

**IN THE MATTER OF A HEARING BEFORE THE HEARING TRIBUNAL
OF THE COLLEGE OF PHYSIOTHERAPISTS OF ALBERTA
INTO THE CONDUCT OF SURYA GADGERAO
PURSUANT TO THE *HEALTH PROFESSIONS ACT*, RSA 2000, c. H-7**

DECISION OF THE HEARING TRIBUNAL

**DECISION OF THE HEARING TRIBUNAL
IN THE MATTER OF A HEARING BEFORE THE HEARING TRIBUNAL
OF THE COLLEGE OF PHYSIOTHERAPISTS OF ALBERTA
INTO THE CONDUCT OF SURYA GADGERAO
PURSUANT TO THE *HEALTH PROFESSIONS ACT*, RSA 2000, c. H-7**

DECISION OF THE HEARING TRIBUNAL

I. Introduction

[1] A hearing of a matter by the Hearing Tribunal of the College of Physiotherapists of Alberta (the “**College**”) was conducted virtually on April 28-30 and May 1, 2025.

[2] The members of the Hearing Tribunal were:

Andrew Otway, Public Member, Chair
Mark Hall, Regulated Member
Jennifer Dunn, Regulated Member
Patricial Hull, Public Member

[3] Also present were:

Simon Cooke, Complaints Director
Vita Wensel, Legal Counsel for the Complaints Director
Surya Gadgerao, Investigated Member (“**Mr. Gadgerao**” or the “**Investigated Member**”)
Alan Rudakoff, Legal Counsel for the Investigated Member
Hannah Jorgenson, Student at Law attending with Legal Counsel for the Investigated Member
Julie Gagnon, Independent Legal Counsel for the Hearing Tribunal
Haylee O’Reilly, Hearings Administrator
Cheryl Blahut, Conduct Coordinator
Jessica Young, Court Reporter

II. Preliminary Matters

[4] A preliminary application was brought by the Investigated Member for the hearing to be held in-person. A written decision dated March 5, 2025 was issued on the preliminary application

[5] The parties confirmed that there were no objections to the composition or jurisdiction of the Hearing Tribunal.

[6] Pursuant to section 78(1) of the *Health Professions Act*, RSA 2000, c. H-7 (“**HPA**”) the hearing was open to the public. Neither party brought an application to close the hearing.

- [7] Ms. Wensel brought an application that the complainant be referred to using the initials CR (the “**Complainant**” or “**CR**”). Mr. Rudakoff had no objection to the application and the Hearing Tribunal so ordered.
- [8] During the hearing, it was noted that the Complainant’s daughter and the other patients of the Centre or their spouses who gave evidence in this matter would be identified only by their initials, in order to preserve their privacy.

III. Allegations

- [9] The allegations that appear in the Notice of Hearing (Exhibit #1) are that:
1. On or about May 15, 2023, while providing physiotherapy treatment to patient CR, you touched her buttocks under her clothing without a therapeutic purpose.
 2. On or about May 26, 2023, while providing physiotherapy treatment to patient CR, you touched her labia over her clothing without a therapeutic purpose.
 3. Further, or in the alternative to Allegation 1, on or about May 15, 2023, while providing physiotherapy treatment to patient CR, you did one or more of the following:
 - a. Failed to obtain adequate informed consent before touching patient CR’s buttocks under her clothing;
 - b. Failed to perform physiotherapy services on patient CR’s buttocks in a clinically appropriate and/or competent manner.
 4. Further, or in the alternative to Allegation 2, on or about May 26, 2023, while providing physiotherapy treatment to patient CR, you did one or more of the following:
 - a. Failed to obtain adequate informed consent before touching patient CR’s inner thigh and/or groin area over her clothing;
 - b. Failed to perform physiotherapy services on patient CR’s inner thigh and/or groin area in a clinically appropriate and/or competent manner.

IT IS FURTHER ALLEGED THAT your conduct constitutes “unprofessional conduct” as defined in s. 1(1)(pp)(i), (ii), and (xii) of the HPA, in particular:

1. Your conduct in Allegation 1 and/or Allegation 2 constitutes “sexual abuse” as defined in s. 1(1)(nn.1) of the HPA and contravenes the College’s Standard of Practice for Physiotherapists in Alberta: Sexual Abuse and Sexual Misconduct.

2. Further or in the alternative, your conduct breaches one or more of the following:
 - a. Code of Ethical Conduct for Alberta Physiotherapists: Responsibilities to the Client (A1, A4, A5, A6, A12, and A18); Responsibilities to the Public (B1); and Responsibilities to Self and the Profession (C1); and
 - b. Standards of Practices for Physiotherapists in Alberta: Client Assessment, Diagnosis, Interventions; Client-Centered Care; Consent; Evidence-Informed Practice and Professional Boundaries.

IV. Exhibits

[10] The following were entered as exhibits during the hearing:

- Exhibit #1 – Book of Agreed Exhibits
- Tab 1 Signed Notice of Hearing dated November 26, 2024
 - Tab 2 Complaint from CR dated June 22, 2023
 - Tab 3 Response letter from Surya Gadgerao dated September 12, 2023
 - Tab 4 Resume of Surya Gadgerao
 - Tab 5 Email from CR to Centre dated June 12, 2023
 - Tab 6 Photo of shorts of CR
 - Tab 7 Photo of pajama pants from CR
 - Tab 8 Photos of Centre taken by investigator
 - Tab 9 Appointment Schedules May 15 and 26, 2023 for the Centre including Surya Gadgerao
 - Tab 10 Intake documents for CR dated May 10, 2023
 - Tab 11 Initial Assessment of CR and WCB Initial Assessment Form
 - Tab 12 Treatment Record of CR and transcribed entries dated May 12-29, 2023
 - Tab 13 WCB appointment history and fee invoice for CR
 - Tab 14 Code of Ethical Conduct for Alberta Physiotherapists
 - Tab 15 Standards of Practice for Physiotherapists in Alberta, March 31, 2023
 - Sexual Abuse and Sexual Misconduct
 - Client Assessment, Diagnosis, Interventions
 - Client-Centered Care
 - Consent
 - Evidence-Informed Practice
 - Professional Boundaries
 - Tab 16 FWBA Architects Report
- Exhibit #2 - Agreed Statement of Facts
- Exhibit #3 - Hilary Reese CV
- Exhibit #4 - Hilary Reese Opinion
- Exhibit #5 - Screenshots - HR
- Exhibit #6 - Documents labelled Page 4
- Exhibit #7 - Resume of Jeffrey Begg
- Exhibit #8 - Expert Report re Surya Gadgerao by Jeffrey Begg

V. Evidence

Agreed Statement of Facts

- [11] The parties presented an Agreed Statement of Facts, agreeing to some of the facts in the hearing. The following facts were agreed to by the parties:

Introductory Background to Complaint

- [12] Mr. Gadgerao became a regulated member of the College on the provisional register on April 6, 2021. His provisional registration certificate was cancelled on May 10, 2024 and he does not currently hold registration with the College.
- [13] Mr. Gadgerao has no prior history of complaints or discipline arising out of his previous membership with the College.
- [14] On June 22, 2023, CR submitted a complaint to the College about Mr. Gadgerao's conduct as a provisional physiotherapist. CR was a previous patient of Mr. Gadgerao.
- [15] At all material times of the alleged concerns in the Complaint, Mr. Gadgerao was employed as a provisional physiotherapist at Medicine Hat Physiotherapy Centre in Medicine Hat, Alberta (the "Centre").
- [16] Following the Complaint, Mr. Gadgerao remained employed at the Centre as a provisional physiotherapist until his cancellation and after May 2024, as a physiotherapy support worker.
- [17] Ms. Deepika Sony and Ms. Ramandeep Kaur were employed as physiotherapy support workers at the Centre at the time of the alleged concerns and they remain employed at the Centre to date.

Treatment of CR

- [18] CR injured her left knee in her workplace on April 28, 2023. She began seeing Mr. Gadgerao as a physiotherapist for her left knee through a Workers Compensation Board ("WCB") claim.
- [19] CR attended physiotherapy appointments with Mr. Gadgerao between May 10, 2023 and May 26, 2023, on eight (8) occasions. During this period and inclusive of May 26, 2023, CR was Mr. Gadgerao's patient as defined in the College's Standards of Practice and section 1(1)(x.1) of the HPA at the time of the alleged conduct.
- [20] On May 29, 2023, a request was sent from WCB to the Centre requesting a discharge report for CR.

Post-Treatment

- [21] On June 12, 2023, CR contacted the Centre about her concerns. She also reported her concerns to the Medicine Hat Police Service.
- [22] Mr. Gadgerao was arrested and charged on June 15, 2023 by the Medicine Hat Police Service relating to CR's allegations. The charges were dropped on July 24, 2023.

Witnesses

- [23] The following individuals were called as witnesses for the Complaints Director during the Hearing:

Hilary Reese
CR
Ramandeep Kaur
Deepika Sony

- [24] The following individuals were called as witnesses for the Investigated Member during the Hearing:

Surya Gadgerao
PG (Patient of the Centre)
PJ (Patient of the Centre)
GB (Patient of the Centre)
CB (Wife of GB)
Jeffrey Begg

Summary of Witness Testimony

- [25] The following is a summary of the testimony given by each witness.

Hilary Reese

- [26] Hilary Reese was called as an expert witness. She is a licensed practicing physiotherapist and has been a member of the College since 1995.
- [27] Mr. Rudakoff advised that Mr. Gadgerao acknowledged and admitted to Ms. Reese's qualification and did not object to her being qualified as an expert. The Hearing Tribunal accepted Ms. Reese as an expert witness in physiotherapy.
- [28] Ms. Reese reviewed her written opinion. She described the different methods of palpation conducted by physiotherapists in manual therapy and reviewed how the muscles are connected to and related to the knee. She noted that the piriformis muscles, located deep in the buttock region, attach to the outer side of the hip. Tension in the

piriformis region can refer down into the leg to the knee region. The hamstring muscles which originate from the ischial tuberosity, the bone at the bottom of the buttock known as the sitz bones, travel down the back side of the thigh. The hamstring biceps attach on the outer side of the knee on the fibular head and the remaining hamstrings attach on the inside of the knee.

- [29] Ms. Reese noted that based on the clinical subjective reports of CR on May 15, 2023, palpation of the hamstrings and piriformis were within the scope of practice and were warranted as an assessment tool for the patient. Ms. Reese described the palpation that would occur, noting that for the hamstring, there would be a lighter palpation but for the piriformis, which lies deep in the buttock muscles, the palpation will have to go down deeper.
- [30] Ms. Reese noted instances where a physiotherapist may want to palpate directly on the skin, including bursitis (involving an inflamed fluid-filled sack where tendons rub over the bone) which can feel warm or hot to the touch. There should be proper draping, informed consent and then palpating. It was Ms. Reese's opinion based on her review of the file that there was no indication for palpating directly on the skin in this case.
- [31] Ms. Reese also noted that, in palpating the piriformis, which lies dead center in the buttock region, it is typically easier to go from top down to palpate rather than from the bottom up.
- [32] Ms. Reese provided her opinion that there was no basis to palpate under CR's shorts on May 15, 2023. She also reviewed informed consent which involves informing the patient about the potential effects as well as potentially the health benefits of what is proposed. It is necessary to ensure that the individual understands why you want to do certain testing, what is the rationale, reasonable alternatives, consequences if they refuse and risks. Informed consent must be given voluntarily and the patient needs to understand that they can withdraw consent at any time. Every time you see a patient, you need to confirm consent. Anytime you propose some sort of new treatment plan or intervention, or a new assessment, especially in a sensitive area like the buttocks, you need to obtain informed consent and document it in your notes.
- [33] Ms. Reese reviewed the patient record for May 15, 2023. She noted that the record indicates that Mr. Gadgerao asked for verbal consent, although it does not note that he received verbal consent.
- [34] Ms. Reese reviewed the May 26, 2023 appointment. CR was presenting with new symptoms, with more numbness in the area of the outer side of the left thigh and ongoing pain over the inside part of the thigh as well as the left knee.
- [35] Ms. Reese described that the adductor muscle group lies on the inside of the thigh, inserts down near the knee and travels up in the groin and attaches to the pubic rami, the hard bone at the bottom of the pelvis on the front of the body. Based on the presenting

concerns of CR on May 26, 2023 it was appropriate to palpate the adductor muscle group from insertion (at the knee) to origin, which involves palpating toward the hip and groin region to evaluate whether or not that is causing the knee pain. You would stop the palpation if you hit the pubic rami, as this is the origin of the muscle. It would be clear as the pubic rami is a hard, bony structure. Palpation beyond the pubic rami in this case would not have been clinically appropriate. It would not be clinically appropriate to palpate the labia. The outer portion of the labia is just inside or lateral to the inferior aspect of the pubic rami. Ms. Reese noted that the recommended position to palpate the adductor muscles is the figure of four position, as that moves the labia a little. You could reach the pubic crest and have a "good centimeter" before reaching the labia.

- [36] Ms. Reese noted that Mr. Gadgerao's chart notes mention that verbal consent was obtained to examine the hip and surrounding muscles and structures, and that he explained the procedure and proceeded with the examination. She noted this entry was a more robust informed consent documentation but that it does not note if verbal consent was given by the patient. Ms. Reese again reviewed the informed consent process.
- [37] Ms. Reese noted that when palpating, the physiotherapist is going across the fibers to see whether they can provoke any of the familiar pain which the patient may perceive as a sliding or gliding type motion.

Cross-Examination

- [38] In cross-examination, Ms. Reese confirmed that her opinion was based only on a paper review of the materials provided to her by the Complaints Director. Ms. Reese confirmed that the palpation in the area of the upper thigh and groin was clinically appropriate on May 26, 2023, given the presenting complaint but touching of the labia would not be appropriate. She further confirmed that palpation over top of the clothing of the buttocks area was clinically appropriate on May 15, 2023.

CR

- [39] CR is 50 years old. She was a health care aide for 27 years and has recently completed a social work diploma program. She suffered a work injury as a health care aide, when she was kicked in the left knee in April 2023. She made a claim to the WCB and received physiotherapy from the Centre. She made a complaint to the College on June 22, 2023.
- [40] CR described the reason for making her complaint arising from two occasions where she believed that Mr. Gadgerao engaged in sexual assault or sexual misconduct.
- [41] CR testified that her first appointment with Mr. Gadgerao was on May 10, 2023 and her last appointment was May 26, 2023. She was attending appointments Mondays, Wednesdays and Fridays in the mornings. The appointments were approximately one half hour each. She initially had no concerns with Mr. Gadgerao and thought he seemed a bit

shy and was not very talkative. She noted that his accent made conversation a little bit harder as English was not his first language. However, she does not believe his accent was a barrier in her understanding when discussing the treatment on her knee.

- [42] CR described the Centre, noting that the rooms have walls between them with privacy curtains.
- [43] CR described the first appointment. She recalls signing a basic consent form. CR testified that she expected that Mr. Gadgerao would touch from her hip to foot on her left side. She stated that Mr. Gadgerao never asked for consent before touching her body or performing an assessment or treatment.
- [44] On May 15, 2023, CR described a pop in her knee to Mr. Gadgerao and that she had a numb sensation. He had her lay on her stomach and did an assessment, including palpating and range of motion. He proceeded up her thigh to assess. She was wearing short denim shorts and was not wearing underwear. She described that the shorts covered her buttock cheeks and ended just below the buttock cheeks. They were not tight and there would be room to get a hand under the shorts comfortably. CR described that Mr. Gadgerao was palpating around the tailbone area and then her buttock cheek. He put his hands up under the shorts on the left buttocks and proceeded with an assessment under the shorts, under the pocket of the shorts, using his fingers. He was not wearing gloves. CR described the pressure as being a 5 out of 10.
- [45] CR stated that there was no discussion about what touching would occur on that day. There was no discussion at any point about where Mr. Gadgerao would touch her on her body.
- [46] CR thought the touching of the buttocks lasted about ten seconds. She did not do anything, she stated she was shocked and kind of frozen. While he was doing his assessment he would ask questions such as "does this hurt" however, he did not say anything while he was touching her buttocks.
- [47] CR did not recall if the physiotherapy assistant treatment on May 15 was before or after she saw Mr. Gadgerao.
- [48] CR described beating herself up about the incident and thinking that she needed to wear underwear the next time. She stated that she thought there may be a cultural difference in how consent is done in India. She thought this might be a one-off and did not want to blow it out of proportion. However, it was in the back of her mind that this was not normal.
- [49] CR testified that she was creeped out after the May 15 appointment but that she blew it off. She started wearing sleep pants to her appointments, including the appointment on May 26, 2023 so that she did not put herself at risk of skin-on-skin contact again. She wore

the sleep pants with no underwear. They were stretchy and made out of a thin cotton fabric.

- [50] CR noted the curtain in the treatment room would have been open, likely about a foot and a half. While she was lying on the bed, her head was towards the curtain.
- [51] On May 26, 2023, her daughter drove her to the appointment. The Centre was running late. She was put in a room on the right. She believes that the physiotherapy assistant did the TENS or ultrasound and then Mr. Gadgerao came in. She told him it was not better and that she was still having numbness. He told her to lie on her back. He had her bend her knee and her left foot up into her right knee, so that she was laying in a four position with the leg in a triangle. He was palpating and assessing the inner thigh and then went higher to the dip in her thigh. She described that he went further, to the left labia and was millimeters from her vaginal orifice.
- [52] CR stated that no conversation occurred about what Mr. Gadgerao would do at the appointment or where on her body he would touch her. She expected he would touch her around the knee area and to her foot. He used his fingers to touch her, palpating up, working his way up the inner thigh, over her clothing. He stopped millimeters from her vagina, and touched her left labia with his fingers. She did not know how long he touched her labia as it happened very quickly. She described the pressure used as a 5 out of 10. She stated that they were making eye contact. While she was lying on the bed, her head was towards the wall.
- [53] CR described that, when Mr. Gadgerao got to the groin area, she put her hands beside her hips and scooted up the bed a bit. She stated she was pretty sure she said "we're done, we're fucking done." She stated her voice would have been a 5 out of 10, a normal voice. CR described Mr. Gadgerao as looked a bit startled, his eyes went big and he left. CR stated that the curtains in the room were always open a bit as she is claustrophobic.
- [54] After Mr. Gadgerao left, CR left the room and went to the reception area. CR testified that she is "missing time" because she doesn't remember what happened after that, but she would have grabbed her shoes and put them on. She does not recall leaving the room or if she sat and waited for her daughter or if her daughter was already there. She felt that Mr. Gadgerao was a predator and that he assaulted her not once, but twice. She was shocked and felt disgusted, ashamed and embarrassed. She shamed herself for not wearing underwear. She stated she now has trouble going to a chiropractor because she does not want to be in an assessment room with a man.
- [55] CR testified that she reported her concerns to the police, her counsellor, her father, her WCB doctor, a couple of friends and her sister. She also reported her concerns to the Centre in an email (Exhibit 1, Tab 5).
- [56] On May 15, 2023, CR was in a room on the left side, closest to the end and away from everybody. On May 26, 2023, she was in a room on the right side.

- [57] CR stated that in addition to Mr. Gadgerao, she received services from the physiotherapy assistants, although she does not recall their names. She received treatment with the TENS machine and ultrasound therapy. If she was receiving treatment with the TENS, the physiotherapy assistants would leave, but if it was ultrasound therapy, they would have to stay for that due to the nature of the therapy. She believed she usually received these treatments at the start of the appointment, but not always. For some appointments, Mr. Gadgerao did not perform manual therapy or assessment but rather would just check in. CR noted that there were always people around the Centre and you could hear conversations in the beds around you or in the common area.
- [58] CR did not think that Mr. Gadgerao had ever touched her buttocks before the May 15 appointment and stated he had not touched her inner thigh into the groin area prior to the May 26 appointment.

Cross-Examination

- [59] CR confirmed she was interviewed by investigators for the College on October 21, 2023. In the hearing, certain portions of the interview were put to CR, including her statements: "Get back to where you came from if that's what you're gonna do in Canada, to women" and "Maybe it's weird for them to even be working on women in the first place, with their culture?" CR explained that she was confused if there were cultural differences at play.
- [60] CR was also questioned on the appointment dates she relayed to the investigators. She initially told the College investigators the first incident occurred on May 10, rather than May 15. She told the investigators the second incident took place on May 28, rather than May 26.
- [61] CR confirmed that on May 15, she was in the furthest room. The curtain was open and she could hear what was going on in the Centre. She noted that she believed with implied consent that Mr. Gadgerao would not say that he would be touching her knee, since she knew he would be touching her knee. She knew she was giving consent to physiotherapy treatment when she signed the consent form. She stated her understating that a physiotherapist assessing and treating a knee will need to place their hands on areas beyond just the leg, which may include the buttocks. She stated that this is why she let the May 15 incident roll off her back.
- [62] CR stated that she was giving her evidence based on her memory, as she did not take notes at the time that the events took place.
- [63] CR stated that on May 15, she received the TENS machine treatment from the physiotherapy assistant before seeing Mr. Gadgerao. However, when it was put to her that she saw the physiotherapy assistant after seeing Mr. Gadgerao, she said that she did not remember, but referred to her original statement to the investigators.

- [64] CR confirmed that on May 26, she was in the traction room. The curtain was open a foot and a half, or so. CR testified that the physiotherapy assistant did the treatment before she saw Mr. Gadgerao.
- [65] Mr. Rudakoff put different versions to CR of statements she made in the hearing and College investigation regarding what she said to Mr. Gadgerao on May 26. CR testified that she believed she would have said "we are fucking done". However, she noted that she did not yell or make a scene. It was also put to her that she told the College investigators that she jumped off the bed and stormed out. She noted that given her injury, she was walking slower. She stated that she did not make a scene or go out running.

Re-Examination

- [66] In re-examination, CR was taken to her complaint dated June 22, 2023, which references the dates of May 15 and May 26. CR stated that she uses the word "fuck" frequently and has been working on using it less.

Hearing Tribunal Questions

- [67] In response to a question from the Hearing Tribunal about informed consent discussions with other staff, CR noted that she was familiar with TENS and ultrasound therapy from a previous injury but that conversations with the physiotherapy assistants would have occurred, as a courtesy of what they were doing.

Ramandeep Kaur

- [68] Ramandeep Kaur is a physiotherapy assistant at the Center. She has worked there since November 2020. She met Mr. Gadgerao when he started working at the Centre in August 2022. They worked together most weekdays.
- [69] Ms. Kaur described her duties, including greeting patients and helping them settle in, implementing the treatment of the physiotherapists, cleaning the equipment, cleaning the beds, doing the laundry, charting, educating patients regarding the treatment plan, and making patients feel comfortable at the Centre. In terms of implementing treatment, they mainly use ultrasound and lasers, but also interferential current ("IFC"), a TENS machine, heat packs, shockwave and vibration therapy, and sometimes exercises for a home exercise program. When doing ultrasound or laser, she would typically stay in the room with the patient and if doing IFC or the TENS machine, she would hook up the patient to the machine and typically leave the room.
- [70] Ms. Kaur was familiar with CR. Ms. Kaur described her as very quiet, barely smiling. Ms. Kaur stated she would have to initiate the conversation with CR. Ms. Kaur treated her once and took her off IFC once or twice.

- [71] Ms. Kaur described the Centre. She noted that the Centre was busy and that Mondays, Wednesdays and Fridays were very busy because most of the WCB patients (who book for three times a week) and new patients came on those days. Typically, two patients are booked in a half hour time slot. She noted that the Centre is not very loud. Sometimes you can hear the interaction with the patient in the Centre because there are only curtains separating the treatment areas.
- [72] Ms. Kaur testified that she treated CR only once, which she believes was on May 26, 2023. Ms. Kaur arrived at 10 a.m. and she could see patients waiting up front. Her colleague, Deepika Sony, asked her to start with CR because she had been waiting over 25 minutes, as her appointment was at 9:30 a.m. She greeted CR and asked her to come inside and have a seat. She asked CR how she was doing. She generally asks about the pain. She asked Mr. Gadgerao to come see CR. When he came in, she started doing something else, although she does not specifically recall what she was doing. She recalled being in the room with CR and Mr. Gadgerao but does not recall if that was before or after he treated CR. She was not in the room while he was performing physiotherapy treatment.
- [73] Ms. Kaur testified that she recalled talking to CR about her mother and that CR made a statement about her own mother. She remembers this because it was close to Mother's Day. The conversation happened after treatment by Mr. Gadgerao. CR was laying down and had her forearm under her head. She does not recall other conversations that day with CR and noted that it was a very busy day. They did not have a receptionist during that time period. She does not recall specific discussions with Mr. Gadgerao about CR that day, although she recalls him asking how CR was doing, which she believed was for the chart notes. She testified that Mr. Gadgerao was in the room with CR approximately five minutes, as he had another patient waiting. In total, she would have been with CR approximately 20 to 25 minutes.
- [74] Ms. Kaur testified that she found out about CR's concerns in June.

Cross-Examination

- [75] Ms. Kaur described the Centre as a very open clinic, where you can hear conversations if someone is speaking loudly. She confirmed that in her role, she is circulating around the Centre at all times. Ms. Kaur confirmed that there are no doors for the treatment rooms, only curtains. Sometimes the curtain is fully closed, but generally it is only half closed. Ms. Kaur noted that CR did not have a preference for the curtain to be closed.
- [76] Ms. Kaur was shown images of the Centre (Exhibit 1, Tab 8). On May 26, she took CR to the traction room. She asked how CR's pain was. CR noted she was in pain and Ms. Kaur went to get Mr. Gadgerao. Ms. Kaur did not start any treatment at that time. She does not believe the curtain would have been fully closed. She noted it is hard to pull the curtain completely closed. When the curtain is fully closed, it pushes out a little into the hallway.

- [77] Ms. Kaur identified an area between the traction room and reception, called the work area, with a desk and chairs. Physiotherapy assistants sit there if there is nothing to do. She would not have been sitting there when Mr. Gadgerao was treating CR.
- [78] Ms. Kaur testified that she did not recall anything unusual happening on May 26. She denied that CR was swearing or cursing while she was in the traction room with Mr. Gadgerao. Ms. Kaur went into the traction room right after Mr. Gadgerao completed his treatment. The atmosphere in the room was normal. She went in with the ultrasound or laser. That is when the conversation about their mothers occurred. Ms. Kaur described CR as relaxed. She does not recall CR storming out of the Centre.
- [79] Ms. Kaur stated that she did not have any conversations with Ms. Sony about anything unusual or out of the ordinary on May 26. She believes she would recall if something unusual had occurred.

Re-Examination

- [80] Ms. Kaur stated that they do charting in the work area between the traction room and reception. She confirmed having no memory of CR leaving the Centre that day.

Deepika Sony

- [81] Deepika Sony has worked as a physiotherapy assistant at the Centre since October 2019, although she is currently on leave. She has known Mr. Gadgerao since he started working at the Centre in 2022.
- [82] Ms. Sony described her role as a physiotherapy assistant. She noted that if she is doing ultrasound or laser, she will be in the room for the treatment. Ms. Sony described that CR would receive ultrasound, IFC and heat pack treatment. She was a morning patient and a WCB patient, so would come in three times per week in accordance with the protocol.
- [83] Ms. Sony testified to her recollection of treating CR on May 15, 2023. CR came in and Ms. Sony took her to the treatment room, which was the last room at the back of the Centre. CR stated she was feeling better and asked if Mr. Gadgerao could teach her the exercises. Ms. Sony went to find Mr. Gadgerao and told him that CR was feeling better and that she asked that he teach her the stretches or exercises. Mr. Gadgerao then went to see CR. She left them and started taking other patients. Once he was done, Mr. Gadgerao came to find Ms. Sony to tell her she could continue with the treatment. She returned to the room and did the ultrasound. The appointment lasted around 25 minutes.
- [84] Ms. Sony testified about May 26 and noted that it was a Friday which is their busiest day and all the treatment rooms were occupied. She stated that she did not treat CR that day. They were running late. CR was waiting in the reception area for quite a long time. Ms. Sony apologized to her a couple of times. When Ms. Kaur arrived, Ms. Sony asked her to take CR because she had been waiting for some time. CR went to the traction room.

- [85] Ms. Sony saw CR when she was leaving. CR was putting on her shoes and Ms. Sony asked her if she wanted to book her next appointment and CR said no, that she would call.

Cross-Examination

- [86] Ms. Sony stated that the curtains would be open when CR was receiving treatment. It is an open clinic and you can hear things. She did not hear anything unusual on May 15 or May 26. She did not recall hearing CR swearing or anything unusual happening. She did not see CR leave the treatment room but only saw her at reception putting on her shoes. CR did not appear angry, and they exchanged pleasantries.

Hearing Tribunal Questions

- [87] Ms. Sony noted that physiotherapy assistants chart in the work area. They chart on the same chart as the physiotherapists. Ms. Sony was asked to review the charting for May 15 and 26 and stated that she believed it to be Mr. Gadgerao's handwriting. Ms. Sony further reviewed the entire chart for CR and confirmed that it was Mr. Gadgerao's handwriting for the entire chart.

Surya Gadgerao

- [88] Surya Gadgerao is 38 years old and was born in India. He came to Canada with his wife and young child in July 2022. In 2023, he was registered as a provisional physiotherapist, working at the Centre. He is currently working as a physiotherapy assistant. Mr. Gadgerao reviewed his background, education and work experience. He graduated in 2011 with a Bachelor of Physiotherapy and obtained a Master's degree in 2014. He worked in a hospital and was in charge of the neuro-physiotherapy department. He was an assistant professor.
- [89] CR received treatment on May 10 and 12, 2023. By May 15, she was doing a little bit better. His plan was that he was going to teach her exercises and again assess to see if there was any improvement.
- [90] Mr. Gadgerao noted that he had taken the clinical examination in February 2023 for which he was not fully prepared and failed the examination. He had received his results in April 2023 and given this, he was more particular about his assessment for each patient he was seeing.
- [91] With respect to the May 15, 2023 appointment with CR, Mr. Gadgerao testified that Ms. Sony came to tell him that CR was doing a bit better. He was going to give her some exercises and then Ms. Sony would continue with the treatment. He went to the last room where CR was waiting, and Ms. Sony came with him. CR was lying on her back.
- [92] Mr. Gadgerao reviewed his chart notes in his evidence and stated that he asked verbal consent to assess tenderness and tightness and so on. Mr. Gadgerao stated that he told her he was going to do an assessment with his hands, palpating with his fingers and that

he would be asking her to do movements and asked if she consented to proceed and she said, yes, you can proceed. Mr. Gadgerao noted that he usually writes "asked for consent, obtained consent, consent given, consent taken."

- [93] Mr. Gadgerao testified that, after explaining everything, he started doing the assessment. He checked the hip flexors first and front of the thigh. He palpated with his fingers for any particular tenderness and there was no tenderness. He moved to palpate the adductor muscles, as she was having pain on the inner and outer side and a tingling sensation. He palpated the lower adductors and there was nothing significant. He then asked her to turn onto her stomach and then he palpated the piriformis on the buttocks. He put deeper pressure on the gluteus and asked if she had pain as he was palpating. He then went down the hamstring and the hamstring was a little bit tender. Mr. Gadgerao noted that the piriformis is a deep muscle so you need to apply deeper pressure. Mr. Gadgerao stated that he palpated over the clothing and that he never palpates under clothing or on bare skin. There was no assessment that he needed to do on bare skin.
- [94] Mr. Gadgerao explained that if there is bursitis then you may need to touch bare skin, but CR did not have bursitis. He denied sliding his hand under her shorts and touching her bare buttocks. After this, he assessed her knee range of motion and she did not have complete range of motion. He gave her exercises to do at home. He believes he was five to eight minutes with CR. He described CR's demeanor as normal and stated nothing significant happened, it was a routine assessment. He handed off CR to Ms. Sony to do the treatment. He did not see CR again that day. He would generally ask the physiotherapy assistant after the treatment if everything was good, for his charting.
- [95] Mr. Gadgerao saw CR on May 19. CR was having increased pain on both sides of the knee and increased numbness. He asked for consent to touch her knee. The pain was severe and the range of motion was limited.
- [96] Mr. Gadgerao then saw CR on May 26. They were running behind. He believes that he went to apologize to CR that they were running late. CR was taken to the traction room. CR did not have any treatment before he saw her. Ms. Kaur came to find him and said that CR was having pain and he could go see her. Ms. Kaur followed him to the room and then he went alone in the room. CR said that she was having more pain and the pain was not changing. She was complaining of more numbness.
- [97] Mr. Gadgerao told CR that any knee injury affects surrounding tissues and the pain may be coming from her hips or pelvis and that he would assess her hip and surrounding muscles. His routine practice, which he did with CR, is to tell the patient that he will do an assessment with his hands and that he will do some palpation. He will ask the patient to do active movements and later he will do the passive movements. He does palpation with his fingers.

- [98] Mr. Gadgerao's chart states: "Took the verbal consent to examine hip and all surrounding muscles and structures explained the procedure." He explained this to CR, asked if he had consent to proceed and CR said yes.
- [99] Mr. Gadgerao stated that if he proceeds, that means he obtained consent. He proceeded to look at her hip flexors, then the adductor muscles, he was palpating and asking her if it hurt. He palpated from the lower, distal portion of the adductors towards the groin area. CR was in the figure of four position when he did the adductor palpation. He told her that the pain might be coming from the IT band and then he released it a couple of times and gave her stretches to do at home. He left the room and told Ms. Kaur that she could continue with the ultrasound and IFC. His interactions took around eight to ten minutes.
- [100] Mr. Gadgerao stated the adductor is inserted in the groin area. He stated that he knows his anatomical limits and his ethical limits. He denied palpating the labia. He noted that, as a professor, he used to teach anatomical and surface landmarks. He stated that the figure of four position does not allow him to go there; if he goes beyond the line, he would be on the pubis. That is the advantage of the figure of four position.
- [101] Mr. Gadgerao denied that CR stated "we're fucking done" or any words to that effect. She did not sit up or stop the treatment. He denied looking wide-eyed and quickly leaving the room.
- [102] Mr. Gadgerao described his interactions with the police, his registration status with the College, his attempts at the examinations and his health since the allegations were made against him.

Cross-Examination

- [103] Mr. Gadgerao confirmed that in May 2023, he understood the Code of Ethical Conduct obligations and the Standards of Practice applicable to physiotherapists and provisional physiotherapists, including those relating to informed consent and sexual abuse and sexual misconduct.
- [104] Mr. Gadgerao testified that he charts immediately, not at the end of the day, although if he is busy, he may see a couple of patients and then chart. It is possible he charted a few hours later on May 26, 2023.
- [105] Mr. Gadgerao confirmed that the May 15 and 26 entries are accurate and written chronologically based on the services provided to CR on those days. If he has direct contact with the skin he will chart "exposed the patient's area".
- [106] Mr. Gadgerao agreed that the origin of the adductor muscles is very close to the female genitalia, although he noted there is surface landmarking that he is aware of while doing his assessment. He stated that he was not near the genitalia, that he palpated before the

groin, that it was not exactly on the origin, but just below. He agreed that the origin is 2 to 3 centimetres from the female genitalia, which is a big enough space.

- [107] Mr. Gadgerao stated that for May 15 he had told CR he would touch the hip muscles and surrounding hip area. He stated that the hip muscles are the same as the buttocks. The hip muscle, gluteus muscle are the buttocks. The gluteus muscle is the physiotherapy term. He confirmed he did not reference her "buttocks cheek" with CR but rather that he would palpate her piriformis muscle which is in the hip area and showed her on his body. When she turned over onto her stomach, he started to palpate her piriformis.
- [108] Mr. Gadgerao was questioned regarding his statement in the College investigation that he took CR into the treatment room on May 26, 2023. He stated that he was unsure and that, in the investigation, he gave evidence to the best of his recollection. He is unsure who brought CR into the treatment room for the May 26, 2023 appointment but knows that he treated her first and then Ms. Kaur treated her. After he told Ms. Kaur she could go in to treat, he did not observe or hear what was going on in the room.
- [109] Mr. Gadgerao noted that his chart does not necessarily reflect the order in which he does the assessment. He would normally do all the assessments in supine position first, and then those in prone or side lying position.
- [110] In terms of consent, Mr. Gadgerao stated in cross-examination that he usually follows the same procedure and noted that he uses a 3D app on his phone, Essential Anatomy. However, he acknowledged he did not do this on May 15 or May 26.
- [111] In terms of consent on May 26, 2023, Mr. Gadgerao agreed that he obtained consent in reference to the knee, hip, pelvis and surrounding muscles. He agreed he did not tell her he would be touching her upper, inner thigh, but stated he showed on his body. He acknowledged not getting consent or discussing he would be in close proximity to her genitalia but noted that he was "not going up there" so did not need consent for that.

Questions from the Hearing Tribunal

- [112] The Hearing Tribunal questioned Mr. Gadgerao about the assessment form, which appeared to be missing a page in the Exhibit (Exhibit 1, page 32). Mr. Gadgerao noted that there would generally be a fourth page. He confirmed that he provided treatment on May 10, 2023. The form was located and entered as Exhibit 6.
- [113] The Hearing Tribunal noted a discrepancy between the handwritten chart notes for May 15, 2023 (Exhibit 1, page 39) and the typewritten version of the chart (Exhibit 1, page 42). The handwritten notes include "adductors" in terms of the verbal consent which is not included in the typewritten version.
- [114] With respect to the issue of consent, Mr. Gadgerao confirmed that he does not use informal words like "buttocks". He used the terms "hip muscles", "pelvis muscles", "pelvis

area”, “adductor muscles”, “hamstring muscles”. He also puts his hands on his own body to show the area he will be assessing. He noted that he took a course where it was advised to use the formal words when discussing with patients, rather than informal words like “buttocks”, “ass” or “butt cheek”.

- [115] Mr. Gadgerao was asked why there was charting on consent only for May 15 and 26, 2023 and he noted that he assessed only on those two days. For the rest, they had already taken consent for treatment in writing on the assessment form for the treatment modalities.

PG

- [116] PG was a patient of the Centre in May 2023 and attended for appointments on May 15 and May 26, 2023 at 10:30 a.m. PG stated that she attends her appointments 15 to 30 minutes early and will wait in the reception area. PG noted that you can hear what is going on in the Centre. PG did not recall seeing or hearing anything out of the ordinary either before, during her treatment or when she was leaving. She did not hear anyone sounding angry or swearing.

Cross-Examination

- [117] PG confirmed that she had not thought about the May 15 and 26 appointments until being contacted for the hearing. She did not take any notes at the time. Her testimony is based on general recollections, although PG noted that she would have recalled if there was a commotion.

PJ

- [118] PJ was a patient of the Centre in May 2023 and attended for an appointment on May 26, 2023 at 10:00 a.m. PJ usually arrives ten minutes early. PJ described the Centre as professional and friendly and noted that sound travels very well. PJ did not recall seeing or hearing anything out of the ordinary and did not recall anyone sounding angry or swearing.

Cross-Examination

- [119] PJ confirmed that she had no specific memory of the May 26 appointment. She had not thought about the appointment until being contacted for the hearing. Her testimony is based on her general recollection.

GB

- [120] GB was a patient of the Centre in May 2023 and attended for an appointment on May 26, 2023 at 10:00 a.m. GB stated that his wife CB drove him to the appointments and would sit and wait with him. He generally arrived five to ten minutes early. GB noted that the Centre is pretty quiet, with quiet music playing. You can hear if someone is getting a

treatment such as shockwave and can hear people talking. Generally when he was there, him and his wife would be chatting. His wife would generally take a chair and sit outside of his treatment room while he was getting treatment. GB did not recall seeing or hearing anything out of the ordinary either before, during his treatment or when he was leaving. He did not hear anyone swearing or see anyone upset.

Cross-Examination

- [121] GB confirmed that he had no specific memory of the May 26 appointment although he believed he would remember if something out of the ordinary happened. He had not thought about the appointment until being contacted for the hearing. He took no notes at the time. His testimony is based on his general recollection. He noted that while he was sitting with his wife, they were likely on their phones.

CB

- [122] CB is the wife of GB. In May 2023, CB would take him to his appointments at the Centre and sit with GB and wait. She would sit in a chair just outside the treatment room. She has no specific recollection of the May 26, 2023 appointment. CB described herself as nosey and very aware of her surroundings. She did not recall seeing or hearing anything out of the ordinary, including anyone swearing or upset.

Cross-Examination

- [123] CB confirmed she had not thought about the May 2023 appointments until she was asked to give evidence in the hearing. Although she was occasionally on her phone, she was aware of her surroundings and likes to watch people.

Jeffrey Begg

- [124] Jeffrey Begg reviewed his qualifications, education and experience. He has been a physiotherapist since 1997. Ms. Wensel advised that the Complaints Director acknowledged and admitted to Mr. Begg's qualification and did not object to him being qualified as an expert. The Hearing Tribunal accepted Mr. Begg as an expert witness in physiotherapy to give expert opinion evidence on the matters of standard of care and standards of practice in Alberta in 2023.
- [125] Mr. Begg reviewed his expert report (Exhibit 8). Mr. Begg noted that there were descriptions of the consent process, specific description of the muscle groups, names of muscles, positions the patient was placed in during examinations. He found that the quality of detail in the charting to be relatively high.
- [126] Mr. Begg noted that his opinion expressed in his report was premised on the assumption that there was no touching of the buttocks under the clothing on May 15, 2023 or of the labia on May 26, 2023.

- [127] With respect to consent on May 15, 2023, Mr. Begg noted his opinion that the evidence supports that Mr. Gadgerao asked for and received consent to palpate the buttock. Palpating of the buttock was clinically supported and an appropriate procedure.
- [128] In terms of the May 26, 2023 appointment, Mr. Begg described the chart entry for consent as a “textbook example of meeting the criteria for informed consent”. Mr. Begg noted that while the chart note did not explicitly state that consent was given, that an experienced physiotherapist would not proceed if consent was not given. Mr. Begg noted that there was no evidence in the chart that Mr. Gadgerao was made aware of concerns by CR that day or that she revoked her consent.
- [129] Mr. Begg’s opinion was that it was appropriate on May 26, 2023 to examine the thigh and groin area. He noted that in order to palpate the adductor muscle group, there is a need to palpate the muscle all the way up to the proximal point, which occurs on the bone of the pelvis. He noted that “you are literally on the edge of the divot of the groin, within centimetres of the female genitals.” It was appropriate and reasonable to examine those structures.
- [130] Mr. Begg noted that it would be reasonable to palpate all the way to the origin point. The palpation that occurred on May 26, 2023 was over anatomically appropriate tissues and in Mr. Begg’s opinion, it cannot be said that Mr. Gadgerao failed to gain consent. He also noted that he found it hard to believe there could be accidental touching in this case. He noted that it could happen with a careless clinician but this is an experienced clinician. Given this, Mr. Begg was of the opinion that Mr. Gadgerao did not make accidental contact. If it did occur, you would expect to see a reference in the chart to the accidental contact.
- [131] Mr. Begg’s opinion was that there was no breach of the standard on sexual abuse and sexual misconduct on May 15 or May 26, 2023.

Cross-Examination

- [132] Mr. Begg acknowledged that his role as an expert is not to determine whether the allegations are factually proven. His review was based on a paper review. His opinion is based on an assumption that the chart notes are true and accurate.
- [133] Mr. Begg confirmed that in addition to the chart, Mr. Begg relied on the information provided by Mr. Gadgerao in the College investigation in determining whether consent was obtained.
- [134] Mr. Begg agreed that palpation of the buttocks and inner thigh near the female genitalia are sensitive areas. Mr. Begg noted that, with respect to the buttocks, some patients will lift their shorts and expose the area, which in his opinion, is the patient giving consent. Draping is considered to be the standard, but you will have a conversation with the patient. Mr. Begg noted that sliding the hand under a patient’s shorts to access the

piriformis muscle would be a breach of the consent standard but it would not be inappropriate to palpate the piriformis. The issue would be about asking for permission.

VI. Closing Submissions

Closing Submissions on behalf of the Complaints Director

- [135] Ms. Wensel described the case as a “he said she said” and noted that there are truly only two people in the room that know what happened. She submitted that there was a lot of circumstantial evidence. In terms of witness evidence, the Hearing Tribunal would need to assess the credibility and reliability of the witness testimony. Ms. Wensel reviewed the principles for assessing witness credibility and reliability.

- [136] Ms. Wensel took the position that CR was credible and her evidence should be accepted. She noted an external inconsistency in the evidence of CR and that of Ms. Kaur for the events of May 26, as CR’s evidence was that she left the Centre after the treatment provided by Mr. Gadgerao, whereas Ms. Kaur’s evidence was that she treated CR after Mr. Gadgerao’s treatment. Ms. Wensel noted that overall, CR’s evidence was plausible and probable, when looking at other factors, such as her termination of treatment with the Centre shortly after May 26. Other inconsistencies were described as minor inconsistencies.

- [137] With respect to Mr. Gadgerao, Ms. Wensel cautioned the Hearing Tribunal regarding use of character evidence. Further, Ms. Wensel took the position that Mr. Gadgerao’s chart should be given little weight as a tool to assess the reliability and credibility of his evidence. She noted the brief entry for May 15 in contrast to the very neatly handwritten and lengthy entry for May 26. She also noted that there were concerns with the chronological flow and level of detail of the May 26 entry and noted that the evidence of the witnesses was that May 26 was a very busy day. She also noted that Mr. Gadgerao testified to not going all the way up to the origin of the adductor muscles but charted to the origin of the adductor muscles in the May 26 entry. There was also a reference to doing a range of motion exercise on May 15, which is not reflected in the chart. Ms. Wensel took the position that the timing of obtaining informed consent and going through the assessment, given the very busy clinic day and length of time to do the assessment, affects Mr. Gadgerao’s credibility in terms of how the appointment, which is detailed so thoroughly and extensively, could have occurred in such a short amount of time. Further, his denial of how close the female genitalia are to the area he was palpating undermines his credibility.

- [138] Ms. Wensel reviewed the evidence of Ms. Sony and Ms. Kaur, noting that they are work colleagues of Mr. Gadgerao and that while well-intended, there may be motivation to remember things in a particular way. She further noted that their evidence is of limited assistance in determining what happened in the treatment room. She submitted that very limited weight should be given to the evidence of PG, PJ, GB and CB.

- [139] Ms. Wensel noted that Ms. Reese was credible and reliable and her opinion evidence should be accepted. Ms. Wensel noted that Ms. Reese's opinion was largely aligned with that of Mr. Begg.
- [140] Ms. Wensel submitted that the Allegations are proven, on a balance of probabilities. Ms. Wensel referred to the definition of "sexual abuse" in the HPA. Touching of the buttocks or labia in a manner that is sexual in nature constitutes sexual abuse. If the touching was not of a sexual nature, then the conduct would not be sexual abuse.
- [141] Ms. Wensel referenced several legal authorities in her submissions and provided copies of these to the Hearing Tribunal.

Closing Submissions on behalf of Mr. Gadgerao

- [142] Mr. Rudakoff noted the impact that the complaint, investigation and hearing process have had on Mr. Gadgerao and asked the Hearing Tribunal whether Mr. Gadgerao should lose his career and his license on the basis of the evidence currently before the Hearing Tribunal.
- [143] Mr. Rudakoff noted that the expert evidence was that there was a therapeutic reason for touching the buttocks overtop of the clothing on May 15 and to palpate CR's leg above the knee towards the origin of the muscle groups on May 26. He acknowledged that there was no therapeutic reason to touch her buttocks under her shorts or her labia.
- [144] Mr. Gadgerao has been consistent that he did not touch CR's buttocks under her shorts or her labia and his evidence is far more credible than that of CR. Mr. Rudakoff noted that the Complaints Director could not have it both ways that the chart was both too detailed and not detailed enough.
- [145] Mr. Rudakoff noted inconsistencies in CR's testimony, including recalling different dates during the investigation, which Mr. Rudakoff submitted shows CR's poor recollection of events. CR could not recall how busy the Centre was, or who treated her. She described speaking in a loud voice on May 26, that Mr. Gadgerao had wide eyes and left the treatment room immediately and that CR then got up and left. She herself noted that she "stormed out" in her interview in October 2023. It was CR who stated that she swore on that day. On the other hand, Ms. Kaur's evidence was that she treated CR after Mr. Gadgerao's assessment on May 26 and recalled her conversation with CR. Mr. Rudakoff submitted that there were several significant inconsistencies in CR's evidence and described her recollection of events as a selective memory.
- [146] Mr. Rudakoff noted that Ms. Kaur, Ms. Sony and the patient witnesses described the days at the Centre on May 10 and 26 as uneventful. He stated that no witness corroborated CR's version of events, but all corroborated Mr. Gadgerao's version of events.

- [147] Mr. Rudakoff submitted that limited character evidence was adduced to respond to CR's comments that Mr. Gadgerao was a predator and pervert and likening him to a pedophile.
- [148] Mr. Rudakoff stated that the chart notes and Mr. Gadgerao's testimony provide evidence on how he took informed consent; that he informed the patient of what he was going to do and demonstrated what he was going to do. He presented in his evidence as an effective, efficient and professional individual with extensive experience. He met the standard for obtaining informed consent.
- [149] Mr. Rudakoff noted that Mr. Gadgerao, although a provisional physiotherapist at the time of the alleged incidents, had approximately ten years of experience and that he presented in his evidence a serious man, committed to his profession. He submitted that Mr. Gadgerao's memory was sharp on most of the details of the appointments. He noted that whether it was Mr. Gadgerao or Ms. Kaur who escorted CR to the treatment room on May 26 is a negligible point. Mr. Gadgerao came to Canada for a better life for his wife and daughter. He values his career, his community, his future with his wife and daughter. He had no motivation to engage in the alleged conduct. His testimony was consistent and credible and he answered all questions. His chart notes align with his evidence and with the practice of seeing a familiar patient and performing competent physical therapy in the midst of a hectic day, in a busy office and accurately charting those patient interactions.

Reply Submissions on behalf of the Complaints Director

- [150] In reply, Ms. Wensel noted that consistency of prior statements is not an indicia of truth. The fact that Mr. Gadgerao has always denied the allegations does not make that denial more true. Ms. Wensel noted that corroboration is not required to prove this type of conduct. She further noted that demeanor evidence should be given little weight, as it is known inherently as an unreliable indicia of credibility. As such, limited weight should be placed on Mr. Gadgerao's demeanor in providing his evidence. She noted that caution should be exercised around the character evidence that Mr. Gadgerao is a man of faith and an experienced professional.
- [151] Ms. Wensel noted that the issue of who brought CR to the treatment room on May 26 is either an inconsistency in Mr. Gadgerao's evidence or that of Ms. Kaur. In terms of CR, Ms. Wensel noted that a patient may not remember all of the details of a physiotherapy appointment, but will remember what matters to them. In this case, while CR does not remember all of the details of the appointments, she remembers that she was touched by Mr. Gadgerao.

VII. Decision of the Hearing Tribunal

- [152] The Hearing Tribunal finds that Allegations 1 and 2 are not proven.
- [153] The Hearing Tribunal finds that Allegation 3(a) is proven, but that Allegation 3(b) is not proven. The Hearing Tribunal finds that Allegation 4(a) is proven, but that Allegation 4(b) is not proven.
- [154] The Hearing Tribunal finds that Allegations 3(a) and 4(a) constitute unprofessional conduct on the basis of the following:
- a. The conduct demonstrated a lack of judgment in the provision of professional services (section 1(1)(pp)(ii) of the HPA);
 - b. The conduct breached the Code of Ethics and Standards of Practice (section 1(1)(pp)(ii) of the HPA);
 - c. The conduct harms the integrity of the profession (section 1(1)(pp)(xii) of the HPA).
- [155] Allegations 1, 2, 3(b) and 4(b) are dismissed.

VIII. Findings and Reasons of the Hearing Tribunal

- [156] The Hearing Tribunal carefully considered the evidence of the witnesses and the documents entered as exhibits. The Hearing Tribunal also carefully considered the submissions of the parties.

Witnesses Evidence

- [157] The Hearing Tribunal considered the credibility and reliability of the witnesses based on the criteria noted by the parties and outlined in the case law: demeanor of the witness, ability to perceive, ability to recall, motivation, probability or plausibility, internal consistency, external consistency. The Hearing Tribunal also considered what weight to place on the witness evidence, noting that it can accept some, all or none of a witness's evidence.

The Complainant CR

- [158] The Hearing Tribunal found CR to be a credible witness. Her testimony was plausible in terms of being surprised by the May 15 appointment, but trying to brush it off and not saying anything at that time. CR's evidence that she questioned herself for wearing short shorts with no underwear and then choosing to wear long sleep pants to subsequent appointments to ensure that no skin to skin contact occurred again was also plausible to the Hearing Tribunal. In addition, the detail provided of the May 15 appointment in terms of how the palpation worked, going up the thigh was plausible from a clinical perspective.

- [159] The Hearing Tribunal also found it plausible that CR was very alert to touching following the May 15 appointment when she perceived improper touching and would have had a heightened sense of vigilance at the May 26 appointment.
- [160] The Hearing Tribunal placed weight on the fact that CR did not rebook following May 26, after going to the Centre three times per week and continuing to experience problems and pain in her knee and leg. WCB contacted the Centre to request a discharge report for CR. CR also went to the police very shortly after the incident.
- [161] The Hearing Tribunal found no motivation for CR to be fabricating the allegations. The Hearing Tribunal considered the statements made by CR regarding other cultures and found that it appeared that CR was trying to justify the incidents based on cultural differences, rather than a motivation against individuals from other cultures that would lead her to fabricate allegations. The Hearing Tribunal found that CR was forthright in her evidence and tried to give evidence to the best of her recollection.
- [162] In addition, CR made admissions on facts that were not necessarily helpful to her version of events. In terms of informed consent, CR acknowledged that implied consent would occur for some treatment and that she knew that she was receiving physiotherapy treatment and that Mr. Gadgerao would be touching her. However, she was adamant that she did not give consent for the touching of her buttocks directly on her skin, or for the assessment of the buttocks on May 15 or inner thigh/groin area on May 26.
- [163] However, the Hearing Tribunal found that there were some concerns with the reliability of CR's evidence. The sequencing of the events during the appointments was not consistent with the evidence of Ms. Kaur, Ms. Sony and Mr. Gadgerao. Her version of events also changed somewhat in terms of how she reacted on May 26 between the investigation interview and her testimony in the hearing. CR candidly acknowledged having some memory blanks about the May 26 appointment. Given this, the Hearing Tribunal found that there were some issues with the reliability of some of CR's evidence.

Mr. Gadgerao

- [164] The Hearing Tribunal considered Mr. Gadgerao's credibility and reliability. Overall, he appeared credible in his evidence. Mr. Gadgerao presented as knowledgeable with respect to physiotherapy treatment. He was generally consistent in his recollection and for the most part, his evidence was consistent with Ms. Kaur and Ms. Sony, as well as with the evidence of PG, PJ, GB and CB. Limited weight was placed on his demeanor or motivation. Any investigated person can be said to be motivated towards a particular result and so, the Hearing Tribunal was mindful that little to no weight should be placed on the motivation to defend himself in a hearing.
- [165] The Hearing Tribunal considered the reliability of Mr. Gadgerao's evidence. Mr. Gadgerao was adamant in his position and did not acknowledge certain points. For example, the female genitals are very close to the origin point of the adductor muscles, yet Mr.

Gadgerao was somewhat dismissive of this proximity. He seemed unable to consider a patient's perspective that touching the buttocks or touching in close proximity to the groin area, even if appropriate to the physiotherapy services being provided, might cause concerns for a patient.

- [166] The Hearing Tribunal found that some of Mr. Gadgerao's evidence was vague or inconsistent. For example, his description of the informed consent process was somewhat vague. In addition, there were some inconsistencies in his evidence, including whether he palpated to the origin or the adductor muscles or just below on May 26. Further, at the hearing Mr. Gadgerao noted that he did not know who brought CR to the treatment room on May 26, but had told the College investigator it was him. In addition, there were inconsistencies with Mr. Gadgerao's chart notes, as described below.
- [167] For these reasons, the Hearing Tribunal had some concerns regarding the reliability of some of Mr. Gadgerao's evidence.

Physiotherapy Assistants

- [168] The Hearing Tribunal found that Ms. Kaur and Ms. Sony were generally credible witnesses. However, the Hearing Tribunal did find that they had some motivation to recall events in a specific manner, given their positions at the Centre and working relationship with Mr. Gadgerao. Further, their evidence appeared to be based largely on their usual practice, rather than specific recollections.
- [169] In terms of Ms. Kaur's evidence, there was an inconsistency with Mr. Gadgerao's statement to the College investigator on the issue of who brought CR to the treatment room on May 26. However, Ms. Sony's evidence was that she asked Ms. Kaur to take CR to the treatment room as they were running behind, which aligns with Ms. Kaur's evidence. CR did not recall who brought her to the treatment room.
- [170] In terms of Ms. Sony's evidence, the Hearing Tribunal considered the evidence of Ms. Sony that the physiotherapy assistants do charting. However, this was inconsistent with the charting of CR that reflected no charting by the physiotherapy assistants for any of the appointments. The Hearing Tribunal found that this undermined Ms. Sony's credibility to a certain degree.
- [171] In terms of ability to recall, the Hearing Tribunal considered that both Ms. Kaur and Ms. Sony became aware of the complaint in mid-June 2023 and so, it is plausible that they have a memory of the events of May 15 and 26, in particular that CR did not appear upset or that anything unusual occurred, given that they would have specifically thought about the May appointments in mid-June. However, the Hearing Tribunal noted that they were not in the treatment room with CR and Mr. Gadgerao at the time of the alleged incidents and so could not provide evidence as to what occurred. In addition, the Centre was a busy clinic and especially on May 26, which was described as a very busy day, where they were running behind on patient appointments, they may not have noticed or heard a discussion

between CR and Mr. Gadgerao in the treatment room or CR leaving in the manner she described in her evidence.

- [172] The Hearing Tribunal placed some weight on the evidence of Ms. Kaur and Ms. Sony, although this was limited, especially on the issue of whether they heard or saw anything unusual on May 15 or May 26.

Patients and Spouse of Patient

- [173] The Hearing Tribunal found that, overall, PG, PJ, GB and CB were credible witnesses. While they may each have established a therapeutic relationship built on trust with the Centre, which may have affected their motivation somewhat, they had no vested interest in the outcome of the matter. They were familiar with their routines at the Centre and the Hearing Tribunal found that they were each trying to give evidence to the best of their recollection.
- [174] The Hearing Tribunal acknowledged however, that these witnesses were not contacted at or near the time of the incidents, but almost two years later. In addition, while they were each in the Centre on May 15 or 26, they were not present in the treatment room with CR and Mr. Gadgerao. It is possible that something happened in a treatment room that they did not notice at the time, or remember.

- [175] The Hearing Tribunal placed limited weight on the evidence of PG, PJ, GB and CB.

Expert Witnesses

- [176] The Hearing Tribunal generally accepted the evidence of the expert witnesses, Ms. Reese and Mr. Begg. They were credible and reliable and overall consistent with each other in their opinions.

Reliability of Chart Notes

- [177] While there was no allegation of improper record keeping, the Hearing Tribunal reviewed and considered the chart notes in terms of assessing Mr. Gadgerao's evidence and in terms of making findings of fact. The Hearing Tribunal noted the following with respect to the chart notes.

Inconsistency between Chart Notes and the WCB Assessment Report

- [178] In the Assessment Chart Note (Exhibit 1, page 34 and Exhibit 6, page 4 of 4), there is no documentation of strength testing or documentation of weakness. However, in the WCB Assessment Report (Exhibit 1, page 36), there is documentation of Strength (MRC) testing of the left knee flexion and extension as "4". The documentation in the WCB Assessment Report is not supported by the actual Assessment Chart Note.

No documentation of consent provided on May 19, 2023 treatment session

- [179] In the chart note for May 19, 2023, the documentation includes “Checked for knee ROM, pain more in knee flexion” (Exhibit 1, page 39). There is no documentation of consent in the May 19 chart note, which is in contrast to the detailed documentation of consent for the May 15 and May 26, 2023 appointments. The Hearing Tribunal found it hard to reconcile why there was such inconsistency in Mr. Gadgerao’s documentation of consent.

Manual therapy treatment referenced in Response to College but not in Chart Notes

- [180] In Mr. Gadgerao’s response letter he notes “I told her that for her IT band tightness I can teach her stretching of IT band and did IT band release passively (myofascial release by hand). I asked the patient to lift her [sic] the bottom of her pyjama bottoms to mid-thigh level, I then released her IT band at the lower 1/3rd area with my hands. I then taught and demonstrated the technique of IT band stretching and advised her to do it at home three times, twice each day” (Exhibit 1, page 12). However, in the chart notes for this May 26, 2023 session, there is no notation of performing a myofascial release. (Exhibit 1, pages 40 and 41)
- [181] Mr. Gadgerao’s evidence was that this session lasted 8 to 10 minutes, which is further supported in Mr. Gadgerao response letter with “...was very brief, perhaps 10 minutes...” (Exhibit 1, page 13). The Hearing Tribunal noted it would be even more difficult to complete all of this treatment in this timeframe if myofascial release was provided, along with the consent process as described, assessment and demonstration/instruction of a new stretch.

Inconsistencies between Chart Notes of May 26, 2023 and the WCB Progress/Discharge Report

- [182] In the WCB Progress/Discharge Report, in response to “What interventions are you employing?” Mr. Gadgerao responded “... soft tissue technics, In clinic strengthening ...” (Exhibit 1, page 45). However, there is no documentation in the Chart Notes to support this. In testimony, neither Mr. Gadgerao nor CR noted any strengthening exercises. In testimony, the physiotherapy assistants also indicated that individuals complete exercises within the Centre only once in a while (Transcript pages 167 and 209).
- [183] The May 26, 2023 Chart Notes document for “subjective report”, “more numbness on lateral aspects of thigh and pain over medial thigh and knee” (Exhibit 1, page 40) but in testimony, Mr. Gadgerao stated that CR was reporting “leg buckling” and “foot drop¹” (Transcript, page 278). Leg buckling and foot drop are significant changes in symptoms

¹ While the transcript references “full drop”, the Hearing Tribunal understood Mr. Gadgerao’s evidence to be “foot drop”.

and that would be expected to be in the documentation as well as in the WCB Progress/Discharge Report.

Conclusion of Chart Notes

- [184] For these reasons, the Hearing Tribunal found that the documentation of Mr. Gadgerao, including his chart notes, to be inconsistent and unreliable. This affected the weight placed on some of his testimony, especially on the issue of consent.

Findings on the Allegations

Allegation 1 On or about May 15, 2023, while providing physiotherapy treatment to patient CR, you touched her buttocks under her clothing without a therapeutic purpose.

- [185] The Hearing Tribunal considered the evidence of CR, Mr. Gadgerao and the expert witnesses with respect to Allegation 1. For the reasons noted above, the evidence of the physiotherapy assistants and the patients of the Centre was of limited assistance in considering this Allegation.
- [186] The Hearing Tribunal found the evidence established the following facts. CR attended for an appointment on May 15, 2023. She was wearing short denim shorts with no underwear. The shorts went just below the buttocks cheeks and were not tight, with sufficient room to place a hand under the shorts. Mr. Gadgerao assessed the tenderness and tightness of the muscles while CR was laying on her stomach. This included the piriformis muscle which lies in the center of the buttocks.
- [187] The Hearing Tribunal found that given that CR was wearing short shorts with no underwear, it is possible that Mr. Gadgerao's hand touched her buttock under her clothing while doing the assessment. CR testified that she felt Mr. Gadgerao's hand under her shorts and the Hearing Tribunal found her evidence credible on this point. Given the position she was laying in and that the shorts were loose enough for a hand to be placed between the shorts and the skin, the Hearing Tribunal found it is plausible that Mr. Gadgerao touched her bare skin on her buttocks under the shorts.
- [188] However, the Hearing Tribunal found that there was a therapeutic purpose for touching CR's buttocks, which was to palpate the piriformis. While this can be done over the clothing, there are circumstances where this can be done directly on the skin as noted by Mr. Begg. There must be informed consent for the touching of the buttocks whether over or under the clothing. However, that issue is addressed under Allegation 3.
- [189] The Hearing Tribunal found that given its finding that there was a therapeutic purpose to the touching of the buttocks, Allegation 1 is not proven. It is not necessary for the Hearing Tribunal to consider this Allegation further, including the definition of sexual abuse. Allegation 1 is dismissed.

Allegation 2 On or about May 26, 2023, while providing physiotherapy treatment to patient CR, you touched her labia over her clothing without a therapeutic purpose.

- [190] The Hearing Tribunal considered the evidence of CR, Mr. Gadgerao and the expert witnesses with respect to Allegation 1. As noted above, the evidence of the physiotherapy assistants and the patients of the Centre was of limited assistance in considering this Allegation in terms of whether Mr. Gadgerao touched CR on her labia.
- [191] The Hearing Tribunal considered the evidence regarding who brought CR into the treatment room on May 26. Although there was inconsistency on this point between Ms. Kaur's evidence and Mr. Gadgerao's statement to the College investigator, Ms. Sony's evidence was that she asked Ms. Kaur to take CR to the treatment room as they were running behind. This aligns with Ms. Kaur's evidence. CR did not recall who brought her to the treatment room. The Hearing Tribunal found Ms. Kaur brought CR into the treatment room on May 26.
- [192] The Hearing Tribunal found that on May 26, 2023, CR was reporting increased numbness on the lateral aspect of her thigh, and pain over the medial thigh and knee. This warranted further examination.
- [193] The Hearing Tribunal found also found that it was plausible that, given CR's reporting of a change in symptoms on May 26, that Ms. Kaur went to get Mr. Gadgerao prior to doing the usual treatment. As such, the Hearing Tribunal found that Ms. Kaur went to get Mr. Gadgerao and that Ms. Kaur returned after Mr. Gadgerao had completed his assessment, to continue the ultrasound and IFC treatment.
- [194] The Hearing Tribunal found that Mr. Gadgerao examined the knee which did not reveal anything significant. He asked CR to put her leg in a figure of four position and proceeded to palpate the region of her groin and upper thigh.
- [195] The Hearing Tribunal found that there was a therapeutic purpose for touching the groin and upper thigh, which are very close to the female genitals. Mr. Gadgerao was palpating to the origin of the adductor muscle according to his chart or very close to, according to his testimony. It was appropriate to have CR assume the figure of four position, to provide more distance or boundary between the bony structure of the origin point, the pubic rami, and the labia.
- [196] The Hearing Tribunal accepted that CR believes that Mr. Gadgerao touched her labia. However, CR was on alert on May 26, given the concerns she had with the May 15 appointment. CR admitted to having some trouble recalling what occurred at this appointment. In addition, given the proximity of the labia to the groin and upper thigh area being palpated by Mr. Gadgerao, a patient could perceive the physiotherapist is touching the labia. The Hearing Tribunal accepted that it could be very distressing for a patient, as it was for CR, to have a physiotherapist palpate her upper thigh/groin area, only a few centimetres from her labia. This distress could affect the patient's perception

about what area is palpated. As such, while the Hearing Tribunal did not believe that CR was fabricating, the Hearing Tribunal found that, on a balance of probabilities, Mr. Gadgerao was palpating the upper thigh/groin area to the origin of the adductor muscles, which CR mistakenly perceived to be her labia.

[197] The evidence does not establish that, on a balance of probabilities, Mr. Gadgerao touched CR's labia.

[198] The Hearing Tribunal found that Allegation 2 was not proven. Allegation 2 is dismissed.

Allegation 3 Further, or in the alternative to Allegation 1, on or about May 15, 2023, while providing physiotherapy treatment to patient CR, you did one or more of the following:

- a. **Failed to obtain adequate informed consent before touching patient CR's buttocks under her clothing;**
- b. **Failed to perform physiotherapy services on patient CR's buttocks in a clinically appropriate and/or competent manner.**

[199] The facts that were found for Allegation 1, apply to Allegation 3 as well.

[200] The Hearing Tribunal considered the chart notes in relation to whether Mr. Gadgerao obtained informed consent. For May 15, there is an entry "asked verbal consent to assess tenderness and tightness of quadriceps muscle, hip flexor muscle in supine position and piriformis and hamstrings muscles in prone position."

[201] As noted above, the Hearing Tribunal has concerns about the reliability of Mr. Gadgerao's chart notes. However, even if the chart note is accurate, the Hearing Tribunal found that a patient may well not understand the terminology used in terms of what areas of the body would be touched by Mr. Gadgerao in his assessment and treatment.

[202] The Hearing Tribunal also considered the informed consent process that Mr. Gadgerao described in his testimony. The Hearing Tribunal found Mr. Gadgerao to be somewhat vague in describing the informed consent process and described it in a few different ways. In addition, Mr. Gadgerao stated that he does not use laymen's terms, such as buttocks. The Hearing Tribunal found that a patient may not fully understand anatomical or medical terms that are used. While Mr. Gadgerao stated that he will demonstrate the area on his own body, his testimony was vague on how he does this. The Hearing Tribunal concluded that this may not be sufficient for a patient to fully understand the parts of their body that will be touched.

[203] As noted above, the Hearing Tribunal found that Mr. Gadgerao touched CR's buttocks in terms of assessing the piriformis and had a therapeutic purpose for doing so. Given the position CR was laying in and that the shorts were loose enough for a hand to be placed

between the shorts and the skin, the Hearing Tribunal found it is plausible that Mr. Gadgerao touched her bare skin on her buttocks under the shorts.

- [204] However, the Hearing Tribunal accepted the evidence of CR that she did not give consent to the touching of her buttocks and that Mr. Gadgerao did not inform her he would be touching her in that area, either over or under her clothing.
- [205] This assessment had not been done by Mr. Gadgerao at a previous appointment with CR. Given this and given the sensitive nature of where CR would be touched, it was necessary for Mr. Gadgerao to explain the assessment in a manner that the patient would understand. The Hearing Tribunal found that Mr. Gadgerao failed to do so.
- [206] The Hearing Tribunal also found that there was no evidence that Mr. Gadgerao explained the options, risks, benefits, potential outcomes or consequences of refusing treatment, which are required in terms of obtaining informed consent.
- [207] The Hearing Tribunal found that, on a balance of probabilities, Mr. Gadgerao touched CR's buttocks under her clothing for a therapeutic purpose. The Hearing Tribunal also found that CR did not understand that her buttocks would be touched as part of the assessment and did not give informed consent to her buttocks being touched under her clothing.
- [208] Allegation 3(a) is proven.
- [209] With respect to Allegation 3(b), for the reasons set out above, the Hearing Tribunal found that it was appropriate for Mr. Gadgerao to perform an assessment of the piriformis on May 15, 2023. This necessarily involves touching the patient's buttocks. While Ms. Reese noted the example of bursitis for palpating the buttock under the clothing, Mr. Begg noted that the piriformis could be palpated under the clothing, so long as informed consent was obtained. He noted the example that clients will sometimes lift their shorts to expose an area, providing implied consent. The Hearing Tribunal accepted that, although best practice may be to palpate the piriformis over the clothing, it is not clinically inappropriate or incompetent to palpate the piriformis on bare skin, so long as informed consent is obtained. Informed consent is addressed in Allegation 3(a).
- [210] The evidence presented did not establish that the physiotherapy services provided on May 15, involving the palpation of CR's buttocks, were not clinically appropriate or not done in a competent manner. Allegation 3(b) is dismissed.

Allegation 4 Further, or in the alternative to Allegation 2, on or about May 26, 2023, while providing physiotherapy treatment to patient CR, you did one or more of the following:

- a. Failed to obtain adequate informed consent before touching patient CR's inner thigh and/or groin area over her clothing;
- b. Failed to perform physiotherapy services on patient CR's inner thigh and/or groin area in a clinically appropriate and/or competent manner.

[211] The facts that were found for Allegation 2, apply to Allegation 4 as well. In addition, the findings made for Allegation 3(a), apply to Allegation 4(a).

[212] The chart note for May 26, 2023 states: "took the verbal consent to examine hip and all surrounding muscles and structures explained the procedure and proceeded with examination." Despite the concerns with the chart notes, as noted above, the Hearing Tribunal found that, based on the chart note, a patient may not understand that Mr. Gadgerao would be touching the upper thigh and groin area.

[213] Mr. Gadgerao confirmed in his testimony that he did not say he would be touching the upper inner thigh or close to the groin.

[214] The Hearing Tribunal also found that there was no evidence that Mr. Gadgerao explained the options, risks, benefits, potential outcomes or consequences of refusing treatment, which are required in terms of obtaining informed consent.

[215] The Hearing Tribunal accepted the evidence of CR that she did not understand that Mr. Gadgerao would be palpating her in the upper thigh area or close to the groin and that she did not give informed consent for this procedure.

[216] This assessment had not been done by Mr. Gadgerao at a previous appointment with CR. Given this and given the sensitive nature of where CR would be touched, it was necessary for Mr. Gadgerao to explain the assessment in a manner that the patient would understand. The Hearing Tribunal found that Mr. Gadgerao failed to do so.

[217] The Hearing Tribunal found that, on a balance of probabilities, Mr. Gadgerao failed to obtain adequate informed consent before touching CR's inner thigh and groin area over her clothing. Allegation 4(a) is proven.

[218] With respect to Allegation 4(b), the Hearing Tribunal found that the physiotherapy services provided were appropriate given the concerns of CR on May 26. As noted by both Ms. Reese and Mr. Begg, it was appropriate to palpate to the origin of the adductor muscle, in the upper thigh and groin area. Further, Mr. Gadgerao did this palpation while CR was in the figure of four position, which was appropriate.

- [219] The evidence presented did not establish that the physiotherapy services provided on May 26, including palpating CR's inner thigh and groin area, were not clinically appropriate or not done in a competent manner. Allegation 4(b) is dismissed.

Whether Allegations 3(a) and 4(a) Constitute Unprofessional Conduct

- [220] Having found Allegations 3(a) and 4(a) to be proven, the Hearing Tribunal then considered whether the conduct constitutes unprofessional conduct.

Lack of Skill or Judgment

- [221] The Hearing Tribunal found that the conduct in Allegations 3(a) and 4(a) constituted a lack of skill or judgment on the part of Mr. Gadgerao. The Hearing Tribunal considered that Mr. Gadgerao is an experienced physiotherapist. He likely has the knowledge to obtain informed consent. However, in the circumstances of this case, he showed a lack of skill or judgment in terms of not providing a clearer explanation to CR of the areas that he would be assessing. In this case, he was touching very sensitive areas of the patient's body. His conduct demonstrated a lack of skill or judgment in how he communicated with CR.
- [222] Where a physiotherapist is touching sensitive areas on the patient, it is imperative that the physiotherapist use clear language in the informed consent process that the patient will understand and that the physiotherapist confirms the patient's understanding before proceeding. Mr. Gadgerao's failure to do so demonstrated a lack of skill or judgment, constituting unprofessional conduct pursuant to section 1(1)(pp)(i) of the HPA.

Code of Ethics and Standards of Practice

- [223] The Hearing Tribunal found that the following provisions of the Code of Ethical Conduct for Alberta Physiotherapists were breached:

A. Responsibilities to the Client

Members of the physiotherapy profession have an ethical responsibility to:

1. Demonstrate sensitivity toward individual clients, respecting and taking into consideration their unique rights, needs, beliefs, values, culture, goals, and environmental context.
6. Respect the principles of informed consent including by explaining service options, risks, benefits, potential outcomes, possible consequences of refusing treatment or services, and by avoiding coercion.
12. Practice in a safe, competent, accountable and responsible manner during the provision of services.

C. Responsibilities to Self and the Profession

Members of the physiotherapy profession have an ethical responsibility to:

1. Commit to maintaining and enhancing the reputation and standing of the physiotherapy profession, and to inspiring public trust and confidence by treating everyone with dignity and respect in all interactions.

[224] The Hearing Tribunal found that the following provisions of the Standards of Practice for Physiotherapists in Alberta were breached:

Client Assessment, Diagnosis, Interventions

Performance expectations

The physiotherapist:

- Obtains clients' ongoing **informed consent** to proposed services.

Client-Centered Care

Performance expectations

The physiotherapist:

- Communicates with clients to facilitate their understanding of the care plan and how it addresses their goals, outlines the risks and benefits of services, and obtains **informed consent**.
- Monitors clients' responses throughout service delivery, adjusting and modifying interventions/approaches as required, and obtaining ongoing informed consent.

Consent

Performance expectations

The physiotherapist:

- Communicates with clients to explain and facilitate their understanding of physiotherapy service options.
- Explains to clients the risks and benefits of physiotherapy service options and the consequences of participating or not in proposed **interventions**.
- Obtains and documents clients' ongoing informed consent to proposed services.

[225] The Hearing Tribunal found that the breaches of the Code of Ethical Conduct for Alberta Physiotherapists and Standards of Practice for Physiotherapists in Alberta were serious. In the present case, given the sensitive nature of the areas that were being assessed, Mr. Gadgerao should have communicated clearly the areas he would be touching, the risks and benefits of proceeding and the consequences of not participating in the assessment. Mr. Gadgerao's failure to use language that the patient would understand resulted in a

failure to demonstrate sensitivity to his patient, in ensuring that she fully understood the assessment that Mr. Gadgerao proposed to do, or the benefits, consequences or other options available to her.

- [226] Further, although the Hearing Tribunal found that the assessments were for therapeutic purposes, it is a serious conduct to touch the patient's buttocks under her clothing without informed consent. This represented a failure to provide professional services in a safe, competent, accountable and responsible manner. It is also conduct that undermines the reputation and standing of the physiotherapy profession and as well as the public's confidence in the services provided by physiotherapists.
- [227] The breaches of the Code of Ethical Conduct for Alberta Physiotherapists and Standards of Practice for Physiotherapists in Alberta are serious and constitute unprofessional conduct under section 1(1)(pp)(ii) of the HPA.

Conduct that Harms the Integrity of the Profession

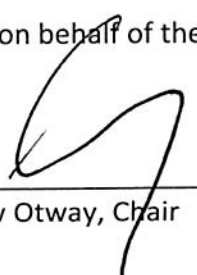
- [228] The Hearing Tribunal found that the conduct harmed the integrity of the profession. Although Mr. Gadgerao provided services that were appropriate and for therapeutic purposes, the failure to obtain informed consent for the assessments of sensitive areas undermines the profession as a whole and the trust placed by patients in their physiotherapists. A patient's experience and perceptions of that experience inform their overall impression of the profession. The conduct is unprofessional conduct under section 1(1)(pp)(xii) of the HPA.

IX. Conclusion

- [229] The Hearing Tribunal finds Allegation 3(a) and 4(a) to be proven and to constitute unprofessional conduct. The Hearing Tribunal finds Allegations 1, 2, 3(b) and 4(b) not proven and dismisses these Allegations.
- [230] The Hearing Tribunal will receive submissions on sanction from the parties. The Hearing Tribunal requests that the parties consult each other and advise the Hearing Tribunal of their preferred method of providing submissions, whether in writing or orally, within three weeks of receipt of this decision. If the parties are unable to agree on the process for submissions on sanction, the Hearing Tribunal will provide further direction.

Dated this 4th day of September, 2025.

Signed on behalf of the Hearing Tribunal



Andrew Otway, Chair