

Analysis and Relevancy

Grand River Solutions

Michigan State University

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Agenda

01

Elements Analysis

02

Evidence authenticity, reliability, and credibility

03

Relevancy Determinations



Decision-making Procedure

- **Investigation Report:** The investigator will prepare a written investigation report fairly summarizing the investigation and relevant evidence directly related to the allegations. OIE will send the investigation report and *relevant* evidence to the parties and their respective advisors.
- **Evidentiary Decisions:** The Resolution Officer makes evidentiary decisions and has discretion to determine relevancy and/or redundancy of the questions and evidence.... Relevant questions regarding credibility are permitted.
- **Decision Regarding Responsibility:** The decision-maker shall evaluate the evidence and decide whether the respondent is responsible for violating this Policy. The decision-maker shall objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations shall not be based on a person's status as a claimant, respondent, or witness.

Findings of Fact

- **A "finding of fact"**
 - The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
 - Based on available evidence and information
 - Determined by a preponderance of evidence standard
 - Determined by the fact finder(s)
- **For example...**
 - Claimant reports that they and Respondent ate ice cream prior to the incident
 - Respondent says that they did not eat ice cream
 - Witness 1 produces a timestamped photo of Respondent eating ice cream

Solutions

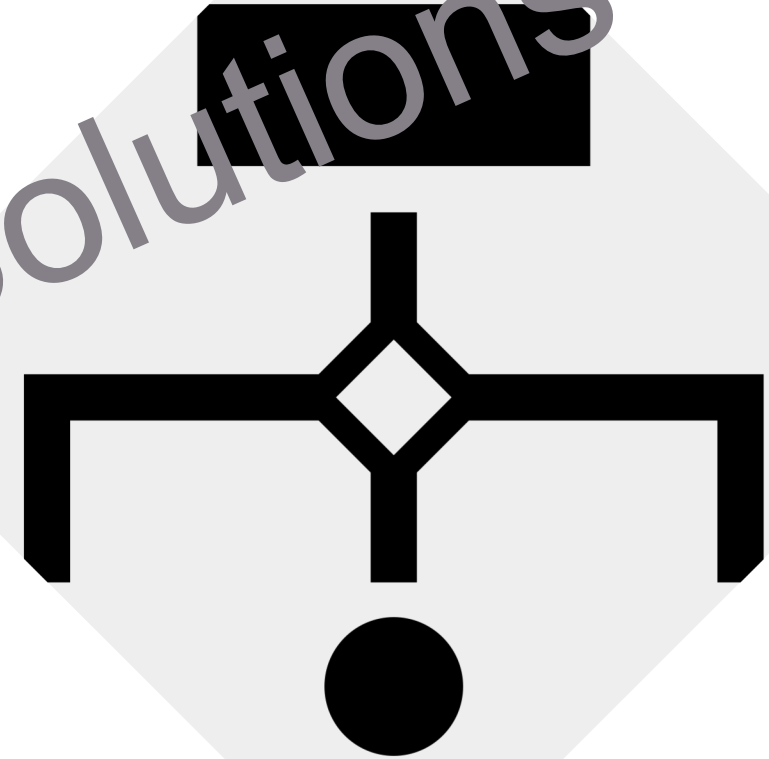
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Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate

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Allegation: Fondling

Fondling is the:

- touching of the private body parts of another person
- for the purpose of sexual gratification,
- Forcibly and/or without the consent of the Claimant,
- including instances where the Claimant is incapable of giving consent because the Claimant is incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments..

Analysis Grid

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<p>Undisputed: Claimant and Respondent agree that there was contact between Respondent's hand and Claimant's vagina.</p>	<p>Respondent acknowledges and admits this element in their statement with investigators</p> <p>"We were hooking up. Claimant started kissing me and was really into it. It went from there. Claimant guided my hand down her pants..."</p>	<p>Claimant: drank more than 12 drinks, vomited, no recall</p> <p>Respondent: C was aware and participating</p> <p>Witness 1: observed C vomit</p> <p>Witness 2: C was playing beer pong and could barely stand</p> <p>Witness 3: C was drunk but seemed fine</p> <p>Witness 4: carried C to the basement couch and left her there to sleep it off.</p>

Relevancy Definition

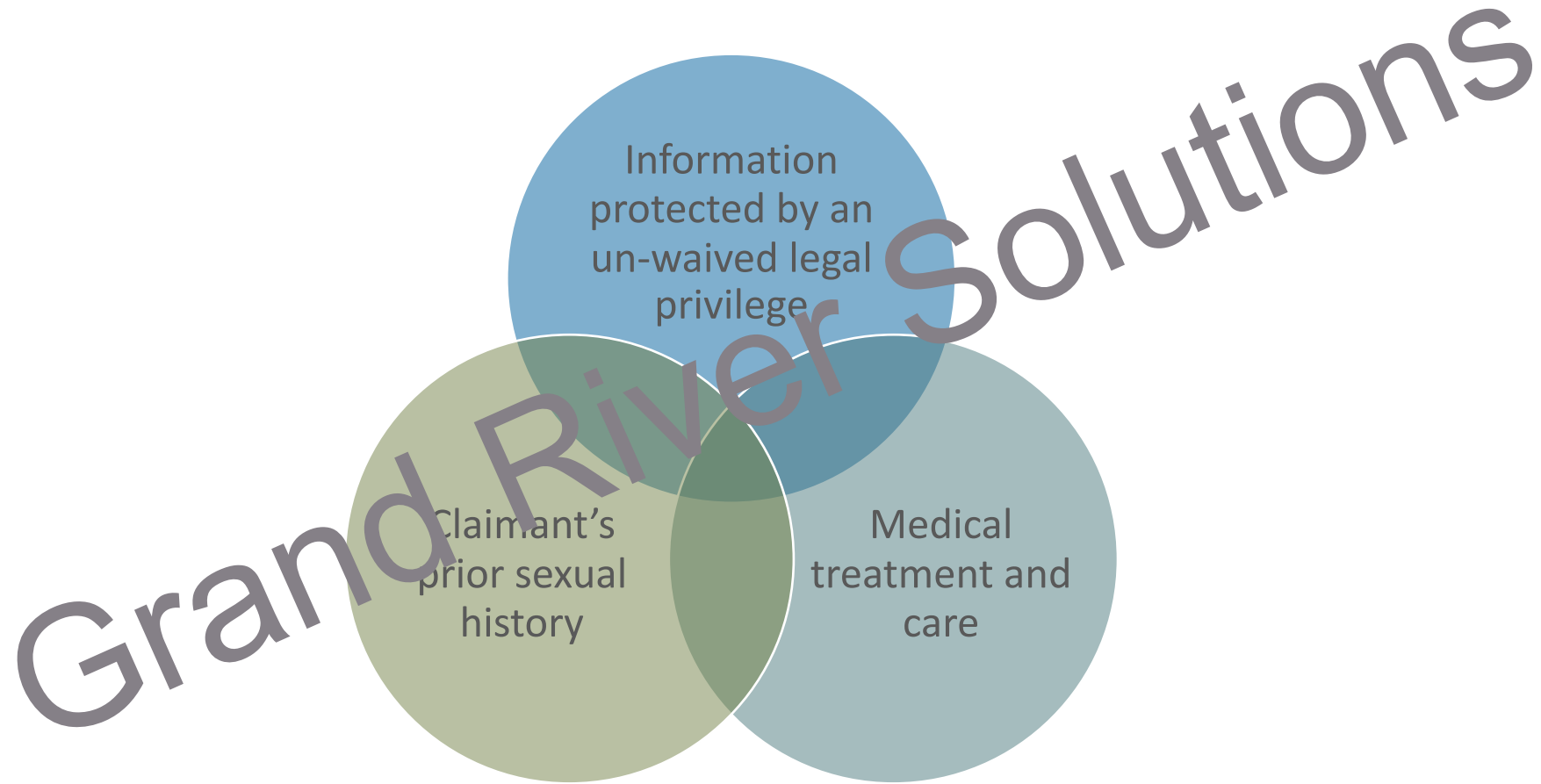
The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Irrelevant or Impermissible



When is evidence relevant?

Logical connection between the evidence and facts at issue

Tends to make a fact more or less probable than it would be without that evidence

Assists in coming to the conclusion – it is “of consequence”

Questions to assess evidence authenticity



Never assume that an item of evidence is authentic.



Ask questions, request proof.



Request further investigation of the authenticity if necessary.

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Never assume that an item of evidence is authentic.

Is it authentic?



QUESTION THE PERSON WHO OFFERED THE EVIDENCE



REQUEST ORIGINALS



OBTAIN ORIGINALS FROM THE SOURCE



HAVE OTHERS REVIEW AND COMMENT ON AUTHENTICITY



ARE THERE OTHER RECORDS THAT WOULD CORROBORATE?

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Credibility versus Reliability

Reliability

- I can trust the person's account of their truth because it is consistent with other evidence.
- It is probably true and I can rely on it.

Credibility

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

Credibility

**No
formula
exists, but
consider
the
following:**

motive to fabricate

plausibility

consistency

character, background, experience, and training

coaching

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Opinion Evidence

When might it be relevant?