Wiens joining the initial office of Dr. Wessels, Dr. Denkema, and Dr. Akinbiyi. Dr. Jones stated that Dr. Wiens said he was upset that Dr. Wessels told him he did not have a voting right as he was not a financial contributor to the office.
- [146] Dr. Jones also stated that there was a general belief, beyond the orthopedic surgeons, that there was an inner circle of privileged surgeons of South African origin at the hospital, who could “do whatever they like”. Dr. Jones stated that Dr. Wiens had told him he did not like having international graduates working in Canada. Dr. Jones stated that he did not think the noose incident had any impact on the discord between the orthopedic surgeons before 2020.
- [147] Regarding the Windowpane report, Dr. Jones indicated he had read it and generally agreed with its findings. He stated that he thought some of the recommendations might not be feasible within the infrastructure, but otherwise he thought it was fair. Ms. Gagnon directed Dr. Jones to the summary of the offending behaviours in the report and asked if he had witnessed those behaviours in the operating room, and in particular from any of the orthopedic surgeons he works with.
- [148] Dr. Jones stated that he had witnessed yelling, and that it had only been Dr. Wiens he had seen yelling, and that this had been on multiple occasions and had been done in a very threatening way toward other people. He disagreed with Dr. Wiens’ testimony that he speaks in a monotone fashion and never raises his voice. Dr. Jones stated that he had personally witnessed Dr. Wiens yelling at people. Dr. Jones indicated he had not witnessed anyone threatening to make complaints against someone else. He stated he had seen people not following established protocols on multiple occasions, in particular Dr. Akinbiyi and Dr. Wiens within the orthopedic group.
- [149] Regarding threatening to or actually physically harming a colleague, Dr. Jones stated that Dr. Wiens once told him he would like to take Dr. Wessels out to a parking lot and beat him. Dr. Jones recalled saying “you shouldn’t joke about things like this” and that Dr. Wiens had been angry and indicated he was not joking. Dr. Jones stated he had reported the incident to Dr. Wessels. Dr. Jones stated he was also aware of a more recent incident where a nurse had an indirect injury caused by Dr. Wiens. Dr. Jones stated he had seen people refusing to make room for someone to pass them, and that specifically he recalled this behaviour by Dr. Wiens, but could not recall seeing anyone else do it.

- [150] Dr. Jones confessed that he talked about others behind their backs, as did Dr. Wessels. However, he could not recall when this would have been done in anyone else's hearing. Dr. Jones did not agree that speaking in a foreign language in front of colleagues would exclude them and create suspicion, but he did agree that the large group of Afrikaans speakers would speak to each other. In particular, he had witnessed Dr. Wessels and Dr. Denkema doing this.
- [151] Dr. Jones again had seen Dr. Wiens, but no one else, ignore or not speak to a colleague. Dr. Jones indicated that he had witnessed people requiring things that did not need to be done, rearranging the established order of activities, and not being responsive, but did not view it as necessarily being "sabotaging". For example, within the orthopedic group, Dr. Jones indicated that certain surgeons request certain operating room tables, and that he had seen Dr. Wiens do this. The only example of unnecessary things being required that he could recall, was the ordering of inappropriate and time-consuming tests that delayed a patient going into surgery. He was unsure if this was sabotage or merely poor clinical judgment. Regarding rearranging the established order, Dr. Jones indicated that he has seen this happen when patients were moved from an elective list to an urgent trauma list, for example by Dr. Akinbiyi, but he stated that because these were not his patients, he could not speak to the urgency, and he did not think it was sabotage, merely circumventing the norm.
- [152] Dr. Jones agreed that there was targeting of colleagues, and in particular by Dr. Wiens. Specifically, Dr. Jones recalled that Dr. Wiens had told him he was going to get Dr. Wessels and had filed numerous complaints in the hopes of getting rid of Dr. Wessels and some of the other South Africans as well. Dr. Jones stated that after Dr. Wiens warmed up to him, Dr. Wiens would approach him to vent complaints about the hospital. Dr. Jones stated that if the stuff Dr. Wiens complained about was true, he would have a legitimate grievance. But Dr. Jones stated, in time he started to think that some of the things Dr. Wiens was complaining about were not quite as he was telling it. Dr. Jones stated that he tried to calm Dr. Wiens down and help him move past the issues, and he thought he was being successful. However, then Dr. Wiens told Dr. Jones something big was coming, and that was just before the news article was published.
- [153] Dr. Jones stated that he currently shares an office with Dr. Denkema and Dr. Wessels, but that he had also been asked to join Dr. Wiens' office when he relocated to Grand Prairie.
- [154] Dr. Jones stated in response to the Windowpane report that he had never seen anyone throw things, but that he had witnessed aggressive gesticulations and yelling.
- [155] Dr. Jones stated that Dr. Wiens had attempted to file a complaint against him. Dr. Jones related a story about Dr. Wiens emailing the facilities director to report Dr. Jones for not responding to pages. In Dr. Jones' view, Dr. Wiens fabricated the allegations and planted evidence to malign him.

Cross-Examination

- [156] Dr. Jones agreed that he had seen the pictures of the noose in the news article. He stated that he grew up in several countries, and was not aware of the symbolism of the noose until after he watched a movie. He indicated he was aware of Apartheid and the history of racial inequality in the United States, but his experience with the noose was that it was a rope with 13 turns in it and that it was used in executions. He stated he was unaware it was used to intimidate people, although he can appreciate that it would be intimidating.
- [157] Dr. Jones stated that he would not hang a noose on the door of an operating room. When asked if it would be justifiable or excusable to hang a noose on an operating room door, Dr. Jones stated it would depend on the circumstances and that sometimes people make stupid decisions. He stated that in his opinion it was a stupid thing to do, but that maybe it was a rash decision that seemed funny like a funny joke but was actually very hurtful.

Dr. Robert Staples

Examination in Chief

- [158] Dr. Staples began by detailing his history with the Grande Prairie hospital. He stated that he has worked there since 1984, 23 years as an emergency room physician and that he has worked in the operating room as an anaesthetist for 37 years. He is currently a staff anaesthetist at the hospital.
- [159] Dr. Staples indicated that he first met Dr. Wessels when Dr. Wessels started at the hospital. He indicated that they have a solid working relationship, which he did not think would influence his testimony in any way.
- [160] Dr. Staples stated that he had read the Merits Decision and understood that the hearing was to determine the appropriate sanction for Dr. Wessels' hanging of the noose on the operating room door on June 24, 2016.
- [161] Dr. Staples stated that he first heard about the noose hanging two or three years after the incident in question when it was mentioned in passing in a conversation in the doctors' lounge. He stated that he was present in the operating room on June 24, 2016, but did not hear about the incident. Dr. Staples stated he was working in a gynaecology room approximately 20 feet away.
- [162] Regarding the impact on the hospital staff, Dr. Staples stated that in his view it had created a negative impact. He stated that the multiple inquiries made him question why someone would continue to work at the hospital, when they were supposed to be working as a team. He attributed the dysfunction to the multiple inquiries.
- [163] Dr. Staples stated that over the last four years, the operating rooms had been unable to operate at one hundred percent capacity. He noted that this affected surgeons, anaesthetists and patient care. It created an unpleasant environment that the administration did not appear capable of solving. Dr. Staples stated that each surgeon was asked to diminish their surgical time, which meant they could get less work done. He stated that up until 10 years

previously, the surgeons could operate until early in the morning to get rid of the add-on list, but budget constraints had restricted how late they could operate. He stated this led to surgeons competing to get their patients taken care of. Dr. Staples blamed the noose incident on the feelings of frustration. In his view, the noose incident had nothing to do with racism, and everything to do with frustration. Dr. Staples indicated that the offender used poor judgment, and that it had since been tried three or four times on different levels and in the media.

- [164] Dr. Staples stated that it was not characteristic of Dr. Wessels to hang the noose. He stated that this was based on working with him for 16 years. Dr. Staples stated he had seen no evidence of racism or seeing people moved up or down the surgical list because of their skin colour or religion. Dr. Staples stated that Dr. Wessels was an excellent surgeon who had cared for Dr. Staples family members.
- [165] Dr. Staples stated that the noose incident happened on a Friday, and in his view, there are “wider limits” for behaviour on Fridays. In his view, this might be relevant to what happened on that evening.
- [166] Regarding the Windowpane report. Dr. Staples stated that he had read it and found it all-encompassing. Dr. Staples stated that he was encouraged that the report found racism to be minimal or a non-issue at the hospital but felt that the report was overly critical of the surgical staff, while the administration came off lightly.
- [167] Ms. Gagnon asked Dr. Staples about a conversation he had recently had with Dr. Wiens regarding a patient order for Dr. Wessels. Dr. Staples stated that on a Wednesday or Thursday in January, when Dr. Wiens was the orthopedic surgeon on call, there were only Dr. Wiens’ patients on the list. One patient was about 30 years old and was African-Canadian. Dr. Staples recalled that Dr. Wiens told him he wanted to do that patient early, because he was afraid he would otherwise get bumped off the list because of his colour. Dr. Staples stated that when he checked the list, the on-call surgeon operating on the following day was Dr. Wessels.

Cross-Examination

- [168] Dr. Staples stated that he had seen the picture of the noose hung on the door of the operating room. When asked about its significance, Dr. Staples stated that he had done no research, but understood it was nothing positive. It made him think of cowboy westerns he had seen as a child.
- [169] When asked if he recognized that the noose could send a dark and sinister message to other communities, Dr. Staples stated he did not know that until his experiences over the last six months. Dr. Staples stated he was not aware of the noose as an instrument of threat and intimidation to people of colour until recently.
- [170] Dr. Staples stated that hanging a noose on a door struck him as odd and misguided, even if it was done on a Friday. He did not see how it would help workplace discord. When asked if he would hang a noose on a door, Dr. Staples stated that he did not have any skill with knots.

Nicole Ressler

Examination in Chief

- [171] Ms. Ressler began by stating her history at the Grande Prairie hospital. She stated that she has worked in various positions since 2001, mostly as an operating room nurse and in May began work as a nurse educator in the operating room.
- [172] Ms. Ressler stated that she first met Dr. Wessels when he began working in the operating room. She stated that she had a great working relationship with him, and that he is one of her favourite surgeons to work with, and that orthopedics is her favourite service to work in. She stated that Dr. Wessels is always pleasant to work with, and that no-one has to track him down. She agreed they were friends and had a good working relationship, but stated this although it would affect her testimony, it would not affect the extent to which she would tell the truth.
- [173] Ms. Ressler stated that she had read the Merits Decision. When asked about her involvement in the noose incident, Ms. Ressler stated she was directly involved. She stated she was talking to Dr. Wessels between operating rooms 3 and 4, and complaining to him about the lack of disciplinary action for disruptive behaviour in the hospital. Ms. Ressler stated that Dr. Wessels was playing with a piece of rope kept between the rooms for traction weights and agreeing with her about the lack of disciplinary action. Dr. Wessels told her he would “tie this right here” for her and leave it in case anybody misbehaved that day. Ms. Ressler said she then went into her room, and that when she came out later, she spoke to her manager because she had heard someone had taken offence to the piece of rope and taken a photo of it.
- [174] Ms. Ressler stated that she was working in either operating room 3 or 4, and did not know if it was hung on the door of the room where she was working. She only determined this later from reading the news article. She confirmed that she had previously stated that Dr. Wessels hung it on the operating room door in case she needed it. Ms. Ressler stated she understood it was a general statement and not targeted toward anyone in particular.
- [175] Regarding how the incident had affected her, Ms. Ressler stated it was stressful for her because she felt that if she had not been complaining to Dr. Wessels that day, the whole process would not have been initiated. She felt that Dr. Wessels’ action had been in support of her and her frustration at the system. Ms. Ressler stated she had not noticed any impact from the incident on her peers and was shocked to see the matter come up in the news in 2020.
- [176] Ms. Ressler stated she was familiar with the Windowpane report and generally agreed with its findings. When asked if there was anything she disagreed with, she stated she thought the report was pretty accurate. When asked if the issue identified in the report regarding witnesses being afraid to come forward applied to her, Ms. Ressler agreed that it did, and stated she was nervous about giving testimony. She stated this was because of Dr. Wiens’ involvement. She stated she had had to report Dr. Wiens to Medical Affairs in the past and that dealing with Dr. Wiens since then causes her a lot of stress. In particular, Ms. Ressler

stated that Dr. Wiens had treated her differently since. For example, in a recent incident, he ignored her completely when she spoke to him about a patient. She expressed her concern that his knowing she would be testifying would make things worse as they still work in the same department and she has to deal with him at times. Ms. Ressler stated that she chose to testify despite her fear, because she felt her moral obligation to do what was right was greater than her feeling uncomfortable. She stated she felt responsible.

- [177] Ms. Gagnon asked Ms. Ressler to review the behaviours listed by the investigator in the Windowpane report and asked if she had witnessed yelling at colleagues, especially in front of other colleagues or patients. Ms. Ressler stated she had witnessed these behaviours in the orthopedic group between Dr. Wiens and Dr. Denkema, and between Dr. Wiens and Dr. Beekman, and in each instance, both parties were yelling. She stated she had also witnessed Dr. Wiens yelling at a clinical coordinator, and had been on the receiving end of Dr. Wiens yelling at herself. Ms. Ressler disagreed that Dr. Wiens had a monotone voice and never raised his voice.
- [178] Regarding the Windowpane report list of offensive behaviors and the item of threatening colleagues with making complaints against them, Ms. Ressler stated she had witnessed that in the orthopedic group because of the hearing against Dr. Wessels, but had witnessed no other examples.
- [179] Regarding following established protocols and procedures, Ms. Ressler stated she had witnessed this in the orthopedic department and that a couple of surgeons manipulate the trauma list to get their patients done first. Ms. Ressler stated she had seen Dr. Wiens and some of the general surgeons do this.
- [180] Ms. Ressler stated she had never seen anyone threatening to or physically harming a colleague, nor had she witnessed a physician “accidentally” affecting a colleague physically in small ways. Ms. Ressler stated that she had witnessed people in her own nursing department speaking about others behind their backs. She stated that she had not seen people speaking in a foreign language in front of colleagues who do not speak that language and which excluded them and created suspicion.
- [181] Ms. Ressler agreed that she had seen people ignoring or not speaking to a colleague, and cited the incident she mentioned earlier when a few weeks earlier, Dr. Wiens completely ignored what she was asking. Ms. Ressler stated that she had also seen other surgeons not handing over their patients or not giving accurate reports to the next on call surgeon. She stated that she had not seen people speaking about a colleague to others as if the colleague were not present.
- [182] Regarding sabotaging the ability of a colleague to do their work by requiring things that did not need to be done, rearranging the established order of activities, or not being responsive, Ms. Ressler stated a good example of this was the manipulation of the trauma list, which often happens after hours when surgeons fight about who gets to do a case first. She stated she had seen this behaviour by Dr. Wiens.

[183] Ms. Ressler stated that she had not seen people targeting one colleague and encouraging others to do the same, nor had she observed physicians throwing things.

Cross-Examination

[184] Ms. Ressler agreed that she did not actually see the noose hanging on the door. She agreed that she saw Dr. Wessels playing with the rope in his hand, but did not see him finish tying the noose because she had to leave to deal with other things. She agreed that she only ever saw a photograph of the noose.

[185] Regarding the symbolism of the noose, Ms. Ressler stated that to her it was a symbol of hanging. When asked if she saw it as a symbol that could be used to threaten or terrorize people, she stated it would depend on the context in which it was used. She agreed that in the context of the noose being hung on the operating room door, someone could take that as a threatening message to themselves or someone else. She also agreed that it could have more significance to someone of colour or from an ethnic background. Ms. Ressler stated that she would not hang a noose on the door of an operating room. She agreed that there was not an appropriate situation to hang a noose on the door of an operating room.

Questions from the Hearing Tribunal

[186] The Hearing Tribunal asked Ms. Ressler if she could recall who she was working with on the day of the incident. She stated she could not recall. When asked if she was certain that it was hung on the door of the room she was working in, she agreed that the doors of the rooms looked similar and she could not be one hundred percent certain it was hung on the door of the room she was working in.

[187] The Hearing Tribunal asked if it was a common occurrence for Dr. Wessels to be playing with the traction rope, and Ms. Ressler stated it was not common for Dr. Wessels or for other surgeons to do that while waiting to go into the operating room.

[188] When asked if she could recall how long her conversation was with Dr. Wessels on June 24, 2016, Ms. Ressler stated she was washing her hands, so it would have been less than five minutes. She was also asked whether the discussion was generally about discipline or about a particular surgeon who was not facing discipline. Ms. Ressler stated it was a general discussion. Ms. Ressler could not recall if it was a discussion she and Dr. Wessels had had in the past, or if it was the first time they had had such a discussion.

Additional Questions Arising

[189] When asked if she could recall if she was the nurse circulating between operating rooms 3 and 4 on June 24, 2016, Ms. Ressler could not recall.

Suneeta Whiteside

Examination in Chief

- [190] Ms. Whiteside began by reviewing her history with the hospital in Grande Prairie. Ms. Whiteside stated that she began there in 2014 for a unit clerk practicum, and most recently started a position as an operating room front desk unit clerk beginning in December 2018. She stated that she schedules cases and organizes the elective slate. Ms. Whiteside stated that in this role, she intersects with all the surgeons, anaesthetists and surgical assistants.
- [191] Ms. Whiteside stated that she first met Dr. Wessels shortly after training in the operating room in December 2018. She stated she has had many interactions with him because before they got their new system, she used to book cases. Although she no longer does this, she still assists him with communication between floors and between nursing staff and patients. She stated that her relationship with Dr. Wessels is good. She stated they work well together, and that Dr. Wessels is respectful and professional, communicates effectively and within a reasonable period of time, and that he is easy to get in touch with. She stated that she would call Dr. Wessels a friend, although they do not have any interactions outside work. Ms. Whiteside stated that her relationship with Dr. Wessels would not influence the truth of her testimony.
- [192] Ms. Whiteside stated that she had reviewed the Merits Decision and understood they were present to discuss the noose incident on June 24, 2016. Ms. Whiteside stated she first learned of the incident when it was discussed in the media in 2020 and had not previously heard about it from anybody in the hospital.
- [193] Ms. Whiteside stated that the incident did not impact her much. She stated she was a little shocked as she thought it was out of character for Dr. Wessels. She thought it must have been meant as a joke. She stated she was more affected by people making rash decisions about Dr. Wessels' character who do not know him. Ms. Whiteside said lots of her friends had shared the story on Facebook which she did not appreciate because people do not know Dr. Wessels as an individual and she did not think their judgment was appropriate. Ms. Whiteside said her experience of Dr. Wessels' character was that he was always professional and ethical. She stated he was one of the few to follow protocol, and she had never had any behavioural problems from him. Ms. Whiteside stated she had not noticed any impact of the incident on the staff.
- [194] Regarding the Windowpane report. Ms. Whiteside stated she had reviewed it and generally agreed with its findings. She stated that the finding that witnesses were afraid to come forward applied to her as she was afraid of retaliation. She stated that her union does not protect her against surgeons and that often when she does have a complaint against a surgeon, it goes nowhere. In particular, she stated she was most likely afraid of retaliation from Dr. Wiens. She stated that she was testifying despite her fear because she did not think the situation was fair and she was tired of nurses and administrative staff being put in the middle of the situation.

- [195] While showing Ms. Whiteside a section of the Windowpane report addressing offensive behaviours, Ms. Gagnon asked if she had seen people yelling at colleagues in front of other colleagues or patients. Ms. Whiteside stated she had, and in the orthopedic surgeon group, she had witnessed only Dr. Wiens behaving in that fashion. Ms. Whiteside agreed that Dr. Wiens generally speaks in a monotone voice, but disagreed that he never raised his voice. She stated that she could think of more than one occasion when he had raised his voice. She stated that although she was not sure she would classify it as yelling, Dr. Wiens had become frustrated and raised his voice at her before storming off.
- [196] Ms. Whiteside stated that she had not experienced people threatening colleagues with making complaints. However, she had witnessed primarily Dr. Wiens not following established protocols and procedures. Ms. Whiteside stated she had not witnessed anyone physically harming a colleague or threatening to do so. She also had not witnessed anyone accidentally physically affecting a colleague by, for example, failing to make room for someone trying to get through a door.
- [197] Ms. Whiteside stated that she had seen people talking about others behind their backs in a way that put the people hearing it in an awkward position, and in particular Dr. Wiens and Dr. Akinbiyi. Ms. Whiteside stated it did happen in hospitals that people spoke to each other in a foreign language in front of colleagues in a way to exclude them, but did not think that applied to the orthopedic group. She was aware of people ignoring or not speaking to a colleague, and although she thought all five orthopedic surgeons did it, it was primarily Dr. Wiens and Dr. Akinbiyi. She was not aware of people speaking about a colleague to others as if the colleague were not there.
- [198] Ms. Whiteside stated that she had witnessed people sabotaging colleagues by requiring work that did not need to be done, by rearranging the established order, or by not being responsive. She stated she had seen Dr. Wiens do all three, and had seen Dr. Akinbiyi being unresponsive.
- [199] Ms. Whiteside stated she witnessed people targeting one colleague, but not encouraging others to do the same. She stated that she felt that Dr. Wessels was being targeted by Dr. Wiens and Dr. Akinbiyi. When asked to recall a call made by Dr. Akinbiyi, Ms. Whiteside stated that in an uncomfortable phone call, Dr. Akinbiyi had called her work phone to ask if Dr. Wessels ever made her feel uncomfortable, and she answered no.
- [200] Ms. Whiteside stated that she had never witnessed physicians throwing things.

Cross-Examination

- [201] Ms. Whiteside confirmed that she did not work at the hospital during the time when the noose incident occurred in 2016. She stated however that she was in touch with nurses and unit clerks in the maternity and labour and delivery ward but she had no contact with staff in the surgical area during that time.
- [202] Ms. Whiteside stated that she had seen a photo of the noose hanging on the operating room door. She stated that it was not a symbol to which she had given much thought. When asked if she might associate it with capital punishment, or how minority groups might have been

treated in the past, she stated that her association was with the *Pirates of the Caribbean* movies, and in particular when the main character is about to be hung, but the rope gets broken and he is saved.

- [203] Ms. Whiteside stated that she would not hang a noose on the operating room door, nor did she believe it was justified in any circumstances. She stated that she would not have hung a noose on a door in response to a workplace conflict with a colleague.
- [204] Ms. Whiteside agreed that other people might have a more sinister and terror filled association with a noose, but stated that she did not personally recognize that a noose can have a racial tone to it for people of colour or black ethnicity.

Holly Ljuden

Examination in Chief

- [205] Ms. Ljuden began by stating that she was a senior consultant with North Zone Medical Affairs. She had been with the organization since 1996 and with Medical Affairs since April 2012.
- [206] Ms. Ljuden stated that she regularly takes notes and that it is part of the scope of her position, although other colleagues might do so more often than she does. She stated that the standard practice within Medical Affairs is to take handwritten notes while the conversation is taking place, and then to transcribe the notes into an electronic version. She stated that they consider the handwritten notes to be transitory, and they are shredded in a confidential manner. She stated that the electronic version is the final version. Ms. Ljuden stated that the notes she takes are not verbatim but more a summary capturing the high points. However, she stated that she would be careful not to lose the meaning or to stray away from what was said.
- [207] Ms. Ljuden stated that she recalled taking notes for interviews related to the complaint against Dr. Wessels in 2016 for hanging a noose. When shown notes taken on July 13, 2016 at a meeting where Dr. Beekman, Dr. Onwuanyi and herself were present, Ms. Ljuden confirmed they were her notes from the meeting. She stated that she had no reason to think she had varied from her standard practice or that the notes would not be accurate.

Cross-Examination

- [208] When asked if she had any independent memory of the meeting on July 13, 2016, she stated that she did. She recalled that it was last minute and not planned. She remembered it took place within Medical Affairs in a small office and she would have had a notebook. Ms. Ljuden recalled that the person present was a physician or surgical assist of colour. She believed he had an accent, but could not recall. She could not recall anything out of the ordinary regarding his manner of speech or pronunciation.
- [209] Ms. Ljuden stated that typically her notes would be reviewed by the person interviewed, but when complaints are managed in an informal manner, they do not ask the witness or complainant to review the notes, although they ask the medical leader to review the notes

for accuracy. Ms. Ljuden stated that she had no record that Dr. Onwuanyi was asked to review her notes, but that Dr. Beekman did.

- [210] When asked how the interview was conducted in relation to the noose being hung on the door, Ms. Ljuden stated it was a significant matter. She stated that there were numerous emails about doing cultural awareness training and setting up a course about bullying and intimidation for both staff and physicians, but she was not aware of whether any physicians or staff had received training on the meaning of a noose and its cultural meaning in different contexts.

Re-examination

- [211] Ms. Gagnon stated that the version of Exhibit 6 before the witness did not have the “draft” watermark come through clearly. She asked Ms. Ljuden what the “draft” watermark meant to her. Ms. Ljuden stated that the version would have been the one being circulated and would not have been approved at that time. However, Ms. Ljuden stated that it would still have been an accurate recording of the notes to her.
- [212] Regarding how approval of notes usually happened, Ms. Ljuden stated that the person conducting the interview was given a chance to provide feedback on the draft notes. If the person felt something in the notes did not accurately reflect the content of the interview, they could provide feedback and suggest edits before the notes were finally circulated out.

Questions from the Hearing Tribunal

- [213] The Hearing Tribunal asked Ms. Ljuden about the circumstances of the meeting with Dr. Beekman and Dr. Onwuanyi. Ms. Ljuden recalled that she thought it was Dr. Beekman who called the meeting, but when she reviewed her calendar it did not show anything that far back. Her faint memory was that Dr. Beekman arranged the meeting at a mutually agreeable time and then came to her to see if she was available to take notes. Ms. Ljuden stated that usually if Medical Affairs arranges the meeting, it is usually arranged in advance, but she could not find the information for this meeting.
- [214] Ms. Ljuden stated that she would take notes, which would then be turned into an electronic version and have the “draft” watermark placed on them, and then they would go to Dr. Beekman. Ms. Ljuden stated that typically the medical leader would approve the notes either verbally or in writing, or provide any feedback. In this case, she stated she could not find anything other than her email to him with the draft notes for his review. She could not recall if he deleted his response or if he did not get back to her or if he replied in person.
- [215] When asked if the draft would be shared with Dr. Onwuanyi, Ms. Ljuden stated that she thought after it was approved, she would remove the watermark, PDF it, and circulate it to the physician with an email requesting that if there were any errors or omissions, to respond in writing and then an amendment to the notes would be made. Ms. Ljuden stated that the physician leader would be copied on that correspondence, however she could find nothing in her email to show a trail like this.

- [216] When asked to clarify, Ms. Ljuden stated it had been many years, and the process had changed over time. She stated that she could find no evidence in her emails to show it had been sent and could not recall if it had been. However, typically, when managing informal meetings, notes would not be sent to the physician prior to having the medical leader review them. She stated that she could not find any evidence in this case to show they were sent.
- [217] When asked if a physician noticing an inaccuracy would have the chance to make the appropriate edit, Ms. Ljuden stated they would have one. Ms. Ljuden was unaware of any formal policies in this regard. Ms. Ljuden stated she thought it was right for the physician to receive a copy to verify its accuracy.
- [218] When asked if the interview was set up as part of a formal complaint, Ms. Ljuden stated it was managed informally. When asked how it was determined whether a complaint was managed formally or informally, Ms. Ljuden stated the decision was based on a few factors. In this case, because Dr. Wessels brought the concern forward and acknowledged what happened, the medical leadership did not deem it necessary to do a formal investigation. Ms. Ljuden stated that because Dr. Wessels brought it forward to his leader, who then brought it forward, and because he acknowledged the incident took place, leadership decided not to do a formal investigation, but there were still conversations with the physicians and individuals who were aware of it or had been affected by it. Ms. Ljuden stated that as far as she was aware, there was no other formal complaint related to this matter from another physician.

Re-re-examination

- [219] Ms. Ljuden confirmed that she had no reason to believe the notes were inaccurate.

Additional Questions Arising

- [220] Mr. Boyer shared his screen showing the “draft” watermark across the document horizontally, which Ms. Ljuden confirmed she could see. Mr. Boyer confirmed that this was the document from the College disclosure. Ms. Ljuden agreed that she had no information that Dr. Onwuanyi reviewed the notes and agreed they were accurate.

Bonny Nelson

Examination in Chief

- [221] Ms. Nelson began by explaining she is a consultant with Medical Affairs and helps the physician leader in managing complaints and accommodations. Ms. Nelson indicated she had been in the role for seven years and that as part of her role, she interviews people for complaints from time to time. During these interviews, Ms. Nelson stated that she takes notes by hand but does not otherwise record the meetings. Ms. Nelson stated that she does her best to capture the words of the person she is interviewing as accurately as possible. She stated that she tries to use the words people are using in her notes.
- [222] Ms. Nelson stated that after the interview, she takes the handwritten notes and converts them to a typed document. In a situation like this, it would happen pretty quickly because

it needed a fast turnaround time. Ms. Nelson recalled that after the interview with Dr. Lafontaine, she typed the notes the same day she wrote them. She stated that in the process of typing the notes, the meaning should not change and she does her best to make sure it does not.

- [223] Ms. Nelson recalled interviewing witnesses about the complaints against Dr. Wessels for hanging the noose in 2016. When shown notes, Ms. Nelson recognized them as the notes she typed following her telephone call with Dr. Lafontaine. Ms. Nelson stated that she used her common practice in recording the notes and had no reason to believe they were inaccurate.

Cross-Examination

- [224] Regarding the notes, Mr. Boyer asked Ms. Nelson if it was a standard form she used, and she agreed it was. When asked why she used the word “witness” and not the proper name as elsewhere in the document, Ms. Nelson guessed it was because it was longer to type out Dr. Lafontaine than to type witness.
- [225] Mr. Boyer also noted that the last sentence of the memo was redacted. Ms. Nelson found an un-redacted copy and stated it said “Witness stated that he works in the Aboriginal health program and sees incidents to indigenous persons.” Ms. Nelson stated that she did not redact that sentence.
- [226] When asked what the bullet point reading “But Witness is here and so has experienced with this here” meant, Ms. Nelson stated she was only guessing, but thought he was referring to comments made because he was speaking about indigenous people. When asked if it was fair to say that something of the interview was lost because the memo did not provide an explanation of what was written there, Ms. Nelson stated she could not answer that.
- [227] When asked if the memo was reviewed by Dr. Lafontaine, Ms. Nelson stated that she had reviewed her email the day before and could not find an email sent to Dr. Lafontaine. She stated that for extremely short interviews like this one, she will highlight the important topics or comments made. She stated that at the time she would have known what she was taking about, but that she no longer did.
- [228] When asked why the notes on Dr. Lafontaine’s interview were brief, she stated because the interview was short. Ms. Nelson agreed that could have been because Dr. Lafontaine called her from the operating room and did not have time to talk at length. She assumed that because she usually asked if anyone had anything to add at the end of her conversation, that he would have told her if he was too busy to talk, which he did not do so.
- [229] Ms. Nelson agreed she had no record to show that Dr. Lafontaine was given the opportunity to review her notes.

Re-examination

[230] Ms. Nelson confirmed that doctors had phoned her from the operating room before.

Questions from the Hearing Tribunal

[231] The Hearing Tribunal asked Ms. Nelson how the meeting with Dr. Lafontaine was set up. Ms. Nelson recalled that Ms. Ljuden had spoken to Dr. Lafontaine earlier and asked that he call whichever of them was available when he was available, but she was not certain. She agreed that the arrangement was that Dr. Lafontaine would call when he had time.

[232] Ms. Nelson stated she could not recall if she had specific pre-set questions. She stated that normally she would say she had information he was in the room, and ask questions like what happened, who said what, what occurred. Ms. Nelson stated that usually her handwritten notes get shredded and the typed notes are placed in the complaint file and the person investigating the matter would review them. In this case, it was Dr. Beekman, and Dr. Pope was also involved.

[233] Ms. Nelson was not certain how Dr. Beekman and Dr. Pope would have got copies of the interview notes, but thought they would have been printed and put in a folder of interview notes that she took for the case. Ms. Nelson stated that to the best of her recollection, Dr. Lafontaine did not get a copy, but she recalled that she had spoken to him about them. She stated that another witness she interviewed in relation to the incident was provided with copies of her notes. Ms. Nelson did not know who would have redacted the final sentence in the notes.

[234] When asked who decided who got notes and who did not, Ms. Nelson stated that she did. As the one responsible for taking the notes, it was up to her to send them out for accuracy. In this situation, she presumes that even though Dr. Lafontaine was not really involved in this matter, she may have sent her notes to him but she could not find evidence to prove that. Ms. Nelson stated that although the normal process would be to send an email to have notes reviewed, in this case she cannot confirm that she followed the normal process.

[235] When asked if there was a policy with AHS regarding whether a witness would have the chance to see their testimony to verify the accuracy, Ms. Nelson stated that for informal processes like this one, they are not as strict. She stated that things are done differently for formal and informal processes. Ms. Nelson stated that zone medical director decides if it will be formal or informal. She stated that in this particular case, her understanding was that Dr. Wessels admitted to the noose hanging, and therefore the zone medical director had made the decision to deal with this matter in an informal manner. Ms. Nelson agreed that it is generally fair that an individual giving testimony about a complaint should be given the written version of their testimony and asked to verify its accuracy.

[236] Regarding who determined whether a complaint would be formal or informal, Ms. Nelson stated this determination was not made by Dr. Beekman, but by the zone medical chief for the whole north zone, who she believed was Dr. Worry. She agreed that her understanding was that if a physician admitted guilt for an action, it would be dealt with more informally, but also stated that there may be other factors that she would not be privy to.

[237] When asked if she was aware that Dr. Lafontaine stated it was he who had initiated the complaint and that he was worried about the implications of doing so, she stated this was the first time she had heard of that. The Hearing Tribunal asked Ms. Nelson if she would be surprised to learn that Dr. Lafontaine believed he had risked his career to bring this complaint forward and yet he could not recall any conversation with herself, and had no written record of any such interview. Ms. Nelson stated that if she could not take notes properly, she should not be in her current position and that in her view it was a “he said, she said” situation. Ms. Nelson confirmed that she did not know who redacted the final part of the interview notes.

Dr. Brendan Leier

Examination in Chief

[238] Dr. Leier began by reviewing his background and training. He stated that he had worked as a clinical ethicist for the last 15 years and also as a clinical and adjunct clinical professor in the faculty of medicine and dentistry at the University of Alberta. He also stated that he had worked with dentists and physicians who had been involved in disciplinary proceedings. Dr. Leier was accepted by the Hearing Tribunal as an expert in medical ethics.

[239] Dr. Leier stated that he had recently worked with Dr. Wessels. He reviewed a letter he prepared, outlining the work he had done with Dr. Wessels. He stated that he typically has no prior information or knowledge of the physician, and then if physicians want to work with him, they have a few discussions. With Dr. Wessels, those discussions were conducted over the phone and covered a set of fixed topics including what kind of work Dr. Wessels does, where he comes from, and his education. Then he does an assessment of the physician’s understanding of Canadian law and of the medical ethics of their particular circumstances. He stated that based on his experience, it is usually fairly easy for him to come up with challenging scenarios that a physician might encounter and to run them through how they might approach difficult patients, cases, or colleagues and how they would deal with specific situations.

[240] Dr. Leier stated that he also tries to get a sense of the particular individual and their life and practice, as well as how they cope with stress and difficulties, and whether they can communicate compassionately and have emotional intelligence. Dr. Leier stated that he also tries to get them to articulate their own concept of what being a good physician means.

[241] After the assessment process, Dr. Leier asks the physician if they are interested in doing some work, which in most cases would be remedial, often to do with a specific aspect of culture. Dr. Leier stated that a lot of the physicians he works with trained elsewhere, so they work on cultural training in relation to how health care is offered or on the ethics specific to a particular practice or on the benefits of working in teams versus hierarchies.

[242] Dr. Leier stated that Dr. Wessels was unusual, in that Dr. Leier did not consider any part of their conversation suggested that Dr. Wessels was in need of remediation. Dr. Leier stated that he told him he was happy to write an assessment of their conversation and of Dr. Wessels capacity, understanding and knowledge. He also offered to augment Dr.

Wessels education and practice that would be over and above the standards of professional education, which Dr. Wessels accepted.

- [243] Dr. Leier stated that he suggested to Dr. Wessels that they could work through the style of narrative ethics, which revolves around literature as a mechanism for enhancing the understanding of another person's culture and perspective. Dr. Leier stated that they settled on doing work related to First Nations people and they read *An Inconvenient Indian* which recounts the relationship between colonialism and the First Nations people in North America. Dr. Leier stated they met several times to discuss the book and that it was difficult work because it is a difficult history. Dr. Leier stated that he benefitted from doing the work because Dr. Wessels was able to compare his experience of being raised, educated, and practicing in South Africa where he worked with the recipients and victims of colonization and comparing that to the experience of the First Nations people in Canada and on the Prairies. Dr. Leier stated that the goal was to gain perspective on why First Nations people are overrepresented in the penal system and what determinants of health are responsible for the poor health outcomes that still continue in Aboriginal populations in Canada and especially on the Prairies and in Northern Alberta and Saskatchewan.
- [244] Dr. Leier confirmed that he determined Dr. Wessels needed zero remediation. He based this on his experience working with residents and fellows in their final training which gave him a clear expectation of what he considered adequate education and sufficient ethics and professional education and understanding to work as a professional in Canada. He stated he has high expectations. Dr. Leier indicated his method is not didactic, but that he assesses and evaluations in a naturalistic, more conversational form. This allows him to create a more bespoke services tailored to the individual.
- [245] Regarding how much time he spent with Dr. Wessels, Dr. Leier stated it was in two long conversations of 90 minutes or more each, plus their time discussing the book. Dr. Leier stated that they had discussed the noose incident, although he did not see the picture of the noose until the day before he testified. Ms. Gagnon asked him if, knowing about the noose incident, he was still of the view that there was no room for remediation regarding Dr. Wessels. Dr. Leier stated that on its face, it appeared to be an outrageous act, however, he was still of the view that beyond some tangential understanding of the symbolism of the noose and its context of racial intimidation, Dr. Wessels did not require remediation.
- [246] Ms. Gagnon asked if Dr. Leier had a good sense of Dr. Wessels' character and he stated that he had only known him for a year, but that they had had many hours of discussion which had been content rich in terms of evaluating character. Dr. Leier stated that Dr. Wessels was an excellent interpreter of the dynamics of power in culture, especially in the country he was born in. Dr. Leier found Dr. Wessels to be eloquent and articulate on the topic of the complex dynamics of power and racial politics in South Africa. Given how much time had passed and how long the issue had been hanging over Dr. Wessels' head, Dr. Leier also found it remarkable that Dr. Wessels expressed no negative emotion or illusions even about people he might have had reason to be frustrated with. Dr. Leier found Dr. Wessels' demeanour to be remarkably calm which showed his capacity to cope under stress. Dr. Leier was of the opinion that Dr. Wessels was coping with the stress as well as anyone he had ever seen.

[247] When asked if he thought it was characteristic of Dr. Wessels to hang the noose on the operating room door on June 24, 2016, Dr. Leier stated that he still could not make sense of the circumstances. Dr. Leier stated that in his opinion it was an elaborate knot and not one that would just be made idly or accidentally. Dr. Leier stated his interpretation was that it was momentarily thoughtless or dumb, which was not in Dr. Wessels' character, as he did not seem thoughtless or dumb. He did not think Dr. Wessels was someone who tended to intimidate, berate, or abuse others symbolically in unusual and indirect ways. In Dr. Leier's opinion, Dr. Wessels is not shy or passive-aggressive, but typically approaches difficulties in a clear and straightforward manner. This was typified by him self-reporting and continuing to deal with the matter.

Cross-Examination

[248] Dr. Leier agreed that he deliberately used the term "knot" and not "noose". He agreed that the knot in question was in the shape of a hangman's noose and was perceived that way by many.

[249] When asked if he had reviewed the Canadian Medical Association Code of Ethics, he stated that it forms part of the background to his core work, but he had not reviewed it explicitly in this case. He agreed he had also not reviewed specific sections of it with Dr. Wessels. When asked whether he and Dr. Wessels had discussed the symbolism of the noose and how it could be perceived by others as quite dark and threatening, Dr. Leier stated that Dr. Wessels had explained it to him and it had formed part of their conversation.

Wynand Wessels

Examination in Chief

[250] Dr. Wessels stated that he had participated in the Windowpane inquiry and had read the report. He stated that although there were some items in the report he was not fully aware of, the majority was pretty consistent with what he was aware of.

[251] Mr. Heelan read paragraphs 30 through 35 of the Windowpane report to Dr. Wessels and asked if he agreed with the characterization of the atmosphere in the hospital and the backdrop for the noose incident. Dr. Wessels agreed with the characterization as a constant theme in his time at the hospital.

[252] Mr. Heelan then reviewed some of the offending behaviours detailed in the Windowpane report. Dr. Wessels stated he had experienced individuals yelling at colleagues, especially in front of other colleagues or patients, and that recently the most common person was Dr. Wiens. Dr. Wessels stated he had observed him yelling at senior AHS staff on at least two occasions. Dr. Wessels thought about intervening but did not. Dr. Wessels also stated that Dr. Wiens had yelled at him.

[253] Regarding threatening colleagues with making complaints, Dr. Wessels stated that on one occasion Dr. Wiens did not see a patient admitted at night, but added the patient to the operating list in the morning. When Dr. Wessels asked him about it, there was a big

conversation and at the end, Dr. Wiens told Dr. Wessels he should be careful what he said, because it might end up in a College complaint.

- [254] Regarding not following established protocols and procedures, Dr. Wessels stated this was a constant thing. He stated that when Dr. Al-Ghamdi was present, this was the misconduct that started the negative culture in the hospital that continues. Dr. Wessels stated that the culture continued and was perpetuated almost exclusively by Dr. Wiens and Dr. Akinbiyi. As an example, Dr. Wessels stated that there was one situation that ended up as a complaint against him. The rule for the trauma room is that if there are more than 12 add-on cases in a day, then the one booked elective orthopedic case will be cancelled. Dr. Wessels stated that on more than one occasion, Dr. Wiens has refused to cancel the booked elective surgery, and that Dr. Akinbiyi will often add a spine case to the trauma room in the morning, which leaves the person on call stuck with all the add-on cases at the end of the day.
- [255] Regarding threatening to or actually harming a colleague, Dr. Wessels was not aware of anyone actually physically harming a colleague, but stated he had been warned by Dr. Jones not to be alone anywhere with Dr. Wiens, as he had threatened to “smash Dr. Wessels’ face in”.
- [256] Regarding “accidentally” physically affecting a colleague, Dr. Wessels stated he had experienced this with Dr. Wiens behaving in a passive-aggressive fashion. He stated “you would walk down the hallway and he will stand right in front of you and would force you to basically-basically take a different course”.
- [257] Regarding speaking about others behind their backs in a way that is disrespectful to the person and puts those hearing it in an awkward position, Dr. Wessels stated he had experienced this. He stated that in the operating room there is a lot of “nursing talk” about other people when those people are not in the room, which leads to discord.
- [258] Regarding speaking a foreign language in front of colleagues which excludes them and creates suspicion, Dr. Wessels stated that many different languages are spoken in the hospital, including Afrikaans, Filipino, and French. He stated that sometimes people have private conversations in their native tongue, but he stated that he made a point of switching if English-speaking people entered the room or stood close to them. Dr. Wessels stated that he would never discuss another person in a different language, as that was not fair.
- [259] Regarding ignoring or not speaking to a colleague, Dr. Wessels stated he saw that on a constant basis.
- [260] Regarding speaking about a colleague to others as if the colleague were not there, Dr. Wessels stated that had happened to him only a few weeks previously when they implemented a new electronic system, with which he was previously familiar and relatively proficient. He stated that a nurse asked him to help Dr. Wiens who was struggling to discharge a patient. Dr. Wessels recalled that he entered the room and politely asked Dr. Wiens if there was something he could help him with. Dr. Wessels stated that Dr. Wiens

turned to the nurse asked her to please get him someone who could help with the computer system, so Dr. Wessels left.

- [261] Regarding whether he had experienced someone sabotaging the ability of a colleague to do their work by requiring them to do things that do not need to be done, by rearranging the established order of activities, or by being unresponsive, Dr. Wessels stated he had experienced these, especially within in the orthopedic group. Dr. Wessels recalled an incident when Dr. Akinbiyi did not see a patient in a timely fashion, and Dr. Wessels had to diffuse the situation and cover it up. Another issue Dr. Wessels stated happened frequently was that patients would be slotted in and the first case would be cancelled without any consultation or discussion.
- [262] Regarding targeting one colleague and encouraging others to do the same, Dr. Wessels stated that he had been targeted.
- [263] Mr. Heelan asked about Dr. Wessels' relationship with Dr. Wiens. Dr. Wessels stated that Dr. Wiens joined his office in 2013, and he was a locum for the first few months. After those first few months, Dr. Wessels stated that Dr. Wiens demand for what he expected from the office was more than they could offer him. Dr. Wiens would take more office days than were available to him and would just be there on someone else's day. Dr. Wessels stated that Dr. Wiens placed a significant load on the office staff, some of whom were working long hours and doing work that Dr. Wiens should have been doing. Dr. Wessels stated that he spoke to Dr. Wiens who said that was what he had to have.
- [264] A second issue that arose was that he was not a partner in the company. Dr. Wessels stated that the day-to-day and financial decision were made by him, Dr. Denkema, and Dr. Akinbiyi. One incident Dr. Wessels recalled was when he and Dr. Denkema were overburdened with additional activities outside their normal work, and still had to do the office administration. Dr. Wessels stated he approached Dr. Akinbiyi and Dr. Denkema to share the workload, or if not, then for Dr. Wessels to be compensated for the extra work. Dr. Denkema agreed that Dr. Wessels could be paid extra, but Dr. Akinbiyi never responded either way. At a meeting, Dr. Wiens got very upset and yelled at Dr. Wessels when Dr. Wessels told him he had no say in the financial management of the office. Dr. Wessels stated that on any given day he tried to be accommodating and to accept Dr. Wiens' personality.
- [265] Mr. Heelan asked Dr. Wessels to explain his connection to a billing audit Dr. Wiens had been subjected to. Dr. Wessels stated that he became concerned shortly after Dr. Wiens started at the hospital. He wondered, based on his experience working with Dr. Wiens, and from other people asking him, if Dr. Wiens' billings were actually valid. Dr. Wessels went to talk to him about it, to say a group had some concerns and did not want him to be an outlier and get audited or get into trouble. Dr. Wessels stated that Dr. Wiens got very angry with him and that the behaviour continued. Dr. Wessels stated that he did two things. He phoned the Alberta Medical Association and anonymously stated that he did not want to report the guy, but asked what he should do. He stated he was advised to speak to Alberta Health. Dr. Wessels called Alberta Health, again used no names, and asked them what happens. Dr. Wessels stated they told him the process, and that was where the matter ended.

Dr. Wessels stated he only knew Dr. Wiens had been audited when it was raised in the last few days, although he had heard rumours about it.

- [266] When asked if he had issues with the way Dr. Wiens scheduled his patients for the OR, Dr. Wessels stated that Dr. Wiens would modify the status of patients without telling anyone in order to jump the queue. Another issue was that Dr. Wiens would feed his patients if he could not go first in the on call period after 5 p.m., and then by 7:30 in the evening the operating room would be empty because all his urgent orthopedic patients had been fed and had to be cancelled until the following day.
- [267] Regarding issues with charting, Dr. Wessels stated he only had second hand information. Dr. Wessels stated a nurse told him Dr. Wiens would scrutinize other people's charts. He also recalled a situation where Dr. Wiens had taken photos of a case Dr. Wessels had done and that he told Dr. Jones it had been handled poorly because Dr. Wessels had done things in a certain way. In Dr. Wessels' opinion, that was not an appropriate thing for Dr. Wiens to have done or said.
- [268] Regarding Dr. Onwuanyi's testimony, Dr. Wessels stated he was stunned and saddened by his comments. He stated that he never knew how Dr. Onwuanyi felt and it did not come out in their conversations or daily interactions, so it was a surprise to him. Regarding Dr. Onwuanyi's testimony that Dr. Wessels had elbowed him, Dr. Wessels stated that he could not recall a specific incident but that Dr. Onwuanyi had described a shoulder case, where they work in close proximity. He stated it does sometimes happen that he bumps the surgical assist. He stated that Dr. Onwuanyi is almost 6 feet tall and he is only 5'7", so it would have to have been an unintentional thing, and Dr. Wessels stated he was sure he would not have done it intentionally. He confirmed he never intentionally elbowed or assaulted Dr. Onwuanyi.
- [269] When asked if he recalled the story Dr. Onwuanyi related about a comment he allegedly made that all black pilots were drug dealers, Dr. Wessels stated this mixed up two separate conversations that might have occurred on the same day. Dr. Wessels stated he is passionate about flying but definitely has no issues with black pilots. Dr. Wessels stated Dr. Onwuanyi had told him about two black girls who were pilots and Dr. Wessels had said that was great. In another conversation, Dr. Wessels commented on how Nigerians were viewed as drug dealers in South Africa because of some criminal activity conducted by Nigerians, and Dr. Wessels thought that was unfair to the law-abiding Nigerians who worked and had businesses. Dr. Wessels stated he had not made racist comments about black people to Dr. Onwuanyi.
- [270] Regarding whether he had blocked Dr. Onwuanyi from a position in 2010, Dr. Wessels stated that when Dr. Onwuanyi applied, he did not have the full College registration as an orthopedic surgeon, and so he was not the successful candidate. In fact, the successful candidate was Dr. Akinbiyi, who is also a black surgeon. Dr. Wessels stated he did not block Dr. Onwuanyi. Dr. Wessels stated that when Dr. Onwuanyi started working as a surgical assist in 2014, Dr. Wessels ask him why he came back out of genuine curiosity. Dr. Wessels stated he was curious why this fully qualified orthopedic surgeon who had

worked at world renowned academic hospitals had come to Grand Prairie. It was not his intention to be negative at all.

- [271] Regarding Dr. Akinbiyi's evidence, that he had commented on iodine being the same colour as shit and same colour as the person's skin, Dr. Wessels stated he did not recall making a comment like that, and it was a word he would seldom use and does not like. He also stated it was totally untrue that he suggested people were vermin in relation to Apartheid.
- [272] Regarding Dr. Lafontaine, Dr. Wessels said he constantly saw Dr. Lafontaine take calls in the operating room and that he expected anyone in the operating group would confirm this.
- [273] Regarding whether the noose incident had split up the orthopedic group, Dr. Wessels stated he did not believe it had. Dr. Wessels stated that before the 2016 incident they had started looking at different buildings as they were getting too small and were looking at incorporating a hip and knee clinic into their office. He stated that he, Dr. Denkema and Dr. Akinbiyi went to look at one big building, but it was too much. On another occasion, he, Dr. Wiens and Dr. Akinbiyi went to look at a building, but he and Dr. Denkema did not want to invest the capital expenses which they calculated would be about one million dollars each. Then in 2018, Dr. Akinbiyi indicated that he and Dr. Wiens had bought a building that would have enough space for everyone, if they wanted to move there with them. If they did not want to buy in, they could rent.
- [274] Mr. Heelan asked Dr. Wessels to comment on where the noose was placed and why. Dr. Wessels stated it was an impulsive thing. He stated he was talking to Ms. Ressler and reached over to pick up the rope which already had the tape on it. Dr. Wessels said he discussed with Ms. Ressler that if she needed, it was there for her. He did not deliberately go find the tape, or walk through the door to place the noose. He merely stuck it there for her, in case she needed it later on. He stated it was probably the stupidest thing he had done in his life. Dr. Wessels recalled that Ms. Ressler was working in the operating room on whose door he placed the noose.
- [275] Regarding the impact of the incident on him, Mr. Heelan asked if Dr. Wessels had been removed from a number of organizations and board positions due to his involvement, and Dr. Wessels agreed. Dr. Wessels stated that an hour after the media story aired, he received an email from the Strategic Clinical Network to tell him he was done. He stated that he had not been replaced with anyone from the North Zone, so it remained unrepresented. Dr. Wessels stated that he was on the Alberta Bone and Joint Health Institute since 2007, but was removed from that. He was the Netcare medical lead for his site, but after the news article broke he was asked to take a leave. Dr. Wessels stated he was instrumental in negotiating education and value-added funding for the Alberta Orthopedic Society, but he lost that position also. Dr. Wessels stated he was involved in Angel Flight, which provided non-urgent medical transfers, but was also asked to take a leave of absence after the news article aired. Dr. Wessels stated he also had an appointment as a clinical tenure at the University of Alberta, but the College dissolved that privilege and he was no longer able to teach residents. He stated that after the news article first aired, Alberta Health Services asked Dr. Wessels to take a leave of absence, and he took two weeks of unpaid leave.

- [276] Regarding the impact of the media coverage, Dr. Wessels stated it went worldwide, and he had friends and colleagues from around the world contact him. He stated everyone was surprised by his actions and no-one could believe he did it, although it obviously happened. He stated that when he applied for a volunteer position with the Canadian Red Cross, the media article stopped that too.
- [277] Dr. Wessels stated that although he had not looked at the social media commentary, other people told him it had been substantial. He stated his patients had also told him. He indicated he is aware of what people are saying.
- [278] Dr. Wessels stated he thought his referral pattern had changed. He stated that although it is hard to know, his referrals had definitely lessened.
- [279] Regarding the steps he had taken to improve himself, Dr. Wessels stated he had spent a significant amount of time, and still does. He stated he has read as much as he could, not just about nooses, but about other symbols and cultural effects. He stated he had attended the AHS cultural course and the Equity in Medicine courses. He also did substantial work with Dr. Leier.
- [280] Regarding his training with Dr. Leier, Dr. Wessels stated it was mostly around indigenous health, and how to appreciate the disconnect some people see in the health care system. He stated the purpose of the training was how to place yourself in someone else's shoes and that it had been very helpful.
- [281] When asked if an event like this will ever happen again, Dr. Wessels stated that no, it was stupid, incidental, and dumb. Dr. Wessels stated that he felt sorry for the effect on Dr. Onwuanyi, Dr. Lafontaine, and on the hospital. He stated that after the news article aired, the hospital has had trouble recruiting staff, and that the effects were widespread. He stated he regrets that is how it ended.

Cross-Examination

- [282] Mr. Boyer asked Dr. Wessels about the conflict with Dr. Wiens and if it existed in June 2016. Dr. Wessels stated that it was mostly driven by Dr. Wiens. Dr. Wessels stated that he worked with lots of difficult people and he did not think he retaliated against people he was in conflict with. Dr. Wessels stated he has tried to accommodate Dr. Wiens as much as possible, and tried to avoid him as much as he could except when patient care was involved. Dr. Wessels stated he would not attack or target Dr. Wiens. Dr. Wessels agreed they did not have a good relationship in 2016, although they could work as colleagues.
- [283] Dr. Wessels agreed he had written two letters of apology, one to Dr. Wiens and one to Dr. Akinbiyi, but none to anyone else.
- [284] Dr. Wessels agreed that he had stated that his removal from the AHS committee meant the north no longer had a voice on that committee. He agreed that witnesses had described the noose as symbol of intimidation and a threat to silence. Dr. Wessels stated he could appreciate that witnesses had interpreted the noose as a message to silence them and take

away their voice. However, he stated it was not his intention, and that it was impulsive, although he now appreciates the context.

[285] Dr. Wessels stated he could not attribute the change in his referrals to this incident, although it seemed coincidental. Regarding how it had affected the hospital's ability to recruit, Dr. Wessels stated that they had posted a position for an orthopedic surgeon, and he had heard there were 140 who were unemployed, but only 3 had applied. He stated that he thought people did not want to come to Grande Prairie because of the discord.

[286] Dr. Wessels stated he was not discrediting what other witnesses had said about the impact they felt. Dr. Wessels stated he wished they had contacted him, and that he would have liked to have had a face-to-face conversation with Dr. Onwuanyi. He stated that he blamed himself for not pushing it and insisting on a meeting. Dr. Wessels stated he was guided by AHS administration at the hospital level and what the zone medical director thought the best actions would be. In retrospect, Dr. Wessels wished he had done more, and had talked to Dr. Onwuanyi.

Questions from the Hearing Tribunal

[287] Dr. Wessels explained that a piece of rope he picked up was just lying there, likely leftover from a traction setup the previous night. It would have had tape at the end to prevent a frayed line, and that the rope he used had such a piece of tape attached to it. Dr. Wessels stated he did not put the tape on the rope.

[288] When asked if he knew who was working in operating room 4 that day, Dr. Wessels stated it was the first case of the day, and he never looked at anyone else's list. Dr. Wessels stated he knew Dr. Wiens was working in that room, but did not know who the anaesthetist or surgical assist was. Dr. Wessels stated he saw Nurse Ressler standing there. Dr. Wessels stated he learned later that day who else was in the room when someone opened the door while he was doing his first case and told him it was a stupid thing he had done. When asked when he became aware of the surgical assist and Dr. Lafontaine working there, he stated it was when Dr. Wiens walked by and made a comment about "if it's for the surgical assist". Dr. Wessels stated that is when he knew who the surgical assist was. Dr. Wessels stated that he did not know about Dr. Lafontaine until later because Dr. Wiens did not talk about him. Dr. Wessels stated he learned about Dr. Lafontaine the same day and went to talk to him right afterward.

[289] Regarding the nurses, Dr. Wessels stated he did not see or know who they were beforehand. When he taped the noose to the door, Dr. Wessels did not know which nurses were working in operating room 4, although he later found out. He only saw Ms. Ressler.

[290] Regarding his interactions with AHS regarding the incident, Dr. Wessels stated he went to Dr. Denkema first, because he was chief of surgery, and reported it to him. Dr. Wessels stated he then reported it to Ms. Ljuden, and nothing further happened until she told him they were looking into the case. Dr. Wessels stated that after Dr. Beekman and Dr. Pope had concluded their interviews with everyone else he met with them. At that time, they requested that he write letters to the two individuals most concerned about the incident. So

it was at their suggestion that Dr. Wessels wrote the letters of apology to Dr. Wiens and Dr. Akinbiyi. When asked if he saw any reason to send an apology to anyone else, including the nurses or Dr. Lafontaine, Dr. Wessels stated he spoke to Dr. Lafontaine, although Dr. Lafontaine disputes that assertion. Dr. Wessels also spoke to Dr. Onwuanyi, but stated he should have done a better job and that it was his fault that Dr. Onwuanyi did not interpret it as an apology. Dr. Wessels stated that when Dr. Beekman and Dr. Pope asked him to write letters to Dr. Wiens and Dr. Akinbiyi, it was based on their understanding that he had apologized to Dr. Onwuanyi, Dr. Lafontaine, and the staff. Dr. Wessels stated he also made it clear he was willing to meet with anybody else face-to-face if there were further concerns.

[291] When asked about the actual pinning of the noose, Dr. Wessels stated that at the end of his conversation with Ms. Ressler, Dr. Wiens was present and would have seen him pin the noose on the door as he walked in. However, Dr. Wiens was not part of the conversation. Dr. Wessels recalled that when Dr. Wiens saw him pin the noose on the door, he asked Dr. Wessels who was it for? Was it for his surgical assist? Dr. Wessels stated that he replied “this is not for anybody, it’s just for her to use if she needs it”. The Hearing Tribunal asked if he knew the surgical assist at the time was Dr. Onwuanyi and Dr. Wessels confirmed that Dr. Wiens mentioned it. Dr. Wessels stated that he had not seen Dr. Onwuanyi that morning but that because Dr. Wiens told him, he should have known. When asked if it could have been a number of different surgical assists, Dr. Wessels confirmed it could have been. When asked why Dr. Wiens would suggest it was for his surgical assist, Dr. Wessels stated that in retrospect and from what he now knows from his own research that Dr. Wiens was interpreting the hanging of the noose as a racist act. In Dr. Wessels view, Dr. Wiens immediately drew the connection between the knot and race, which Dr. Wessels stated he did not appreciate at the time.

[292] When asked if he felt he needed to write further letters of apology in addition to those he had written to Dr. Wiens and Dr. Akinbiyi, he stated that at the time of writing those letters of apology, he had already spoken to both Dr. Lafontaine and Dr. Onwuanyi and he did not sense that they were upset about the matter. In retrospect, Dr. Wessels felt he had done a poor job in assessing their feelings but he had tried the best he could. Dr. Wessels stated that he would still be willing to speak to Dr. Onwuanyi and Dr. Lafontaine face to face, if doing so could improve their relationship.

Additional Questions Arising

[293] Mr. Heelan asked Dr. Wessels if he recalled the question from the Hearing Tribunal regarding the fact that he wrote letters of apology to two physicians, and not others, and that there was some question about AHS’s role. Mr. Heelan directed Dr. Wessels to the investigator’s summary of the witness interviews. On reviewing what was written, Dr. Wessels agreed the incident was not targeted toward anyone specifically. Dr. Wessels agreed that after the investigation was completed, the matter was dropped. He also agreed that there was discontent in the orthopedics department both before and after the incident. Dr. Wessels also agreed that the incident was dealt with in isolation, and not within the greater context of the discord in the department, and that the discord continued despite numerous attempts to mediate. Dr. Wessels also believed that there was no satisfying the entire orthopedics department and that the incident as described by Dr. Beekman to the

College investigator did not fit a pattern of Dr. Wessels' profile. Dr. Wessels also agreed that it was his understanding that he was asked by AHS to write letters of apology to Dr. Wiens and Dr. Akinbiyi as they were the most aggrieved by the incident.

V. CLOSING SUBMISSIONS

Complaints Director

- [294] Mr. Boyer presented the closing submissions of the Complaints Director. Mr. Boyer started by asking the Hearing Tribunal to review the findings and directions from the Merits Decision. He stated that the Hearing Tribunal had accepted Dr. Wessels' admission and found the charge proven that on June 24, 2016 he hung the noose on the operating room door, and that this amounted to unprofessional conduct in breach of section 52 of the Code of Ethics.
- [295] Mr. Boyer stated that the Hearing Tribunal had not found sufficient evidence to prove there was racist intent, and he submitted that although the evidence over the previous few days had included some testimony of what people thought the motivation was, the vast majority of the evidence was focussed on the degree of discord, discontent and conflict in the orthopedic group prior to June 2016 and which appeared to continue. At paragraph 73 of the Merits Decision, the Hearing Tribunal found that it was not a joke or a team-building exercise.
- [296] Mr. Boyer submitted that although Dr. Wessels had stated he was not targeting anyone specifically with the rope, the Hearing Tribunal had already found that the rope was a message sent by Dr. Wessels to at least one or more individuals. Mr. Boyer submitted that there had also been evidence from individuals present in the operating room that day and how they perceived the message. He submitted that the Hearing Tribunal had also heard evidence of the broader community perception and significance of a noose and from an expert on workplace harassment that it amounts to workplace violence. Mr. Boyer submitted that the Hearing Tribunal had also heard evidence of how Dr. Wiens, Dr. Onwuanyi, Dr. Akinbiyi, and Dr. Lafontaine were affected by the noose on the door.
- [297] Mr. Boyer submitted that it was significant that all the defence witnesses who were asked if they would hang a noose said no. They all said it was inappropriate, and could not be justified in any situation where there was workplace discord. Mr. Boyer submitted that not all the witnesses attributed the same meaning to the noose that others did. Some of the witnesses associated it with movies or TV westerns. Mr. Boyer submitted that regardless of the associations for the witnesses, whether it was capital punishment, threats, intimidation, or keeping people of ethnic and racial minorities subjugated and quiet, the underlying sense was always the same in that it was a deadly threat, and a symbol of intimidation and threat.
- [298] Mr. Boyer submitted that although the hospital administration described it as a serious incident, they unfortunately made the decision to deal with the complaint in an informal manner. He submitted that this resulted in a failure of due process for some witnesses who would otherwise have had the opportunity to review notes taken at their interviews for

accuracy and completeness. Mr. Boyer submitted that the notes taken by Ms. Ljuden and Ms. Nelson were the extent of the internal review done by the hospital administration.

- [299] Mr. Boyer submitted that Dr. Onwuanyi and Dr. Lafontaine testified that their interviews were brief, and that they never saw notes or had the opportunity to ensure their accuracy and completeness as would have been required with a more formal investigation under the bylaws. Mr. Boyer submitted that the hospital administration assumed that the brief interviews were sufficient and therefore those people were satisfied with the outcome. However, Dr. Lafontaine had testified he felt completely ignored. He testified that although he brought the matter forward, despite fearing negative repercussions, he felt he had been given no role and had been effectively silenced. Mr. Boyer submitted that the letter from Dr. Osei-Tutu on behalf of the Black Physicians Association of Alberta stated that the effect of the symbol and its impact was very significant. Mr. Boyer submitted this created a problem, in that Dr. Wessels' intent was only part of the issue, because the impact on the victim of the message behind hanging a noose on the door remains a very negative, threatening and intimidating message, regardless of the intent.
- [300] Mr. Boyer submitted that the Hearing Tribunal heard evidence about how the message entered the broader community through media coverage and that Dr. Wessels had described how it appeared to affect recruiting, which Mr. Boyer stated was a reflection of public confidence in hospital administration and the environment at the hospital.
- [301] Mr. Boyer provided case law to the Hearing Tribunal including *Jaswal*, a case which sets out factors to consider when determining sanction. Mr. Boyer directed the Hearing Tribunal to paragraph 36 where the 13 factors are set out.
- [302] Regarding the first factor, which is the nature and gravity of the proven allegation, Mr. Boyer submitted that the act had been shown to be serious, and that there was a power imbalance between Dr. Wessels and hospital staff, including Dr. Onwuanyi. He submitted that Ms. Nelson and Ms. Ljuden had both testified that Medical Affairs considered the incident to be very serious, and that Dr. Hershcovis had testified it was a serious incident and on the spectrum of workplace harassment was at the upper end, and would meet the definition of workplace violence. Mr. Boyer submitted these were aggravating factors to be considered when determining sanction.
- [303] On the second *Jaswal* factor, which considers the age and experience of the physician involved, Mr. Boyer submitted that Dr. Wessels was an orthopedic surgeon who had practiced in Canada for approximately 15 years. Mr. Boyer stated that Dr. Wessels had testified that he started practice in South Africa in 1994, and therefore at the time he hung the noose, he had been a practicing physician for more than 20 years. In Mr. Boyer's submission, Dr. Wessels is a seasoned and experienced physician.
- [304] Regarding the third *Jaswal* factor, which considers the physician's previous character and any prior complaints, Mr. Boyer stated that Dr. Wessels had no prior history of complaints, and this was his first discipline matter before the CPSA.

- [305] Regarding the fourth *Jaswal* factor, which considers the age and mental condition of the offended individuals, Mr. Boyer submitted that the Hearing Tribunal had heard from Dr. Wiens, Dr. Onwuanyi, and Dr. Lafontaine regarding how they were affected.
- [306] The fifth *Jaswal* factor relates to the number of times the event has occurred. Mr. Boyer submitted that this was a single incident.
- [307] In Mr. Boyer's submission, the evidence in relation to sixth *Jaswal* factor, which was the role of physician in acknowledging what has happened, was that Dr. Wessels had acknowledged that he was responsible for what had happened.
- [308] Regarding the seventh *Jaswal* factor, which is whether the offending physician has suffered serious financial or other penalties, Mr. Boyer submitted that Dr. Wessels had described what happened to him in terms of loss of teaching, removal from some committees, and a two-week unpaid leave required by AHS.
- [309] On the eighth *Jaswal* factor, the impact of the conduct, Mr. Boyer submitted that no patients had been directly affected, but that there was evidence regarding how patients had talked to Dr. Wessels, how they had a loss of confidence in the system or in Dr. Wessels. Mr. Boyer submitted that there was clearly continuing discord in the orthopedic department, which appeared to both predate the incident, and continue after it.
- [310] Mr. Boyer submitted that Dr. Onwuanyi, Dr. Akinbiyi, and Dr. Lafontaine had all described how it affected them. He also submitted that Dr. Osei-Tutu had described the message received as one of negative inclusion, and that physicians of colour believe they are not treated with dignity and respect in the community. Mr. Boyer appreciated that Dr. Wessels said this was not the message he intended, but he submitted that it was still a fallout from the use of the particular symbol. Mr. Boyer submitted that both Dr. McGowan and Dr. Jones testified that the incident contributed to the divide in the orthopedic department.
- [311] Regarding the ninth *Jaswal* factor, the presence or absence of mitigating factors, Mr. Boyer submitted that the essence of the conflict could be considered. Mr. Boyer stated that Dr. Wiens had testified to the toxic environment, and Dr. Lafontaine had testified that this type of behaviour was an extension of pre-existing conflict in the hospital. Mr. Boyer submitted that Dr. Herscovis had spoken to the idea that bad behaviour begets more bad behaviour.
- [312] The tenth and eleventh factors from *Jaswal* are the need to promote specific and general deterrence, to protect the public and ensure the safe and proper practice of medicine, and the need to maintain public confidence in the medical profession. In this regard, Mr. Boyer submitted that Dr. Osei-Tutu on behalf of the Black Physicians Association of Alberta had spoken of the need to ensure public trust in the health care system. He also wanted people across Canada to have confidence that the event would be dealt with seriously and not go unaddressed so that patients and the public could feel confident going into any hospital in Alberta without feeling that there are different levels of care depending on skin colour, racial background, or religious belief.
- [313] Mr. Boyer submitted that Dr. Osei-Tutu stated that society demands that institutions not leave people unsupported. Mr. Boyer submitted this meant working to ensure public

confidence is maintained or, in this situation, repaired, given Dr. Wessels' testimony as to the difficulties in recruiting, and perhaps the effects on his referrals. Mr. Boyer stated that trust is an essential component in the doctor-patient relationship, and that patients need to trust their needs will be met in a fair, appropriate, and respectful manner.

- [314] The twelfth *Jaswal* factor relates to the degree to which the offensive conduct is agreed to be unacceptable. In this case, Mr. Boyer submitted there was no dispute that hanging a noose on a door was completely unacceptable. Dr. Wessels acknowledged this, and Mr. Boyer submitted all the defence witnesses who were asked stated they would never hang a noose on a door, and that it was inappropriate and could not be justified. Mr. Boyer submitted that there was evidence from witnesses on the negative power of the symbol of a noose, especially to those who come from communities, subject to discrimination, where they are put down, kept silent, made to feel less than others and not included as equal members of the community.
- [315] The thirteenth *Jaswal* factor asks the Hearing Tribunal to consider similar cases, but in Mr. Boyer's submission there are very few cases of a similar nature to provide guidance to the Hearing Tribunal. Mr. Boyer stated he could not find another case where a symbol was used and other members of the community understood it to have meanings of death and intimidation with racial overtones. Mr. Boyer directed the Hearing Tribunal to *CPSA v Alarape* where the physician was found guilty of sexual assault. The physician harassed a co-worker at his clinic, and the Hearing Tribunal ordered a 15-month suspension, and considered the incident to be workplace harassment. That case also included a criminal conviction.
- [316] Mr. Boyer provided additional case law as guidance, but submitted it was at the lower end of the spectrum for this type of conduct. In *College of Physicians and Surgeons of Ontario v Bhatt*, the physician repeatedly disrupted co-workers and subordinates. Mr. Boyer submitted that the panel considered the physician's position as chief of medicine and of the ICU at the time of the conduct, and imposed a 4-month suspension, a reprimand and costs.
- [317] In *College of Physicians and Surgeons of Ontario and Sogbein*, the physician had engaged in eleven incidents of anger and disruptive behaviour, and consistently displayed poor communication skills. He received a 4-month suspension.
- [318] In *College of Physicians and Surgeons of Ontario and Waddell*, the physician sent unprofessional, offensive, and possibly threatening communications to the local health authority after they did not renew his privileges. He received a 3-month suspension, a reprimand, and was required to taken ethics course.
- [319] In *College of Physicians and Surgeons of Manitoba and de Muller*, the physician paged other physicians at times when she should have known they were not available, and the panel found this was done to annoy or harass those physicians. Mr. Boyer submitted the physician also misled the college in its investigation. The physician received a 3-month suspension and a reprimand.

- [320] Mr. Boyer also referred the Hearing Tribunal to cases involving revocation of licences where there was intentional conduct such as death threats. For example, in *College of Physicians and Surgeons of Manitoba and Mahdi*, the facts were very unique, and the panel in that decision placed little reliance on any of the cases provided by the parties. The facts in that case were so unusual, they were difficult to compare to other circumstances, and Mr. Boyer submitted that the panel had to focus on the seriousness of the conduct and the severity of the impact. In the result, the panel ordered a 6-month suspension, which departed from other case law which might have suggested a shorter suspension period.
- [321] In *College of Physicians and Surgeons of Ontario and Peirovy*, the panel ordered a suspension for a boundary violation. On appeal, the court stated that societal expectations had changed and public confidence required a more significant sanction be imposed. Mr. Boyer acknowledged that the Ontario Court of Appeal overturned the case, but submitted it was on the basis of the standard of review, specifically that the court should not have determined sanction on its own, only whether the Hearing Tribunal's sanction was reasonable or not. Mr. Boyer submitted the point of the case was that it is the role of the Hearing Tribunal to determine the appropriate sanction. The need to consider societal expectations and public confidence in the regulation of the profession is a factor the Hearing Tribunal must consider.
- [322] Mr. Boyer submitted that in looking at decisions that might be a bit dated, it is open to the Hearing Tribunal to find that they do not reflect the current expectations of society and the need for a clear message that will ensure public confidence in the regulation of the profession is upheld.
- [323] Mr. Boyer submitted that the Hearing Tribunal had the COAP report, with the assessment by Dr. Wright and Dr. Frizzell, which was also before it in the merits phase. Mr. Boyer submitted that it concluded there were no contributing psychological or medical conditions, and it was unlikely the conduct would be repeated. Mr. Boyer submitted that the evidence from Dr. Leier was that no further remediation from an ethical perspective was required. In Mr. Boyer's submission, because the evidence suggested remediation had already been addressed, the focus of the Hearing Tribunal's sanctions should be on deterrence. In Mr. Boyer's submission, general deterrence is the message to the profession at large, the public, and the regulated member that the conduct was completely unacceptable. In his submission, a significant sanction is appropriate, given the gravity of the conduct. Mr. Boyer submitted a 12-month suspension to commence on a date determined by the Complaints Director would be appropriate in the circumstances, and that Dr. Wessels should also be ordered to pay the costs of the hearing and investigation.

Dr. Wessels

- [324] Mr. Heelan presented the closing submissions of Dr. Wessels. Mr. Heelan began by reviewing the process thus far, noting that the Hearing Tribunal had accepted Dr. Wessels' admission that his conduct was unprofessional. The Hearing Tribunal also accepted that Dr. Wessels tied a piece of rope into a shape that could be seen as a hangman's noose, and had hung it on the door of an operating room where other medical staff would see it. Mr. Heelan submitted that the Hearing Tribunal found Dr. Wessels was motivated to do this by

the discord in the hospital and intended to send a message to one or more individuals. After carefully considering whether Dr. Wessels was motivated by racism, Mr. Heelan submitted the Hearing Tribunal concluded that although the evidence established that the rope could be perceived as racist or a symbol of racism, there was insufficient evidence to support a finding that Dr. Wessels was motivated by racism when he hung the rope on the door. Mr. Heelan stated that the Hearing Tribunal accepted Dr. Wessels' evidence that it was intended for anybody misbehaving at the hospital.

- [325] Mr. Heelan submitted that the Hearing Tribunal had considered the situation of conflict at the hospital, and found Dr. Wessels was motivated by the discord at the hospital. Mr. Heelan submitted the evidence showed a high level of conflict in the orthopedic group. Mr. Heelan submitted that Dr. Wessels hung the rope after discussing the discord at the hospital with Ms. Ressler, and that the Hearing Tribunal found there was a clear connection between the hospital environment when the rope was hung and Dr. Wessels' actions.
- [326] Mr. Heelan asked the Hearing Tribunal to remember its task in determining an appropriate sanction or penalty in relation to the findings already made. Mr. Heelan agreed with Mr. Boyer that the *Jaswal* factors are a useful guide in determining the appropriate sanction.
- [327] Mr. Heelan submitted that six of the thirteen *Jaswal* factors were of particular relevance. First, the nature and gravity of the proven allegations; second, the previous character of the physician and the presence or absence of any prior complaints or convictions; third, the role of the physician in acknowledging the conduct; fourth, whether the offending physician has already suffered other serious financial or other penalties as a result of the allegations; fifth, the impact of the incident on the offended patient, which in this case relates to others working at the Grande Prairie hospital; and sixth, the presence or absence of any mitigating circumstances.
- [328] Before reviewing the factors, Mr. Heelan reviewed the evidence, witness by witness. Mr. Heelan stated that the first witness for the College, Dr. Wiens, was not credible and would say anything to advance his agenda. In Mr. Heelan's submission, Dr. Wiens lacked credibility and gave answers that were largely off a prepared script. Mr. Heelan submitted that in cross-examination, Dr. Wiens would not answer the simplest question without being obtuse, evasive, and difficult. Dr. Wiens answers were consistently on his own agenda, which was to destroy Dr. Wessels' career to advance his own and avoid scrutiny of his failings. Mr. Heelan stated that he did not make these comments lightly, and that he rarely made such harsh comments about a witness, but that the evidence here showed that Dr. Wiens simply could not be believed.
- [329] By way of examples, Mr. Heelan stated that Dr. Wiens testified he did not shout, but Dr. Denkema, Dr. Jones, Ms. Ressler, Dr. Wessels, and Ms. Whiteside all described Dr. Wiens shouting in various incidents. Mr. Heelan noted how these witnesses were surprised to hear that Dr. Wiens had asserted that he does not raise his voice. In Mr. Heelan's submission, this was significant evidence and demonstrated that Dr. Wiens lacks insight or is simply a liar. In either case, Mr. Heelan submitted the Hearing Tribunal should disregard Dr. Wiens' evidence in its entirety. Mr. Heelan submitted that Dr. Wiens had informed the narrative around the noose hanging in a significant way. Mr. Heelan submitted it was Dr. Wiens who

suggested it was a racist gesture aimed at Dr. Onwuanyi, and Dr. Wiens who informed Dr. Onwuanyi and Dr. Akinbiyi.

- [330] Mr. Heelan submitted that only Dr. Wiens saw the noose and took a picture of the noose. In Mr. Heelan's submission, the evidence showed that Dr. Wiens continued to advance his false narrative. Mr. Heelan submitted Dr. Wiens was unhappy with Dr. Wessels before the incident due to the partnership agreement between Dr. Wessels, Dr. Denkema, and Dr. Akinbiyi. In Mr. Heelan's submission, the evidence showed Dr. Wiens' unhappiness predated the noose incident, and led him to leave and set up a partnership in a new space.
- [331] Mr. Heelan submitted the evidence also showed Dr. Wiens had formed a view that Dr. Wessels caused his billing difficulties, which resulted in him having to repay money to Alberta Health. Mr. Heelan submitted that fractures in the orthopedic group predated the noose incident: Dr. Wiens was upset about having no say in partnership matters, and blamed Dr. Wessels for his billing review. Mr. Heelan submitted this was the background and when Dr. Wiens saw the noose placed on the operating room door, he seized his opportunity and used it to pollute Dr. Onwuanyi's mind. Dr. Wiens refused to accept AHS's view that the matter had been addressed and closed, and refused to accept Dr. Wessels' apology. Mr. Heelan submitted that instead, Dr. Wiens did what he could to ensure the noose incident would not go away.
- [332] Mr. Heelan directed the Hearing Panel to the Windowpane report, which concluded that it would be difficult to review the circumstances of the noose without suspecting Dr. Wiens had an ulterior motive. Mr. Heelan submitted Dr. Wiens' motive was to advance the story after it was leaked to the media. He submitted that the evidence showed the story was leaked by Dr. Kollias, who knew Dr. Akinbiyi, but who was also acquainted with Dr. Wiens. Mr. Heelan submitted that when the story was leaked in 2020, the world was a different place than in 2016, due to the police killing of George Floyd and the international Black Lives Matter movement.
- [333] Mr. Heelan submitted that Dr. Wiens was well aware of the media story, cooperated with the media and provided information, and perpetuated his lie that it was a racist act directed at Dr. Onwuanyi. Dr. Wiens told both Dr. Jones and Dr. Denkema that something big was coming. Mr. Heelan submitted that Dr. Wiens exposed the incident to the fullest scrutiny of the public domain. All of this furthered Dr. Wiens' goal of portraying Dr. Wessels as racist and deserving of being pushed out of the Grande Prairie hospital.
- [334] Mr. Heelan stated that Dr. Wiens behaviour was egregious and submitted that Dr. Wiens suggestion that because Dr. Wessels owned guns, he might have homicidal tendencies was outrageous and should not be accepted by the panel. Mr. Heelan submitted that the only evidence of violence being threatened was by Dr. Wiens against Dr. Wessels. Mr. Heelan referred to the evidence of Dr. Jones that Dr. Wiens told him he wanted to take Dr. Wessels outside to the parking lot and beat him, and Dr. Jones didn't think he was joking.
- [335] Mr. Heelan submitted that Dr. Wiens had the audacity to tell the panel there was no discord before the noose incident, but in Mr. Heelan's submission, the evidence showed otherwise. Mr. Heelan submitted that although Dr. Wiens suggested Dr. Wessels hung the noose as a

racist gesture, the evidence showed that Dr. Wiens hijacked serious issues of race relations for his own purposes. Mr. Heelan submitted that Dr. Staples had testified that Dr. Wiens would use the race card whenever it suited him. In Mr. Heelan's submission, Dr. Wiens concocted a narrative that the Hearing Tribunal must reject.

- [336] Regarding Dr. Onwuanyi, Mr. Heelan stated that, given the clear and acknowledged symbolism of hatred, death, and racism related by a noose to black individuals, it is not surprising that Dr. Onwuanyi would be highly offended by the placing of the noose. However, Mr. Heelan submitted that Dr. Onwuanyi's evidence should be viewed with some caution. Mr. Heelan submitted that Dr. Onwuanyi learned of the noose from Dr. Wiens, who said Dr. Onwuanyi was targeted by the noose. Mr. Heelan submitted it was clear that Dr. Onwuanyi and Dr. Wiens had continued to discuss the matter since. Mr. Heelan did not think Dr. Onwuanyi was lying, merely that with the influence of Dr. Wiens, he had come to believe he was targeted. Mr. Heelan submitted that at the time of the incident, Dr. Onwuanyi was interviewed by Dr. Beekman, and Ms. Ljuden took notes. He suggested that while it was regrettable that Dr. Onwuanyi was not given the chance to review the notes, it was clear that Ms. Ljuden was experienced at taking notes and had nothing to gain by concocting a story about what was said in July 2016.
- [337] Mr. Heelan reviewed the notes Ms. Ljuden had taken. In his submission, the notes clearly show that while Dr. Onwuanyi had the right to be concerned and offended when the noose was placed, he was not. Mr. Heelan submitted that over time, as Dr. Wiens worked on him, Dr. Onwuanyi's opinion of what transpired evolved.
- [338] Regarding Dr. Onwuanyi's examples of racist comments by Dr. Wessels, Mr. Heelan submitted that Dr. Wessels had clear explanations for the context of those events, and they do not suggest racism. Mr. Heelan submitted that Dr. Onwuanyi's testimony was polluted by the lens created by Dr. Wiens, and that despite it all, he had continued to work and have social discussions with Dr. Wessels.
- [339] Regarding Dr. Akinbiyi, Mr. Heelan submitted that, as a black orthopedic surgeon, he also stated he was shocked by what he viewed as uncharacteristic behaviour from Dr. Wessels. Like Dr. Onwuanyi, Dr. Akinbiyi learned of the incident from Dr. Wiens, who also told him Dr. Onwuanyi was the target of the noose. In Mr. Heelan's submission, Dr. Akinbiyi told the College he had no evidence of racism from Dr. Wessels prior to the event. Mr. Heelan submitted that in testifying before the Hearing Tribunal however, Dr. Akinbiyi suggested that Mr. West, an experienced College investigator, refused or failed to properly record Dr. Akinbiyi's feelings.
- [340] Mr. Heelan referred the Hearing Tribunal to the notes from Dr. Akinbiyi's meeting with Mr. West. Mr. Heelan submitted that Dr. Akinbiyi testified that he relayed two other stories about racist comments made by Dr. Wessels, but Mr. Heelan submitted that this was hearsay and highly unreliable. Mr. Heelan submitted that there is no evidence as to who told the stories to Dr. Akinbiyi, but in any event, Dr. Wessels rejected them as inaccurate. Mr. Heelan submitted that it was clear Dr. Akinbiyi was trying to dredge up stories about Dr. Wessels. Mr. Heelan referred to Dr. Akinbiyi's call to Ms. Whiteside and suggested Dr. Akinbiyi was disappointed that she disclosed it to Dr. Wessels' counsel. In Mr.

Heelan's submission, this conversation was really Dr. Akinbiyi calling Ms. Whiteside at work and making her uncomfortable.

- [341] Mr. Heelan suggested to the Hearing Tribunal that Dr. Akinbiyi was misguided and misinformed by his friend and partner Dr. Wiens, and had therefore taken it on himself to paint Dr. Wessels as racist. Mr. Heelan submitted that the evidence showed Dr. Akinbiyi, through Dr. Kollias, advanced the story to the media, and gave an interview on the matter.
- [342] Regarding Dr. Lafontaine, Mr. Heelan submitted that he had testified about being made invisible by the process. Mr. Heelan submitted that Dr. Wessels was not responsible for the process and that had AHS engaged in a more comprehensive investigation and forced a more comprehensive dialogue, there might be less suspicion and innuendo. He submitted that AHS's failures to deal with the matter in a timely way should not be visited on Dr. Wessels.
- [343] Mr. Heelan submitted that Dr. Lafontaine's evidence was also clearly informed by Dr. Wiens, who was in the operating room and was informed by Dr. Wiens about the noose. Dr. Wiens also showed him the noose and said it was directed at Dr. Onwuanyi. Mr. Heelan submitted that Dr. Lafontaine, like Dr. Onwuanyi was misinformed and that the passage of time shaped the testimony he shared with the Hearing Tribunal. Mr. Heelan submitted that the evidence showed that when first speaking about the issue with AHS, Dr. Lafontaine regarded it as a joke misconstrued, and stated Dr. Wessels apologized to him and asked him to apologize to the operating room if it offended anyone. Mr. Heelan stated that the AHS documentation of its recorded telephone conversation with Dr. Lafontaine, done as part of the investigation into the noose hanging matter, revealed that Dr. Lafontaine had played no direct part in the matter, that Dr. Lafontaine had believed Dr. Wessels had not intended malice, that he believed Dr. Wessels was a good surgeon and that he was not sure Dr. Wessels had any insight into the significance of what he had done.
- [344] Mr. Heelan submitted that Dr. Lafontaine also denied any such phone call with AHS. Mr. Heelan submitted that it was suggested the call did not happen because Dr. Lafontaine was in the operating room. However, Mr. Heelan submitted that Ms. Nelson recalled that Dr. Lafontaine was in the operating room when they spoke, and other evidence showed Dr. Lafontaine regularly takes calls while in the operating room.
- [345] Mr. Heelan suggested that Ms. Nelson had no reason to lie and concoct a document to support her lie. Rather, Mr. Heelan submitted that Dr. Lafontaine had forgotten what he said in 2016, and his thinking has since evolved, due to changing societal attitudes and Dr. Wiens' influence.
- [346] Mr. Heelan referred the Hearing Tribunal to Exhibit 2, an email written by Dr. Wessels on June 24, 2016 in which he records approaching Dr. Lafontaine to apologize and explain the context. Mr. Heelan submitted that this aligned very closely with the contents of Ms. Nelson's notes. Mr. Heelan submitted that Ms. Nelson's notes should be accepted based on her experience. He submitted that Dr. Lafontaine's assertion that there was no phone call was the product of him forgetting and being influenced in another direction.

- [347] Mr. Heelan also submitted that Dr. Lafontaine spoke about his difficulty in making the complaint. However, Mr. Heelan questioned why someone who is president elect of CMA and has a role in serious high-level medical leadership, would not have approached AHS to ask where the investigation stood. In Mr. Heelan's submission, Dr. Lafontaine, as a capable individual, would not have accepted inaction. Mr. Heelan submitted that the evidence showed Dr. Lafontaine's memories had faded, and that the evidence he gave to the Hearing Tribunal in 2021 was informed by the media, influenced by Dr. Wiens and was not accurate compared to his evidence in 2016.
- [348] Regarding Dr. Hershcovis, Mr. Heelan submitted that little of what she said bore any relevance to the matters before the Hearing Tribunal, although some of her evidence merely confirmed what is already common sense including that harassment is bad, bad behaviour and harassment beget bad behaviour and harassment in the workplace, and people make mistakes.
- [349] Regarding Dr. Denkema, Mr. Heelan submitted that he described in detail the dysfunction that predated the noose event. Mr. Heelan submitted that Dr. Denkema described Dr. Wessels self-reporting the event the same day it occurred. He also described Dr. Wiens as a bully who shouts and who engages in dysfunction by shutting down communication, verbal aggression, and engages in pointing fingers and other threatening behaviour. Mr. Heelan submitted that Dr. Denkema's evidence supported the evidence of other witnesses that Dr. Wiens was engaged in a vendetta against Dr. Wessels.
- [350] Mr. Heelan submitted that Dr. McGowan spoke as someone outside the orthopedic department who gave evidence confirming he made nooses over the years, and would have been seen doing so by Dr. Wessels, whom he described as a solid citizen trying to do things better. Mr. Heelan referred to the memo written by Dr. Caffaro and later shared with Dr. McGowan for his approval. Mr. Heelan submitted that when shown this memo Dr. McGowan confirmed that he had never seen or heard anything from Dr. Wessels that could be considered racist or discriminatory. Mr. Heelan submitted that Dr. McGowan spoke about Dr. Wiens as someone concerned with pecuniary and selfish interests who was trying to avoid scrutiny. Nevertheless, he described Dr. Wiens as a friend.
- [351] Regarding Dr. Jones, Mr. Heelan submitted that he began as a bit of an outsider at the Grand Prairie hospital and observed the toxicity predating the noose incident and growing over time. Mr. Heelan also referred to Dr. Jones' testimony regarding Dr. Wiens saying he wanted to beat up Dr. Wessels. Mr. Heelan submitted that Dr. Jones was also told something big was coming shortly before the media article was published. Mr. Heelan also submitted that Dr. Jones thought complaints were being weaponized by Dr. Wiens and described a complaint he was subject to as a pure fabrication. Dr. Jones also recalled that Dr. Wiens blamed a complaint against him on Dr. Wessels.
- [352] Regarding Dr. Staples, Mr. Heelan submitted that like Dr. McGowan, he was outside the orthopedic group and had no stake in the battle there. Mr. Heelan submitted he provided a strong character reference for Dr. Wessels and told a story about Dr. Wiens attempting to advance racist stories about Dr. Wessels, which were made up.

- [353] Regarding Ms. Ressler, Mr. Heelan stated that like Ms. Whiteside, her evidence was courageous because of the power imbalance in the hospital setting. He submitted that both witnesses displayed their fear for their evidence, and the person they fear is Dr. Wiens. Mr. Heelan submitted that Ms. Ressler's evidence supported Dr. Wessels in that it was intended for anyone misbehaving, and would be available to her if anyone misbehaved. Mr. Heelan submitted that Ms. Ressler was afraid of Dr. Wiens, who has shouted at her. Mr. Heelan submitted her evidence was that the situation was a mischaracterization and that she was the only person there at the time to hear what Dr. Wessels actually said.
- [354] Regarding Ms. Whiteside, Mr. Heelan submitted that she also feared retribution from Dr. Wiens. He submitted that she spoke to the challenges she had with him, and that she had seen Dr. Wiens shouting and been shouted at by him as well. Mr. Heelan described the call she received from Dr. Akinbiyi, asking if she was uncomfortable with Dr. Wessels, as concerning and disturbing. He submitted that she told Dr. Akinbiyi that she thought Dr. Wessels was highly professional and had no reason to think he was racist.
- [355] Regarding Dr. Wessels' testimony, Mr. Heelan submitted that he had faced many challenges over the previous five years, but that this did not belittle the seriousness of the terrible mistake he made when he demonstrated incredible misjudgment and unprofessional conduct by hanging the noose on the operating room door. Mr. Heelan submitted that from Dr. Wessels' previous evidence, he had fully and quickly admitted his wrongdoing on the very day it happened.
- [356] Mr. Heelan submitted that the impact on Dr. Wessels was profound. He submitted that Dr. Wessels remained remarkably stoic in the face of the narrative, driven by Dr. Wiens and his proxies, that Dr. Wessels was a racist. Dr. Wiens stated that he had been branded as racist throughout the world of social media and Google and that this had been seen around the world. Mr. Heelan submitted that although he had been described as a racist surgeon who hung a noose targeting a black man, the Hearing Tribunal had found the evidence did not support that it was a racist gesture. Mr. Heelan reminded the Hearing Tribunal of the many appointments Dr. Wessels had lost as a result of these events, as well as the financial consequences of his referral network slowing down.
- [357] Mr. Heelan submitted that the Hearing Tribunal should conclude that Dr. Wessels made a terrible and grave mistake, but that this was a momentary lapse in judgment and should be considered in the circumstances he found himself in, namely the orthopedic group at the Grande Prairie hospital, where dysfunction was the norm. Mr. Heelan submitted that this mattered because courts take circumstance into account when they determine the appropriate sentence to impose. He submitted that the *Jaswal* factors invite consideration of the context of an issue.
- [358] The first *Jaswal* factor considers the nature and gravity of the proven allegations, and Mr. Heelan reminded the Hearing Tribunal any sanction should be based on "proven" allegations. In Mr. Heelan's submission, the proven allegation was that Dr. Wessels hung a noose to send a message to anyone misbehaving, which is what the Hearing Tribunal found. Although there was extensive testimony speaking to the profoundly upsetting, difficult and terrible meaning for black individuals, Dr. Wessels had testified he did not

know about that at the time. Mr. Heelan submitted it was interesting that a number of the individuals answering Mr. Boyer's questions did not know the full meaning of the noose even now.

- [359] Regarding the second *Jaswal* factor, the age and experience of the offending physician, Mr. Heelan submitted that Dr. Wessels' age and experience suggested he should have known better, but Dr. Wessels also stated that he grew up in Apartheid and did not fully experience North American culture, which should also be taken into account.
- [360] Regarding the third *Jaswal* factor, the presence or absence of any prior complaints or convictions, Mr. Heelan submitted that Dr. Wessels' record was impeccable. Mr. Heelan referred the Hearing Tribunal's attention to the character reference letters from the merits portion of the hearing. He submitted that these letters speak to Dr. Wessels' strong character and come from people of all ethnicities, races, and backgrounds. Mr. Heelan also submitted that Dr. Wessels voluntarily submitted to a forensic psychiatric assessment which demonstrated he had not psychiatric impediments and that there was no racist behaviour in Dr. Wessels' past or in the manner he conducts himself.
- [361] Regarding the fourth *Jaswal* factor, the age and mental condition of the offended patient, and factor eight, the impact on the offended patient, Mr. Heelan submitted there is no offended patient, but that the Hearing Tribunal could consider other victims, and in this case, foremost was Dr. Onwuanyi who was allegedly targeted by the noose. Mr. Heelan submitted that the evidence showed Dr. Onwuanyi was not offended at the time, but that subsequently, as he was polluted by Dr. Wiens, he became offended. Mr. Heelan submitted it was understandable that the noose would have a profound meaning for him, but he continued to work with Dr. Wessels and engage in social interactions with him. A second offended individual would be Dr. Akinbiyi, and Mr. Heelan submitted he was not working at the hospital on the day in question, but was still a black surgeon who ordinarily worked in the hospital. Mr. Heelan submitted that although he was offended, he did not appear to feel targeted.
- [362] Mr. Heelan submitted that a third person who asserted he was a victim was Dr. Wiens, who was in the OR and did not get along with Dr. Wessels. Mr. Heelan submitted Dr. Wiens is not a victim, but rather a perpetrator of lies and innuendo.
- [363] Mr. Heelan submitted that a fourth victim was Dr. Lafontaine, but Mr. Heelan submitted there was no evidence to suggest any animosity between Dr. Lafontaine and Dr. Wessels prior to the incident. Although Dr. Lafontaine was present in the operating room in question, the evidence shows he was personally unconcerned and that he was not targeted.
- [364] A fifth victim in Mr. Heelan's submission was the staff at the hospital, who experienced the fallout from the incident. However, Mr. Heelan submitted that the fallout was not due to Dr. Wessels hanging the noose, but rather due to the narrative created and advanced by Dr. Wiens since the event.
- [365] Regarding the fifth *Jaswal* factor, the number of times the offence occurred, Mr. Heelan submitted it only happened once, and was only seen by one person, Dr. Wiens.

- [366] Regarding the sixth *Jaswal* factor, the role of the physician in acknowledging what occurred, Mr. Heelan submitted that Dr. Wessels immediately acknowledged his mistake and that over time, he had realized even more how profoundly stupid and unprofessional it was. Mr. Heelan submitted that Dr. Wessels had taken steps to better understand what he done, and that his self-learning and ethics training were also evidence of acknowledgment.
- [367] Regarding the seventh *Jaswal* factor, whether the offending physician has already suffered serious financial or other penalties as a result of the allegations having been made, Mr. Heelan submitted that Dr. Wessels had suffered significantly through the media and social media coverage suggesting he is a racist, through the loss of board positions and referrals, and through missing out on practice for two weeks.
- [368] Having previously covered the eighth factor, Mr. Heelan turned to the ninth *Jaswal* factor, which is the presence or absence of any mitigating circumstances. Mr. Heelan submitted that there were significant mitigating circumstances. He cited the toxicity of the operating room, which does not excuse what happens, but informs and explains why it happened. Mr. Heelan also suggested that the pain felt by Dr. Onwuanyi, Dr. Akinbiyi and others at the hospital was not largely due to Dr. Wessels' action, but because of the narrative around it that was constantly expounded on by Dr. Wiens. Mr. Heelan submitted that the passage of time was also a mitigating factor in that, had AHS and the College dealt with the matter sooner, the impact could have been significantly reduced.
- [369] Regarding the tenth *Jaswal* factor, the need to promote specific and general deterrence, Mr. Heelan submitted that, in regards to the need for specific deterrence, there was already evidence presented that, whatever the sanction imposed by the Hearing Tribunal, Dr. Wessels would never do anything so stupid again. By way of general deterrence, Mr. Heelan submitted that any right-minded physician in the province, having read of the scrutiny endured by Dr. Wessels, would never do such a thing.
- [370] Regarding the eleventh *Jaswal* factor, the need to maintain public confidence in the integrity of the medical profession, Dr. Heelan submitted that this did not mean that Dr. Wessels should receive a punishment that did not fit the wrongdoing as found. He submitted that Mr. Boyer had proposed a 12-month suspension, but that this was the domain of physicians who engaged in profound sexual misconduct. Mr. Heelan submitted that the case of Dr. Alarape was a case of a physician who sexually assaulted a nurse, which is not workplace harassment, but sexual assault at work. The physician in that case was criminally charged and convicted of sexual assault, which Mr. Heelan submitted was a different type of misconduct. Mr. Heelan submitted that a short, sharp suspension would send the message that what Dr. Wessels did will not be tolerated. Combined with the costs of the matter, the 2-week suspension Dr. Wessels had already served, along with its consequent income loss, the loss of referrals, and his treatment in the media, Mr. Heelan submitted a 4-week suspension would satisfy the public's confidence in the integrity of the medical profession. Mr. Heelan also submitted that the public must be properly informed, which included knowing this was not a racist attack on a black surgeon.
- [371] Regarding the twelfth *Jaswal* factor, how far outside the range of acceptable conduct the offensive conduct was found to have occurred, Mr. Heelan submitted it was clear that what

Dr. Wessels did was wrong. However, he also asked the Hearing Tribunal to turn its mind back to 2016 and how the conduct would have been perceived then. In Mr. Heelan's submission, the Hearing Tribunal heard evidence as to how nooses had been made and displayed in the past, although not in such a profound way as in this incident. He also submitted that the evidence was that the noose meant different things to different people, and that it did not have the profound and horrific connotation for Dr. Wessels that it should have.

- [372] Regarding the thirteenth *Jaswal* factor, the range of sentences in similar case, Mr. Heelan provided case law to the Hearing Tribunal which he submitted were helpful. In *College of Physicians and Surgeons and Young*, Mr. Heelan submitted the physician issued threatening statements about a physician to a third party, including that he would have to shut the other physician up even if he had to blow him up, and it might not be bad to go to jail for that. Mr. Heelan submitted that Dr. Young was reprimanded and ordered to pay costs. Mr. Heelan submitted this situation was similar to Dr. Wessels in that it involved a threat which was dealt with by way of a reprimand.
- [373] In *College of Physicians and Surgeons and Namis*, the physician referred to his ability to have a nurse shot or killed or have her home burned down in a heated confrontation. He later denied the event, and was found guilty of common assault by a court. Mr. Heelan submitted that the College sought penalties including suspension for four months with two months held in abeyance if Dr. Namis completed an impulse control program. However, the panel ordered that Dr. Namis be reprimanded only.
- [374] In *College of Physicians and Surgeons and Georgantopoulous*, the doctor was criminally convicted of assaulting and uttering threats to cause serious bodily harm to his then wife. He was reprimanded and received a 3-month suspension, which was held in abeyance if he completed a boundaries course and an anger management course.
- [375] In *College of Physicians and Surgeons and Sewchand*, the physician was also criminally convicted of assaulting his wife. He was also reprimanded and his 3-month suspension was held in abeyance if he completed a boundaries course and paid costs.
- [376] In Mr. Heelan's submission, these four cases show that when violence is threatened or even led to criminal convictions, regulatory colleges did not impose an actual suspension, or if they did, the suspensions were held in abeyance so remedial courses could be completed.
- [377] Mr. Heelan submitted that the cases put forward by the Complaints Director were distinguishable because they all involved repeated misconduct over a prolonged period of time, whereas Dr. Wessels' situation involved a single, isolated, and momentary incident of thoughtlessness. Some of the CPSA cases also involved cover-ups, which Mr. Heelan submitted was also absent from the present case. The CPSA cases also involved continued misconduct, despite prior disciplinary action aimed at correcting the offending behaviour. In the cases of Dr. Waddell and Dr. de Muller, they received only 3-month suspensions for far more egregious misconduct than Dr. Wessels'. Mr. Heelan submitted that, if anything, the cases put forward by opposing counsel show that Dr. Wessels' suspension should be less than three months.

- [378] Mr. Heelan submitted that Dr. Waddell spread defamatory words by email and social media to a wide audience repeatedly over a long period of time. The misconduct had a significant impact on the work environment, and some of the social media posts disclosed patient information. Mr. Heelan submitted that Dr. de Muller made harassing phone calls purely to disturb colleagues between midnight and 7 a.m. She also lied to her colleague about her behaviour.
- [379] The other cases cited by CPSA provided for longer suspensions, but Mr. Heelan submitted the conduct was more serious. For example, Dr. Sogbein received a 4-month suspension for the frequent and cumulative nature of his offences, and Mr. Heelan submitted that as a new professional, he needed a strong deterrent to correct his path early. Dr. Bhatt also received a 4-month suspension, but had a history of abusive misconduct toward colleagues and patients over many years. Mr. Heelan submitted that after the monitoring ceased, he recommenced his harmful conduct. Mr. Heelan submitted that Dr. Mahdi received a total of 6 months, but he had made false allegations against colleagues, and his sanction reflected the pre-meditation and the length of time he persisted with his acts. Mr. Heelan submitted that Dr. Alarape was clearly distinguishable because it was a case of sexual assault. In Mr. Heelan's submission, these cases provided no comparison to Dr. Wessels.
- [380] In closing, Mr. Heelan submitted that the Hearing Tribunal, after considering all the evidence and cases put forward, should find the appropriate penalty was a reprimand. In addition, Mr. Heelan submitted that given the incredible public scrutiny, a short, sharp suspension of one-month was also appropriate. Mr. Heelan submitted that the Hearing Tribunal should also consider that Dr. Wessels had already served two weeks because of the leave he took following the media story. To summarize, Mr. Heelan proposed a one-month suspension, of which two weeks should be held in abeyance provided Dr. Wessels remained of good behaviour and character.
- [381] Regarding costs, Mr. Heelan submitted that Dr. Wessels admitted his conduct right from the day it happened, and admitted it to the Hearing Tribunal. Mr. Heelan submitted that it was the propagated misinformation which required a four-day hearing to illuminate the context and reveal the misinformation. Mr. Heelan submitted that without the misinformation, only a day would have been required. Mr. Heelan submitted that the misinformation was not Dr. Wessels' fault. Therefore, Mr. Heelan submitted that Dr. Wessels should only be required to pay 25 percent of the actual costs.

Response of the Complaints Director

- [382] On behalf of the Complaints Director, Mr. Boyer asked the Hearing Tribunal to look at the date of the decisions referred to by Dr. Wessels. For example, the case considering Dr. Namis dated from 1995. Mr. Boyer submitted that looking at the dates of the cases would help the Hearing Tribunal understand societal expectations and that this should be included in the context of the sanction assessment.

Response of Dr. Wessels

- [383] On behalf of Dr. Wessels, Mr. Heelan agreed that Mr. Boyer's comment regarding dates was fair, and that this was a variable to be considered. Mr. Heelan submitted that the Hearing Tribunal should be guided by the principles both he and Mr. Boyer had reviewed.

VI. DECISION OF THE HEARING TRIBUNAL

- [384] After adjourning to review the Exhibits and transcripts and to deliberate, the Hearing Tribunal determined the appropriate sanction in this case to be a suspension of Dr. Wessels' registration for 4 months, with 2 weeks of that suspension remitted as a result of the AHS request that Dr. Wessels remain at home in July 2020. In addition, Dr. Wessels is responsible for 75% of the costs associated with this Hearing and the investigation leading to it.

Reasons

- [385] Dr. Wessels has acknowledged that his act on June 24, 2016 of hanging a noose in such a manner in the workplace was totally inappropriate and constitutes unprofessional conduct. During the three days of evidence submitted to it during the Sanction component of the Hearing, the Hearing Tribunal listened to and carefully considered the testimony about the events leading to the noose incident, and also the aftermath and impact of the incident in the workplace. In its Merits Decision, the Hearing Tribunal found there was insufficient evidence that the act was racially motivated. Therefore, if race was not the motivation behind this event, what evidence was presented to explain this incredibly inappropriate act? We heard in great detail about the dysfunction that existed prior to this noose hanging incident and which unfortunately seems to persist to this day. Episodes of verbal abuse of staff by at least one of Dr. Wessels' colleagues seem to have been common, and it is the Tribunal's opinion that it was the difficulties in the relationships between some of the orthopedic surgeons that contributed significantly to the noose hanging incident. There may well have been other frustrations at play in Dr. Wessels' mind regarding the general dysfunction at the hospital when this episode occurred, considering that another CPSA investigation against a second orthopedic surgeon, Dr. Al Ghamdi, was ongoing at this same time.
- [386] The evidence from Nurse Ressler, however, made it clear to the Tribunal members that the hanging of the noose by Dr. Wessels emanated directly from a conversation they had about the dysfunction in the operating rooms and the lack of consequences for surgeons who behaved badly. It is regrettable that in follow up to that conversation that Dr. Wessels would hang the noose he had been tying, on an operating room door without providing any context or explanation to accompany its placement in such a location. In our Merit Decision, this Tribunal found that the evidence it had considered indicated that the hanging of the noose was meant as a warning to others. Our opinion on this has not changed following the three days of further testimony we have heard during the Sanction component of this Hearing. Dr. Wessels' motivation at the time of hanging the noose may have been mixed, but there is little doubt that while he may have meant to offer support to Nurse Ressler by hanging it, he also could not have been unaware that a noose is symbolic of

violence and would be perceived as a threat by anyone seeing it. It is also undoubtedly true from the evidence we heard and have considered that Dr. Wiens has fostered the narrative both publicly and within the QE2 facility where he works (that narrative being Dr. Wessels is a racist South African and that he was targeting black physicians in the operating room when he hung the noose). It is quite possible that Dr. Wiens believes this to be true. However, it is also the opinion of the Hearing Tribunal based on the evidence it heard that the propagation of such a narrative by Dr. Wiens has compounded the dysfunction that already existed in the Orthopedic Department before the hanging of the noose. This, however, is not an unforeseen outcome considering the circumstances in which the noose was hung, and Dr. Wessels is ultimately responsible for creating or inflaming the environment for such a narrative to arise.

- [387] The Tribunal has considered the case law supplied by both parties when considering what an appropriate sanction should be. It is undoubtedly true, however, that there is little precedent for such an event in the cases we were provided by both parties. Despite this, it is the Tribunal's opinion that the cases that involved threats of violence by a physician or those that involved bringing discredit to the profession were the most appropriate ones to consider when deciding upon the length of any suspension. The publication of this incident in the media has resulted in significant controversy and has done nothing to uphold the public's confidence in the medical profession, its regulatory mechanisms or its institutions. This was reflected in the fact that the recent Minister of Health felt it necessary to instigate an Independent Investigation into this matter, the result of which was the Windowpane report that was submitted as evidence in this Hearing. Therefore, the Tribunal focused on the following cases that were provided to it by both parties, to assist the tribunal in arriving at a fair sanction.
- [388] In the case of the *College of Physicians and Surgeons of Manitoba and Muller* in 2009, that physician was found guilty of making harassing pages to two physician colleagues in the early hours of the night and to also lying to a College Investigator about doing so. The sanction was for a 3-month suspension, with it held in remission, subject to the physician receiving appropriate therapy. The physician also paid the full costs of the Hearing.
- [389] In the case of the *CPSO and Waddell* in 2020, the physician, who had sent emails to his colleagues that could be considered threatening, was sanctioned by having his license suspended for 3-months and he paid the costs associated with the Hearing.
- [390] In the case of the *CPSO and Sewchand* in 2001, the physician, who had been found guilty on a criminal count of assaulting his wife and of uttering threats to kill her, was found guilty of unprofessional conduct by the College and given a 3-month suspension of his license, which was subject to remission if he obeyed certain conditions imposed upon him by the Hearing Tribunal. The physician was also liable for the costs.
- [391] In the case of the *CPSO and Namis* in 1995, the physician was found guilty of unprofessional conduct in that he threatened to harm a colleague by arranging for her to be harmed and/or that her house would be burned down. He was found criminally guilty of these charges. The CPSO Hearing Tribunal sanctioned the physician with a reprimand considering that 6 years had elapsed since the unprofessional conduct had taken place and

the physician's behavior since that time had not raised any concerns with the public or his colleagues.

[392] In the case of the *CPSO and Georgantopoulos* from 2006, the physician was found guilty of unprofessional conduct after he was found criminal guilty of assaulting his wife and uttering threats. He was suspended by the CPSO for 3 months, the sanction to be remitted if he followed the orders of the Hearing Tribunal. He also had to pay costs to the CPSO.

[393] In addition to considering the case law which the Hearing Tribunal believed to be the most relevant to the matter at hand, it also considered the *Jaswal* factors that help inform the appropriateness of any sanction that it will impose. *Jaswal* has broken down the issues that influence what a sanction should be by looking at thirteen factors. The Tribunal Members have considered these thirteen factors and how they might be applied to the case in hand.

1. The nature and gravity of the proven allegations:

- The act of hanging the noose by Dr. Wessels was admitted by him to be a serious act of unprofessional conduct.
- Not only was it unprofessional, but it also constituted intimidating, threatening conduct, even if there was insufficient evidence of racial motivation.
- Dr. Hershcovis testified it was a serious incident and on the spectrum of workplace harassment was at the upper end, and would meet the definition of workplace violence.
- The Windowpane report and the evidence and report of Dr. Leier did not indicate racial motivation. This is consistent with the multidisciplinary assessment carried out by the COAP in August 2020.

2. The age and experience of the offending physician:

- Dr. Wessels was a mature, experienced physician who had worked in several countries.
- He should have been aware that others would interpret the noose in a very negative way.
- He would certainly have been aware of its death symbolism, even if less aware of all the details of the history of lynching in the southern USA.

3. The previous character of the physician and in particular the presence or absence of any prior complaints or convictions:

- The Tribunal has not been presented with any evidence that Dr. Wessels has been found guilty of unprofessional conduct in the past.
- During the Hearing, the Tribunal heard various unproven allegations or hearsay statements by some witnesses against Dr. Wessels.

4. The age and mental condition of the offended patient:
 - There were no patients directly involved in this matter, but the potential co-workers who were adversely affected were mature adults, some of whom yielded less power than Dr. Wessels in the hospital hierarchy and who have suffered emotional trauma by becoming entangled in this matter.
5. The number of times the offence was proven to have occurred:
 - The hanging of the noose by Dr. Wessels on June 24, 2016 was a single event.
6. The role of the physician in acknowledging what had occurred:
 - It appears that Dr. Wessels took responsibility and pled guilty to the allegation as soon as the matter was reported to his AHS superiors.
7. Whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made:
 - The Hearing Tribunal has heard evidence that Dr. Wessels has suffered significantly with a brief (2 week) period off work as requested by AHS, the worldwide media exposure, and possible decreased referrals.
 - He has also been taken off key AHS committees and can no longer teach residents.
8. The impact of the incident on the offended patient:
 - Various physician colleagues appear to have been adversely affected by the racial connotations of the noose – particularly his racial minority colleagues. There was no evidence presented that other health care co-workers were significantly impacted by the specific event; however, some hospital staff felt stress from the dysfunctional workplace and media attention.
 - There was some difference as to the degree of impact this matter had on some physicians at the time the event occurred in 2016, as reflected in their contemporaneous AHS interviews notes recorded at that time and their subsequent evidence at this Hearing, where it would appear the matter has taken on a greater significance for them and that significance continues to affect them 5 years after the event occurred.
9. The presence or absence of any mitigating circumstances:
 - The willingness of Dr. Wessels to agree to a joint statement on guilt.
 - His cooperation with the College.
 - His willingness to engage in remediation.

- The number of people of all races willing to offer character references on his behalf.
 - The acknowledgement by the CPSA that Dr. Wessels is not in need of remediation.
 - The fact that this was a single unpremeditated event.
10. The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine:
- This is an important consideration as a period of suspension sends a strong message to the profession as to the seriousness of this or any similar conduct.
11. The need to maintain the public's confidence in the integrity of the medical profession:
- This is particularly important, especially in the context of a self-regulated profession.
 - However, the length of any suspension should be appropriate for the facts surrounding the conduct that was proven or admitted to.
12. The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct:
- Every witness and even Dr. Wessels himself agreed that the conduct was totally unacceptable, unprofessional and that it would fall far outside the range of permitted conduct.
13. The range of sentence in other similar cases:
- The details in the case law examples provided by both parties were not particularly applicable to the case at hand but they did provide some guidance as to the appropriate length of any sanction this Tribunal should impose.
 - Some of the cases involved intimidation and threatening conduct by physicians, often on a repeated basis, that led to suspensions in the range of 3-4 months.

[394] Having reviewed all the evidence and the transcripts from the Hearing, the Tribunal feels that the sanction it has reached will primarily act as a general deterrent to the profession. It believes it is highly unlikely that Dr. Wessels will ever act in such an unprofessional manner in the future.

VII. ORDERS

[395] The Hearing Tribunal orders that Dr. Wessels' registration be suspended for a period of 4 months, commencing on a date to be determined by the Complaints Director, with 2 weeks

of that suspension remitted as a result of the AHS request that Dr. Wessels remain at home in July 2020.

VIII. COSTS

[396] The Hearing Tribunal considers that some of the testimony from the College of Physicians and Surgeons was unnecessary. That perspective is not intended to be a criticism because it is not always possible to assess the relevance of testimony in advance, and in fact, the College might well have been criticized for not calling that evidence, but it contributed to the length of the Sanction Hearing. As a result, it finds that Dr. Wessels should be responsible for 75% of the costs associated with the Merits Hearing, this Sanction Hearing and the investigation leading to it, and must repay those costs to CPSA on a timetable to be agreed upon by the parties.

Signed on behalf of the Hearing Tribunal by the Chair this 2nd day of December, 2021.



Dr. Colm MacCarthy