UCLA Health System

Employee Relations
UCLA Human Resources Department
Suite 390
10920 Wilshire Blvd
Los Angeles, CA 90095

Investigative Review

Date: November 13, 2019 **Investigator:** Jane Miller

Date Investigation initiated: December 22, 2017

Complainant: Patient A

COMPLAINT / INCIDENT DETAILS:

On or around December 20, 2017, Patient A reported conduct by Dr. James Heaps ("Respondent") during a gynecology exam in June 2017 that, if true, could constitute sexual assault and sexual harassment under the University of California 2016 Policy for Sexual Violence and Sexual Harassment (SVSH Policy). The patient complaint alleged that Respondent asked inappropriate and irrelevant questions of a sexual nature during her physical examination, and that he touched her on intimate parts of her body that were not necessary or relevant to the reasons for her visit.

BACKGROUND

This review was conducted on behalf of the UCLA Health Medical Staff and the UCLA Title IX Director to determine whether in the course of providing medical treatment to Patient A, Respondent engaged in conduct that violated the SVSH Policy. Patient A has been a patient of [redacted] for [redacted] years, during which [redacted] has delivered [redacted] the patient's babies. The patient was referred to the clinic where Respondent practices due to the patient's desire for an urgent appointment and [redacted] unavailability at the time. The patient had two visits with Respondent. The initial visit was held on June 23, 2017 with the [redacted], [redacted], and Respondent. There was no concerning conduct reported in this initial visit. The second visit occurred on June 27, 2017 with Respondent (and without [redacted]).

Note that Respondent completed UC Sexual Violence and Sexual Harassment Prevention Training on July 13, 2014 and again on February 11, 2016.

APPLICABLE POLICY

The applicable section of the SVSH Policy, effective January 1, 2016, provides in relevant part:

1. Sexual Violence

(b) Sexual Assault- Contact: Without the consent of the Complainant, touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed

2. Sexual Harassment is unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when:

ii. Hostile Environment: such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable would find to be intimidating or offensive.

INTERVIEWEES

The following individuals were interviewed in person by the investigator on the dates noted.

Interviewee	Working Title	Interview Date
[redacted] / [redacted]	[redacted]	December 22, 2017
[redacted] / [redacted]	[redacted]	December 22, 2017
[redacted] / [redacted]	[redacted]	December 22, 2017
[redacted] / [redacted]	[redacted]	December 22, 2017
[redacted] / [redacted]	[redacted]	December 22, 2017
[redacted] / [redacted]	[redacted]	January 3, 2018
[redacted] / [redacted]	[redacted]	January 3, 2018
[redacted] / [redacted]	[redacted]	January 3, 2018
[redacted] / [redacted]	[redacted]	January 3, 2018
[redacted]	[redacted]	January 4,2018; March 8, 2018
Patient A		January 8, 2018
[redacted] / Respondent	Physician	January 11, 2018
Patient B		January 12, 2018

INVESTIGATIVE STANDARD

The standard applied in determining whether or not the alleged conduct occurred and constituted a violation of the University of California Sexual Violence and Sexual Harassment Policy (SVSH Policy) is the preponderance of the evidence. This means that the totality of the evidence must demonstrate that it is more likely than not that the alleged conduct occurred in violation of the SVSH Policy.

COMPLAINANT INTERVIEW (Patient A)

Patient A has been a patient of (female) for years. She described that relationship as trusting. Patient stated she and her husband were taking a trip and she wanted to get an Intrauterine Device (IUD) placed before departing for the trip. She stated that referred her to the clinic where Respondent practices due to being unavailable, and she mentioned being referred to ". (Note that patient is referring to)

The patient recalled her initial visit was a Thursday, and her husband and son were with her. She stated that Respondent was helping " " (showing her how to use ultrasound). The patient reported no concerns with this visit.

The patient stated that after she left the clinic, she experienced pain from the IUD. On Tuesday June 27, she called the clinic in order to come in to have the IUD removed. She said her husband stayed home and did not attend this visit with her.

When she arrived, she learned that " " was not in the office and she saw Respondent. She stated that the nursing assistant escorted her into the room first, and then Respondent joined them. He began asking questions about why she wanted to have the IUD removed. She told him it hurt too much. She expected it would be a relatively quick visit where he would simply remove the IUD.

The patient stated that Respondent asked her questions such as, "Is it bothering you during sex?" She stated that he showed her how her uterus was shaped;
The patient felt this was not appropriate
She said she had never been to a male gynecologist before.

The patient stated that Respondent then started talking about her She stated that in all the years she has been a patient of , there has never been any reason to talk about this

She described his rapport as too familiar. She stated that he touched it for "longer than it should have been" or "about a minute". She stated that during this interaction, she and the nursing assistant in the room exchanged a knowing look as if they were both wondering "what's going on?"

The patient stated that she did not speak up or say anything to Respondent because she was in pain from the IUD, and she wanted him to remove the IUD without hurting her. She said she was afraid to say anything. She said she wanted to run away, and she felt that he used his position and power because he knew she was in pain.

The patient stated that after Respondent started asking questions in connection with the IUD to see if she was experiencing symptoms. He asked her if her breasts were tender. She told him no. However, she stated that he "groped my left breast and said here is where you would feel soreness". She did not think this was appropriate because she already told him she did not have soreness or other symptoms. She said he then touched her indicating, "These are the spots you would be sore". He touched her lower back and in doing so, She did not recall if the nursing assistant was still in the exam room when he was

She believed this behavior would not have occurred if her husband had been present. She stated that she did not have a familiar "physician – patient" relationship with Respondent and he was being too familiar.

When asked if Respondent ever discussed personal topics, she said no, but mentioned they had a brief conversation about her upcoming trip to Belize, which came up in the context of why she did not want to keep the IUD in for another week.

WITNESS INTERVIEWS - Staff members

has provided clinical support to Respondent since before his practice became a part of UCLA Health. was the medical assistant present in the exam room with the patient during the June 27th visit. While stated that the patient's name was familiar to her, she did not recall this specific visit. She stated that she has never witnessed nor heard of anything inappropriate during an exam with Respondent.

( )
In May 2017, began working at UCLA Health as a and her primary role is to support Respondent and see patients in his practice. She is the who saw the patient with Respondent on June 23, 2017. She did not recall Patient A or seeing her last summer. She stated that she has never witnessed Respondent

When asked if she had ever witnessed or heard of anything inappropriate during an exam with Respondent, she shared that his conversations are not always professional in topic and nature.

She stated that Respondent is very comfortable and familiar with patients, rubbing a patient's leg or shoulder. She repeatedly said he does a, "very thorough exam with every patient". She acknowledged that she has not worked with other physicians enough to know how his style compares to other physicians. She said he is more thorough than she is when she examines patients.

As another example, said that sometimes she consults with Respondent on patients she has examined. When he walks in, he automatically does a breast exam on the patient even though she has already done one. She characterized this as his "routine".

She described Respondent as more familiar than other physicians, and she has heard him discuss personal topics with patients, such as asking if they are online dating. A patient once mentioned Tinder, and Respondent said, "if I was younger, I would be swiping".

also stated that one time she asked Respondent for a referral for a primary care physician who could for her. His response was to offer , stating he has done it for others in the office. She declined and changed the subject. She said it made her feel uncomfortable. Since then, he has joked about it. Once she asked him to write her a prescription, to which he said, Ultimately, he did write a prescription for her though she did not consent to an exam.[1]

[1]

After being interviewed for this investigation, reported that Respondent contacted her about this investigation. On one occasion, she stated that he pulled her into his office and asked her why he was repeatedly questioned about She also reported that two days after , Respondent contacted her with multiple questions and expressed an interest in wanting to talk. He continued to try to contact her via text message and through his assistant as recently as the beginning of March. She expressed her discomfort in being contacted by Respondent.

Staff Members

In addition to these two staff members, multiple staff members and two physicians were interviewed. The medical assistants stated that they routinely chaperone Respondent during patient exams. None reported having ever witnessed or heard about anything inappropriate during an exam. None reported ever seeing any inappropriate or unusual behavior by Respondent or any of the other physicians in the practice. None reported having ever encountered a situation where a patient sought out support in any way because the patient thought something was concerning or uncomfortable during an exam. Some stated that patients love and trust Respondent, and they specifically ask to see him. None reported being offered an exam by any of the physicians, although one acknowledged that she is a patient at the practice.

(has been the for the department since and where Respondent works since it was acquired by UCLA in February 2014. She described Respondent as very approachable, compassionate and conveying a lot of caring, but also said that he lacks boundaries. When asked if she had ever witnessed or heard of any inappropriate behavior, she remarked that Respondent's She reported that in August or September 2014, Respondent made a comment to her that made her feel uncomfortable.

immediately reported the incident to ( ), who said she would address it with ( ). said she and met with together, during which relayed the incident to and asked him to address it. recalled agreeing to address it, but she was unsure if he ever did.

explained that Respondent's behavior towards her changed after that. She said he stopped talking to her and interacting with her on work related matters that he normally would otherwise. She described a good friendly rapport prior to the incident, but since then, she has only met with him about 3 times. She heard from that Respondent did not want her to attend meetings.

also shared an incident that was reported to her by the former clinic supervisor in which Respondent provided patient care to a clinic employee. said that Respondent offered to do an exam on the employee, and it is her understanding that he did an exam with the employee's consent. learned of this after it had happened, and she reported this to and expressing concern that the employee should not have been examined by Respondent.

stated that Respondent has a strong following of patients, and she reported hearing third hand about a patient of his (Patient B) who allegedly said Respondent, but she continues to go to him because he is such a good physician.

Patient B

said that Patient A is a regular patient of hers who came to see in December 2017 to report a concerning incident that had occurred in June 2017 when the patient saw Respondent. recalled that someone had referred Patient A to Respondent, but she was unsure how that happened and thought it was unusual because of Respondent' subspecialty. She also offered that she does not know Respondent very well and that other patients of hers have seen him and shared positive feedback.

She described the patient as credible and someone she has known for years. She recalled that Patient A was upset and tearful when describing her experience with Respondent. She recalled the patient saying she felt she needed to report the incident so that it does not happen to someone else.

The account that described was consistent with what the patient shared in her interview on January 8, 2018. When specifically asked about there being a need to discuss opinion was that given the type of visit Patient A had, the exam should not have had anything to do , so she did not think a discussion or examination was necessary.

When asked about treating employees in the clinic as patients, said employees have asked her to be their treating physician, and she has always ensured that they go through a formalized process just like any other patient. When asked if she had ever offered to conduct an exam for an employee or if she was aware that other physicians had done this, she said no to both questions.

In his role said he was aware that a patient had recently raised concerns about an exam with Respondent that had occurred in June, but he did not have first-hand knowledge of the incident or report.

When asked if he was aware of any prior complaints about Respondent, described a 2014 patient complaint that he was charged with reviewing. His recollection of the complaint was as follows:

As part of his review, met with Respondent. concluded that no clear transgressions had occurred (such as doing a pelvic exam without a chaperone present or touching an area unrelated to the exam)

said he also recalled an occasion many years ago (between 1997 – 2000), prior to the practice being acquired by UCLA, where individuals were present in the practice interviewing staff and taking pictures. He said the office manager informed him it was the medical board investigating Respondent for being inappropriate with a patient.

When asked about his own observations of Respondent, stated that his interactions with patients are very different, and what Respondent does would make him uncomfortable as a patient.

He said that since this time, he stopped referring his patients to Respondent.

has not received any recent staff complaints about Respondent, but he offered that he has had patients who have seen Respondent who have shared feedback

When asked about treating employees in the clinic as patients, referenced following an official process that was professional. He was unsure if physicians had offered to conduct exams on staff members,

but he did recall informing him of a prior circumstance with an employee and who was seen by Respondent as a patient. said he knows this must occur through an official documented process. He also said at the time of the incident, was the lead and responsible for ensuring appropriate processes were being followed.

RESPONDENT INTERVIEW

The interview with Respondent began with a series of questions related to his general clinical practices. He stated that he has a medical assistant or nurse practitioner (or sometimes both) in the room with him every time he examines a patient. He explained that sometimes, he begins an oral exam with the patient, and then signals (system of bells) for the chaperone to join for pelvic and chest exam, or sometimes the medical assistant will follow him into the room shortly after he has entered. He said under no circumstance would he examine a patient without a chaperone in the room.

During his standard exam, Respondent explained that he routinely performs on all patients and referred to following a template. He described the following: he and the patient are both sitting; he starts with checking the neck (lymph nodes); he conducts a breast exam while patient is sitting. Once the patient is lying down, he continues the breast exam, and then does an abdominal exam. He then conducts a groin and pelvic exam; he inserts the specula; he does a pap, biopsy or whatever is necessary. He removes the specula and does a manual exam. He described this as his standard process with every patient unless the patient is there for a very specific reason that would cause him to deviate from this. As an example of an exception, he said that if a patient is only undressed from waist down because their visit is limited in scope (for example, issue with a wart), he may not do a breast exam, but he would still do a neck and abdomen exam.

When asked about his clinical practice when removing IUDs, he explained the following: He conducts his routine exam with the exception of doing a breast exam. He asks about pain or symptoms. He asks questions about sex practices, new partners, fever and pain with intercourse. During the exam, he asks where the pain is located throughout the evaluation. He would examine the back area near kidney or spleen (close to buttocks). He said he would conduct a breast exam if the patient complained of hormonal changes related to the IUD or if the patient was there for an annual visit.

When asked to describe his regular practice working with the , he explained the following: The has patients, who are his patients. He said the majority of his patients want him to come in the room. His current is and she started working with him in May 2017. He stated that for the first month, she shadowed him in every exam. In June 2017, she started seeing her own patients, but up until about a month ago, she called him to see almost every patient she saw. He explained that regardless of what she does when seeing a patient, he does his standard exam because his role is to teach her. He described it as, "She does her thing and I do my thing". He does not rely upon her exam as he sees this as a teaching experience. When asked if he conducts a breast exam even if has done one, he said yes and that patients expect this.

He said he sees patients who are referred from other physicians and that he covers the other physicians in his practice from time to time. When asked about seeing patients from the 200 Med Plaza Obstetrics and Gynecology practice, he said there have been patients referred to and then he will see those patients with .

He acknowledged that staff members in his practice are also patients of his. He noted one medical assistant who is a current patient of his and one staff member who had been his patient in the past. He confirmed that is not his patient.

When asked how these patient relationships came about, he recalled that one employee/patient and her physician recommended she see him. He said she made an appointment just like any other patient and she was registered in the system just like any patient. He recalled the other

patient/employee had pain and made an appointment with him. He said this individual still works at UCLA, but is not his patient.

He denied ever offering to conduct an exam for any employee and specifically denied offering one to [redacted] and he said he would rather not. He said he may have given [redacted] a prescription, which he has done for other employees (i.e. when they had colds). When doing this, he did not consider them as patients or register them as patients, but rather, just called in the prescription. When asked what type of education or guidance he received about treating employees as patients, he responded that he assumed he has taken a course on this and considers it common sense.

When asked if any patient had ever expressed concern that something he was doing was not appropriate or was unusual, he stated that patients have asked questions such as, "Why do you do a pelvic exam to check ovaries", "Why do you have to use that speculum" and made statements like, "You are the only doctor who does breast exams both sitting and lying down". He said he has never heard any concerns from patients that he was doing anything inappropriate during an exam, and he further stated that he teaches his method of examinations to students, residents and nurse practitioners. He said he hopes a patient would speak up if she felt he was doing something inappropriate.

When asked if he discusses personal topics with patients, such as asking about dating, he said yes, 100% of the time. He said patients come see him just to ask him about dating. He described counseling as a lot of what he does and further stated he does marriage counseling with his patients.

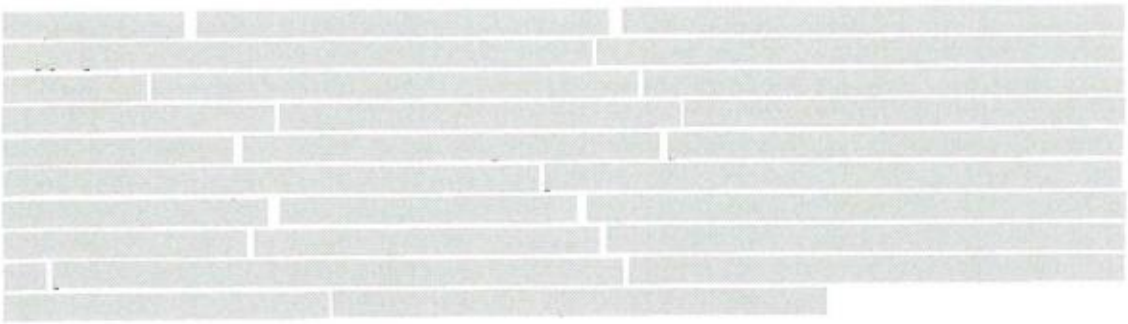
He stated that online dating was a common topic of conversation with patients and with staff members at lunch, and he said women talk about swiping and online dating. He said the most common ways patients meet partners are online. He said he discusses the safety of this with his patients. [redacted]

[redacted]

When asked if he recalled a staff member asking for a referral for a primary care physician who could [redacted] he said he did not remember. When asked if he remembered offering [redacted] for a staff member, he said no and does not know why anyone would ask for that out of the blue. He does not recall an occasion when a staff members asked him to write a prescription and his response was, [redacted] He said there is an employee who asked him this week if she could be his patient, and he referred her to the normal channels. He confirmed that [redacted] did not ask him to be his patient.

[redacted]

[redacted] When asked to describe his current working relationship with [redacted], he said it was good.



Respondent was then asked about the recent patient complaint from patient A. He did not recognize the patient's name or anything about the patient's visit. The general visit and details of the patient complaint were described to him in detail. In response, he said it would be unusual to have an IUD removed after 4 days given the expense and pain involved in placing it, so he would naturally ask why she wanted it removed. He said asking if an IUD is bothering a patient during sex is a routine question. He said showing a patient how her uterus is shaped is part of every exam, and he was probably trying to convince the patient to keep the IUD. He said he may have been trying to determine if pain was coming from the uterus. He said examining the whole uterine wall is something he would do with IUD pain due to concerns about puncture.

Respondent said he asks patients questions about breast pain and sore spots in connection with IUD pain to see what symptoms might be present. He said if this particular case involved a Mirena IUD, he would commonly examine areas such as the breast and the sacrum since this is where it will hurt if an IUD is causing pain. [Subsequent to the interview with Respondent, it was confirmed that the patient had a Mirena IUD.]

He said he would discuss and examine with any patient he examined, and that every gynecologist would. He said he would examine to see if there was any problem. He said if a patient saw him for an IUD removal, and he discovered during the exam, he considers that significant and something to examine. He likened it to noticing whether or not there was a problem with something else (i.e. a rash) upon doing a routine exam. He said, "you don't close your eyes", so of course he would inspect to ensure it is not causing injury or harm. He said standard medical questions when examining a include, "Did it hurt? When did you get it done? How long have you had it?". When asked if there would ever be reason to touch , he said yes, to make sure it's not causing harm.

At the conclusion of the interview, Respondent was reminded about the importance of confidentiality with regards to the investigation and he was specifically asked not to discuss it with others in the workplace, especially since there had been discussion of specific colleagues. He was also specifically advised not to engage in retaliatory behavior or behavior that might be perceived as retaliatory.

PRELIMINARY ANALYSIS

Clinical Practice

Complainant alleges Respondent asked inappropriate questions during an exam such as whether or not the IUD bothered her during sex; when she , and whether or not it hurt. She also alleges that Respondent was too familiar and did inappropriate and unnecessary things during her exam, including touching She claims that a medical assistant was present during some of this activity and they exchanged a knowing look. The patient said she did not speak up or say anything because she was in pain from the IUD and felt vulnerable.

The medical assistant present in the room did not recall this specific patient or encounter. She said she has never observed any inappropriate activity or questions by Respondent. did not recall this specific patient.

Respondent did not recall this specific patient or encounter. When confronted with the allegations, he stated that his normal, routine clinical practice with regards to IUD examinations and removals include asking questions about the IUD, pain and sex, , breasts and buttocks, as well as examining , when applicable.

Patient B described Respondent as always being remarkably thorough in his examinations. She said she never felt he was, and she described feeling grateful that Respondent was able to diagnose her.

described Respondent as going and said that Respondent's clinical practice would make him uncomfortable as a patient.

described Respondent as very comfortable and familiar with patients. She repeatedly said he does a, "very thorough exam with every patient", though she admitted that she has not worked with enough other physicians to know how his style compares to other physicians. She has heard him discuss personal topics with patients, . She recalled a patient once mentioned

None of the medical assistants who provide clinical support to Respondent (some of whom have provided clinical support in his practice for many years) reported concerning actions or questions by Respondent.

There is enough evidence to establish that Respondent is remarkably familiar and thorough in his clinical practice. Some patients and observers consider his manner inappropriate and crossing a boundary while others do not. A determination about the appropriateness of Respondent's clinical practice with specific regards to Complainant is a matter that will be referred to UCLA Health Medical Staff.

A determination about whether or not his actions with Complainant constituted sexual violence, sexual harassment in violation of University's policy cannot be made without being able to establish whether or not his actions were clinically appropriate.

Appropriate Clinical Scope

An evaluation of the appropriateness of the clinical actions conducted by Respondent in regards to Complainant's complaint was provided. This included the assistance of three board-certified actively practicing physicians along with a third party evaluator. The following describes the unanimous conclusions of the panel members in regards to the medical treatment provided by Respondent to Complainant:

1. The panel members all agreed that the American College of Obstetricians and Gynecologist (ACOG) Committee Opinion #373 on Sexual misconduct, dated August 2007, provides clear guidance applicable to this incident. It states, "Examinations should be performed with only the necessary amount of physical contact required to obtain data for diagnosis and treatment. Appropriate explanation should accompany all examination procedures." The physician's manner of conducting a physical examination of the genital and gluteal area did not include adequate communication with the patient regarding the individual steps of the examination prior to performing them, including the clinical reason for conducting that portion of the examination and why it was clinically relevant and necessary. Further, common practice would include performing an ultrasound prior to the physical examination, in which case some aspects of the physician's examination would likely have been less aggressive and perhaps not required at all.

2. The fact that the patient was completely irrelevant to the evaluation for possible complications of IUD insertion. This history of is not relevant to the focused visit. Therefore asking questions about was not appropriate, and examining beyond a simple visual inspection to rule out obvious infection was not indicated or appropriate. Furthermore, manipulation of the , especially for any period of time beyond what would have been needed to rule out a local infection, was clearly not appropriate. Even still, this portion of the examination should only have lasted a few seconds, so the fact that the patient experienced this portion of the examination for a sustained duration was not appropriate.

3. In regards to the examination of , the forcefulness of the physician's examination as described by the patient is concerning, and if the physician conducted a particularly forceful examination , this was not clinically indicated. Further, while it is possible the physician may have been attempting to evaluate for , this is not a necessary examination step to take in order to adequately evaluate the patient's risk for a complication from the IUD insertion.

4. In regards to conducting a breast exam, even if the patient was having breast tenderness symptoms, examination of the breasts was not indicated for this problem focused visit and would not have meaningfully contributed to the plan of care. Further, the physician reported that he "always" performs a breast exam for a gynecologic visit, which is outside the norm of practice and inconsistent with ACOG guidelines regarding physical examination. Despite there being no indication for performing a breast exam, there is no indication for performing a breast exam that examines only one breast.

5. In the absence of complaints about gluteal pain, back pain or "right cheek" pain, it is not appropriate to palpate the gluteal, back or "right cheek" region, especially since the patient's primary complaint is that the IUD hurt.

The panel was unanimous in concluding that several aspects of Respondent's conduct during the patient encounter were not professional and were inappropriate. Specifically, the panel noted that it appeared that Respondent failed to explain his reasoning for asking certain questions, and doing so would have provided a professional and appropriate context, as would informing a patient prior to performing examination of a sensitive area what the exam would entail and why it needed to be done. Even still, the panel concluded

that this would not have rendered appropriate some of Respondent's actions during the patient encounter, most notably discussion and examination of . According to the panel review, no additional clinical information would impact the conclusion regarding the inappropriateness of how Respondent discussed and examined . Additionally, the panel determined the , performance of the breast examination and possibly the exam of the buttocks/gluteal region appeared to be inappropriate as well.

FACTUAL FINDINGS AND ANALYSIS

As with any Title IX investigation, Respondent cannot be found responsible unless the preponderance of the evidence shows that the conduct, as alleged by Complainant, occurred in violation of the applicable SVSH Policy.

In determining if Respondent's examination of Complainant violated the SVSH Policy, it is necessary to consider the appropriateness of clinical practice scope. As described above, the external peer review of Respondent's examination of Complainant included several unanimous conclusions of inappropriate clinical practice, including:

1) Inadequate communication with Complainant about his questions and physical examination;
2) Questioning, examining and manipulating was not indicated or appropriate;
3) Doubt as to the necessity of examining , which does not appear to be clinically indicated, and concern that such an exam was particularly forceful;
4) No clinical indication to examine the breasts; no clinical indication to only examine one breast; "always" performing a breast exam for a gynecologic visit is outside the norm of practice and inconsistent with ACOG guidelines and
5) Inappropriately palpating the gluteal, back and "right cheek" region in the absence of complaints about pain in these regions

It is worth noting that the peer review emphasized that the examination and manipulation of is the most alarming conduct that cannot be explained as even remotely appropriate in the context of the problem focused patient encounter.

Based upon the peer review analysis, it can be reasonably concluded that Respondent conducted an inappropriate medical examination of Complainant in the five aforementioned areas.

Sexual Assault – Contact

The 2016 SVSH Policy defined Sexual Assault-Contact as: "Without the consent of the Complainant, touching an intimate body part (genitals, anus, groin, breast, or buttocks) (i) unclothed or (ii) clothed

See SVSH Policy, section II. B. 1(b)

In reaching a determination regarding an allegation of sexual assault contact, the University utilizes the preponderance of the evidence standard. In general, this standard means that individuals will not be found responsible for violating policy unless a preponderance of the evidence supports a finding that sexual assault-contact occurred.

Based upon a thorough review and analysis of the evidence during this investigation, it is determined by a preponderance of evidence that there is SUFFICIENT EVIDENCE to conclude that the Respondent engaged in behavior that constituted sexual assault – contact in violation of the University's policy on Sexual Violence and Sexual Harassment. The basis for this rationale is detailed below.

The specific contact being alleged includes the following: Respondent inappropriately examined Complainant's , and did so for an extended period of time; Respondent inappropriately groped Complainant's left breast; Respondent inappropriately examined Complainant's and did so in a forceful manner; and Respondent inappropriately palpated the gluteal, back and right cheek region.

Did Complainant provide consent to Respondent's Medical Treatment?

Complainant provided consent to receive clinical treatment by Respondent assuming that treatment was medically appropriate and clinically indicated. However, based upon the determination that his treatment was inappropriate in several aspects, she did not provide consent to be subjected to the medical treatment that she received on the day of the incident. Specifically, the respondent groped Complainant's left breast without telling her why, inappropriately examined and manipulated , forcefully examined and unnecessarily examined her gluteal, back and right cheek regions. Adequate consent for this contact was not given by Complainant.

The SVSH Policy defines sexual assault - contact as touching an intimate body part (genitals, anus, groin, breasts or buttocks) that is clothed or unclothed without the consent of the other person or when the other person is unable to consent to the activity. Not only did his failure to appropriately communicate with her render her unable to provide consent, the conduct included a clinically unnecessary examination that the Complainant described at a time when Complainant was in a compromised state of pain and at a disadvantage. Her statement alone that she felt she could not say anything because she was in pain, scared and dependent upon him to remove the source of her pain strongly suggests a lack of consent. There were further indications that she had not provided consent. She stated that she felt very uncomfortable with his touching of her and that it seemed to last for a prolonged period of time. She stated prior physicians had never examined her in any prior visits. She also never saw Respondent as a patient again. All of these strongly indicate she had not provided consent to this conduct. Given that his actions identified in items two through five above were not clinically necessary or appropriate, and that they involved the touching of intimate sexual areas of the body such as the breasts, genital area and buttocks, the preponderance of the evidence established that Complainant did not consent to the aforementioned physical contact by Respondent and that such conduct constituted sexual assault – contact in violation of the SVSH Policy.

Sexual Harassment - Hostile Environment Analysis

The 2016 SVSH Policy defined Sexual Harassment – Hostile Environment as:

> unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal or physical conduct of a sexual nature when such conduct is sufficiently severe or pervasive that it unreasonably denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person would find to be intimidating or offensive.

See SVSH Policy, section II. B.2(a)(i).

In reaching a determination regarding an allegation of sexual harassment – hostile environment, the University uses the preponderance of the evidence standard. In general, this standard means that individuals will not be found responsible for violating policy unless a preponderance of the evidence supports a finding that sexual assault-contact occurred.

Based upon a thorough review and analysis of the evidence during this investigation, it is determined by a preponderance of evidence that there is SUFFICIENT EVIDENCE to conclude that the Respondent

engaged in behavior that constituted Sexual Harassment – Hostile Environment in violation of the University's policy on Sexual Violence and Sexual Harassment. The basis for this rational is detailed below.

1. **Whether Respondent Engaged in Unwanted Conduct of a Sexual Nature**

The Respondent's manner of conducting a physical examination of the genital and buttocks area did not include adequate communication with the patient regarding the individual steps of the examination prior to performing them, including the clinical reason for conducting that portion of the examination and why it was clinically relevant and necessary. The Complainant reported to the Investigator that she felt uncomfortable with Respondent's interest in . She stated that in all the years that she was a patient of (her regular gynecologist), there was never any reason to talk about The Complainant described the Respondent's rapport as "too familiar"; asking questions such as: The Complainant stated the Respondent for "longer than it should have been" or "about a minute." The Complainant was in such discomfort with the interaction, she stated that she and the nursing assistant in the room exchanged a knowing look as if they were both wondering "what's going on?" The peer review determined that the was completely irrelevant, and as such, questions regarding were irrelevant. Without a clinical reason for conducting the physical examination of and/or questioning the patient about it, coupled with Respondent examining the left breast and buttocks (both intimate body parts) without a clinical reason; the patient's discomfort with the Respondent's actions show, based on a preponderance of the evidence, that Respondent's conduct was unwanted and sexual in nature

2. **Whether Respondent's Conduct was Sufficiently Severe or Pervasive that it Interfered with Complainant's Participation or Benefit from the Programs or Services of the University**

Sexual harassment may include incidents between any members of the University community, including patients, and it may occur in hierarchical relationships. In this case, Complainant was seeking medical attention for pain involving a recently inserted IUD. Respondent held a position of power in being responsible for providing medical attention and care. Complainant stated that she was afraid to say anything because she was in pain and wanted him to remove the IUD without hurting her. She stated that she wanted to run away, but felt that he used his position and power because he knew she was in pain. When she told about the encounter, she was crying about the treatment she received from Respondent, which indicates she felt the treatment she received was offensive and inappropriate. Specifically, the Complainant said she felt uncomfortable with Respondent's questions related to her and described his examination . She said she was too fearful to speak up because she thought Respondent would not remove the IUD that was causing her pain and was the reason for her visit. said the Complainant also mentioned the Respondent groping her chest. The Complainant never sought or received treatment by Respondent again. As such, a preponderance of the evidence established that Respondent's behavior towards Complainant was sufficiently severe enough that it interfered with her ability to seek and receive medical services provided by the University.

3. **Whether Respondent Created an Environment that a Reasonable Person would Find to be Intimidating or Offensive**

A reasonable person would consider medically irrelevant questions about offensive and sexually harassing. A reasonable person would also be offended and/or intimidated by being subjected to multiple inappropriate and clinically unnecessary examinations of the genital area, breasts and buttocks at a time when a patient is in a state of pain. Specifically, Respondent failed to explain to the Complainant the reason for his questions and physical examination (for example, he did not explain why he was examining or why he was examining her left breast). This created an intimidating environment particularly given her physically vulnerable state and that she was not a regular patient of the Respondent. Her regular gynecologist was not available and she was being seen in an emergency situation

for a sensitive procedure. She described the Respondent's rapport as too familiar, especially since she did not have a familiar "physician – patient" relationship with him. She expected the visit to be a quick one where the IUD was simply removed, and instead, she was subjected to a full examination and questions that were not clinically indicated or appropriate, which made her feel intimidated and offended. She did not speak up because she was in pain and reliant on Respondent to relieve her pain without hurting her. She described his examination of , and found his examination of her gluteal, back and right cheek region uncomfortable, unnecessary and offensive. She said she wanted to run away. Given the information summarized above, the preponderance of the evidence established a reasonable person would have found Respondent's contact to be offensive and verbal questioning harassing.

Given that the respondent's comments and conduct were unwanted, sexual in nature, sufficiently severe enough to interfere with Complainant's ability to obtain appropriate medical services from the University and created an intimidating and offensive environment, the preponderance of the evidence established that the Respondent's conduct amounted to Sexual Harassment - Hostile Environment.

CONCLUSION

For the above stated reasons, I conclude that there is **SUFFICIENT EVIDENCE** to establish by a preponderance of the evidence that Respondent violated the Sexual Assault - Contact and Sexual Harassment - Hostile Environment sections of the University of California Policy on Sexual Violence Sexual Harassment when he examined Complainant.

DOCUMENTS / POLICIES REVIEWED

- Emails and reports related to the 2014 patient complaint against Respondent
- Sexual Violence Sexual Harassment training records
- University of California Policy, Sexual Harassment and Sexual Violence
- University of California Policy on Sexual Violence Sexual Harassment (2016)
- Whistleblower Protection Policy