



Dr. Oladayo OLADIPO

Discipline Hearing Committee Decision

Date Charge(s) Laid:	January 14, 2020
Date of Discipline Hearing:	October 7-8, 2020
Date of Penalty Hearing:	June 18, 2021

This matter proceeded to hearing before the Discipline Hearing Committee. The decision of that committee is attached.

The matter has proceeded to penalty hearing before the CPSS Council. The results of the penalty hearing are posted on the College website in Dr. Oladipo's physician profile at the link "Council Decision".

**IN THE MATTER OF THE *MEDICAL PROFESSION ACT, 1981*,
S.S. 1980-81, c. M-10.1 and**

**DR. OLADAYO OLADIPO
MEDICAL PRACTITIONER
REGINA, SASKATCHEWAN**

**HEARING OF THE DISCIPLINE HEARING COMMITTEE OF THE COLLEGE OF
PHYSICIANS AND SURGEONS OF SASKATCHEWAN**

**Saskatoon, Saskatchewan
October 7 & 8, 2020**

**Before: Leslie T. K. Sullivan, Q.C. Chair
Dr. Joan Baldwin
Dr. Lorne Rabuka**

**Counsel: Sheila Torrance for the College of Physicians and Surgeons
David Thera, Q.C. and Katherine Melnychuk for Dr. Oladayo Oladipo**

I. INTRODUCTION

1. The Executive Committee of the College of Physicians and Surgeons laid the following charges against Dr. Oladayo Oladipo:

- 1) You Dr. Oladayo Oladipo are guilty of unbecoming, improper, unprofessional or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981*, SS 1980-81, c. M-10.1 and/or Bylaw 8.1(b)(xvi) and/or (xvii) and/or paragraphs 1 and/or 2 and/or 52 of the Code of Ethics contained in Bylaw 7.1 of the Regulatory Bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Regina you engaged in inappropriate conversation with and inappropriate touching of a co-worker and patient.

The evidence that will be led in support of this charge will include some or all of the following:

- (a) On or about November 10, 2018, you were working at the Pasqua Hospital with a hospital employee named in the charge as Co-worker #1.
 - (b) You noted Co-worker #1 appeared to be in discomfort.
 - (c) You examined Co-worker #1 by placing your hand on her back and neck, rubbing or massaging her shoulder and back, and manipulating her arm.
 - (d) Co-worker #1 asked you to stop the examination, and you did not.
 - (e) Also on or about November 10, 2018, you treated Co-worker #1 when she was registered as a patient in the emergency department at the Pasqua Hospital.
 - (f) In the course of treating Co-worker #1, you commented to her that you could not be her physician much longer as you would not be able to treat her sexually in the way you wanted (or similar words).
 - (g) While you were making these comments to Co-worker #1, you were leaning towards her.
- 2) You Dr. Oladayo Oladipo are guilty of unbecoming, improper, unprofessional or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981*, SS 1980-81, c. M-10.1 and/or Bylaw 8.1(b)(xv.ii) and/or 52 of the Code of Ethics contained in Bylaw 7.1 of the Regulatory Bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Regina you engaged in inappropriate conversation with and inappropriate touching of a co-worker.

The evidence that will be led in support of this charge will include some or all of the following:

- (a) On one occasion during the summer or fall of 2015, you were working at the Pasqua Hospital with a hospital employee named in this charge as Co-worker #2.
 - (b) You approached Co-worker #2 as she was standing at a monitor and you kissed her on the right cheek.
 - (c) You then left without saying anything to Co-worker #2.
 - (d) On or about November 10, 2018, you asked Co-worker #2 and another colleague whether they were ticklish.
 - (e) You then attempted to tickle Co-worker #2 and touched her on her side or hip.
2. During the course of the hearing, the date referred to in Charge 2 (a) was amended to read: “On one occasion during 2015 or 2016” to conform with the evidence presented. The Discipline Hearing Committee allowed this amendment pursuant to s. 50(5.1) of the *Medical Profession Act, 1981*.

II. SUMMARY OF HEARING AND DECISION

3. A Discipline Hearing Committee composed of Dr. Lorne Rabuka, Dr. Joan Baldwin and Leslie Sullivan, Q.C. (Chair) conducted a hearing into these charges on October 7 and 8, 2020. Due to COVID-19, the Committee, Counsel and Dr. Oladipo attended in person for the hearing, while the witnesses appeared via video link.
4. The Committee came to the following decisions:
- 1) Charge 1:

The College of Physicians and Surgeons did not meet its onus of proving the allegations against Dr. Oladipo on a balance of probabilities and therefore the Committee finds Dr. Oladipo not guilty of Charge 1 regarding Co-worker #1.
 - 2) Charge 2:

The College of Physicians and Surgeons has met its onus of proving the allegations against Dr. Oladipo on a balance of probabilities and therefore finds Dr. Oladipo guilty of Charge 2 regarding Co-worker #2. Further, the proven conduct falls within Section 46(o) of The Medical Profession Act, 1981 as being conduct unbecoming, improper, unprofessional or discreditable.

III. BURDEN OF PROOF

5. The burden of proof in a professional discipline matter rests with the College.

IV. STANDARD OF PROOF

6. The standard of proof is on a balance of probabilities. In their briefs and oral submissions, both counsel referred to the decision of the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, 297 DLR (4th) 193.
7. In *F.H. v. McDougall* Justice Rothstein clearly stated the persuasive standard in civil cases:
[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.

...

[44] Put another way, it would seem incongruous for a judge to conclude that it was more likely than not that an event occurred, but not sufficiently likely to some unspecified standard and therefore that it did not occur. As Lord Hoffmann explained in *In re B* at para. 2:

If a legal rule requires a fact to be proved (a “fact in issue”), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.

In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.

...

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

...

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

8. Therefore, the basic tenets set out in *F.H. v. McDougall* are:
 1. The evidence must be sufficiently clear, cogent and convincing to satisfy the balance of probabilities test.
 2. The only civil standard of proof is on a balance of probabilities.
 3. A balance of probabilities means that the trier of fact must determine whether it is more likely than not that an alleged event occurred.

V. RELIABILITY AND CREDIBILITY OF WITNESSES

9. During the relevant time, Dr. Oladipo was an Emergency Physician working at Pasqua Hospital, Regina, Saskatchewan and Co-worker #1 (K.P.) was a unit clerk. Co-worker #2 (J.D) was a nurse. There were two incidents involving each of K.P. and J.D. The College of Physicians and Surgeons called six witnesses. Dr. Oladipo testified on his own behalf. The credibility and reliability of the various witnesses was the dominant issue at the hearing.
10. The Committee is mindful of the need to carefully and critically assess, in turn, the credibility and reliability of the witnesses, particularly that of K.P., J.D. and Dr. Oladipo. There is a distinction between these two concepts. Credibility has to do with the veracity or truthfulness of the witness. Reliability refers to the ability of the witness to observe, recall and recount the events in issue.
11. This distinction was clearly explained by Watt, J. A. in *R. v. H.C.* 2009 ONCA 56, 241 CCC (3d) 45:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

 - i. observe;
 - ii. recall; and
 - iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514, at 526 (C.A.).
12. The assessment of credibility and reliability is not an exact science (*R. v. Gagnon*, 2006 SCC 17, [2006] 1 SCR 621 at para 20). This assessment involves a consideration of many factors. These factors include a witness's power of observation, opportunity to observe,

possible motive, judgement, memory, demeanour, and the ability to express clearly what was seen and heard.

13. A concise description of what is involved in assessing the credibility of witnesses was set out by the British Columbia Human Rights Tribunal in *Gichur v. Purewal* 2017 BCHRT 19, [2017] BCHRTD NO. 17 at paragraph 8:

[8] In assessing credibility, I have adopted and applied the test set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, para. 186:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) (*Faryna*); *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

VI. EVIDENCE PRESENTED AT HEARING

14. To provide some initial context, it is helpful to deal with some of the evidence of Dr. Oladipo, who testified on his own behalf with respect to both charges. He is a highly qualified Emergency physician with impressive credentials. Dr. Oladipo graduated from the University of Ibadan Medical School in Nigeria about twenty years ago. He moved to the Republic of Ireland for post-graduate training and was admitted into the College of Surgeons of Edinburgh in 2008. From 2009 to 2013 Dr. Oladipo trained in the United Kingdom receiving his Royal College of Emergency Medicine. He worked in Regina from 2014 to 2019 also obtaining his Fellowship in the Royal College of Physicians in Emergency Medicine in 2017. Dr. Oladipo also provided detailed information about the inner workings of an emergency department.
15. Dr. Oladipo knew all the witnesses who testified. He described his relationship with J.D. as professional and recounted a favor regarding a basketball hoop. His relationship with K.P. was professional as well, and he referred to her by her nickname of "Sassy K.". This nickname was used by everyone in the department and was used to describe K.P.'s lively

banter. His relationship with N.M. was also strictly professional, other than to show her some support when she lost her husband.

16. Exhibits filed as part of the proceedings were:

C – 1: Notice of Hearing and Charges

C – 2: Agreed Statement of Facts and Documents

C – 2, Tab 1: Medical records of K.P. from November 10, 2018

C – 2, Tabs 2 – 4 floor plans of the Emergency area of Pasqua Hospital

C – 3: Amended Charge 2

D – 1: series of text messages between Dr. Oladipo and J.D.

a. Charge 1

17. There were two incidents complained of by K.P.; both took place Saturday November 10, 2018. These form Charge 1. The first incident involves a manipulation of K.P.'s shoulder and neck area by Dr. Oladipo. In this regard, we must assess whether K.P. initially gave Dr. Oladipo permission to examine or manipulate her neck and shoulder area and once she told him to stop, whether he stopped. As we consider this incident, a further consideration is whether Dr. Oladipo *heard* K.P. say "stop", and did he continue the examination despite her obvious discomfort.
18. The second incident involving K.P. related to an interaction in the Emergency Department streaming area. K.P. testified that during the assessment process in the Emergency Department streaming area, Dr. Oladipo made sexually inappropriate comments to her.

Evidence of K.P.

19. K.P. currently works with the Pasqua Hospital Food Services but previously and on the relevant date worked in the Emergency Department at Pasqua as a unit clerk. She had worked there for approximately three years and had worked with Dr. Oladipo during that time. In her evidence K.P. referenced other inappropriate behavior on the part of Dr. Oladipo. These incidents did not form part of the charges before us and Dr. Oladipo was not required to answer to them.
20. K.P. has osteoarthritis in her spine and when the discs move around, she can experience a lot of pain. She is deciding whether to have surgery and often needs to take pain medication. K.P. testified that on November 10, 2018 she was sitting at her workstation. This is shown in Exhibit C-2 at Tab 3. She was sitting in area 2320. One of the discs in her left shoulder area had slipped and it was painful and pushing on the nerve. K.P. tried to alleviate the pain by rotating her shoulder. Dr. Oladipo approached her, put his hand on her shoulder and asked her what was wrong. K.P. told him and then without asking her permission he commenced rubbing her shoulders. She then told him to stop. Instead, he pulled her left arm up and began to manipulate it. K.P. was in pain and crying, albeit softly. K.P. testified

that she told Dr. Oladipo again to stop and he did not stop right away. He walked away shortly thereafter.

21. K.P. provided further information. She testified that when she initially said stop to Dr. Oladipo, she said it quietly and that it is possible he did not even hear her. K.P. also testified that the second time she told Dr. Oladipo to stop, he did so within “a matter of seconds”. K.P. was never asked to articulate the distinction between ‘right away’ and ‘a matter of seconds’. K.P. also said that there could have been some miscommunication.
22. K.P. subsequently registered for treatment in the ER. This was for some pain medication which she could not receive unless she was a registered patient. She went to the streaming area which is essentially an intake area. Patients are seen in private rooms but on occasion if it is a ‘quick-see’ it is in the vicinity of the streaming area. This is where the second incident described by K.P. happened. As Dr. Oladipo was the only ER physician on duty, he met with K.P. She testified that during the patient interview with Dr. Oladipo, she was uncomfortable as he kept moving his chair closer to hers. K.P. testified that at some point during the assessment, Dr. Oladipo said to her that “he couldn’t be her physician as he couldn’t treat her sexually the way that he wanted to.”
23. K.P. also testified that the conversation was mostly social (about Dr. Oladipo’s family) and that he did not make the notes shown in Tab 1 of Exhibit C-1, the inference being that he recorded the information from other sources. We are not sure what this evidence is in aid of other than to discredit Dr. Oladipo.
24. K.P. testified that her recollection was not clear. There was more than one version of what she attributed to Dr. Oladipo. In the end, K.P. said that she believed he said something inappropriate. K.P. agreed that she could not recall a lot of what happened in the ER. At times, she was unable to focus. We can infer that in large part this was due to the pain she was experiencing.

Evidence of Other Witnesses

25. G.C. provided evidence. G.C. is a Licensed Practical Nurse and is employed by the Saskatchewan Health Authority. She was on duty in the Pasqua Hospital Emergency Department streaming area on this date. At some time during the day, she saw K.P. outside when she was having a smoke. K P. was visibly upset and crying.
26. Dr. Tiann O’Carroll is an Emergency Physician and worked with both K.P. and Dr. Oladipo at Pasqua Hospital. She described her relationship with each of them as professional. She described K.P.’s usual outgoing nature which was missing on November 10, 2018. K.P. discussed her concerns regarding Dr. Oladipo with Dr. O’Carroll, who advised her how to make a report. Dr. O’Carroll gave a statement to the DC Strategic Management during the investigation of the various complaints. Regarding the complaint of K.P. about the shoulder manipulation, Dr. O’Carroll told the investigators that K.P. told her that Dr. Oladipo had offered to examine her. Dr. O’Carroll adopted this statement.

27. Dr. O'Carroll agreed that it was not uncommon for an ER Physician to look at or examine a staff member complaining of a health issue. For example, she has looked into other's ears or examined ankles. However, a staff member must register as a patient for something like an x-ray or medication.
28. J.D., a registered nurse, was also working in the triage area which is in the vicinity of K.P.'s workstation. She described her relationship with K.P. as professional and friendly. She was aware that K.P. had a neck injury and K.P. told her it was bothering her that day. At some point she became aware that Dr. Oladipo was standing behind K.P. in her chair and he was touching her neck and upper back and manipulating and moving K.P.'s arm upward and in a circular motion. She believes that it was for two to three minutes. This was in plain view of all working in the vicinity. While she noted that K.P. was wincing in pain, J.D. was too far away to overhear any conversation between K.P. and Dr. Oladipo. She recommended to K.P. that she book off the rest of the day as sick and go home.
29. N.M. was working as a Registered Nurse in the streaming area. She was the nurse who checked K.P. into the ER. While patients are usually put into a private room for assessment, in this case K.P. and Dr. Oladipo were only a few feet away from her during their interaction and N.M. did not see or hear anything untoward. She did, however, leave the area for a while to get the medication being prescribed for K.P.

Evidence of Dr. Oladipo

30. Dr. Oladipo testified that he observed K.P. on November 10, 2018. First, he noticed that she was at her workstation and that she was in pain. He asked her what was going on and she volunteered information regarding a previous injury and related disc problems. She said that she had discussed the possibility of surgery with her doctor and was nervous about that. Dr. Oladipo then asked her if he could take a look, and she said to not move her arm. She then parted her hair to make it easier for him to examine the area. Dr. Oladipo described the procedure in considerable detail. At no point did he hear her say stop, but he immediately stopped the examination when he came to the most tender area in the thoracic spinal area. He then recommended that she register as a patient in order to obtain some pain medication, and she followed his recommendation.
31. During the next phase, that of the assessment in the streaming area, Dr. Oladipo also described in detail the conversation. There was discussion about the type of medication K.P. should take including a detailed discussion about pregabalin and the need for her to follow up with her physician. With regard to moving closer, Dr. Oladipo explained that he wanted to show his phone to K.P. to see information about a potential medication, pregabalin. It is likely that this was the case.
32. Dr. Oladipo testified that he did not say anything regarding treating her sexually or any words to that effect. He acknowledged that he did say 'how can I make sassy conversations with you if I am still your doctor'. Sassy refers to K.P.'s nickname of "Sassy K." and the usual lively banter between her and all of her colleagues in the ER.

b. Charge 2

33. Charge #2 relates to two instances involving employee J.D., a Registered Nurse working at the Pasqua Hospital Emergency Department. The first incident was in 2015 or 2016 and one was in November, 2018. J.D. commenced working at Pasqua Hospital in 2015 as a casual employee. At the time of the first incident, she was not yet familiar with the names of all her co-workers and had had limited interaction with Dr. Oladipo, one of the physicians on the Emergency Department roster. Other than the two incidents she described, her relationship with Dr. Oladipo was cordial and professional. That is, the two incidents she described were isolated.
34. The two incidents J.D. alleged involved a kiss and a tickling. The first incident occurred not long after J.D. began working at Pasqua Hospital. The date is uncertain and the charge was amended to state that the date was sometime in 2015-2016. It is appropriate to amend a charge to conform to evidence of this nature.
35. The second incident occurred in the medication room. This is where the nursing staff go to get the medications to be administered to patients in the ER. It is a small area shown best in Exhibit C-2, Tab 4. The complaint against Dr. Oladipo is with respect to a tickling incident. There were four individuals in the room at the time: J.D., N.M., R.B. and Dr. Oladipo. As is often the case, there are discrepancies between the evidence of the various witnesses.

Evidence of J.D.

36. J.D. testified that she was standing up, facing and looking at the patient cardiac monitors. The next thing she knew, Dr. Oladipo had walked up from behind her and kissed her on the right cheek. He then kept walking past her, to her left. While she was unaware of his presence until he moved in to kiss her, J.D. knew it was Dr. Oladipo because she looked at him as he walked away. Using the floor plan filed as Exhibit C-2, Tab 4, area 1, J.D. was able to describe exactly where she was standing.
37. J.D. did not chastise Dr. Oladipo on the spot, nor did she make a fuss with her co-workers. As indicated, she was relatively new to the unit, did not know many of her co-workers, was not yet full-time and she was not comfortable with making waves. J.D. said that at the time, she was shocked and afterwards she felt very awkward.
38. With respect to the November 10, 2018 incident, J.D. testified that she was in the room with her student, R.B. and N.M. was also there. The room is narrow, with cabinets, drawers, a sink and a Pyxis machine in the centre. N.M. was facing the wall to the west, presumably doing something. J.D. was facing south, just about at the Pyxis machine. Dr. Oladipo entered the room from the south heading north. As he came across the three women he asked if N.M. was ticklish and he tickled N.M. on her hip. He then asked J.D. if she and R.B. were ticklish and motioned as if he was tickling her as well, from her neck area down to her hip. He made light contact with her hip. She then confronted him verbally, but did not recall her words other than it was something along the lines of appropriateness. None

of the women were laughing but Dr. Oladipo was smiling at them. J.D. believes she was facing R.B. when Dr. Oladipo tickled her.

Evidence of N.M

39. In addition to providing the evidence regarding Charge 1, N.M. gave evidence about what happened in the medication room. She testified that she was facing toward the west wall and focusing on her job. She was aware that J.D. was nearby. Dr. Oladipo entered the room and then poked her on the side. This was just between her left hip and rib cage, where the ticklish part is and it was a deliberate tickle. Immediately, J.D. said words to the effect of 'don't you touch her like that'. J.D. was upset with Dr. Oladipo. No one was laughing and the situation was not a laughing matter. N.M. testified that it was not the first time that Dr. Oladipo had tickled her like that but usually she saw him coming and could dodge out of the way. This time she was focused on the Pyxis machine and was taken by surprise. She did not see him coming. N.M. did not see whether Dr. Oladipo touched J.D., but she was not always in a position to see her. After J.D.'s statement to Dr. Oladipo, Dr. Oladipo put his hands up and said to J.D that he had no intention of touching her.

Evidence of R.B.

40. R.B works at Pasqua Hospital in the Emergency Department as Registered Nurse. In November 2018 she was in her fourth year of nursing and was doing a practicum at Pasqua for a few months. J.D. was her preceptor. Ms. B was assigned to get a patient's medications and all of her medication checks had to be with J.D. present. She remembered hearing Dr. Oladipo use the word tickle phrased as a question; something to the effect of "do you like to be tickled or, do you want to be tickled". This happened behind her so she did not see anything.

Evidence of Dr. Oladipo

41. Dr. Oladipo testified that the kissing incident with J.D. never happened. Due to the lapse of time, it was difficult for him to provide any other detail about his interactions with J.D. that day. While he testified that it did not happen, he also referred to an inability to 'recall' it. This is understandable. We appreciate that due to the lapse of time other evidence that could have provided more context is long gone. While this can be the case when a complainant does not come forward right away, it does not necessarily detract from the credibility of the complaint.
42. With respect to the "tickling incident", Dr. Oladipo thought another nurse, K.S., was present. If she was there, none of the other witnesses recalled it and K.S. was not called to provide evidence. However, the context provided by Dr. Oladipo was that he was talking to K.S. about her pregnancy and the word "tickles" came up. He then asked J.D. if she was ticklish and J.D. responded by saying "don't come near me". He raised his hand and said that he had no intention of tickling J.D. He did not touch her or try to touch her. He did not recall if he had ever tickled N.M.

VII. FINDINGS

a. Charge 1

43. There is no question that K.P. was upset regarding the events that occurred on November 10, 2018. While the College asked us to view G.C.'s testimony about K.P.'s emotional state as corroborative of K.P.'s story, it is important to keep in mind that K.P. was experiencing a significant amount of pain, which could account for her emotional upset.
44. The examination by Dr. Oladipo was painful and she believed he made certain inappropriate comments to her in the streaming area. The phrase that she attributes to Dr. Oladipo (that "he couldn't be her physician as he couldn't treat her sexually the way that he wanted to") does not appear to make sense. It is more likely that Dr. Oladipo said words to the effect of not being able to have sassy banter with K.P. if she became his patient.
45. After considering the evidence presented, we find that it is likely that Dr. Oladipo did ask and receive consent or inferred that K.P. consented to his examination. It is also likely that Dr. Oladipo did stop the examination when asked to do so and did not make the comment K.P. attributed to him.
46. We are not able to say, on a balance of probabilities, that Dr. Oladipo is guilty of Charge 1. The College has not proved that it is more likely than not that these events happened. We find him not guilty of Charge 1.

b. Charge 2

47. J.D. did not report this first kissing incident until the events of November 10, 2018 occurred. Seeing K.P. upset in addition to the tickling incident in the medication room prompted J.D. to speak up.
48. J.D. presented as a credible witness. During her testimony she was calm, articulate and fair. Despite thorough cross-examination, J.D. held to her evidence and her story did not appear fabricated in any way. While the first incident was a brief encounter and some time ago, J.D. remembered it clearly. It was a very unusual incident – the kind of incident that would stick in one's memory, in part, due to its unusual and inexplicable nature. She hardly knew Dr. Oladipo.
49. During the hearing, much was made of a time when J.D. transported a basketball hoop from Fort Qu'Appelle to Regina for Dr. Oladipo. This was one co-worker doing a favor for another. J.D. had easy transportation from Fort Qu'Appelle. There was nothing untoward about this and that is reflected in the text messages between Dr. Oladipo and J.D. shown in Exhibit D-1. This was approximately 1 – 2 years after the kissing incident. That J.D. was willing to do this favor for Dr. Oladipo does not mean that he did not kiss her on the cheek a year or so earlier. It does not detract from her credibility in that regard.

50. We are cognizant that there is a perceived power imbalance between a physician and the other staff, be they nurses or clerks. That Dr. Oladipo felt he could 'get away' with this kiss is an example of this imbalance. The kiss was not only inappropriate, but unprofessional. It was personal and a clear invasion of J.D.'s bodily integrity. It took her by surprise and shook her up a bit and could only be viewed as sexual in nature. We are satisfied on a balance of probabilities that this 'kiss' incident likely happened as described by J.D.
51. With regard to the "tickling" incident, J.D. was a credible witness. Overall, Dr. Oladipo's attitude to the issue of tickling was dismissive. On the one hand, he agreed with counsel for the College that tickling was inappropriate and on the other he said that you did not need consent to touch a co-worker if it was not in a sexual way.
52. The evidence of N.M. is particularly telling. That she had been tickled by Dr. Oladipo before and tried to 'dodge' him when he was coming by on other occasions made absolute sense and demonstrated that Dr. Oladipo had a somewhat cavalier attitude to this sort of touching of co-workers. That she had never reported this behaviour before does not mean it did not happen.
53. N.M. was forthright in her observations. While there were minor inconsistencies between the evidence of the four individuals present, we are satisfied, on a balance of probabilities that Dr. Oladipo tickled N.M. and either tickled or attempted to tickle J.D. Further, acts of tickling are flirtatious in nature and therefore have a sexual connotation. Neither N.M. nor J. D consented to this activity. J.D. explicitly told Dr. Oladipo not to touch her and N.M. said that this had happened before and that she usually tried to dodge Dr. Oladipo but on this occasion she was taken by surprise. Not only is tickling or trying to tickle another co-worker highly inappropriate, it is a form of harassment, albeit at the low end of the scale.
54. We therefore find Dr. Oladipo guilty of Charge 2. As indicated, this finding is made on a balance of probabilities in that it is likely that these events happened.

VIII. CONCLUSION

55. After considering the evidence presented, the submissions of counsel, and the applicable standard of proof for these matters, the Committee came to the following decisions:
- 1) Charge 1: Dr. Oladipo is not guilty.
 - 2) Charge 2: Dr. Oladipo is guilty and the proven conduct falls within Section 46(o) of *The Medical Profession Act, 1981* as being conduct unbecoming, improper, unprofessional or discreditable.

Dated at Saskatoon, Saskatchewan, this 15th day of April, 2021

A handwritten signature in black ink, appearing to be 'LS', with a long horizontal line extending to the right.

Leslie Sullivan, Q.C.
Chair of Disciplinary Hearing Committee

Concurred to by Dr. Lorne Rebuka and Dr. Joan Baldwin,
Members of the Disciplinary Hearing Committee