

**IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL OF THE
COLLEGE OF PHYSIOTHERAPISTS OF ALBERTA**

**Pursuant to THE *HEALTH PROFESSIONS ACT*, being Chapter H-7 of the Revised
Statutes of Alberta**

Regarding the conduct of Liaqat Ali Khan, a Regulated Member

DECISION OF THE HEARING TRIBUNAL

A hearing of the Hearing Tribunal of the College of Physiotherapists of Alberta (the “College”) was conducted by video conference on June 25, 26, and 28, 2024.

In attendance were:

Hearing Tribunal Members:

Todd Wolansky, PT, Chair
Wendy Coombs, PT
Vince Paniak, Public Member
Dianna Jossa, Public Member

Also present were:

Joyce Vogelgesang, Complaints Director
Vita Wensel, Legal Counsel for the Complaints Director
Liaqat Ali Khan, Investigated Member (“**Mr. Khan**” or the “**Investigated Member**”)
Joel Franz, Legal Counsel for the Investigated Member
Julie Gagnon, Independent Legal Counsel for the Hearing Tribunal
Haylee O’Reilly, Hearings Administrator
Cheryl Blahut, Conduct Coordinator

PRELIMINARY MATTERS

1. The parties confirmed that there were no objections to the composition or jurisdiction of the Hearing Tribunal.
2. 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.
3. Counsel for the Complaints Director brought an application to have the patient’s name referred to by initials throughout the proceeding and in the transcripts. Counsel for the Complaints Director indicated that they were making this application being mindful of balancing the privacy of the patient with achieving transparency.
4. Counsel for Mr. Khan indicated that they had no concerns with respect to the application, but asked that any inadvertent reference to the patient by name be replaced with initials in the hearing transcript.

5. The Hearing Tribunal considered the application and the agreement of both parties to use of the patient's initials in the hearing transcript. The Hearing Tribunal directed that the patient would be referred to by her initials, SB, in the transcripts of the hearing. Recognizing that no members of the public had registered to attend, the Hearing Tribunal noted that it could address the issue of referring to SB by name and preserving her privacy if any public members attended the hearing.

ALLEGATIONS

6. The allegations set out in the Amended Notice of Hearing (Exhibit 1, Tab 1) are:
 1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:
 - a. You asked about women's "erogenous zones", or words to that effect;
 - b. You asked, "do women get aroused by touch", or words to that effect;
 - c. You discussed and/or asked about sexual activity and "rape";
 - d. You discussed vibrators and a sex toy website, PinkCherry;
 - e. You told a story to Patient SB about watching pornography;
 - f. You told Patient SB that "sex is more primal than intimate", or words to that effect;
 - g. You discussed wanting to "curl up" with Patient SB, or words to that effect.
 2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:
 - a. Sexual preferences and/or sexual orientation, including:
 - i. discussing "jumping into a girls' train", or words to that effect;
 - ii. Being in an open relationship.
 - b. Pornographic movies;
 - c. Sexual activity and "rape";
 - d. A party with male dancers, including that you viewed a photo of a naked man;
 - e. Being naked at home and/or in front of other people;
 - f. Vibrators and a sex toy website, PinkCherry.

3. On or about October 6, 2022, while providing physiotherapy treatment to Patient SB, you:
 - a. told Patient SB “sorry for arousing you” or words to that effect.

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 constitutes “sexual misconduct” as defined in s. 1(1)(nn.2) 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 (A4, A5, A18); Responsibilities to the Public (B1, B5); and Responsibilities to Self and the Profession (C1, C3); and
 - (b) Standards of Practice for Physiotherapists in Alberta: Client-Centered Care; Professional Boundaries; and Sexual Abuse and Sexual Misconduct.

EVIDENCE

7. The following exhibits were entered during the course of the hearing:

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|-------------|--|
| Exhibit 1 - | Book of Agreed Exhibits (Tabs 1 to 25) |
| Tab 1 - | Signed Amended Notice of Hearing |
| Tab 2 - | Complaint from Ms. JC, dated January 26, 2023 |
| Tab 3 - | Response from Mr. L. Khan, dated April 5, 2023 |
| Tab 4 - | Resume of Mr. L. Khan |
| Tab 5 - | Phone Records and Text Messages, SB dated November 3, 2022 to October 11, 2022. (NOTE - in actuality, the phone records within this exhibit range between September 28, 2022 and November 3, 2022.) |
| Tab 6 - | Meadows Mile Physiotherapy, Client Activities, Statement of Account, Appointment History |
| Tab 7 - | Consent and Intake Form, dated June 27, 2022 and July 11, 2022 for SB |
| Tab 8 - | Treatment Records of Mr. L. Khan, June 27 to October 8, 2022 for SB |
| Tab 9 - | Code of Ethical Conduct for Alberta Physiotherapists |
| Tab 10 - | Standards of Practice for Physiotherapists in Alberta, March 31, 2023 (Client-Centered Care [January 2017]; Professional Boundaries [January 2017]; Sexual Abuse and Sexual Misconduct [March 2019]) |
| Exhibit 2 - | Agreed Statement of Facts |
| Exhibit 3 - | E-mails between Ms. SB and Ms. SL, June 22, 2022 to October 28, 2022 |

8. The following witnesses gave evidence during the course of the hearing:

SB
Ramesh Bimagani
Liaqat Khan

SUMMARY OF WITNESS EVIDENCE

9. The following is a summary of the testimony given by each witness.

SB

10. SB began by explaining that she works as a registered [...] [...]. She injured her shoulder and neck while at work in 2022, and subsequently found Mr. Khan on a list of approved WCB physiotherapists. She saw Mr. Khan for treatment at the Meadows Mile Physiotherapy (“**Meadows Mile**”) and Crowchild Physiotherapy (“**Crowchild**”) clinics.
11. SB explained that she also saw Ms. KD, a pelvic floor physiotherapist, for treatment beginning in early 2022. SB shared her concerns about Mr. Khan with Ms. KD and provided a written account of her concerns to Ms. KD on December 22, 2022. After learning of SB’s concerns about Mr. Khan, Ms. KD drafted a letter to the College. SB indicated that she could not recall whether she reviewed the letter or when it was sent.
12. SB stated that she did not file a complaint to the College because she was worried that, because Mr. Khan knew her home address, he might take the complaint personally and show up at her home. She later stated that she installed cameras at her home to help with these safety concerns.
13. After switching physiotherapists midway through treatment, WCB assigned SB to a psychologist, Ms. JC. SB stated that this was because WCB had concerns that her experience was awakening previous traumas and that they wanted to ensure she felt supported. SB stated that she had been raped and dealt with issue of stalking and abusive relationships.
14. SB indicated that she shared her concerns about Mr. Khan with Ms. JC at her first session. Ms. JC later provided a complaint to the College.
15. SB provided her recollection of the Meadows Mile clinic, describing its location and layout. She stated the reception desk was located about 20–30 feet from the treatment beds, and that there were roughly 10 beds in the clinic.
16. SB stated that her appointments at Meadows Mile typically occurred around 4 or 4:30 in the afternoon. When asked about who was present during her appointments, SB noted that the receptionist MB was occasionally present and that there were sometimes other patients, though not often. SB could not recall how many times she saw Mr. Khan at Meadows Mile.
17. SB then described the Crowchild clinic and its layout. She recalled that there were roughly 10–12 beds, but stated that she never saw the full clinic, including the private rooms and treatment rooms used by other practitioners.

18. SB's appointments at Crowchild generally took place at 4–4:30 p.m. or on the weekends. SB explained that Crowchild was generally busier than Meadows Mile and that there would be other patients and treatment providers present.
19. SB gave evidence that she moved from Meadows Mile to Crowchild to continue treatment with Mr. Khan because Meadows Mile was undergoing renovations. She noted that Mr. Khan told her that Meadows Mile was being renovated.
20. SB described Mr. Khan as a very good physiotherapist, noting that his treatments helped her injury immensely and that he was quite good at targeting where she experienced pain.
21. SB stated that Mr. Khan was friendly and would regularly ask her questions throughout her treatments. SB noted that Mr. Khan's questions started off very casual and became increasingly personal over the course of the treatments. Mr. Khan was also more talkative when there were no other patients in the clinic.
22. SB gave evidence that at the end of treatment sessions, Mr. Khan initially gave her fist bumps and that this progressed to giving a high five, then Mr. Khan putting his arm around her shoulder and walking her out, and then hugs. SB stated that the first hug occurred at Crowchild on a day when she arrived in an emotional state because she and her partner had been in a fight. She said that Mr. Khan gave her a hug before her treatments and then again at the end of treatment.
23. SB explained that, due to the passage of time and the multiple appointments, events, and discussions, she could not pinpoint the specific appointments at which certain conduct occurred.
24. SB testified that she felt there was a strong cultural difference between herself and Mr. Khan.
25. SB gave evidence about her relationship with MB, the receptionist at Meadows Mile. She explained that, as her treatments with Mr. Khan progressed, MB would typically come to the back of the clinic and continue discussions with herself and Mr. Khan while SB received treatment. SB noted that MB was not present for every appointment.
26. SB testified about how the tone of conversation with Mr. Khan changed over time. She noted that the first significant change occurred when he was performing treatment with a TENS machine and told a story about how an older patient of his said that the machine felt like her vibrator. SB stated that Mr. Khan asked her what a vibrator was and whether it felt like the TENS machine. SB said that she explained that a vibrator was a women's pleasure device and that there is a website called PinkCherry where a physician describes what each device is and how it works. She also noted that the website offered adult toys for men and women as well as outfits. SB suggested that Mr. Khan could look online to understand more about them and that he could consider ordering something for his wife.
27. SB described her reaction to Mr. Khan's story about the previous patient and the vibrator. She stated that she was taken aback by the topic change because she was not expecting that topic to be broached in a professional situation. At the same time, she noted that this may

have been an issue of cultural differences and thought that she could use it as an opportunity to educate and help him.

28. After describing the PinkCherry website, SB relayed that Mr. Khan asked her if she had ever ordered anything from it. After replying in the affirmative, SB said that Mr. Khan asked her what she had ordered, and she responded by saying that was too personal a question. She testified that the question made her feel uncomfortable and that she followed by referring Mr. Khan back to the website saying that he could look for himself.
29. SB then gave evidence about how the conversations between herself and Mr. Khan and between herself, MB, and Mr. Khan changed over time. She stated that if she was alone with Mr. Khan or if MB was present, the conversations were typically of a sexual nature, with MB describing her experiences and dating life.

Hearing Objection re hearsay

30. Counsel for Mr. Khan raised an objection regarding SB relaying what MB said. Counsel for Mr. Khan offered a proposal for dealing with the hearsay evidence. Noting that section 79(5) of the HPA provides that evidence can be given in a hearing in any manner that the Hearing Tribunal considers appropriate and that tribunals often admit hearsay evidence, Counsel for Mr. Khan stated that it would be unfair for the College to proceed on Allegation 2 without allowing Mr. Khan the opportunity to be able to provide descriptions of the conversations with MB.
31. Counsel for the Complaints Director agreed that the witnesses should be allowed to testify about three-way or alleged three-way discussions as a matter of fairness and of evidentiary necessity. Counsel for the Complaints Director added, however, that evidence of what MB said was not being tendered for a hearsay purpose but for the fact that comments were made. Counsel for the Complaints Director drew the Hearing Tribunal's attention to this distinction from hearsay evidence tendered for the proof of its contents. Counsel for the Complaints Director further suggested that three-way conversations could be distinguished from any conversations between Mr. Khan and MB or between SB and MB alone.
32. In response, while recognizing the distinction between using hearsay for the truth of its contents and for whether or not something was said, Counsel for Mr. Khan stated that there was disagreement over what was said and that there would be overlap between what was tendered for the truth of its contents and for the fact that it was said. On the issue of two-way conversations, Counsel for Mr. Khan reiterated concerns that with Allegation 2 the Complaints Director had decided to proceed on an allegation inherently based on hearsay and that it would be fundamentally unfair to Mr. Khan not to be able to provide testimony as to what MB said. Counsel for Mr. Khan concluded by adding that, if the hearsay evidence was allowed on the basis of necessity and threshold reliability, the parties should be allowed to address the issue of weight in their closing submissions.
33. Counsel for the Complaints Director stated that Allegation 2 was not alleging anything where Mr. Khan was not present, rather the allegation is fundamentally focused on Mr. Khan's responsibilities and failure to take action. Counsel for the Complaints Director agreed that the necessity requirement for hearsay was met and added that, on reliability,

both SB and Mr. Khan were present and able to be cross-examined about their interactions and participation and what they overheard in discussions with MB.

34. The Hearing Tribunal considered the submissions of the parties on the hearsay issue. The Hearing Tribunal noted that there appeared to be agreement between the parties that neither would object on the basis of hearsay evidence to the testimony of SB or Mr. Khan relating to three-way conversations that occurred. Concerns about hearsay evidence relating to two-way conversations could be addressed if an objection arose later in the hearing.

Evidence of SB, continued

35. SB recalled that MB discussed her single lifestyle and having multiple sexual partners. She stated MB would discuss her experiences during SB's treatments with Mr. Khan. SB said she would not indulge in that conversation as much but would allow MB to talk and carry on about her experiences.
36. SB gave further evidence about the topics of her discussions with MB. She stated that MB would discuss her dating life, her previous relationship with her ex-husband, and where she would go on nights out.
37. SB noted that it was Mr. Khan who first told her that MB was divorcing her husband because he had raped her. She stated that MB was not in the room at the time, and that Mr. Khan asked her how that was possible because he did not believe that a husband could rape a wife. SB responded by clarifying that a husband could rape a wife because sex is a consensual thing and that women cannot enjoy rape regardless of stimulation. She noted that, in previous conversations, Mr. Khan had expressed concern that women could be aroused by touch regardless of situation.
38. SB testified that Mr. Khan also asked if she had ever been raped when they were alone together. She confirmed that had been, and stated that she was not comfortable discussing it when Mr. Khan asked her what had happened. She stated that the question felt intrusive.
39. SB gave evidence about a previous conversation where Mr. Khan had expressed concern that SB was being guarded about her body because he thought she would become aroused by touch if he treated her in certain areas. She responded by explaining that she was not aroused because she had no reaction to him.
40. SB added that Mr. Khan would tease her about being guarded about exposing herself when she wore a gown during treatment. She said this made her feel awkward and uncomfortable.
41. SB recalled one incident where MB had a video of herself performing oral sex and she stated that Mr. Khan tried to show her the video. SB noted that Mr. Khan made comments about wishing he could receive oral sex but noting that he was repulsed by performing oral sex on women. SB stated that this conversation about oral sex made her feel uncomfortable, but that she was more comfortable having MB present and being the focus of the conversation.
42. When MB discussed her experiences of going to bars, gatherings, and clubs, SB noted that Mr. Khan would primarily listen to the conversations, occasionally asking MB open-ended

questions or asking SB if she had ever done anything similar. SB said that these questions made her feel uncomfortable and that she told Mr. Khan that she was uncomfortable answering certain questions. When MB was present, SB would provide more detail but try to keep the questions directed toward MB or ask Mr. Khan about his marriage or history.

43. SB testified that Mr. Khan asked her not to tell anyone about their conversations or tell the College because he was worried about being reported for misconduct and inappropriate discussions. She stated that Mr. Khan made those comments multiple times in the course of her treatment and while MB was present.
44. SB told Mr. Khan that he could ask her general questions about cultural differences or about women's sexual enjoyment generally, but she asked him not to ask about her personal life.
45. SB testified that, after MB discussed her experiences, Mr. Khan became more pointed in his questions about SB's experiences when the two were alone. She stated that the conversation more quickly turned toward sexual topics and that he asked her questions about whether women enjoy anal sex, giving oral sex, having multiple partners, and other topics.
46. SB gave evidence Mr. Khan asked her about her relationship with her partner, J. After SB had noted that J had certain medical conditions, she said that Mr. Khan asked her whether J's sexual performance was impacted at a subsequent appointment.
47. SB noted that MB discussed her attraction to and experiences with men and women. SB stated that, in response, Mr. Khan asked her whether she had had sex with women. The nature of Mr. Khan's questions made SB uncomfortable.
48. SB recalled an incident where Mr. Khan was providing treatment and expressed concern that she was going to become aroused due to him touching her pectoral muscles. SB explained that she responded by stating that she was not aroused because arousal required attraction and a relationship. SB stated that she described different ways of how she had enjoyed being touched in two previous relationships.
49. SB noted that Mr. Khan shared details regarding his relationship with his wife. He said that sex between them was more primitive or primal than intimate. SB could not recall the conversation in which that comment occurred.
50. SB explained that it made her feel uncomfortable when Mr. Khan discussed his own sexual activity or views on sexual activity. She noted that she first thought Mr. Khan's comments were about cultural differences and curiosity about different cultural outlooks on sex but that over time Mr. Khan turned to primarily asking her personal questions, including about whether she enjoyed oral sex, if she had multiple partners, and what her erogenous zones were.
51. SB described her experience with Mr. Khan after moving to the Crowchild clinic. She noted that there were other patients present during her first appointment and Mr. Khan was quieter; however, the two were alone at her next appointment and Mr. Khan was much more open about asking questions.

52. SB discussed her final appointment and why she stopped seeing Mr. Khan as a physiotherapist. Describing the final appointment, SB noted that she and Mr. Khan were alone at the clinic. She noted that Mr. Khan was quite agitated because he was supposed to see a cardiologist that day but was told he would have to wait an hour for his appointment and left. During her treatment, Mr. Khan opened up the back of SB's gown while she was laying on the table and placed his hands on her back and his face on her back and side while complaining that he was so stressed.
53. SB stated Mr. Khan continued talking throughout the duration of her appointment. She gave evidence Mr. Khan stated that he wanted to see her outside of treatment and did not want to discharge her because he did not want to stop seeing her. He said that he just wanted to watch horror movies with her on the couch. SB noted that, when she first started seeing Mr. Khan, he had told her that he liked watching horror movies with his wife. SB responded by noting that she liked watching horror movies with a friend as well. When Mr. Khan said that he wanted to watch horror movies with SB, it made her feel uncomfortable. She told Mr. Khan she did not think his wife would like that, trying to redirect the conversation.
54. SB described other points of discussion in her last appointment with Mr. Khan. After SB noted that if she ever broke up with her partner J she would probably end up dating women, Mr. Khan said he would watch her with another woman. Mr. Khan also told her a story about being in college in Sweden. He told her that one of his colleagues asked Mr. Khan for a pornographic movie and then Mr. Khan and his friends observed from the window as the colleague watched the video and masturbated. Hearing this story made SB feel incredibly uncomfortable and unsafe.
55. When asked about what else Mr. Khan told her about his time at college in Sweden, SB noted that at an earlier session he told her about how his classmates arranged for him to lose his virginity with a sex worker before his arranged marriage. SB stated this conversation occurred after Mr. Khan started asking her questions of a sexual nature and she responded with questions about cultural differences and his marriage.
56. Returning to the final appointment, SB said that Mr. Khan told her he did not want to make her stressed and petted and brushed her hair while he had the TENS machine working on her back. When she left, SB told Mr. Khan not to touch her in certain ways because she felt that he was trying to mimic ways that she had described previous partners touching her. She said that Mr. Khan then put his arm around her shoulder, laughed, and apologized saying that he did not mean to arouse her. SB noted that she then decided no conversation could break the pattern of what Mr. Khan felt their relationship was and she decided to stop seeing him. SB stated that she felt that Mr. Khan was becoming too comfortable with her and felt that he thought they had a relationship outside of just being physiotherapist and patient.
57. After that appointment, SB asked her partner to call the clinic and cancel all of her upcoming appointments with Mr. Khan. SB noted she then received phone calls from the clinic and a text message from Mr. Khan asking whether she was okay and attempting to reschedule her for another appointment.

58. SB reviewed Tab 5 of Exhibit 1, the Book of Agreed Exhibits. She confirmed that she recognized all of the text messages and phone records, and that they were the ones that she had just testified to.
59. SB noted that she also messaged her WCB coordinator to tell her that she would be seeking treatment from an alternate physiotherapist. She could not recall who her WCB coordinator was. Counsel for the Complaints Director then introduced the email records marked as Exhibit 3 and asked SB to review them. SB stated that the emails were her exchanges with her WCB coordinator Ms. SL, and she confirmed that the email sent to Ms. SL about seeing a new physiotherapist was sent October 11, 2022. SB noted that after Crowchild, she saw a new physiotherapist at the Momentum clinic and had to have another physical assessment.
60. SB explained that Ms. SL inquired about why SB was seeking to change physiotherapists, and SB told her that she felt there was a misunderstanding in her relationship with Mr. Khan. When Ms. SL asked her to elaborate, SB stated that Mr. Khan was asking her inappropriate questions and she no longer felt comfortable seeing him. Ms. SL subsequently called SB back and recommended that she reach out to a psychologist.
61. SB testified that Mr. Khan's conduct had a significant psychological impact upon her. She stated that it put her in the mindset of remembering being assaulted and raped and that she has been very uncomfortable and self-conscious about her body and self-conscious about situations over the last two years. She stated that she will only see a female physiotherapist, and that her shoulder still hurts and she has not returned for treatment because it is too uncomfortable. She added that despite moving, she still feels unsafe at home.
62. SB stated she could not recall any steps that Mr. Khan took to enforce appropriate boundaries during her appointments and that she could not recall any steps that Mr. Khan took to minimize discussions about sexual topics.
63. When asked about Mr. Khan providing shockwave therapy, SB stated that Mr. Khan told her not to tell anyone about it because he was not going to bill her for it. SB added that while doing the treatment, Mr. Khan asked her if it felt like a vibrator, and she replied with a joke suggesting it could be like one of MB's but not for a normal person. SB could not recall precisely when she received the shockwave therapy treatment but confirmed that it was at the Crowchild clinic.
64. SB testified further about the video of MB that Mr. Khan had tried to show her. SB explained that she was on the table with the heating pad and TENS machine on her and Mr. Khan walked over with the phone, and she put her hand up and he walked away. SB confirmed that she saw what was on the screen. SB added that this occurred in the context of MB discussing that she enjoyed performing oral sex and Mr. Khan saying he wished he could receive oral sex.
65. SB confirmed that, during her treatment sessions, MB stated that she was divorcing her husband because he had raped her and that she was proud to get rid of him and hoped to get the best end of the divorce.

Hearing Discussion re Potential Conflict

66. Following SB's evidence on direct examination that she subsequently sought physiotherapy treatment at Momentum Health, the Hearing Tribunal noted that one of its members, Ms. Coombs, is a CEO and one of the owners of Momentum Health and sought the parties' submissions on whether that raised a conflict of interest. The Hearing Tribunal noted that Ms. Coombs had no firsthand knowledge of SB or the situation and as CEO has no involvement in the day-to-day operations of the clinic.
67. Counsel for Mr. Khan indicated that they did not have any concern with regard to Ms. Coombs remaining on the panel.
68. Counsel for the Complaints Director also stated that they did not have any concerns.
69. Following that discussion, the hearing proceeded.

Evidence of SB, continued

70. On cross-examination, SB confirmed that she first went to Meadows Mile for treatment after she injured her left shoulder and that Mr. Khan was the only one who treated her there. She then confirmed that MB was present at Meadows Mile but not at Crowchild.
71. SB disagreed that MB was present at every one of her treatments at Meadows Mile.
72. SB agreed that she had a large number of conversations with Mr. Khan during the course of her treatment and that they often discussed cultural differences between Pakistan and Canada.
73. SB was asked to confirm that she was the one who first raised the topic of relationships by raising an anecdote about her partner J. SB indicated that she did not recall. Counsel for Mr. Khan then asked SB about being questioned by Karen Anthony, the investigator who prepared the report following the initial complaint. Counsel for Mr. Khan noted that when SB was questioned by Ms. Anthony, she was asked what kinds of personal things Mr. Khan asked her about and SB replied by stating she thought the door opened when she made a joke about her partner. SB testified that she could not recall whether she was the one who opened the door talking about relationships and could not recall if she volunteered unsolicited information about her relationship with J to Mr. Khan, despite the fact that he did not ask.
74. SB stated she could not recall telling Mr. Khan that she felt she was in an abusive relationship with her partner. She stated she did not tell Mr. Khan that she wanted to break up with J but was waiting until he finished renovating her basement.
75. SB acknowledged stating that if she ever broke up with J she might jump on a girls' train. She could not recall whether Mr. Khan asked her what a girls' train was.
76. SB acknowledged leaving a favourable review of Meadows Mile. SB then reviewed the Google review at Tab 3 of Exhibit 1. She could not recall when she left the review but noted she had no reason to believe it was not in mid-to-late August 2022.

77. At this point, Counsel for the Complaints Director asked to confirm that SB was not writing anything while testifying, noting she saw a pen in SB's hand. SB noted that she had a colouring book, but no other paper. Counsel for the Complaints Director asked that SB close the colouring book and put away the pen and her phone. Both parties then indicated they had no further concerns.
78. When asked about the physical contact with Mr. Khan, SB could not recall the exact number of hugs but stated it was more than two. She said she did not initiate the hugs.
79. Counsel for Mr. Khan suggested that at all times during her treatment at Crowchild a receptionist was present in the clinic. SB said she could not recall, and Counsel for Mr. Khan then noted she earlier had said that was not correct. SB responded by noting she remembered seeing no one at the reception desk or in the back of the clinic.
80. SB agreed that on October 3, 2022, Mr. Khan notified her that she was approved for treatment from Mr. Khan until the end of October. SB acknowledged that she replied, stating "amazing".
81. SB denied that she told Mr. Khan that the shockwave machine was like a vibrator.
82. Counsel for Mr. Khan asked about SB's final appointment and Mr. Khan relaying a story about being unable to see a pulmonologist. Counsel for Mr. Khan noted that earlier in her testimony, SB testified that Mr. Khan had tried to see a cardiologist. SB then said that she could not recall what the specialist was.
83. Counsel for Mr. Khan asked SB about her evidence that Mr. Khan told a story about a pornographic video in Sweden. SB stated that the story was about Mr. Khan's friend watching pornographic movies, not Mr. Khan and that Mr. Khan was part of the group that watched the friend through the window.
84. Counsel for Mr. Khan asked SB about her statement to the investigator about her last appointment with Mr. Khan. In her statement, SB said that Mr. Khan tried to touch her hip during treatment and she slapped his hand away. In the statement, SB told Mr. Khan that he could not touch her like that, and she said he put his arm around her shoulders and said that he was sorry and that he did not mean to arouse her. Counsel for Mr. Khan suggested SB had given two different accounts of the last treatment.
85. In response, SB said that she could not recall the exact date on which the hair petting and the touching of her hip occurred but that both did occur.
86. When asked about Mr. Khan's story about losing his virginity in Sweden, SB said that she was unaware that Mr. Khan was married with a child when he went to study in Sweden. She said that she was unaware of when it occurred but that he had told her the story.
87. SB stated that she could not recall showing Mr. Khan and MB photos of a scantily clad man during one of her treatments.
88. Counsel for Mr. Khan asked SB about discussions with Mr. Khan and MB about rape and whether SB shared that she had been raped after being late for an appointment. SB denied

that she told Mr. Khan and MB that she was late because she was seeing a psychologist to deal with prior abuse and rape, and she stated that she could not recall the order of that conversation, whether MB shared that she had been raped by her husband, and whether Mr. Khan asked about marital rape.

89. SB testified that MB was not present when Mr. Khan told the story about a former patient who said that a TENS machine felt like her vibrator. She denied that the reason that the topic arose was because she or MB mentioned it in conversation.
90. SB agreed that the topic of PinkCherry only came up in conversation with Mr. Khan when she volunteered it.
91. SB indicated that she did not recall raising to Mr. Khan that she was unhappy with her relationship with her partner. She then said she did not recall telling Mr. Khan about watching movies with a friend or that Mr. Khan said that it was nice for her to have a friend like that.
92. Counsel for Mr. Khan asked SB about the complaints made to the College by Ms. JC and Ms. KD. SB acknowledged that she had an opportunity to talk to Ms. JC about her complaint before it was submitted. With respect to the statement she provided to Ms. KD, SB said that she wrote her account before knowing that Ms. KD had an obligation to report. SB agreed that she asked Ms. KD not to submit her complaint in early January because she was concerned about security and wanted to install cameras at home. SB denied that she embellished her concerns about safety to Ms. KD.
93. SB acknowledged that she saw Ms. KD concurrently with Mr. Khan. SB stated that she could not recall when she told Ms. KD about her concerns with Mr. Khan, but that she thought she told Ms. KD after seeing Mr. Khan for the last time.
94. SB disagreed that she made a comment to Mr. Khan and MB during treatment about considering an open relationship. She said that she could not recall whether Mr. Khan asked her what an open relationship was.
95. SB stated that Mr. Khan was present when MB shared stories about going to clubs and bars where there was an opportunity to have sex with different men.
96. MB stated that she could not recall whether she raised any concerns with Mr. Khan about the nature of conversations he was having with her during treatment.
97. On re-examination, Counsel for the Complaints Director asked SB about Mr. Khan touching her hip. SB stated that it bothered her and caught her off guard because it was not related to her treatment in any way. She stated that the incident occurred at Crowchild but that she could not recall at which appointment, thinking it may have been her second-last.
98. SB noted that when the topic of rape came up, it was because Mr. Khan noted that MB was going through a divorce because her husband raped her. Mr. Khan asked her how that was possible because he did not believe rape was something that was possible within a marriage. She affirmed that MB was not present for that conversation.

Ramesh Bimagani

99. Ramesh Bimagani is a physiotherapist who started his practice in Calgary in 2005. He is an owner of several physiotherapy clinics in Calgary, including the Meadows Mile and Crowchild clinics.
100. Mr. Bimagani discussed the operations of the Meadows Mile and Crowchild clinics. He explained that Meadows Mile shut down in September 2022 due to a combination of issues, including the high cost of rent and low patient caseload.
101. Mr. Bimagani explained that he was Mr. Khan's primary supervisor at Meadows Mile and that one of the other partners managed Crowchild.
102. When asked about his relationship with Mr. Khan while at Meadows Mile, Mr. Bimagani stated that he was a good therapist and that he never raised any complaints or concerns. Mr. Bimagani explained that there were limited conversations with Mr. Khan about concerns because Mr. Khan came with experience and his patients approved his assessments and treatment techniques.
103. Mr. Bimagani was asked about the education relating to sexual abuse and sexual misconduct he required physiotherapists to have to be employed in his clinics. He gave evidence about the licensing examinations and practice standards required by the College. He stated that the clinics did not provide any additional education on those subjects.
104. Mr. Bimagani discussed the clinics' processes relating to staff and patient concerns. In both cases, he stated that the clinics aimed to allow for discussion about any concerns and to aim to address any issues through those discussions.
105. Mr. Bimagani testified that he and Mr. Khan generally worked opposite schedules at Meadows Mile and that Mr. Khan generally worked independently.
106. Comparing the two clinics, Mr. Bimagani gave evidence that Crowchild was much busier than Meadows Mile.
107. Mr. Bimagani discussed MB's role and responsibilities at Meadows Mile. He explained that, in addition to administrative work at the front, MB would assist at the back of the clinic and move between the front and back of the clinic when a single patient was present. Mr. Bimagani described MB's performance as very poor, stating that she was very distracted and not focused on the job and her role. He explained that there were times when MB would just step out of the clinic, that she often stepped out to smoke, and that she spent time attending to personal things. He stated that there were complaints of times when patients would arrive and there was no one at the front of the clinic. Mr. Bimagani explained that ultimately, as a result of the issues and poor performance, MB was terminated from Meadows Mile before the clinic closed in September 2022.
108. Mr. Bimagani testified that he never met SB. He stated that he only became aware of any concerns regarding Mr. Khan and SB once he received notice of the complaint. After becoming aware of the complaint, Mr. Bimagani explained that he and one of the other clinic directors had a closed-door meeting with Mr. Khan to obtain his statement on the

complaint and then followed with an investigation. Mr. Bimagani then explained his understanding of the nature of SB's complaint and Mr. Khan's explanation of the kinds of discussions that took place between SB, MB, and Mr. Khan. Mr. Bimagani testified that Mr. Khan described a discussion where SB and MB were discussing adult toys but stated that he did not participate in the conversation. Mr. Bimagani testified that Mr. Khan said there one incident where he overheard a discussion about adult toys. When asked further about Mr. Khan's response to the discussion about adult toys, Mr. Bimagani stated that Mr. Khan said that it was not his religious practice to do things like using adult toys. Mr. Khan said that he had no knowledge of them.

109. Mr. Bimagani testified that he expected Mr. Khan to be honest in the investigatory meeting.
110. In cross-examination, Mr. Bimagani confirmed that he first hired Mr. Khan and that Mr. Khan was on the provisional register until becoming fully qualified in 2022.
111. Regarding the closure of Meadows Mile, Mr. Bimagani noted that he could not recall whether any reason was given to the patients but that patients were told that the clinic was closing and that they could transfer to one of the other clinics.
112. Mr. Bimagani confirmed that MB was the only receptionist at Meadows Mile from June 27 to its closure. Mr. Bimagani agreed that MB would have always been present when Mr. Khan was in the clinic.

Hearing Objection re Hearsay

113. When asked about whether MB raised any concerns about Mr. Khan's treatment of any patients prior to her departure, Counsel for the Complaints Director objected, stating that Counsel for Mr. Khan was attempting to elicit hearsay due to MB's absence from the hearing.
114. Counsel for Mr. Khan noted the College had decided to proceed with a set of allegations to which MB was a very central character, but she was not present as a witness. Counsel for Mr. Khan suggest that, in fairness, the Hearing Tribunal should allow for the hearsay evidence and permit the parties to address the appropriate weight to ascribe to it in their closing submissions.
115. In response, Counsel for the Complaints Director recognized that the Hearing Tribunal's previous ruling related to three-way conversations between Mr. Khan, MB, and SB. Counsel for the Complaints Director stated that the evidence at issue, of whether MB told Mr. Bimagani about any patient concerns, related to a two-way conversation and could not be tested by another witness.
116. Having considered the submissions of the parties, the Hearing Tribunal decided that it would allow the question and consider the appropriate weight to be given to any hearsay evidence in its deliberations.

Evidence of Mr. Bimagani, continued

117. Mr. Bimagani testified that, prior to MB's departure, MB did not raise any concerns about Mr. Khan's treatment of any patient.
118. Mr. Bimagani confirmed that he was Mr. Khan's only supervisor between 2020 and 2022 at the Meadows Mile and East Hills clinics.
119. Mr. Bimagani stated that there was never a complaint about Mr. Khan's treatment of patients and that he never had any concerns about Mr. Khan's treatment of patients.
120. Regarding the Crowchild clinic, Mr. Bimagani confirmed that a receptionist would have always been present when Mr. Khan was treating patients. Additionally, there would have been other treatment providers working at the same time as Mr. Khan.
121. Mr. Bimagani further stated that Mr. Khan would never have been alone with a patient at either Meadows Mile or Crowchild. He confirmed that there is a policy at his group of clinics that when there is a male physiotherapist treating a female patient, a female staff member would be present in the vicinity. He agreed that Mr. Khan adhered to that policy at all times.
122. Mr. Bimagani noted that, prior to the complaint regarding SB, no disciplinary action had been taken against Mr. Khan at the clinics.
123. Mr. Bimagani confirmed that he never met SB and that he was never present in the clinic when she was being treated.
124. When asked about the investigatory meeting with Mr. Khan, Mr. Bimagani noted that he had been told that MB and SB often carried on conversations amongst themselves, that there was an instance when an adult toy had been raised in conversation, and that they discussed the treatment of SB. Mr. Bimagani could not recall whether Mr. Khan had relayed a separate story about a TENS machine and an adult toy.
125. Mr. Bimagani stated that Mr. Khan also shared that SB discussed cuddling and watching television with a friend. Mr. Bimagani said that Mr. Khan responded to SB by stating that it would be nice to have a friend like that.
126. Mr. Bimagani gave evidence that he had concerns about Mr. Khan bringing religion into his practice.
127. Mr. Bimagani agreed that it was not usual for a physiotherapist to have general conversations with patients about family and relationships, provided that boundaries were not crossed.
128. Mr. Bimagani confirmed that Mr. Khan was not terminated when he ended his employment with Mr. Bimagani's group of clinics in early 2023.
129. On re-examination, Mr. Bimagani addressed the closure of Meadows Mile but accepted that he did not know what was told to each patient about any reason for its closure.
130. Mr. Bimagani confirmed that he did not observe Mr. Khan's treatment of SB.

Liaqat Khan

131. Mr. Khan testified about how he became a physiotherapist, stating that he passed his written exam and started working as a licensed physiotherapist in 2018, and then came onto the full register in March 2020.
132. Mr. Khan discussed his education and the beginning of his career in Pakistan, explaining that after graduation in 2003, he started working at a hospital in Karachi and then worked in Islamabad before joining the Pakistan Cricket Board as a physiotherapist in 2007. Between 2010 and 2013, Mr. Khan completed a master's degree in sports medicine in 2013.
133. Mr. Khan reviewed his CV, entered as Tab 4 of Exhibit 1. He stated that he had prepared it for the hearing and that it was accurate.
134. Mr. Khan noted that he moved to Canada with his wife and two children in April 2015. He and his wife were married in March 2009, and their first child was born in December 2009. Between 2015 and 2018, Mr. Khan did odd jobs, including working for a security company, a rental car company, and driving for Uber.
135. Mr. Khan discussed the education and coursework he needed to complete to become eligible for his physiotherapy licence in Canada. He noted there was a module on the physiotherapy system in Canada and that he had to complete a College-selected activity on professional boundaries, sexual conduct, and the Code of Ethical Conduct.
136. Mr. Khan testified that SB came to Meadows Mile as a WCB client with a shoulder injury.
137. Mr. Khan described the layout of Meadows Mile, noting that there were four treatment beds in a row and another on the right side. Mr. Khan noted that he did not work at the same time as Mr. Bimagani.
138. Mr. Khan explained that he would typically treat SB at the bed closer to the entry door and right behind his charting desk.
139. Mr. Khan explained that he completed SB's charting electronically in an application called Practice Perfect. Mr. Khan reviewed the treatment records at Tab 8 of Exhibit 1. He explained that for SB's initial visit, he took notes contemporaneously and then scanned them into her file.
140. Mr. Khan testified that SB's charts were all accurate, except for the charting for October 8, 2022. Mr. Khan explained that SB did not show up that day but was billed by the clinic. He said that he completed the chart notes for that day in early November and wrote that SB was getting better; however, he later realized that SB did not attend that session and asked the clinic director of Crowchild to delete the notes for October 8, 2022 before sending them to WCB. He later learned that the notes were not deleted.
141. Mr. Khan described MB's role at Meadows Mile. He explained she mainly worked at the reception desk but also did laundry, sanitized beds, and organized the aisle for the modalities. She sometimes helped with preparing the heat packs and removing the heat

packs from clients. Mr. Khan noted that when there were female patients, MB tended to do work near the treatment area and assure patients that someone else was around.

142. Mr. Khan observed that SB and MB initially tended to chat for a long time when SB would go to reception to schedule her next appointment. After a few treatments, MB came back to the treatment area and she and SB would typically continue chatting for most of the treatment time.
143. Mr. Khan commented on policies for treating female patients. He noted that at Meadows Mile there was a policy of having the receptionist around to ensure female patients were comfortable when receiving treatment from a male therapist. Crowchild was busy and the clinic would have multiple different patients on different tables at the same time.
144. Mr. Khan testified that he asked SB multiple times whether she was comfortable during treatment and she never told him that she was uncomfortable. Mr. Khan acknowledged that SB was guarded about her body during her appointments and said that he would always ask for her consent before touching or exposing any part of her body.
145. Mr. Khan described the different forms of treatments he gave to SB and noted her progression and positive response. He referred to the five-star Google review and said he thought it was left in late August.
146. Mr. Khan gave evidence that he would usually converse with SB during her treatments and that they would discuss cultural differences.
147. Mr. Khan recalled that SB mentioned also seeing a pelvic floor physiotherapist and a psychologist while he was treating her.
148. Mr. Khan testified that he told SB that Meadows Mile clinic was closing. He said that he did not say it was closing because of renovations because there was nothing to be done in the clinic.
149. Mr. Khan described the layout of the Crowchild clinic. He noted that while SB received treatment, other treatment providers, a receptionist, and other clients would have been present. He said the receptionist was always in the clinic.
150. Mr. Khan discussed SB's treatment and response at Crowchild. He stated that her treatment was progressing well. At SB's first appointment at Crowchild, Mr. Khan introduced the shockwave machine. He said that SB was making fun of the probe and said that it was like a big vibrator. Mr. Khan just smiled in response.
151. Mr. Khan denied that he said anything to SB about not billing for the shockwave treatment. He noted that it would not have been possible to hide because of the noise it makes and it was documented in his chart notes.
152. Mr. Khan gave evidence that SB did not make any complaints about his treatment of her before stopping treatment at Crowchild.

153. Mr. Khan described his final appointment with SB. He told her that he had an appointment with a pulmonologist and that he waited for an hour for his appointment before leaving. He then said that he asked SB about J, and she said she did not want to talk about J because J makes her stressed. SB told Mr. Khan that she has another male friend who she cuddles and watches movies with, and he responded by saying that he thought everyone should have a friend like that. He then started treatment.
154. Mr. Khan described other circumstances when SB talked about her relationship with J. He recalled one day when SB was late for her appointment at Meadows Mile. SB explained she was late because she was with her psychologist. Mr. Khan asked SB why she saw a psychologist, and SB explained that she was raped and sees a psychologist to cope with her PTSD. MB responded by noting that she was raped by her husband. Mr. Khan then recalled that MB told a story about how MB found her husband with another woman, and they beat MB and broke her jaw. MB said she was pressing charges against her husband now that they were divorcing. Khan testified that SB responded by saying J is abusive as well but that she was waiting for him to finish working on her basement before deciding whether they should separate.
155. Mr. Khan recalled that it was strange hearing that MB was raped by her husband because in his culture and religion a husband cannot rape a wife. Mr. Khan described the basis of his beliefs in his religion. He testified that he told SB and MB that marital rape was not a concept in his culture or religion. Otherwise, he did not participate in the conversation.
156. Mr. Khan testified that he did not ask SB about her personal relationships but that she voluntarily told him about her ex-boyfriend and J.
157. Mr. Khan asserted that the conversation with SB and MB was the only discussion about rape that took place with SB. He testified that he never asked her if she was raped and that SB voluntarily shared that after the appointment with her psychologist.
158. When asked about SB's testimony regarding watching horror movies, Mr. Khan noted that his wife does not understand English and that neither he nor his wife is a fan of horror movies. Mr. Khan stated that horror movies did not come up in discussion with SB, and that she just mentioned watching movies with the guy she cuddles.
159. Mr. Khan described the treatments he provided SB in her final appointment. He stated he worked on her neck, back, and shoulders. He did cupping, muscle release, and put the heat and TENS on her. She did some neck stretches. After the treatment finished, Mr. Khan said that SB gave him a hug, said that she would see him on Saturday, and noted that they were going to Canmore and she hoped to make it on time. Mr. Khan said that SB initiated the hug and that it is not his practice to hug anyone. He has not hugged any other patients.
160. Mr. Khan stated that SB hugged him twice, once at her last appointment, and once at the second last appointment.
161. Discussing physical contact with SB, Mr. Khan noted that he did a few fist bumps but asserted that he never put his arm around her shoulder.

162. Mr. Khan denied that he ever asked SB to break up with her partner. He said he never said anything about seeing her with another woman.
163. When asked about SB's testimony that he touched her hip during treatment, Mr. Khan said he did not touch SB's hip at any point. Mr. Khan noted working on different muscles in SB's back, including the quadratus lumborum, which is a muscle of the lower back and is close to the hip. Mr. Khan stated that SB never slapped his hand during treatment.
164. Mr. Khan was also asked about SB's testimony that he placed his hand on her back and pet her hair while talking about discharging her. Mr. Khan said that he only placed his hands on SB's neck and back to treat her. He stated he only touched her hair to move it aside to treat the top of her neck. Mr. Khan said that they did not discuss SB's discharge because she was approved for further treatment. He added that he would be happy to discharge a patient because they are getting better.
165. Mr. Khan explained that no other conversations with SB happened at the end of treatment. She gave him a hug and said she would be back and left.
166. Mr. Khan testified that the word "arousal" never came up in any treatment sessions. He said he did not tell SB he was sorry for arousing her.
167. Mr. Khan discussed his contact with SB after her last appointment. He noted that he texted her asking if she was coming for treatment after she did not show up to her October 8 appointment. He sent a further message regarding booking another appointment on October 11 and did not receive a reply. Mr. Khan stated that SB's partner called Crowchild after her last treatment and told the receptionist that they had found a clinic closer to their house and she would continue treatment there.
168. Mr. Khan reviewed the text messages at Tab 5 of Exhibit 1. He explained he and SB first exchanged text messages when Meadows Mile was closing, and then he requested a note from her doctor to send to WCB.
169. Mr. Khan testified that he first learned that SB had raised concerns regarding treatment from the Crowchild clinic director. He explained that they had a meeting at the East Hills clinic in December 2022. Mr. Khan said that he told Mr. Bimagani that SB developed a relationship with MB and that the two would discuss many things, including their life, boyfriends, and husbands. Mr. Khan said that there was one point when SB and MB were talking about vibrators and that he relayed the story of his client. Mr. Khan said that he thought Mr. Bimagani forgot to mention this in his testimony. Mr. Khan told Mr. Bimagani that SB never raised any concerns during or after treatment.
170. Mr. Khan stated that he first learned of the complaint of Ms. JC in February. He said he had already put in his resignation for the East Hills and Crowchild clinics when he received the complaint.
171. Counsel for Mr. Khan asked Mr. Khan about whether he spoke to MB after receiving the complaint and what they discussed.

Hearing Objection re hearsay

172. Counsel for the Complaints Director objected to this line of questioning on the basis of hearsay, noting that because MB was not present both witnesses were unable to testify about it.
173. Counsel for Mr. Khan asserted that, as a matter of fairness to Mr. Khan and given the Tribunal's jurisdiction to deal with the rules of evidence as they see fit, the evidence should be allowed and the Tribunal could determine what weight should be afforded to it.
174. After considering the submissions of the parties, the Hearing Tribunal determined that it would allow the question and determine the appropriate weight to place upon Mr. Khan's evidence in its deliberations

Evidence of Mr. Khan, continued

175. Mr. Khan testified that he called MB and told her that he had received a complaint from the College regarding SB. Mr. Khan stated that MB said that she was always present when the discussions were occurring and that she never heard any mention of erogenous zones or personal discussions with SB. She was not present at Crowchild, but MB said that nothing happened at Meadows Mile. Mr. Khan said there were no personal questions and no discussion of erogenous zones, arousal, or rape. Mr. Khan said he did not say anything personal to SB other than the general discussions between MB, SB, and himself.
176. Mr. Khan stated that he and SB carried on conversations most of the time while she was receiving treatment. He noted that SB and MB carried on conversations almost every time at Meadows Mile. Mr. Khan testified that at Crowchild the topics of conversation changed. There were no more personal discussions as were discussed with MB at Meadows Mile.
177. Mr. Khan testified that "erogenous" was a word he saw for the first time in Ms. JC' complaint. He said he never said any erogenous thing in his discussions with SB. Mr. Khan said that SB never shared anything about any arousing touches or erogenous things from former partners. The only mention SB made of former partners was of one who passed away, and then she talked about her partner J.
178. Mr. Khan asserted that the word "arouse" never occurred in his interactions with SB at any point. He said that he was always careful about gaining her consent before touching her and that he would not discuss anything about arousing by touch with his patient.
179. Mr. Khan denied that he ever teased SB either about her gowning or about touching her.
180. Mr. Khan testified that he did not hear or participate in any discussion about sexual activities with SB and MB, other than their discussion of rape.
181. Mr. Khan testified that he did not discuss personal things relating to his wife. He said he never talks about his wife with anyone and that he did not ask SB about her partner. Mr. Khan stated that the only thing he knew about SB's partner was from hearing SB mention to MB that her partner had a heart condition and was taking medication, which was affecting his performance. Mr. Khan said this was between MB and SB, not between SB and himself. Mr. Khan said there was no reason for him to ask about SB's partner's performance.

182. Mr. Khan said that SB never asked him to only ask general questions, not personal ones. He said that they only talked about general things, not personal ones.
183. Mr. Khan testified that he did not hear SB and MB say anything about oral sex or anal sex and he did not take part in those kinds of conversations. He asserted that he did not discuss oral sex or anal sex with SB and did not tell her a story about trying to have anal sex with his wife.
184. Mr. Khan recalled that MB and SB discussed getting divorced or separated from their partners. He said that SB told MB that if she ever separated from her partner, she would jump onto a girls' train. Mr. Khan stated he did not understand what that meant and that he later asked MB to explain when SB was not there.
185. Mr. Khan denied that he ever showed SB a video of MB performing oral sex. Instead, he said that SB told them about a birthday party where they hired a male dancer and that SB pulled out her phone and showed a photo of the man to MB and himself. Mr. Khan said he responded by saying it was impossible to see that a man gets naked in front of women and noted that it was a very strange thing for him.
186. When asked about any conversations with SB about losing his virginity, Mr. Khan said no conversations occurred. Mr. Khan explained that he was married on March 14, 2009 and that his daughter was born in December 2009. He said he went to Sweden in August 2010.
187. Mr. Khan stated that no conversations with SB about oral and anal sex ever occurred.
188. Mr. Khan said that he and SB never talked about pornography. He said the only thing they talked about was movies generally, and that was in relation to her friend that she watches them with.
189. Mr. Khan said there were no discussions with SB about masturbation.
190. Mr. Khan said he did not hear anything from MB or SB about sexual preferences or multiple partners. He said that MB only mentioned that she goes to clubs but did not mention anything sexual. Mr. Khan then noted that on one occasion MB said that she was in an open relationship with her husband before their divorce.
191. Mr. Khan recalled that once when SB and MB were talking about vibrators, he told them a story about working at a previous clinic where an elderly patient said that the TENS machine felt like her vibrator. Mr. Khan said he then apologized to SB and MB and said that kind of conversation went beyond his professional boundaries and that he would not get involved because it could affect his licence. Mr. Khan said SB responded and said that he was good. He said that she asked him why he did not know about vibrators and explained that there was a website called PinkCherry with toys for men and women. Mr. Khan said he just responded by saying "okay".
192. Mr. Khan explained that he did not raise any concerns with Mr. Bimagani during SB's treatment. He said that he did not want to be complained about for stopping SB and MB from having their conversations or accused of being paternalistic. Mr. Khan added that he was aware that MB was going through a very difficult time and was in a difficult situation

financially. He knew that Mr. Bimagani was not happy with her performance. He said that it would have been unfair to MB financially if he raised concerns with Mr. Bimagani and he fired her. Mr. Khan noted that in hindsight there were things that should not be done in the clinic.

193. Mr. Khan testified that there were no discussions relating to adult toys or vibrators other than the story that he told about one of his patients and SB making a comment that the shockwave gun was like a vibrator.
194. When asked about SB's testimony that he said sex was more primal than intimate, Mr. Khan stated that did not discuss anything about his personal life with SB and that he did not understand the difference between sex and intimacy before learning the details of this case.
195. On the topic of discussions about being naked, Mr. Khan recalled that MB commented that she did not wear anything at home and walked around naked such that her neighbour could see her. Mr. Khan said he responded by saying that this was absolutely different from his culture and that even husband and wife do not get naked in front of each other.
196. On cross-examination, Mr. Khan was asked about his education in Sweden. He testified that he did not go out or travel while in Sweden and that his friends there were from his home town. He noted that he frequently travelled between Sweden and Pakistan because he continued to work with the cricket board when completing his studies.
197. Mr. Khan was asked whether he was talkative with his patients and clients. He said he was unsure about what talkative meant, but noted that he did talk. He explained that he would not talk continuously and would not talk much when focusing on a treatment technique. When asked about his testimony that they talked all through SB's treatment sessions, he explained they would not talk continuously for 30 minutes but they would definitely talk about something.
198. Mr. Khan testified that he always tries to treat his patients in a friendly way. He acknowledged talking about pets, cars, and the weather, and talking generally about life.
199. Mr. Khan stated that he does not talk to patients about his wife. He said that the only thing he tells patients is that she takes care of their five kids and does not work.
200. Mr. Khan acknowledged that he tells patients about his education and his experiences in Pakistan. He noted that he would have conversations with patients about cultural differences between Canada and Pakistan if they were interested.
201. Mr. Khan testified that he and SB frequently talked about cultural differences. He noted that he and SB compared arranged marriages in Pakistan to marriages in Canada and compared relationships between husband and wife. He said there were not specific intimate or sexual discussions related to culture.
202. Mr. Khan acknowledged that he completed education on professional boundaries, sexual abuse, and sexual misconduct with the College. He said he completed the course on sexual

abuse and sexual misconduct in March 2022, and that it remained fresh in his mind when treating SB.

203. Mr. Khan review the College Standards of Practice at Tab 10 of Exhibit 1. Referring to the professional boundaries standard, Mr. Khan agreed that he was familiar with the document. He said that he believed he understood everything. He acknowledged that he was familiar with and understood the Sexual Abuse and Sexual Misconduct Standard. Mr. Khan also acknowledged that he had reviewed and understood the Client-Centred Care Standard prior to treating SB.
204. Mr. Khan reviewed the Code of Ethical Conduct at Tab 9 of Exhibit 1. He agreed that he had reviewed the document prior to becoming a physiotherapist in 2022 and that he continued to understand his obligations under the Code.
205. Referring to the obligations under the Practice Standards and Code of Ethical Conduct, Counsel for the Complaints Director then asked Mr. Khan whether he agreed that it was not appropriate to talk about vibrators with patients.

Hearing Objection re line of questioning

206. Counsel for Mr. Khan asserted that Counsel for the Complaints Director was asking Mr. Khan to answer a legal question, asking him how the Standards of Practice or Code of Ethical Conduct should be interpreted. Counsel for Mr. Khan stated that this was inappropriate.
207. Counsel for the Complaints Director stated that she was asking Mr. Khan about his own personal interpretation of whether conduct was appropriate based on his knowledge and experience and his awareness of the standards and guidelines.
208. Counsel for Mr. Khan responded, stating that Counsel for the Complaints Director was asking Mr. Khan to comment on the ultimate question for the tribunal.
209. After consideration of the submissions of the parties, the Hearing Tribunal decided that the question posed by Counsel for the Complaints Director was the ultimate issue for the Hearing Tribunal. The Hearing Tribunal added that the question, as posed, had no context and was very general. The Hearing Tribunal sustained the objection.

Evidence of Mr. Khan, continued

210. Mr. Khan agreed that he was not completely sure when SB left the Google review for Meadows Mile but stated that he estimated it was August 2022.
211. Mr. Khan discussed SB's WCB coverage and potential for discharge. He noted that her coverage was not indefinite and that discharge can change depending on a patient's recovery. Mr. Khan agreed that SB's shoulder condition was improving and that her injury was doing very well at the beginning of October 2022.
212. Mr. Khan gave evidence regarding the clinic hours and SB's appointments. Regarding Meadows Mile, he noted that most of the time SB was the only patient in the clinic when

she was receiving treatment and that most of her appointments were later in the afternoon. He added that most of SB's appointments at Crowchild were in the late afternoon as well.

213. Mr. Khan reviewed the appointment search results document at Tab 6 of Exhibit 1. He said he would not call it inaccurate and agreed based on the document that most of SB's appointments at Crowchild were between 6 and 6:30 pm. Mr. Khan then reviewed the appointment search results document for Meadows Mile. He noted there were appointments at 11:30, 4:30, and 10:15 but agreed that SB was largely attending at the end of the day at Meadows Mile.
214. Mr. Khan testified that Meadows Mile in general was very slow. He said that the massage therapist was often working when he was working but that she would not be there if no patients booked her.
215. Discussing his charting of SB, Mr. Khan stated that he did not chart personal things or conversations, other than once noting that SB had complained of neck stiffness and he charted that she expressed too much stress, which might have been the reason for the stiffness.
216. When asked about MB as an employee, Mr. Khan stated that he did not have any opinion about her. He noted that according to Mr. Bimagani, she was not a good employee. Mr. Khan said he knew Mr. Bimagani was thinking about firing MB because he talked to Mr. Khan multiple times about MB's performance.
217. Mr. Khan gave evidence that MB did not talk to him much about her personal life. He noted that MB was often on the phone talking with others about personal things but she did not talk to him about them. Mr. Khan then said that MB spoke a little of her personal things. He noted that she was going through a hard time in her life. MB would cry a lot and Mr. Khan would ask if everything was okay and she would tell him about concerns for her children.
218. When asked about whether MB would leave work for personal appointments or emergencies, Mr. Khan recalled that she went to school once and went to the emergency once.
219. Mr. Khan acknowledged that MB often took calls and would go outside to smoke during work hours. Regarding SB's treatment, Mr. Khan said he could not recall any time that MB was not present in the clinic during treatment. He stated that MB sometimes sat on a nearby treatment bed, that she could be at the reception desk, or elsewhere in the clinic.
220. Mr. Khan testified regarding the conversations between SB and MB. He said that initially they had conversations at the reception and later in the treatment area while SB received treatment.
221. Mr. Khan discussed his goodbyes with SB after treatment. He said that these occurred at his charting station. He noted that the goodbyes included two hugs that SB initiated at Crowchild. Mr. Khan said receiving a hug from a female patient was a new thing but he was not uncomfortable because SB was okay with it. Mr. Khan said he thought it was either because she liked his treatment or because she was stressed and wanted to hug him. Mr.

- Khan could not recall whether he told Mr. Bimagani about the hugs. He said he did not talk to SB about them.
222. When asked about the “jumping on a girls’ train” comment, Mr. Khan said he did not know it was something sexual and that he asked MB about it because he wanted to know the meaning of the sentence.
223. Mr. Khan testified that after his former patient had mentioned her vibrator, he googled it because he did not know what a vibrator was. When asked whether he googled what PinkCherry was, Mr. Khan initially said he was not answerable to what he did in his personal time. He then said that he did google PinkCherry because he was curious about what there was for men because SB had said there were many toys for men on PinkCherry. Mr. Khan noted that he searched it on his personal time, not at work. He said that he and SB did not discuss PinkCherry after she told him what the website was.
224. Mr. Khan testified that the incident when a former patient mentioned her vibrator occurred in 2018. He acknowledged that he knew what a vibrator was when he told SB and MB the story. Khan said that his only intention was to make a joke, not to tell them that he was interested in any sexual toys. Mr. Khan stated that after telling the story he apologized to the two women and said that it was going beyond his professional boundaries to talk about those sorts of things. He said he did not want to lose his licence. Mr. Khan stated the reason he apologized was because he participated in the discussion.
225. Mr. Khan stated that after telling that story he never brought up vibrators again. He said that it was SB who said the shockwave machine was like a vibrator.
226. When asked about discussions with SB and MB about being naked at home, Mr. Khan stated that he compared cultures and told them that his culture is very conservative and that being naked at home is never accepted or never happens. Mr. Khan said there was nothing sexual in that. He just noted that it was very strange to him.
227. Referring to the photo that SB showed him of a man in short clothing, Mr. Khan stated that he talked about the photo when it was shown to him. He said he did not say anything about professional boundaries at that time because he did not request that SB show him the photo. Mr. Khan said it was very abrupt, that SB pulled out her phone and showed it to him. He responded by saying it was not possible for him to imagine that a man could be that naked in front of a woman.
228. When asked about SB’s reference to her partner’s medical condition and its impact on his performance, Mr. Khan said that SB did not use the word sexual but that he believed she meant sexual performance.
229. Mr. Khan recalled being interviewed by an investigator of the College. He stated that he was honest in the interview. Mr. Khan agreed that his evidence was that MB and SB did not talk about sexual things or topics other than rape. Counsel for the Complaints Director then read Mr. Khan a portion of the transcript from his interview with the investigator. In it, Mr. Khan stated that SB and MB would talk about “some sexual stuff” and discuss things like open relationships, and that it was very strange for him because he did not know about

these things. Mr. Khan then said that SB and MB discussed many things, including some sexual stuff. Mr. Khan said that his understanding was that rape is a sexual thing.

230. In re-examination, Counsel for Mr. Khan asked him what his reference to “sexual stuff” in the investigation transcript was referring to. Mr. Khan said that he was referring to the rape that SB and MB experienced and to their discussion about open relationships and going anywhere they wanted to go.
231. The Hearing Tribunal then questioned Mr. Khan. The Hearing Tribunal asked Mr. Khan if there were occasions where he was alone with SB at Meadows Mile. In his initial response, Mr. Khan referred to sections of SB’s statement to the investigator. It appeared Mr. Khan had those materials in front of him. Counsel for the Complaints Director interjected, stating that it was inappropriate for Mr. Khan to refer to investigation materials in his answers and requesting that the Chair caution Mr. Khan to close any materials in front of him and answer the questions based on his own testimony. Counsel for Mr. Khan agreed and suggested that Mr. Khan’s answer be struck from the record. Counsel for the Complaints Director then suggested that the Tribunal ask its question to Mr. Khan a second time. Counsel for the Hearing Tribunal noted that while answers are not struck from the record in a hearing, the Hearing Tribunal could disregard Mr. Khan’s initial answer.
232. Mr. Khan answered again and stated that he was one hundred percent sure that MB was always present when he was treating SB at Meadows Mile. Mr. Khan then stated there were no instances when he was treating SB alone at Crowchild. He said that the receptionist was always in the clinic. He said that SB was the last patient and it was the receptionist’s duty to close the clinic, so she would always be there.

SUBMISSIONS BY THE PARTIES

Closing Submissions of the Complaints Director

233. Counsel for the Complaints Director indicated that the Complaints Director was not seeking that any conduct beyond what is detailed in the Notice of Hearing be found to be unprofessional conduct. Referring to the decisions in *MacLeod v Alberta College of Social Workers*, 2018 ABCA 13 and *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313, Counsel for the Complaints Director submitted that only allegations within the Notice of Hearing can be proven but that other evidence can still be considered and weighed.
234. Counsel for the Complaints Director submitted that conduct alleged under Allegation 1 (a) to (f) was factually proven based on SB’s testimony and should be found to be sexual misconduct or, alternatively, a boundary violation or unprofessional conduct.
235. With respect to Allegation 1(g), Counsel for the Complaints Director acknowledged that SB’s evidence on was different than the wording of the allegation, and that accordingly the allegation may not be factually proven. Counsel submitted, however, that if the Hearing Tribunal found Allegation 1(g) to be factually proven, it constituted sexual misconduct, or, alternatively, a boundary violation or unprofessional conduct.
236. Regarding Allegation 2, the Complaints Director submitted that, if SB’s testimony is accepted, Allegation 2(a)(i) was factually proven but 2(a)(ii) regarding open relationships

would not be factually proven if the evidence of SB is accepted. The Complaints Director submitted that Allegation 2(d) and (e) would not be factually proven if SB is believed that she did not recall those comments. However, the Complaints Director noted that Mr. Khan testified to both of those comments and they would be factually proven if he was believed. Regarding Allegation 2(f), the Complaints Director noted that SB strongly asserted that MB was not present for this discussion and therefore it would not be factually proven if she is believed. However, Mr. Khan testified that this conversation occurred with MB, so the Complaints Director submitted that it would be factually proven if he is believed. Considering Allegation 2 as a whole, the Complaints Director submitted that the conduct alleged, if proven, amounted to very serious violations and unprofessional conduct, but not sexual misconduct as defined under the HPA.

237. Counsel for the Complaints Director submitted that Allegation 3 was factually proven based on SB's testimony and that it should be found to be sexual misconduct or, alternatively, a boundary violation and unprofessional conduct.
238. Counsel for the Complaints Director recognized that the case involved witness testimony with two dramatically different versions of events, one where most of the alleged conduct occurred, and another where only certain comments occurred.
239. Counsel for the Complaints Director recognized the agreed statement of facts and suggested that there were certain additional facts that were not contentious: that Meadows Mile was described as a very slow clinic with few patients and that Mr. Khan worked almost entirely independently from his supervisor Mr. Bimagani. Counsel noted that the witnesses generally testified that MB was around at Meadows Mile; however, the issue of how present MB was during SB's treatments was a contentious one.
240. Given the significant differences between the testimony of SB and Mr. Khan, Counsel for the Complaints Director indicated that the Hearing Tribunal needed to assess the credibility of the witnesses. Counsel for the Complaints Director reviewed the credibility factors set out in the parties' briefs of law.
241. Counsel for the Complaints Director submitted that SB's evidence was credible and should be accepted. Counsel noted that SB testified to a relatively consistent and detailed version of events about what she experienced. SB was honest about what she did not recall. She noted that she could not recall specific dates and some details. The Complaints Director suggested that this is an important aspect of credibility. SB did not attempt to testify to events that she could not recall, and Counsel for the Complaints Director noted that in cross-examination SB indicated when she could not recall or corrected counsel as to what she recalled happening in a clear and consistent manner.
242. Counsel for the Complaints Director suggested that SB's version of events was plausible. SB described an ongoing erosion of boundaries and increased personal attention from Mr. Khan that made her more and more uncomfortable up to the point when she no longer wanted to see him. Counsel for the Complaints Director submitted that this was consistent in cross-examination.
243. Regarding SB's demeanour, Counsel for the Complaints Director recognized that SB was not making eye contact in cross-examination and perhaps looked a bit deflated. Counsel

for the Complaints Director submitted that demeanour is not a strong indicia of credibility and added that the process of testifying under direct or cross-examination can be exhausting. Counsel submitted that the Hearing Tribunal should give little weight to SB's demeanour.

244. Counsel for the Complaints Director submitted that SB had no motive to lie, noting that SB was scared to make a complaint.
245. Counsel for the Complaints Director submitted that, given that the allegations related to conversations SB was directly engaged with, she generally had an ability to perceive.
246. Turning to Mr. Khan's credibility, Counsel for the Complaints Director first drew attention to Mr. Khan's demeanour, noting the case of *Physiotherapy Alberta – College + Association v Dutta*, 2021 ABPACA 2 and the relationship of defensiveness or argumentativeness to witness credibility. Counsel for the Complaints Director submitted that Mr. Khan refused to answer questions and asked questions back during cross-examination and that there was a general refusal to agree to non-contentious information. Counsel noted Mr. Khan's evidence that he had no opinion on MB's performance as an employee as an example of his refusal to answer a question or restricting his answers. Counsel submitted that Mr. Khan's restrictions to his answers about MB showed a refusal to provide any answers that could suggest his involvement in personal discussions.
247. Counsel for the Complaints Director submitted that there were implausibilities and impossibilities in Mr. Khan's version of events. Counsel suggested that in direct examination Mr. Khan admitted to speaking to SB most of the time during treatment but was hesitant to agree that they had ongoing discussions about personal topics in cross-examination. Counsel suggested that this was implausible based on how Mr. Bimagani described him and how Mr. Khan described himself as a therapist. Counsel for the Complaints Director also submitted there was implausibility to Mr. Khan's evidence regarding his lack of awareness of sexual topics. Counsel also asserted that there was improbability regarding Mr. Khan's story about vibrators and PinkCherry as he suggested that this was not a discussion he would engage in but also testified that he googled PinkCherry after the discussion.
248. Regarding inconsistencies in evidence, Counsel for the Complaints Director submitted that the greatest inconsistency was whether MB was present with Mr. Khan 100 percent of the time at Meadows Mile. Counsel suggested that there were inconsistencies both internally and externally on this point, noting the evidence of Mr. Bimagani regarding MB. SB also testified to numerous one-on-one discussions with Mr. Khan. Counsel for the Complaints Director also submitted that there was inconsistency regarding whether sexual topics were discussed.
249. Counsel for the Complaints Director discussed character evidence and its utility in cases involving sexual conduct-related allegations. Citing the Supreme Court's decision in *R v Profit*, 1993 CanLII 78 (SCC), [1993] 3 SCR 637, Counsel for the Complaints Director submitted that character evidence is of little utility in allegations of this sort because these types of allegations can occur in private and can be contradictory to someone's potential character.

250. Counsel for the Complaints Director submitted that the documents submitted as joint exhibits in the hearing were of very little assistance. Mr. Khan's charting does little to assist the Hearing Tribunal in determining whether the discussions or conduct occurred. Additionally, the Complaints Director submitted that little weight should be given to SB's conduct after her last treatment, including writing to WCB and not responding to Mr. Khan's text.
251. Counsel for the Complaints Director addressed the issue of hearsay and the distinction between alleged three-way conversations with MB and alleged two-way conversations involving Mr. Khan and MB or Mr. Bimagani and MB. Counsel for the Complaints Director submitted that the alleged three-way conversations involving MB did not raise traditional hearsay concerns because the issue for the Tribunal was not the truth of MB's comments but the issue of whether these discussions occurred. Counsel suggested that there was an inherent reliability as SB and Mr. Khan had the ability to testify to their recollection of these discussions. By contrast, the Counsel for the Complaints Director submitted that the alleged two-way conversations with MB were pure hearsay and raised traditional hearsay concerns. Counsel suggested that this evidence should be given little weight because it was untested and unreliable.
252. Counsel for the Complaints Director reviewed the elements of sexual misconduct and discussed the overall purpose and inherent protections built into the sexual misconduct provisions of the HPA. Counsel submitted that Allegations 1 and 3 fell within the definition of sexual misconduct and that the elements of sexual misconduct were met based upon SB's evidence. Counsel for the Complaints Director cited the objective test for determining whether conduct is sexual in nature, as set out by the Supreme Court in *R v Chase*, 1987 CanLII 23 (SCC), [1987] 2 SCR 293 at 302: "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer"? Determining whether Mr. Khan's conduct was sexual in nature required the Hearing Tribunal to conduct a factual and contextual assessment.
253. Counsel for the Complaints Director addressed the issue of myths and stereotypes in relation to allegations of sexual misconduct. Counsel for the Complaints Director recognized that SB testified openly about her sexual activity and submitted that the Hearing Tribunal needed to be conscious of myths and stereotypes in assessing SB's credibility.
254. Counsel for the Complaints Director discussed the Standards of Practice and Ethical Code of Conduct, noting that it was open to the Hearing Tribunal to find that the proven conduct was a breach of the Standards of Practice or unprofessional conduct.
255. Regarding Allegations 1 and 3, Counsel for the Complaints Director submitted that the element of "while providing physiotherapy" should be interpreted to include SB's attending and engaging in physiotherapy treatment, not in a narrow or strict sense.
256. Counsel for the Complaints Director submitted that Allegations 1(a) and (b) were factually proven based on the testimony of SB and that they meet the definition of sexual misconduct based on being sexual in nature.
257. For Allegation 1(c) regarding sexual activity and rape, Counsel for the Complaints Director submitted that SB testified to numerous examples of references to sexual activity, including

to oral sex, anal sex, and conversations about rape. Counsel for the Complaints Director stated that SB noted feeling uncomfortable and that the topics and the surrounding context of these discussions met the requirement of being sexual in nature.

258. Regarding Allegation 1(d), Counsel for the Complaints Director noted the differing versions of these conversations, and how SB testified to receiving direct and personal questions from Mr. Khan regarding whether she had any toys herself. Counsel for the Complaints Director submitted that SB's version, in the surrounding context, established that these discussions were sexual in nature.
259. Counsel for the Complaints Director submitted that Allegation 1(e) and 1(f) were established based on SB's evidence and that these discussions were clearly sexual in nature.
260. Counsel for the Complaints Director submitted that Allegation 3 was established based on SB's testimony and that in the surrounding context of what could be characterized as more persistent and aggressive advances toward her, the comment was sexual in nature.
261. Regarding Allegation 2, Counsel for the Complaints Director submitted that if SB's evidence is accepted, there were no steps taken to stop the inappropriate discussions that were occurring while SB was receiving treatment. Counsel submitted that Allegation 2 was factually proven and that there was a significant lapse and failure in Mr. Khan's obligations to maintain boundaries.
262. Counsel for the Complaints Director reviewed the allegations, evidence, and elements of sexual misconduct, the relevant Standards of Practice, and unprofessional in detail, discussing how, if proven, the conduct met the required elements.

Closing Submissions of the Investigated Member

263. Counsel for Mr. Khan submitted that Mr. Khan was the more credible witness and that SB's telling of her story contained a number of critical inconsistencies, a variety of memory gaps, and ultimately lacked plausibility.
264. Counsel for Mr. Khan addressed the relevant Standards of Practice at issue. Regarding the Client-Centered Care Standard, Counsel for Mr. Khan noted that SB attested that Mr. Khan gave her great care. Counsel suggested that the question was really whether any conversations that took place during treatment were inappropriate.
265. Counsel for Mr. Khan agreed with the Complaints Director that for the purposes of the Notice of Hearing and the allegations, the appropriate definition of physiotherapy treatment was one that includes the patient's time in the clinic.
266. Regarding the Professional Boundary Standard, Counsel for Mr. Khan suggested that there was no requirement that physiotherapists restrain conversations to simple small talk and that topics including culture, religion, politics, and even topics touching on sexuality could be appropriate provided that they are done professionally and in line with the legislation and Standards of Practice.

267. Counsel for Mr. Khan reviewed the Sexual Abuse and Sexual Misconduct Standard and three elements of sexual misconduct. Counsel submitted that the Hearing Tribunal needed to look to the HPA when determining whether conduct constitutes sexual misconduct.
268. Counsel for Mr. Khan reviewed the law governing assessments of the credibility and reliability of witness evidence. Counsel noted that a Hearing Tribunal of the College set out the relevant factors in *Physiotherapy Alberta – College + Association v Dutta*, 2021 ABPACA 2.
269. Counsel for Mr. Khan agreed that demeanour should be given little weight. Noting Counsel for the Complaints Director’s submissions about giving little weight to SB’s demeanour while assigning more weight to Mr. Khan’s, Counsel for Mr. Khan suggested that demeanour is a difficult indicia because everyone reacts to examination differently.
270. Regarding the burden of proof, Counsel for Mr. Khan asserted that courts have repeatedly stated that the balance of probabilities standard requires clear, cogent, and convincing evidence. Citing *College of Nurses of Ontario v Thomas*, 2013 CanLII 94557 (ON CNO), Counsel stated that if the Hearing Tribunal finds that there is equal credibility or an inability to determine who is more credible, the College has not met their burden and the allegations must be dismissed.
271. On the issue of unprofessional conduct, Counsel for Mr. Khan cited *College of Physiotherapists of Alberta v Deis*, 2022 ABPACA 3 at para 163 for the proposition that conduct must be sufficiently serious and that not every breach of a Standard of Practice amounts to unprofessional conduct. Counsel added that there needs to be culpability and blameworthiness, submitting that not every ill-advised comment or discussion constitutes unprofessional conduct.
272. Regarding certain cases relied upon by the Complaints Director, Counsel for Mr. Khan suggested that cases that proceeded by consent or no contest have little-to-no precedential value.
273. Counsel for Mr. Khan addressed sexual misconduct and its constituent elements. Citing *Ontario (College of Physicians and Surgeons of Ontario) v Islam*, 2020 ONCPSD 5, Counsel submitted that just because there is a sexual element to a conversation does not mean that it amounts to sexual misconduct or unprofessional conduct.
274. Counsel for Mr. Khan submitted that there is a fundamental distinction between sexual abuse and sexual misconduct. Accordingly, Counsel suggested that the Hearing Tribunal needed to be careful when analogizing between cases derived from criminal law and regulatory law, and even within regulatory law between sexual abuse and sexual misconduct.
275. Counsel for Mr. Khan discussed the law relating to hearsay evidence, noting the distinction between statements tendered for the fact that they were made and statements tendered for the truth of their contents. Counsel for Mr. Khan noted that with Allegation 2, the Complaints Director had decided to proceed on allegations involving a central character who was not available to testify: MB. Counsel suggested that this should tie into the weight given to Mr. Bimagani and Mr. Khan’s evidence of what MB said.

276. Counsel for Mr. Khan drew the Hearing Tribunal's attention to the range of impermissible myths and stereotypes and asserted that they were not seeking to rely upon them. Rather, Counsel for Mr. Khan distinguished SB's evidence and behaviour from issues of avoidance and incremental disclosure.
277. Counsel for Mr. Khan addressed the credibility of the three witnesses.
278. Counsel for Mr. Khan submitted that Mr. Bimagani was a credible and impartial witness with a good ability to perceive and good recall. He submitted that Mr. Bimagani's evidence was plausible and consistent and that his demeanour was calm and collected throughout. Counsel for Mr. Khan noted that the only point where Mr. Bimagani and Mr. Khan may diverge in their evidence was on whether Mr. Khan told Mr. Bimagani that he relayed the story about the TENS machine and the vibrator. Counsel for Mr. Khan submitted that Mr. Bimagani supported Mr. Khan's evidence in relation to who would have been at Meadows Mile and Crowchild and when.
279. Regarding Mr. Khan, Counsel for Mr. Khan submitted that Mr. Khan was extremely forthcoming in direct examination, that he had great recall, and that there were no instances when he could not provide a substantive answer. Counsel suggested that there was no material inconsistency in Mr. Khan's evidence and that Mr. Khan was consistent and willing to admit shortcomings. Counsel added that Mr. Khan's evidence was plausible, and that he admitted to conversations that SB and MB had and making remarks about being surprised or about how his culture differed. With regard to demeanour, Counsel for Mr. Khan noted that he became a little frustrated in cross-examination but suggested that his evidence remained consistent.
280. With respect to Allegation 2 and the conversations Mr. Khan may have overheard, Counsel for Mr. Khan noted that Mr. Khan was clear and candid that he was not entirely sure what he should have done and that in hindsight said he probably should have talked to Mr. Bimagani or done something.
281. Addressing Mr. Khan's purported inconsistency on whether sexual topics were raised, Counsel for Mr. Khan submitted that this was clarified on re-examination. Counsel noted that reference to sexual stuff in his interview with the investigator related to the rape discussion, maybe the vibrator, and potentially the girls' train. Counsel submitted that there was no suggestion that there were rampant sexual discussions.
282. Counsel for Mr. Khan submitted that SB's evidence was not only scandalous but salacious. Counsel submitted that SB was inconsistent on critical points, including whether she was afraid of Mr. Khan after her last treatment and concerns about her safety in relation to Ms. JC and Ms. KD submitting complaints. Counsel for Mr. Khan suggested that SB's evidence that she was alone in Meadows Mile and Crowchild lacked external consistency and was implausible. Counsel for Mr. Khan also submitted that SB was inconsistent on critical details with respect to her last treatment, sharing two different stories. Counsel for Mr. Khan suggested that SB had a story and refused budge on it on substantive issues, even when pushed.
283. Counsel for Mr. Khan addressed the individual allegations in light of the totality of the evidence. Recognizing the distinctions between the evidence of Mr. Khan and SB, Counsel

for Mr. Khan submitted that, based on the inconsistencies and problems of her testimony, SB's evidence should be completely rejected as being uncredible and lacking veracity. Counsel for Mr. Khan recognized that Mr. Khan admitted to certain comments and discussions, including the discussion about marital rape and the story Mr. Khan told about his patient comparing the TENS machine to a vibrator. However, Counsel for Mr. Khan submitted that these discussions, on Mr. Khan's evidence, did not amount to unprofessional conduct, sexual misconduct, or a breach of the Standards of Practice. In relation to allegations 1(d) and 2(f), Counsel for Mr. Khan noted that Mr. Khan admitted to two instances where vibrators were mentioned; however, Counsel for Mr. Khan submitted that the anecdote that Mr. Khan shared about his former patient was neither unprofessional nor sexual misconduct. He also stated that Mr. Khan did not engage when SB compared the shockwave machine to a vibrator.

284. With respect to Allegation 2, Counsel for Mr. Khan noted that Mr. Khan admitted that references to jumping on a girls' train and being in an open relationship occurred. Counsel for Mr. Khan noted that Mr. Khan did not know what these terms meant. Counsel submitted that Mr. Khan cannot be sanctioned for overhearing comments he did not understand and asking what they meant. Counsel for Mr. Khan further noted that Mr. Khan testified to SB showing a photo of a male dancer, whereas SB denied it. Mr. Khan admitted in hindsight that interactions like that one could have called for a caution or discussion about boundaries; however, Counsel for Mr. Khan submitted that this was a learning experience for Mr. Khan and should be left as such. Counsel for Mr. Khan also noted that Mr. Khan was forthcoming about MB mentioning being naked at home and his response that this was something that never happens in his culture. Counsel for Mr. Khan submitted that there is nothing sexual regarding being naked on its own and that talking about being naked is not inherently inappropriate or a boundary violation.
285. Noting that they both related to SB's final treatment, Counsel for Mr. Khan addressed Allegations 3(a) and 1(g) together. Counsel for Mr. Khan drew attention to the differing accounts of the final appointment in the testimony of SB and Mr. Khan, and Counsel for Mr. Khan submitted that there were inconsistencies, implausibility, and other issues with SB's evidence, including two different stories about why she stopped seeing Mr. Khan for treatment.
286. Ultimately, Counsel for Mr. Khan submitted that the Hearing Tribunal should reject SB's testimony and that even the interactions that Mr. Khan admitted to do not rise to the level of unprofessional conduct or sexual misconduct.

DECISION OF THE HEARING TRIBUNAL

287. The Hearing Tribunal considered the evidence of each of the witnesses and the documents tendered as exhibits. The Hearing Tribunal also carefully considered the written and oral submissions of the parties.
288. The Complaints Director bears the burden of proving the allegations. In considering the totality of the evidence, the Hearing Tribunal applied the standard of proof of the balance of probabilities.

289. The Hearing Tribunal found that Allegation 1, particulars (c) and (d) were proven and amounted to unprofessional conduct under section 1(1)(pp)(ii) and (xii) of the HPA. The Hearing Tribunal found that 1(c) and (d) amounted to sexual misconduct under section 1(1)(nn.2) of the HPA and breached the Sexual Abuse and Sexual Misconduct Standards of Practice, as well as the Professional Boundaries and Client-Centred Care Standards of Practice. This conduct also breached the Code of Ethical Conduct Provisions A4, A5, A18, B1, B5, C1, and C3. The Hearing Tribunal concluded that Allegation 1 (c) and (d) constituted conduct that harmed the integrity of the profession.
290. The Hearing Tribunal also found that Allegation 2, particulars (a)(i), (c), (d), (e), and (f) were proven and amounted to unprofessional conduct under section 1(1)(pp)(ii) and (xii) of the HPA. The Hearing Tribunal found that this conduct breached the Client-Centered Care and Professional Boundaries Standards of Practice; breached Code of Ethical Conduct Provisions A4, A5, A18, B1, B5, C1, and C3; and was conduct that harmed the integrity of the profession.
291. The Hearing Tribunal found that Allegations 1(a), (b), (e), (f), (g); 2(a)(ii), (b); and 3 were not proven on a balance of probabilities.

FINDINGS AND REASONS OF THE HEARING TRIBUNAL

Agreed Facts

292. The Hearing Tribunal considered that certain facts in this case were not in dispute. The parties entered an Agreed Statement of Facts, setting out that Mr. Khan became a regulated member of the College on the provisional register on July 9, 2018 and that he was subsequently registered on the general register on March 18, 2022. Mr. Khan has no previous history of complaints or discipline arising out of his membership with the College. SB came to Mr. Khan for treatment on a WCB claim in June 2022 after she injured her left shoulder at work and was diagnosed with bursitis. Mr. Khan provided treatment to SB on 23 occasions between June 27, 2022 and October 6, 2022, first at Meadows Mile and then at the Crowchild clinic. MB was the receptionist at Meadows Mile and would join in conversations between SB and Mr. Khan or engage in conversations with SB while she received treatment from Mr. Khan. SB saw Ms. JC, Registered Psychologist, for psychological treatment starting in December 2022. On January 26, 2023, Ms. JC submitted a complaint to the College about Mr. Khan on behalf of SB based on her mandatory reporting obligations (Exhibit 1, Tab 2). SB also received physiotherapy treatment from Ms. KD. SB provided Ms. KD a written statement about Mr. Khan on December 16, 2022. Ms. KD subsequently submitted information about Mr. Khan to the College on February 23, 2023 based on her mandatory reporting obligations. Mr. Khan responded to the complaint in writing on April 5, 2023 (Exhibit 1, Tab 3).

Assessment of the Credibility and Reliability of the Witnesses

293. The Hearing Tribunal considered the evidence of the witnesses and recognized that, on many points, it was faced with two divergent accounts. Accordingly, it was necessary to carefully assess the credibility of the witnesses and the reliability of their evidence.

294. The Hearing Tribunal considered the parties' written and oral submissions on the law governing assessment of witness credibility. The parties each provided briefs of law on witness credibility and reliability, including the factors that the Hearing Tribunal needed to consider in assessing the evidence of each of the witnesses. Witness credibility focuses upon an assessment of the honesty and truthfulness of the witness, whereas reliability is about the accuracy of the witness' evidence: *R v SGH*, 2023 ABKB 39 at para 43. In assessing credibility and reliability, the relevant factors include:
- a. Appearance or demeanour;
 - b. Ability to perceive;
 - c. Ability to recall;
 - d. Any motivation to fabricate.
 - e. Probability or plausibility;
 - f. Internal consistency of evidence;
 - g. External consistency of evidence;

(Physiotherapy Alberta – College + Association v Dutta, 2021 ABPACA 2 at para 174)

295. The Hearing Tribunal can accept some, all, or none of the evidence of witnesses: *R v Pittiman*, 2006 SCC 9 at para 7.

SB

Appearance or demeanour

296. The Hearing Tribunal approached its assessment of the demeanour of the witnesses with caution, recognizing that demeanour can be an unreliable predictor of accuracy: *College of Physicians and Surgeons of Ontario v Schwarz*, 2019 ONCPSD 9, citing *Law Society of Upper Canada v Neinstein*, 2010 ONCA at para 66. The Hearing Tribunal noted that SB did not make consistent eye contact during her testimony, drew in a colouring book, and appeared uncomfortable at points during her testimony. The Hearing Tribunal recognized that her testimony required SB to testify at length about difficult subject matter and that witnesses generally respond to direct and cross-examination differently. Recognizing that demeanour is a limited indicator of credibility, the Hearing Tribunal did not place significant weight on this factor in assessing SB's credibility.

Ability to perceive

297. In assessing SB's ability to perceive, the Hearing Tribunal found that there were no significant issues in SB's ability to perceive the conversations, comments, and discussions that she participated in or that took place in front of her. The Hearing Tribunal noted that the nature of SB's physiotherapy treatment, including sometimes being face down on the treatment bed, may have impacted her ability to perceive who was present in the clinic at

all times during her treatment and whether she was alone with Mr. Khan. It also may have impacted her perception of how Mr. Khan touched her during treatment, including whether he pet her hair or placed his face to her back.

Ability to recall

298. SB provided detailed descriptions of the conversations, discussions, comments, and questions she alleged took place during the course of her treatment with Mr. Khan. By contrast, there were many small details she could not recall, including the number of treatments she received. The Hearing Tribunal placed less weight on SB's inability to recall these small details; however, the Tribunal noted that other points, like SB's evidence as to the number of treatment beds in Meadows Mile was inconsistent with that of Mr. Bimagani and Mr. Khan. There were also many points that SB indicated she could not recall on cross-examination.
299. SB was unable to recall the exact dates or treatment sessions at which she alleged discussions and comments took place. Given the number of appointments, the passage of time, and the number of incidents alleged, the Hearing Tribunal did not find that the failure to recall exact dates or treatment sessions indicated any significant limitation to her ability to recall. However, the Hearing Tribunal also noted the differences in the accounts of her final treatment session with Mr. Khan, in terms of the testimony she provided and the information provided to the investigator.
300. Overall, the Hearing Tribunal found that SB's ability to recall was mixed. She had strong recall of some details and weaker recall about dates and other contextual details. She has also provided different information regarding the last appointment with Mr. Khan.

Motivation to fabricate

301. The Hearing Tribunal did not find that SB had a strong motivation to fabricate. While Counsel for Mr. Khan suggested that SB may have sought to change clinics because Crowchild was inconvenient and further from her home, the Hearing Tribunal did not find that this provided a motive to fabricate the allegations. The Hearing Tribunal additionally noted that SB did not initiate the complaints herself and that certain conversations were admitted to by Mr. Khan.

Probability or plausibility

302. Certain aspects of SB's testimony appear somewhat improbable when considered together with external evidence. For example, the story regarding Mr. Khan losing his virginity while studying in Sweden is implausible when considered together with the evidence that Mr. Khan was already married and had a child when he began his studies in Sweden.
303. SB had also testified that Mr. Khan asked her not to disclose that he was providing shockwave treatment as he was not billing for it. However, the shockwave treatment was noted by Mr. Khan in the patient record. Based on this, it seems implausible that Mr. Khan would ask SB not to disclose this.

304. SB gave evidence that her and Mr. Khan were alone in the Crowchild clinic at her last appointment, which was on October 6, 2022. The Hearing Tribunal found that it was improbable that SB would have been alone in the Crowchild clinic with Mr. Khan, given the evidence of all three witnesses that Crowchild was a busier clinic and Mr. Bimagani's evidence that a receptionist and other treatment providers would always have been present at the Crowchild clinic when Mr. Khan was working.
305. Also, as outlined above, the Hearing Tribunal noted that there were differing accounts by SB of her final appointment with Mr. Khan. While certain aspects of those accounts such as Mr. Khan placing his face on SB's back seemed improbable, the Hearing Tribunal found that it is probable SB perceived that something occurred during the last appointment that caused SB to cease seeing Mr. Khan. Given that SB would have had a limited ability to perceive what was happening in the appointment while she was lying face down on the treatment table, as noted above, the Hearing Tribunal acknowledged that there was insufficient information to determine if Mr. Khan touched her as part of his treatment. The Hearing Tribunal also noted that none of the allegations in the Notice of Hearing related to inappropriate touching of SB.

Internal consistency of evidence

306. Overall, SB's evidence was largely internally consistent throughout her testimony. SB described events in significant detail and those details generally remained consistent on cross-examination.
307. The Hearing Tribunal noted however that SB's evidence regarding her last appointment with Mr. Khan at Crowchild differed from the account she provided to the investigator, as noted by counsel for Mr. Khan in his cross-examination of SB. SB's evidence can be summarized as follows:
- a. SB testified that during her last appointment with Mr. Khan, Mr. Khan tried to touch her in ways that she had described previous partners touching her as being signs of intimacy. At the end of the appointment, SB requested that Mr. Khan not touch her like that. SB stated that he then put his arm around her shoulder and laughed and apologized, saying that he did not mean to arouse her. SB stated that this was when she decided to stop seeing him.
 - b. On cross-examination, Counsel for Mr. Khan suggested that SB told a different story of her last appointment to the investigator. Counsel for Mr. Khan read a portion of the investigation transcript, where SB said that Mr. Khan touched her hip and she slapped his hand away. At the end of the appointment SB told Mr. Khan that he could not touch her like that, and she said he apologized and said he did not mean to arouse her.
 - c. SB said she could not recall the exact date on which each set of events occurred but that both happened.

External consistency of evidence

308. The Hearing Tribunal recognized that certain elements of SB's testimony were not consistent with external evidence. For example, it was SB's evidence that there were roughly 10 treatment beds in Meadows Mile. By contrast, Mr. Khan and Mr. Bimagani each testified that there were four or five treatment beds at the clinic. While SB's evidence suggests a significant difference in the size of the clinic, the Hearing Tribunal did not place significant weight on inconsistencies regarding small details.
309. Beyond those details, SB's evidence conflicted with Mr. Khan's on many substantive points. However, there were certain points of agreement between the two, including that at times MB was present with SB and Mr. Khan while he provided treatment, that Mr. Khan relayed a story about an elderly patient comparing a TENS machine to a vibrator, that SB referred Mr. Khan to the PinkCherry website, that there were discussions by SB, MB or Mr. Khan about sexual activity including rape and jumping on a girls' train.

Conclusion on the evidence of SB

310. Ultimately, the Hearing Tribunal found that SB's credibility and reliability was mixed. SB's evidence was consistent and detailed on many substantive points; however, certain portions of her evidence appeared improbable and she repeated that she could not recall many points on cross-examination. Overall, the Hearing Tribunal found that the credibility factors weighed in favour of her evidence on certain points and against her evidence on others. To that end, the Hearing Tribunal found that there was mixed credibility and reliability of SB's evidence in making its findings of fact.

Mr. Bimagani

Appearance or demeanour

311. The Hearing Tribunal found that Mr. Bimagani's demeanour was professional throughout his testimony.

Ability to perceive

312. Mr. Bimagani had a limited ability to perceive much of the conduct at issue in the hearing. Even at Meadows Mile, where Mr. Bimagani worked with Mr. Khan and MB, Mr. Bimagani's schedule was opposite that of Mr. Khan. Accordingly, he was not present when any of the conduct was alleged to have occurred. Mr. Bimagani did not work at Crowchild and was not involved in the day-to-day operations of the clinic. While Mr. Bimagani testified to conversations with Mr. Khan and SB, his experience was filtered through their accounts of events.

Ability to recall

313. Generally, Mr. Bimagani had a good ability to recall. When asked about whether Mr. Khan had relayed a story about a TENS machine and adult toys, he noted that he could not recall.

Motivation to fabricate

314. At certain points in his testimony, Mr. Bimagani appeared to provide restricted answers. The Hearing Tribunal considered that Mr. Bimagani may have been concerned about being dragged into the situation or any potential negative implications for his own professional practice.
315. Mr. Bimagani generally portrayed Mr. Khan in a positive light; however, the portrayal was not uniformly positive. Mr. Bimagani noted that he did not like that Mr. Khan brought religion into his practice.

Probability or plausibility

316. Mr. Bimagani's evidence seemed plausible.

Internal consistency of evidence

317. Mr. Bimagani's evidence was internally consistent.

External consistency of evidence

318. Mr. Bimagani testified that during his investigation meeting with Mr. Khan, Mr. Khan stated there was only one instance where there were discussions about adult toys. Mr. Bimagani said that he could not recall Mr. Khan telling him about relaying an anecdote about a TENS machine and an adult toy. Mr. Khan in turn testified that he told Mr. Bimagani about sharing the story of an elderly patient comparing the TENS machine to her vibrator.
319. The Hearing Tribunal noted that there was some potential inconsistency on the issue of MB's attendance at Meadows Mile. Mr. Khan testified that MB was always present during SB's treatment sessions; however, Mr. Bimagani gave evidence of issues with MB leaving the clinic and patients arriving at the clinic when she was not present at the reception desk. Given that Mr. Bimagani was not at the clinic during any of SB's treatment sessions, the Hearing Tribunal did not place significant weight on this factor.

Conclusion on the evidence of Mr. Bimagani

320. While generally Mr. Bimagani appeared credible in his testimony, the Hearing Tribunal found that there were certain limitations to his evidence. Mr. Bimagani appeared to restrict his answers at certain points, and he appeared concerned about potential professional repercussions. Additionally, Mr. Bimagani's absence from the clinics at any of the times the conduct is alleged to have occurred was a significant limitation upon his evidence.

Mr. Khan

Appearance or demeanour

321. In assessing Mr. Khan's demeanour during the hearing, the Hearing Tribunal noted that Mr. Khan appeared visibly uncomfortable, particularly during questioning about sexual topics. While at certain points Mr. Khan responded to questions with further questions, the Hearing Tribunal found that Mr. Khan's questions generally reflected his efforts to seek clarification and were not a refusal to answer. At one point while under cross-examination,

Mr. Khan initially refused to answer the Complaints Director's question and suggested he was not answerable to questions regarding his personal time. Mr. Khan also appeared to refer to investigation materials in front of him in responding to the questions of the Hearing Tribunal. Overall, the Hearing Tribunal did not place significant weight upon Mr. Khan's demeanour.

Ability to perceive

322. Mr. Khan was present throughout SB's treatment sessions and had an equal ability to make observations of the situation from throughout the clinic. Both SB and Mr. Khan testified that SB and MB's conversations often began at the front desk; however, for the purposes of the allegations, the relevant conversations were those that took place while Mr. Khan was in the vicinity.

Ability to recall

323. The Hearing Tribunal found that Mr. Khan had a good ability to recall under both direct and cross-examination. Unlike SB, Mr. Khan did not frequently respond that he could not recall in cross-examination.

Motivation to fabricate

324. The Hearing Tribunal did not find that Mr. Khan had any particular motivation to fabricate. A regulated member is entitled to deny and defend against allegations made against them.

Probability or plausibility

325. Given the evidence of SB and Mr. Bimagani concerning MB's presence in the clinic, the Hearing Tribunal found the probability of Mr. Khan's evidence that he was never alone in the clinic with SB was unlikely. Even considering Mr. Khan's evidence, the Hearing Tribunal found that it was probable that certain conversations could have occurred between SB and Mr. Khan while MB had stepped outside for a cigarette or was elsewhere in the clinic attending to duties.
326. The Hearing Tribunal also found that Mr. Khan's evidence was more plausible on certain points. Given his evidence that his wife does not speak English, Mr. Khan's evidence that he and his wife did not watch horror movies appeared more plausible. Additionally, Mr. Khan's denial of sharing any story about losing his virginity while studying in Sweden appeared more plausible than SB's version of events when considered together with Mr. Khan's evidence that he was already married and had a child when he began his studies in Sweden.

Internal consistency of evidence

327. The Hearing Tribunal found that Mr. Khan's evidence was generally consistent and did not change on substantive issues.

External consistency of evidence

328. The Hearing Tribunal noted several points of external consistency with Mr. Khan's evidence.
329. The Hearing Tribunal found that Mr. Khan's evidence about the forms of treatment he was providing to SB was consistent with the charting notes.
330. There was also some consistency with SB's evidence. Mr. Khan agreed that certain topics of conversation arose with SB and MB, though his evidence diverged on details, context, and, generally, his reactions and level of participation in conversation.
331. Mr. Khan testified that he told Mr. Bimagani about relaying the story about his elderly patient and the vibrator; however, Mr. Bimagani stated that he could not recall such a conversation.

Conclusion on the evidence of Mr. Khan

332. Like SB, the Hearing Tribunal found that the credibility and reliability of Mr. Khan's evidence was mixed. Mr. Khan's evidence appeared more credible and consistent on certain points, and less credible on others. Ultimately, the Hearing Tribunal carefully considered the credibility and reliability of Mr. Khan's evidence in making its findings of fact.

Overall Findings of Credibility

333. Given the mixed assessment regarding the credibility and reliability of SB and Mr. Khan's evidence, the Hearing Tribunal was unable to accept the entirety of either SB or Mr. Khan's testimony. The Hearing Tribunal found that there were aspects of each of their evidence that was credible and reliable and other aspects that were less credible and reliable.
334. The Hearing Tribunal noted that MB would have been a key witness in this matter, as she was present for many of the conversations at issue in this hearing. Had MB been called to give evidence, it would very likely have assisted the Hearing Tribunal in further assessing the credibility of SB and Mr. Khan and in its role in making findings of fact.
335. Given these issues, in making its findings of fact applying the standard of proof of the balance of probabilities, the Hearing Tribunal was able to rely on evidence that both SB and Mr. Khan agreed occurred, as well as admissions made by Mr. Khan in his testimony.
336. As set out below, in some cases, the Hearing Tribunal preferred the evidence of SB over Mr. Khan, or vice versa. However, where the Hearing Tribunal was not able to determine whose evidence was more credible, the Hearing Tribunal determined that the allegation was not proven on a balance of probabilities.

Factual Findings

Allegation 1(a)

337. Allegation 1(a) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

a. You asked about women’s “erogenous zones”, or words to that effect;

338. In relation to Allegation 1(a), the Tribunal notes the following evidence was put forward during the hearing:

a. SB testified that Mr. Khan asked her about women’s erogenous zones during treatment. She stated that Mr. Khan was concerned that she might become aroused in touching her pectoral muscles. SB stated that she told Mr. Khan that she was not aroused and that erogenous zones and being aroused depended on individual relationships.

b. SB testified that Mr. Khan asked her what her erogenous zones were.

c. Mr. Khan testified that he did not refer to erogenous zones ever in his discussions with SB and that he only saw the word “erogenous” for the first time in the complaint.

d. Mr. Khan also testified that when he called MB to discuss the complaint, MB said that she never heard any reference to erogenous zones in Mr. Khan’s conversations with SB. Given that MB was not present to testify, the Hearing Tribunal placed little weight on this evidence.

339. In weighing the statements made by SB against the denial and evidence of Mr. Khan, the Hearing Tribunal found, on a balance of probabilities, that the facts underlying this particular of Allegation 1 did not occur.

340. Given the conflicting evidence from SB and Mr. Khan, it was necessary for the Hearing Tribunal to assess the credibility of each witness on this point. As noted above, the Hearing Tribunal found issues and limitations to the credibility of both witnesses.

341. The Hearing Tribunal considered that Mr. Khan testified that the first time he saw the words “erogenous zones” was when he received the complaint. The Hearing Tribunal considered that it was possible that he did not know this term. He was unfamiliar with some terms, for example, asking MB what “jumping on a girls’ train meant. As such, the Hearing Tribunal accepted that Mr. Khan may not have known the term “erogenous zones” and preferred his evidence on this point.

342. The Hearing Tribunal found that Allegation 1(a) was not proven on a balance of probabilities.

Allegation 1(b)

343. Allegation 1(b) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

b. You asked, “do women get aroused by touch”, or words to that effect;

344. In relation to Allegation 1(b), the Tribunal notes the following evidence was put forward during the hearing:

a. SB testified that Mr. Khan asked her if she was concerned about being aroused during treatment. SB stated that Mr. Khan also expressed concern that she was being guarded about her body because he thought that she was concerned about being aroused by touch if he treated her in certain spots or areas. SB said she told Mr. Khan that she was not aroused because arousal requires a relationship. SB stated that she shared examples of how previous partners had touched her in ways that she enjoyed.

b. SB also testified that, when discussing the topic of marital rape, she told Mr. Khan that women cannot enjoy rape regardless of stimulation. SB explained that she told Mr. Khan this because he had been concerned, based on previous conversations, that women were aroused by touch, regardless of the situation. SB said she told Mr. Khan that touch was not all that was required for arousal.

c. Mr. Khan testified that the word “arouse” never arose at any point in his interactions with SB. He stated that SB never shared any stories about arousing touches.

345. The Hearing Tribunal saw some overlap in the evidence underlying particulars 1(a) and 1(b), particularly in that SB testified that references to erogenous zones and arousal may have occurred in some of the same conversations. Again, given the conflicting evidence of the witnesses it was necessary for the Hearing Tribunal to consider the credibility of SB and Mr. Khan on this point. The Hearing Tribunal was not able to determine whose evidence it preferred on this matter.

346. Considering all of the evidence, and for the reasons noted above regarding findings of credibility, the Hearing Tribunal found that Allegation 1(b) was not proven on a balance of probabilities.

Allegation 1(c)

347. Allegation 1(c) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

c. You discussed and/or asked about sexual activity and “rape”;

348. In relation to Allegation 1(c), the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that Mr. Khan told her that MB was divorcing her husband because he had raped her. She said that when Mr. Khan said this MB was not in the room with them. SB stated that Mr. Khan then asked her about how that was possible because he did not believe that a husband could rape a wife, and she responded by clarifying that sex is a consensual thing regardless of relationship and that women cannot enjoy being raped regardless of stimulation.
 - b. SB testified that Mr. Khan asked her if she had been raped and what happened. SB stated she told Mr. Khan she was not comfortable discussing it.
 - c. SB also gave evidence that MB told her that she was divorcing her husband because he had raped her.
 - d. On cross-examination, SB denied that she had volunteered to Mr. Khan and MB that she had been raped after she arrived late for an appointment because she was seeing a psychologist.
 - e. Mr. Khan testified that SB arrived late for an appointment at Meadows Mile and explained that she had come from an appointment with her psychologist. Mr. Khan said that he asked SB why she saw a psychologist, and SB stated that she had been raped and saw a psychologist to cope with her PTSD. Mr. Khan stated that MB then added that she had been raped by her husband. Mr. Khan testified that he told SB and MB that marital rape was not a concept in his culture or religion, and that he did not otherwise participate in the conversation.
 - f. Mr. Khan also testified that no discussions between SB and MB about sexual topics other than rape occurred in front of him.
 - g. Referring to his statement in the investigation report that SB and MB discussed some “sexual stuff”, Mr. Khan stated that he was referring to their discussions about being raped and open relationships.
349. Both SB and Mr. Khan testified to discussions about rape, including that MB had been raped by her husband and that Mr. Khan told SB that marital rape was not a concept within his religion and culture. Their evidence diverged on other details, including whether MB was present for the discussion and whether Mr. Khan asked SB if she had been raped or whether SB volunteered the information.
350. Given the overlap in evidence between SB and Mr. Khan, the Hearing Tribunal found that, on a balance of probabilities, Allegation 1(c) was proven. The Hearing Tribunal finds that Mr. Khan did discuss rape with SB, including noting that marital rape was not a concept within his religion or culture.

Allegation 1(d)

351. Allegation 1(d) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

d. You discussed vibrators and a sex toy website, PinkCherry;

352. In relation to Allegation 1(d), the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that while she was receiving treatment involving a TENS machine, Mr. Khan told a story about an elderly patient who stated that the TENS machine felt like her vibrator. SB said that Mr. Khan asked her what a vibrator was, and she told him that it was a women's pleasure device and that there is a website called PinkCherry that has a physician that describes each toy and what it does. SB said that she told Mr. Khan he could look online and consider purchasing something for his wife. SB said that Mr. Khan asked her about whether she had ordered anything and what, and that she stated she had but it was too personal to discuss.
- b. SB also testified that while receiving shockwave therapy treatment at Crowchild Mr. Khan asked her if the machine felt like a vibrator. SB said that she responded with a joke about perhaps a vibrator belonging to MB, but not one for a normal person.
- c. Mr. Khan testified that the topic of vibrators arose in conversation between SB and MB and that he then told them the story about his former patient who said that the TENS machine felt like her vibrator. Mr. Khan said he then apologized to SB and MB and said that the conversation was going beyond his professional boundaries.
- d. Mr. Khan testified that SB told him that there was a website called PinkCherry that has adult toys for men and women. He said he responded by saying "okay".
- e. Mr. Khan stated that he later googled the PinkCherry website on his personal time. He said that he did not discuss the website with SB after she told him what it was.
- f. Mr. Khan testified that when he first used the shockwave therapy machine on SB at Crowchild, SB made fun of the probe and said it was like a big vibrator. Mr. Khan said that he just smiled in response.

353. SB and Mr. Khan each gave similar evidence regarding discussions of vibrators and PinkCherry. Both testified to Mr. Khan sharing a story about a former patient who compared a TENS machine to her vibrator and to SB discussing the PinkCherry website. The Hearing Tribunal also found that it was more probable than not that the PinkCherry website was discussed more than Mr. Khan simply saying "okay". In other instances, Mr. Khan asked questions where he did not know what something was. As such, the Hearing Tribunal found that a discussion about the website occurred, as described by SB.

354. Having considered all the evidence on this issue, the Hearing Tribunal found that, on a balance of probabilities, Allegation 1(d) was proven. Mr. Khan and SB discussed vibrators and the PinkCherry website.

Allegation 1(e)

355. Allegation 1(e) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

e. You told a story to Patient SB about watching pornography;

356. In relation to Allegation 1(e), the Tribunal notes the following evidence was put forward during the hearing:

a. SB testified that Mr. Khan told her a story about lending a pornographic movie to a friend while he was in Sweden. She said that Mr. Khan told her that he and his friends went and watched through a window as the friend masturbated.

b. Mr. Khan testified that he and SB did not discuss pornography at any time.

357. Given the conflicting evidence of the witnesses, the Hearing Tribunal needed to consider the credibility of SB and Mr. Khan in regard to this particular. The Hearing Tribunal determined that it was not able to assess whether SB or Mr. Khan was more credible on this point. As such, the Hearing Tribunal found that Allegation 1(e) was not proven on a balance of probabilities.

Allegation 1(f)

358. Allegation 1(f) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

f. You told Patient SB that “sex is more primal than intimate”, or words to that effect;

359. In relation to Allegation 1(f), the Tribunal notes the following evidence was put forward during the hearing:

a. SB testified that Mr. Khan told her that sex with his wife was more primitive or primal than intimate. She said she could not recall the exact conversation within which the statement was made.

b. Mr. Khan testified that he did not discuss anything about his personal life with SB. He said that he did not understand the difference between sex and intimacy before the complaint.

360. Given the conflicting evidence of the witnesses, the Hearing Tribunal needed to consider the credibility of SB and Mr. Khan in regard to this allegation. The Hearing Tribunal assessed the credibility of the witnesses and determined that it was not able to determine

whether SB or Mr. Khan was more credible on this point. Accordingly, the Hearing Tribunal found that Allegation 1(f) was not proven on a balance of probabilities.

Allegation 1(g)

361. Allegation 1(g) reads as follows:

1. On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

g. You discussed wanting to “curl up” with Patient SB, or words to that effect.

362. In relation to Allegation 1(g), the Tribunal notes the following evidence was put forward during the hearing:

a. SB testified that at her last appointment, Mr. Khan said that he and his wife watched horror movies together. SB further testified that Mr. Khan said that he wanted to watch horror movies with her because she had told him that she watched horror movies with a friend. SB stated that she then told Mr. Khan that she did not think his wife would like that.

b. Mr. Bimagani testified that Mr. Khan did not tell him that he told SB that he wanted to cuddle up or curl up with her. In respect of cuddling and watching television, Mr. Bimagani stated that Mr. Khan told him that he had told SB that it would be nice to have a friend like that after she relayed a story of cuddling with a friend to watch television.

c. Mr. Khan testified that during SB’s final appointment he asked her how her partner J was and SB replied that J makes her stressed and she did not want to talk about J. Mr. Khan stated that SB then told him about another male friend who she cuddles and watches movies with. Mr. Khan replied by stating that everyone should have a friend like that. Mr. Khan testified that he then started treatment.

d. Mr. Khan testified that the topic of horror movies did not come up in his discussions with SB, only that she mentioned watching movies with a guy that she cuddles with.

e. Mr. Khan testified that he and his wife do not watch horror movies together.

363. The Hearing Tribunal noted there was overlap in the evidence of SB, Mr. Khan, and Mr. Bimagani with respect to SB mentioning that she watches movies with a friend. As previously noted, the Hearing Tribunal found SB’s version of events on this point less plausible.

364. In addition, as noted by counsel for the Complaints Director, SB did not explicitly testify that Mr. Khan said he wanted to curl up with her, but rather that he said he wanted to watch movies with her. As such, even if SB’s evidence is accepted on this point, Allegation 1(g) is not proven.

365. Having considered all of the evidence, the wording of the Allegation, and the credibility of the witnesses, the Hearing Tribunal found that Allegation 1(g) was not proven on a balance of probabilities.

Allegation 2(a)

366. Allegation 2(a) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

- a. Sexual preferences and/or sexual orientation, including:
 - i. discussing “jumping into a girls’ train”, or words to that effect;
 - ii. Being in an open relationship.

367. In relation to Allegation 2(a), the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that she told MB that if she ever broke up with her partner that she might jump on a “girls’ train”. She said that she could not recall if Mr. Khan asked her what a girls’ train was.
- b. SB stated that she did not make a comment to MB and Mr. Khan that she was considering an open relationship. She could not recall whether Mr. Khan asked her what an open relationship was.
- c. Mr. Khan testified that SB told MB that if she separated from her partner she would jump onto a girls’ train. Mr. Khan said that he did not understand and that he later asked MB what jumping on a girls’ train meant. MB explained to him that it meant getting sexually involved with women. Mr. Khan stated that this was the only conversation about sexuality that he recalled.
- d. Mr. Khan also testified that on one occasion MB said that she was in an open relationship with her husband before the divorce. He said that she explained what an open relationship was to him later. It was not clear if SB was present when MB said she was in an open relationship.

368. Both SB and Mr. Khan gave evidence that SB said that she would consider jumping on a girls’ train. Considering all of the evidence on this point, the Hearing Tribunal found that Allegation 2(a)(i) was proven on a balance of probabilities.

369. SB and Mr. Khan gave different evidence on whether there were any discussions about open relationships. SB did not provide any evidence in support of this particular. Counsel for the Complaints Director acknowledged that if SB’s evidence was accepted on this point, that Allegation 2(a)(ii) would not be factually proven.

370. Further, it was not clear from Mr. Khan's evidence if SB was present when MB made the comment.
371. Upon considering all the evidence, the Hearing Tribunal found that Allegation 2(a)(ii) was not proven on a balance of probabilities.

Allegation 2(b)

372. Allegation 2(b) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

b. Pornographic movies;

373. Whereas SB testified that Mr. Khan told her a story about lending a pornographic movie to a friend, Mr. Khan denied that pornography was discussed at any time. This aspect was addressed in Allegation 1(e).

374. The following additional evidence regarding MB engaging in conversations related to pornographic movies was put forward at the hearing:

a. SB testified that MB had videos on her phone of herself performing different acts. SB stated that during a treatment session MB showed a video of herself performing oral sex on a man to Mr. Khan and that Mr. Khan tried to show the video to SB while she was receiving treatment. SB said she raised her hand to indicate she did not want to see the video, and Mr. Khan walked away. SB confirmed that she saw what was on the screen of the phone.

b. Mr. Khan denied that the interaction with the video on MB's phone ever occurred.

375. Given the conflicting evidence of the witnesses, the Hearing Tribunal needed to consider the credibility of SB and Mr. Khan in regard to this particular. For the reasons noted above, the Hearing Tribunal found that the evidence of each of SB and Mr. Khan had some aspects that were more credible and some aspects that were less credible. The Hearing Tribunal determined that it was not able to assess whether SB or Mr. Khan was more credible on this point. As such, the Hearing Tribunal found that Allegation 2(b) was not proven on a balance of probabilities.

Allegation 2(c)

376. Allegation 2(c) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to

address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

- c. Sexual activity and “rape”;

377. In relation to Allegation 2(c), the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that Mr. Khan told her that MB was divorcing her husband because he had raped her. She said that when Mr. Khan said this MB was not in the room with them. SB stated that Mr. Khan then asked her about how that was possible because he did not believe that a husband could rape a wife, and she responded by clarifying that sex is a consensual thing regardless of relationship and that women cannot enjoy being raped regardless of stimulation.
- b. SB also gave evidence that MB told her that she was divorcing her husband because he had raped her. It was not clear from SB’s evidence whether Mr. Khan was present for this conversation.
- c. On cross-examination, SB denied that she had volunteered to Mr. Khan and MB that she had been raped after she arrived late for an appointment because she was seeing a psychologist.
- d. Mr. Khan testified that SB arrived late for an appointment at Meadows Mile and explained that she had come from an appointment with her psychologist. Mr. Khan said that he asked SB why she saw a psychologist, and she stated that she had been raped and saw a psychologist to cope with her PTSD. Mr. Khan stated that MB then added that she had been raped by her husband. Mr. Khan testified that he told SB and MB that marital rape was not a concept in his culture or religion, and that he did not otherwise participate in the conversation.
- e. Mr. Khan also testified that no discussions between SB and MB about sexual topics other than rape occurred in front of him. Mr. Khan further testified that there was only one discussion about rape.
- f. Referring to his statement in the investigation report that SB and MB discussed some “sexual stuff”, Mr. Khan stated that he was referring to their discussions about being raped and open relationships.

378. Both SB and Mr. Khan testified to discussions with MB involving rape. There is a discrepancy about whether SB volunteered the information about her own experience, but both agree that MB said that she was divorcing her husband because he had raped her. SB did not directly address whether Mr. Khan was present when MB shared this. Given the differences in the evidence of SB and Mr. Khan, the Hearing Tribunal determined that it was necessary to assess the credibility of the witnesses on this issue. Taking into account the overlap in evidence and the relevant credibility and reliability factors, the Hearing Tribunal found that Mr. Khan’s version of events was more credible on this issue and that Mr. Khan, SB, and MB were present together for the discussion where MB shared that she was divorcing her husband because he had raped her.

379. Considering all the evidence, the Hearing Tribunal found that Allegation 2(c) was proven on a balance of probabilities.

Allegation 2(d)

380. Allegation 2(d) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

- d. A party with male dancers, including that you viewed a photo of a naked man;

381. In relation to Allegation 2(d), the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that she could not recall showing any pictures of men to Mr. Khan or MB. She noted that she had photos of men on her phone, including from an event where a male dancer had been hired, but that she did not recall showing those photos.
- b. Mr. Khan testified that SB told him and MB about a birthday party with a male dancer in short clothes. He said that SB pulled out her phone and showed a photo to MB and himself. Mr. Khan said he responded by saying it was impossible for him to imagine that a man could be naked in front of a woman like that.
- c. Mr. Khan stated that he did not say anything about professional boundaries when he was shown the photo because he did not request to see it and it was very abrupt.

382. The Hearing Tribunal noted that SB could not specifically recall having shown Mr. Khan and MB any photos; however, the evidence overall supported a finding that a conversation relating to male dancers took place. Mr. Khan's evidence was clear that SB told him and MB about a birthday party with a male dancer that was scantily clad.

383. Considering all of the evidence, the Hearing Tribunal found that Allegation 2(d) was proven on a balance of probabilities.

Allegation 2(e)

384. Allegation 2(e) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

- e. Being naked at home and/or in front of other people;
385. In relation to Allegation 2(e), the Tribunal notes the following evidence was put forward during the hearing:
- a. SB stated that she could not recall any discussion with MB and Mr. Khan about being naked at home.
 - b. Mr. Khan testified that once when he asked SB if she felt comfortable changing, MB mentioned walking around her house naked and said that even her neighbour could see her through a window. Mr. Khan said he responded by stating that this was very different from his culture where even he and his wife do not get naked in front of each other.
386. The Hearing Tribunal noted that SB could not recall the alleged conversation; however, Mr. Khan was forthright on this point and, considered together with other evidence about conversations that occurred with MB and his responses, the Hearing Tribunal found that it was likely a conversation occurred as alleged.
387. Weighing the evidence of the witnesses together, the Hearing Tribunal found that Allegation 2(e) was proven on a balance of probabilities.

Allegation 2(f)

388. Allegation 2(f) reads as follows:

2. Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

- f. Vibrators and a sex toy website, PinkCherry.
389. Allegation 2(f) engaged some of the same evidence as Allegation 1(d), which the Hearing Tribunal found to have occurred on a balance of probabilities. In relation to Allegation 2(f), the Tribunal notes the following evidence was put forward during the hearing:
- a. SB testified that while she was receiving treatment involving a TENS machine, Mr. Khan told a story about an elderly patient who stated that the TENS machine felt like her vibrator. SB said that Mr. Khan asked her what a vibrator was, and she told him that it was a women's pleasure device and that there is a website called PinkCherry that has a physician that describes each toy and what it does. SB said that she told Mr. Khan he could look online and consider purchasing something for his wife. SB said that Mr. Khan asked her about whether she had ordered anything and what, and that she stated she had but it was too personal to discuss. SB said that she could not recall if MB was present or not for that conversation. Later under cross-examination, SB stated that MB was not present for that conversation.

- b. Mr. Khan testified that the topic of vibrators arose in conversation between SB and MB and that he then told them the story about his former patient who said that the TENS machine felt like her vibrator. Mr. Khan said he then apologized to SB and MB and said that the conversation was going beyond his professional boundaries.
 - c. Mr. Khan testified that SB told him that there was a website called PinkCherry that has adult toys for men and women. He said he responded by saying “okay”.
 - d. Mr. Khan stated that he told Mr. Bimagani about relaying the story about his former patient to SB and MB when they were discussing vibrators.
390. Both SB and Mr. Khan testified to conversations about vibrators and the sex toy website PinkCherry. For the purposes of Allegation 2(f), the relevant issue was whether those discussions involved MB. The Hearing Tribunal noted that SB initially gave evidence that she could not recall if MB was present for the discussion involving vibrators and PinkCherry but that on cross-examination she said MB was not present. It was Mr. Khan’s evidence that the topic of vibrators arose in conversation between SB and MB and that he responded by sharing his story regarding a former patient. The Hearing Tribunal considered the evidence of both SB and Mr. Khan and concluded that conversations relating to vibrators occurred with MB. Mr. Khan’s involvement in the conversation is addressed under Allegation 1; however, for the purposes of Allegation 2(f), the Hearing Tribunal found that Mr. Khan was present when MB engaged in conversations about vibrators with SB and that he failed to take appropriate steps to address the inappropriate nature of the topics discussed or to enforce appropriate boundaries. Accordingly, the Hearing Tribunal found that Allegation 2(f) was proven on a balance of probabilities.

Allegation 3

391. Allegation 3 reads as follows:

- 3. On or about October 6, 2022, while providing physiotherapy treatment to Patient SB, you:
 - a. told Patient SB “sorry for arousing you” or words to that effect.

392. In relation to Allegation 3, the Tribunal notes the following evidence was put forward during the hearing:

- a. SB testified that during her last appointment with Mr. Khan, he petted her hair, placed his face on her back and tried to touch her in ways that she had described previous partners touching her as being signs of intimacy. At the end of the appointment, SB requested that Mr. Khan not touch her like that. SB stated that he then put his arm around her shoulder and laughed and apologized, saying that he did not mean to arouse her. SB stated that this was when she decided to stop seeing him.
- b. On cross-examination, Counsel for Mr. Khan suggested that SB told a different story of her last appointment to the investigator. Counsel for Mr. Khan read a portion of the investigation transcript, where SB said that Mr. Khan touched her hip and she slapped his hand away. At the end of the appointment SB told Mr. Khan

that he could not touch her like that, and she said he apologized and said he did not mean to arouse her. SB said she could not recall the exact date on which each set of events occurred but that both happened.

- c. Mr. Khan testified that the word “arousal” never came up in any treatment sessions.
393. The Hearing Tribunal noted that the version of the last appointment given by SB in her testimony was different from the version provided to the investigator. Given the two differing accounts, the Hearing Tribunal found that this undermined SB’s credibility on this point. The Hearing Tribunal also considered the mixed findings of credibility of SB, as described above. Mr. Khan denied that the word “arousal” ever came up in any treatment session. Having considered all of these factors, the Hearing Tribunal was unable to determine whose evidence it preferred in relation to Allegation 3.
394. Considering all of the evidence on this issue, the Hearing Tribunal found that Allegation 3 was not proven on a balance of probabilities.

Findings Regarding Unprofessional Conduct

395. After making factual determinations on the allegations, the Hearing Tribunal considered whether any of the proven conduct constituted unprofessional conduct.
396. The HPA defines “unprofessional conduct” as including the following subcategories relevant to this matter:

Interpretation

1(1) In this Act, ...

(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;
- (xii) conduct that harms the integrity of the regulated profession;

397. The HPA in section 1(1)(nn.2) additionally defines “sexual misconduct” as follows:

“sexual misconduct” means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient’s health and well-being but does not include sexual abuse;

398. In determining whether conduct is sexual in nature, hearing tribunals have applied the objective test set out by the Supreme Court in *R v Chase*: “determining whether conduct is of a sexual nature depends on whether the carnal or sexual nature of the conduct is visible

to a reasonable observer” (*College of Physicians and Surgeons of Alberta v Vu* (online: August 29, 2022) at para 121; *College of Physiotherapists of Alberta v Deis*, 2022 ABPACA 3 at para 145).

399. The Hearing Tribunal also considered the following Standards of Practice relating to the allegations.
400. The Sexual Abuse and Sexual Misconduct Standard (Exhibit 1, Tab 10) provides:

Standard

This Standard of Practice is specific to addressing Sexual Abuse and Sexual Misconduct as defined in s. 1(1) of the *Health Professions Act*. This Standard of Practice establishes who is considered a *patient* for the purpose of a complaint of unprofessional conduct in relation to Sexual Abuse and Sexual Misconduct and the performance requirements of the College of Physiotherapists of Alberta members.

The physiotherapist abstains from conduct, behaviour or remarks directed towards a patient that constitutes sexual abuse or sexual misconduct.

Expected outcome

A patient can expect physiotherapy services will be free from conduct, behaviour or remarks of a sexual nature, and the physiotherapist will maintain professional boundaries appropriate to the therapeutic relationship in all interactions.

Performance expectations

The physiotherapist:

- Clearly and thoroughly explains any physiotherapy service which could potentially be perceived to be sexual in nature, taking all reasonable steps to confirm the patient’s understanding of the service and its rationale, and obtaining informed consent prior to engaging in the service.
- Abstains from conduct, behaviour, or remarks directed towards a patient that constitutes sexual misconduct for the duration of the therapeutic relationship, which extends for one year (365 days) from the date of the last documented physiotherapy service provided.
- Abstains from commencing an intimate or sexual relationship with a patient for the duration of the therapeutic relationship, which extends for one year (365 days) from the date of the last documented physiotherapy service provided.
- Recognizes that due to the nature of physiotherapy practice, there is always an inherent power imbalance between the patient and the physiotherapist, and due to this inherent power imbalance, sexual relationships are prohibited for the duration of the therapeutic relationship, which extends for one year (365 days) from the date of the last documented physiotherapy service provided, even if the patient consents to the sexual relationship.

401. The Client-Centered Care Standard (Exhibit 1, Tab 10) provides:

Standard

The physiotherapist integrates a client-centered approach in all aspects of physiotherapy service delivery.

Expected outcome

Clients can expect that they will be treated respectfully and their input will be valued, acknowledged, and integrated into all aspects of physiotherapy service delivery.

Performance expectations

The physiotherapist:

- Treats clients in a manner that recognizes and appreciates their autonomy, uniqueness, goals, and self-worth at all times.
- Values the best interests of clients.
- Treats all clients with compassion, respect, and dignity throughout the course of their care.

Client-centered approach refers to “an approach which recognizes the physiotherapist’s expertise and values, respect for and partnership with the people receiving physiotherapy care, including the client’s ability to make key choices in services delivered.”

Clients are recipients of physiotherapy services, and may be individuals, families, groups, organizations, communities, or populations. An individual client may also be referred to as a patient. In some circumstances, clients/patients may be represented by their substitute decision-makers.

Physiotherapy service delivery refers to the period from the initial client assessment to discharge from services provided by the physiotherapist.

Therapeutic relationship refers to the relationship that exists between a physical therapist and a client during the course of physical therapy treatment. The relationship is based on trust, respect, and the expectation that the physical therapist will establish and maintain the relationship according to applicable legislation and regulatory requirements and will not harm or exploit the client in any way.

402. The Professional Boundaries Standard (Exhibit 1, Tab 10) provides:

Standard

The physiotherapist acts with professional integrity and maintains appropriate professional boundaries with clients, colleagues, students and others.

Expected outcome

Clients can expect to be treated with integrity and respect, and that the physiotherapist will maintain professional boundaries appropriate to the therapeutic relationship in all interactions.

Colleagues, students and others can expect to be treated with integrity and respect and that the physiotherapist will maintain professional boundaries in all interactions.

Performance expectations

The physiotherapist:

- Demonstrates sensitivity, accountability, integrity, honesty, compassion, and respect in all professional interactions.
- Understands the impact of power, trust, respect, and physical closeness on relationships with clients, colleagues, students, and others.
- Treats clients, colleagues, students and others with respect avoiding all situations, comments and/or actions (e.g., sexual, racial) that would reasonably be perceived as unprofessional, in violation of human rights, or discriminatory.
- Establishes and maintains professional boundaries and does not make abusive, suggestive or harassing comments or engage in inappropriate physical contact or sexual advances with clients, colleagues, students, and others.
- Identifies, discusses, and attempts to resolve issues or seeks advice when the potential for compromising boundaries exists, whether by the physiotherapist or the client.

Professional boundaries set the limitations around relationships between clients and health-care providers to ensure the delivery of safe, ethical, client-centered care. Professional boundaries are characterized by respectful, trusting, and ethical interactions with patients that are free of abuse, sexual and/or romantic encounters.

403. The relevant provisions of the Code of Ethical Conduct for Alberta Physiotherapists provide (Exhibit 1, Tab 9):

A. Responsibilities to the Client

4. Maintain professional boundaries that honour and respect the therapeutic relationship with clients.

5. Communicate openly, honestly and respectfully with clients at all times.

18. Comply with all legislation, guidelines, and regulatory requirements that pertain to the profession of physiotherapy.

B. Responsibilities to the Public

1. Conduct and present themselves with integrity and professionalism.
5. Act transparently and with integrity in all professional and business practices including fees and billing; advertising of professional services; and real and/or perceived conflicts of interest.

C. Responsibilities to Self and the Profession

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.
3. Act honestly, transparently and with integrity in all professional and business practices to uphold the reputation of the profession.

Allegation 1

404. Given the factual findings on particulars 1(c) and 1(d), Allegation 1 was factually established. Accordingly, the Hearing Tribunal considered whether Allegation 1 demonstrated unprofessional conduct.
405. The Hearing Tribunal found that the conduct is Allegation 1 was unprofessional conduct in that it:
 - a. amounted to sexual misconduct under section 1(1)(nn.2) of the HPA;
 - b. contravened a code of ethics or standards of practice under section 1(1)(pp)(ii) of the Act; and
 - c. harmed the integrity of the profession under section 1(1)(pp)(xii) of the Act.

Sexual Misconduct

406. The Hearing Tribunal found in Allegation 1(c) that Mr. Khan “discussed and/or asked about sexual activity and ‘rape’” while providing treatment to SB.
407. The proven conduct in Allegation 1(c) meets the definition of sexual misconduct under the HPA. Mr. Khan’s comments and remarks to SB regarding rape were objectionable or unwelcome and were of a sexual nature. Mr. Khan ought reasonably to have known that his comments would cause offence or humiliation to SB or adversely affect her health and well-being. Further, Mr. Khan’s comments, including stating that marital rape was not a recognized concept in his culture, were not appropriate to the service being provided to SB. The Hearing Tribunal concluded that Mr. Khan’s proven conduct under Allegation 1(c) constituted sexual misconduct under the HPA and breached the Sexual Misconduct Standard.
408. The Hearing Tribunal concluded that the proven conduct in Allegation 1(d) meets the definition of sexual misconduct under the HPA. While SB participated in the conversations

to some extent, Mr. Khan's comments, remarks, and questions to SB regarding vibrators and PinkCherry were objectionable or unwelcome and were of a sexual nature. The Hearing Tribunal accepted SB's testimony that she felt uncomfortable about the topic of conversation. Mr. Khan ought reasonably to have known that his comments would cause offence or humiliation to SB or adversely affect her health and well-being. The comments were unrelated to SB's treatment and of a nature that was likely to negatively impact the therapeutic relationship and, in turn, SB's health and well-being. The Hearing Tribunal concluded that Mr. Khan's proven conduct under Allegation 1(d) constituted sexual misconduct under the HPA and breached the Sexual Misconduct Standard.

Breach of the Standards of Practice and Code of Ethics

409. Having found that Allegation 1(c) and (d) constitute sexual misconduct as defined in section 1(1)(nn.2) of the HPA, the Hearing Tribunal also found that the conduct breached the provisions of the Standards of Practice: Sexual Abuse and Sexual Misconduct noted above.
410. Mr. Khan's conduct in Allegation 1(c) and (d) also breached the Professional Boundaries Standard. Mr. Khan failed to demonstrate sensitivity, compassion, and respect in his professional interactions with SB. Discussing rape was not in any way relevant to SB's care and was inappropriate and a breach of professional boundaries. Mr. Khan's conduct in telling the story about his patient comparing the TENS machine to a vibrator and engaging in discussion about the PinkCherry website fell short of the performance expectations under the Standard noted above. Mr. Khan failed to demonstrate sensitivity, compassion, and respect in his professional interactions with SB; to understand the impact of power, trust, respect, and physical closeness on his relationships with SB; and to treat SB with respect and avoid all situations, comments, and actions that would reasonably be perceived as unprofessional.
411. The Hearing Tribunal further found that Mr. Khan's conduct in this Allegation breached the Client-Centered Care Standard. The proven conduct fell short of the performance expectations in the Standard noted above and reflects Mr. Khan's failure to treat SB with compassion, respect, and dignity throughout the course of her care.
412. The Hearing Tribunal found that Mr. Khan's conduct breached the Code of Ethical Conduct Provisions A4, A5, A18, B1, B5, C1, and C3, as noted above. The conduct did not maintain professional boundaries or show respectful communication. By engaging in conversations on topics that were completely irrelevant and inappropriate to the context of SB's care, Mr. Khan breached his responsibilities to SB as a client. The above discussion of the relevant Standards of Practice and definition of sexual misconduct under the HPA further evidences Mr. Khan's failure to comply with relevant legislation and regulatory requirements. Mr. Khan also breached his obligation to conduct himself with integrity and professionalism. Complying with those obligations requires professionals to recognize the boundaries of appropriate topics of discussion. Mr. Khan's conduct did not maintain and enhance the reputation of the profession. Rather, and as discussed below, the Hearing Tribunal found that Mr. Khan's proven conduct under this Allegation harmed the integrity of the profession.

413. The Hearing Tribunal concluded that the breaches of the Standards of Practice and Code of Ethics were serious unprofessional conduct.

Conduct that Harmed the Integrity of the Profession

414. Ultimately, the Hearing Tribunal concluded that the proven conduct in Allegation 1(c) and (d) harmed the integrity of the profession.
415. The Hearing Tribunal was cognizant that the hearing involved a “he said/she said” situation with significant variance in the evidence of the witnesses. Such situations create challenges for hearing tribunals in assessing credibility and making findings of fact. However, in this case, even with challenges regarding assessing the credibility of the witness testimony as noted above, there was overlap in the evidence on the allegations that were factually found, and both witnesses agreed that discussions with sexual content occurred. Absent relevance to a patient’s treatment, discussions regarding rape, sex toys, and cultural beliefs about sex are inappropriate to a treatment setting, regardless of intent. Such discussions can negatively impact the treatment relationship and treatment outcomes. Further, physiotherapists must be aware of the power imbalance that occurs in providing treatment to patients and how that may impact patients’ perceived ability to address uncomfortable or inappropriate topics of discussion. Engaging in the types of discussions that were found to be proven in this case undermines the public’s trust in the profession and harms the integrity of the profession.

Allegation 2

416. Given the factual findings on particulars 2(a)(i), (c), (d), (e), and (f), Allegation 2 was factually established. Accordingly, the Hearing Tribunal considered whether Allegation 2 demonstrated unprofessional conduct.
417. The Hearing Tribunal found that the conduct is Allegation 2 was unprofessional conduct in that it:
- a. contravened a code of ethics or standards of practice under section 1(1)(pp)(ii) of the Act; and
 - b. harmed the integrity of the profession under section 1(1)(pp)(xii) of the Act.

The conduct is not sexual misconduct

418. The Hearing Tribunal found that Allegation 2 did not constitute sexual misconduct as defined under the HPA and the Sexual Abuse and Sexual Misconduct Standards of Practice. Allegation 2 does not address comments made by Mr. Khan. Rather, Allegation 2 relates to comments made by MB while Mr. Khan was present. As such, the definition of sexual misconduct in the HPA is not met.

Breach of the Standards of Practice and Code of Ethics

419. However, the Hearing Tribunal found that the conduct breached the sections of the Client-Centered Care and Professional Boundaries Standards of Practice noted above.

420. The Hearing Tribunal found that the proven particulars under Allegation 2 demonstrated that Mr. Khan was aware of an environment of inappropriate communications engaged in by MB during the course of SB's treatment. Regardless of SB's participation in the conversations, Mr. Khan's obligations as a physiotherapist required that he establish and maintain an appropriate treatment environment and ensure that SB was treated with compassion, respect, and dignity in the course of her care. Mr. Khan's failure to intervene in these conversations, and participation in certain discussions, did not meet the requirements of the Standards of Practice.
421. The Client-Centered Care Standard of Practice requires that physiotherapists treat clients with compassion, respect, and dignity throughout the course of their care. A physiotherapist must interject and take steps to address inappropriate situations occurring in relation to a client. Mr. Khan was present for and aware that discussions were taking place with MB that were inappropriate to the therapy relationship, and he failed to take steps to address them.
422. The Hearing Tribunal found that the proven conduct and particularly Mr. Khan's failure to enforce appropriate boundaries breached several performance expectations under the Professional Boundaries Standard of Practice. In failing to take steps to address the inappropriate nature of the conversations engaged in by MB and to enforce appropriate boundaries, Mr. Khan did not demonstrate the sensitivity, accountability, integrity, and respect that is required of physiotherapists in all professional interactions. Mr. Khan failed to establish and maintain professional boundaries that were appropriate to the therapeutic relationship and to ensuring that SB received quality care.
423. The Hearing Tribunal also found that the proven particulars under Allegation 2 breached the following provisions of the Code of Ethical Conduct for Alberta Physiotherapists: A4, A5, A18, B1, B5, C1, and C3. In failing to address MB's conduct in engaging in discussions of a sexual nature with SB, Mr. Khan breached his responsibilities to SB by failing to maintain professional boundaries and to ensure respectful professional communication. In breaching the Standards of Practice addressed above, Mr. Khan also failed to comply with regulatory requirements. Mr. Khan's conduct breached his responsibilities to the public in that he failed to conduct himself with integrity and professionalism in the context of his practice. Finally, Mr. Khan's conduct breached his responsibilities to himself and the profession by failing to maintain and enhance the reputation of the profession and in his failure to act with integrity.
424. Ultimately, the Hearing Tribunal concluded that the breaches of the Code of Ethical Conduct and Standards of Practice in relation to Allegation 2 amounted to unprofessional conduct.

Conduct that Harmed the Integrity of the Profession

425. The Hearing Tribunal further found that the proven conduct in respect of Allegation 2 harmed the integrity of the profession. Maintaining a safe and appropriate environment is integral to the provision of quality care. The Hearing Tribunal found that the public and the profession as a whole would expect that if a professional witnessed inappropriate comments or saw that staff was regularly engaging in inappropriate discussions, the

professional would take steps to address the comments and ensure that the patient felt safe within the treatment environment.

426. The topics of discussion found under the particulars of Allegation 2 were unconnected to SB's treatment and care and inappropriate for a treatment setting. Mr. Khan's failure to appropriately address these discussions, and his engagement in them, is behaviour that is not acceptable. It is behaviour that could cause the public to lose trust in the profession. The Hearing Tribunal found that the conduct harmed the integrity of the profession.

CONCLUSION

427. The Hearing Tribunal found that Allegation 1 was proven on a balance of probabilities on the following particulars:

On or between June 27, 2022 – October 6, 2022, while providing physiotherapy treatment to Patient SB, you engaged in inappropriate discussions with Patient SB including one or more of the following:

- c. You discussed and/or asked about sexual activity and "rape";
- d. You discussed vibrators and a sex toy website, PinkCherry;

428. The Hearing Tribunal found that Allegation 1 constituted unprofessional conduct under the HPA in that it:

- a. amounted to sexual misconduct under section 1(1)(nn.2) of the HPA;
- b. contravened a code of ethics or standards of practice under section 1(1)(pp)(ii) of the Act; and
- c. harmed the integrity of the profession under section 1(1)(pp)(xii) of the Act.

429. The Hearing Tribunal found that Allegation 2 was proven on a balance of probabilities on the following particulars:

Further, or in the alternative to Allegation 1, on or between June 27, 2022 – October 6, 2022, you were present when receptionist MB engaged in communications with your patient SB regarding topics of a personal and/or sexual nature, and failed to take steps to address the inappropriate nature of the communications or to enforce appropriate boundaries, including one or more of the following topics:

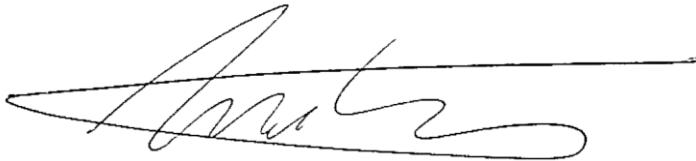
- a. Sexual preferences and/or sexual orientation, including:
 - i. discussing "jumping into a girls' train", or words to that effect;
- c. Sexual activity and "rape";
- d. A party with male dancers, including that you viewed a photo of a naked man;
- e. Being naked at home and/or in front of other people;

f. Vibrators and a sex toy website, PinkCherry.

430. The Hearing Tribunal found that Allegation 2 constituted unprofessional conduct under the HPA in that it:
- a. contravened a code of ethics or standards of practice under section 1(1)(pp)(ii) of the Act; and
 - b. harmed the integrity of the profession under section 1(1)(pp)(xii) of the Act.
431. Allegations 1(a), (b), (e), (f), (g); 2 (a)(ii), (b); and 3 are not proven on a balance of probabilities and these Allegations are dismissed.
432. The Hearing Tribunal will receive submissions from the parties as to sanction. The parties are encouraged to discuss the process and timing for providing submissions on sanction. The Hearing Tribunal can provide further direction if the parties are unable to agree on process or timing.

DATED this 6th day of January 2025.

Signed by the Chair on behalf of the Hearing Tribunal

A handwritten signature in black ink, appearing to read 'Todd Wolansky', written over a horizontal line.

Todd Wolansky, PT, Chair