

**AGENDA**  
**CONNECTICUT MEDICAL EXAMINING BOARD**  
**Tuesday, March 15, 2022 at 1:30 PM**

**Department of Public Health**  
**410 Capitol Avenue, Hartford Connecticut**

**CALL TO ORDER**

**I. APPROVAL OF MINUTES**

February 15, 2022

**II. OPEN FORUM**

**III. UPDATES**

- A. Chair Updates
  - Workgroup Ideas
- B. DPH Updates

**IV. NEW BUSINESS**

- A. Materials to be provided to the Board concerning proposed Consent Orders  
*Daniel Shapiro, Deputy Assistant Attorney General*
- B. Review of License Application (Post Graduate Training Review)  
*Presented by Celeste Dowdell, License and Applications Analyst*

**V. OLD BUSINESS**

Federation of State medical Boards Workgroup on Physician Sexual Misconduct  
*Jean Rexford, Board Member; Harold Sauer, MD, Board Member*

**IV. PROPOSED Memorandum of Decision**

- A. John Lynch, II, MD - Petition No. 2021-726

**ADJOURN**

**Connecticut Medical Examining Board via Microsoft Teams**

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 860-840-2075](tel:+18608402075),662017784# United States, Hartford

Phone Conference ID: 662 017 784#

The following minutes are draft minutes which are subject to revision, and which have not yet been adopted by the Board.

**CONNECTICUT MEDICAL EXAMINING BOARD  
MINUTES of February 15, 2022**

The Connecticut Medical Examining Board held a meeting on Tuesday, February 15, 2022 via Microsoft TEAMS

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**BOARD MEMBERS PRESENT:** Kathryn Emmett, Esq., Chairperson  
Raymond Andrews, Jr., Esq.  
Allyson Duffy, MD  
Marie C. Eugene, DO  
Robert Green, MD  
Michele Jacklin  
William C. Kohlhepp, DHSc, PA-C  
Shawn London, MD  
Edward McAnaney, Esq.  
Jean Rexford  
Daniel Rissi, MD  
Harold Sauer, MD  
David Schwindt, MD  
C. Steven Wolf, MD  
Andrew Yuan, DO  
Peter Zeman, MD

**BOARD MEMBERS ABSENT:** Joseph Kaliko, Esq  
Marilyn Katz, MD  
Brimal Patel, MD

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Ms. Emmett called the meeting to order at 1:30 p.m.

**I. MINUTES**

The draft minutes of the January 18, 2022 and the February 2, 2022 meetings were reviewed and approved on a motion by Dr. Rissi, seconded by Ms. Rexford.

**II. OPEN FORUM**

None

**III. UPDATES**

A. Chair Updates

Chair Emmett gave an update of Medical Board/DPH workgroup discussions.

Department of Public Health

None

**IV. NEW BUSINESS**

A. Physician Sexual Misconduct

Ms. Rexford and Dr. Sauer provided an overview of the Report and Recommendations of the FSMB Workgroup on Physician Sexual Misconduct

**V. OFFICE OF LEGAL COMPLIANCE**

A. Christopher Betz, M.D. - Petition No. 2019-807

Staff Attorney Linda Fazzina, Department of Public Health, presented a Consent Order in this matter. Respondent was present and was represented by Attorney Andrew Wildstein.

Dr. Green made a motion, seconded by Dr. London, to approve the Consent Order for discussion

During discussion Dr. Green spoke in opposition to the Consent Order as written.

Following discussion, the Board the motion to approve the Consent Order, which imposes a reprimand and a \$5000.00 civil penalty, passed with all in favor except Dr. Duffy, Dr. Green, Ms. Jacklin, Dr. Rissi, and Ms. Emmett who were opposed.

B. Derek William Donovan, P.A. Petition No. 2022-103

Assistant to Attorney General Kerry Colson was present for this matter. Staff Attorney Craig Sullivan, Department of Public Health, presented a Motion for Summary Suspension in the matter of Derek Donovan, PA . Respondent was present but was not represented by counsel.

Attorney Sullivan provided information in support of the Motion for Summary Suspension

Mr. Donovan also addressed the Board

Dr. Zeman made a motion, seconded by Mr. McAnaney, to grant the motion for Summary Suspension in that respondent's continued practice as physician assistant represents a clear and immediate danger to public health and safety. The motion passed unanimously

A hearing in this matter will be held on February 25, 2022. The hearing panelists in this matter will be Ms. Jacklin, Mr. Kohlhepp, and Dr. Zeman.

**VI. ADJOURNMENT**

As there was no further business, the meeting was adjourned at 2:31 p.m. on a motion by Mr. McAnaney, seconded by Mr. Kaliko.

Respectfully submitted,  
Kathryn Emmett, Esq., Chairperson

## WORK GROUP SUMMARY OF IDEAS

March 2, 2022

1. **Provide Board with more information concerning facts underlying charges/consent orders, including having a Board member participate in DPH discussion of consent order.**
2. **Review and improve guidelines for penalties – in particular, review and delineate range of monetary penalties.**
3. **Educational presentations to CMEB at each monthly meeting** (whether to include as a standing item on the agenda?) – Board members to volunteer to do 5-10 minutes on topics of interest and/or outside speakers on relevant topics – volunteer needed to plan and organize.
4. **Add information/requirements to the license renewal process for MDs, DOs and PAs** – Suggestions include a) information about concerns in regard to and protocols for examining sensitive areas (whether to suggest use of chaperones?), b) highlighting specific limitations on delegation of duties – e.g., practitioner must sign for their own controlled medications, non-licensed personnel cannot administer medications, non-licensed staff cannot operate radiological or other equipment used to diagnose or treat patients, etc., c) adding same guidance to APRNs' renewal process.
5. **Put information concerning types of conduct that result in disciplinary actions on the website** or locate more centrally in easier to find place: a) boundary violations/sexual assault/inappropriate touching/etc.; b) impermissible delegation of duties to non-licensed personnel or others; c) prescribing violations (requirement to check CPMRS); d) other types of conduct that result in discipline (?).
6. **Explore idea of CMEB putting out a periodic newsletter** (quarterly?) – including whether grant opportunities exist or whether pilot program through legislature to undertake the project might be possible. Included in the idea is the sub-idea of including listing of recent disciplinary actions taken by the Board in the newsletter.
7. **Establish a mentoring program for new CMEB members.**
8. **Explore mass email as a means of communicating information**, including data (what DPH already publishes? other?) – Massachusetts example (?).
9. **Look at statutory requirements for CMEs for MDs/DOs and PAs** and consider seeking legislative change to allow more flexibility and/or to require more pertinent topic areas (e.g., some % focused on ethics as is the case in attorney CLE requirements).
10. **Explore partnerships** with insurance companies and/or professional societies (state and county medical societies and state PA organization) **to provide (risk avoidance) education.** Explore other partnerships for providing education concerning disciplinary issues to practitioners via CT hospital association, large medical groups such as Northeast Medical Group, Nuvance, etc.
11. **Identify best methods of reaching MDs/DOs and PAs who are not in groups** such as those listed in # 10.
12. **Include PAs** (and nurses as appropriate and/or possible) in relevant educational initiatives.
13. **As to all the above and other ideas not listed, what authority does CMEB have – or not have?**

Additional topics: orientation of board, diversity of the board, partnerships and/or communication with organizations such as Haven, others (e.g., consumer protection and/drug enforcement)

TO: Connecticut Medical Examining Board

FROM: Celeste Dowdell  
Licensing Applications Analyst  
Practitioner Licensing and Investigations Section

RE: MARIANA FLORES, MD

Dr. Flores is an applicant for Connecticut physician licensure. Dr. Flores meets all requirements for licensure except he has not completed two years of graduate medical education in a program accredited by the Accreditation Council for Graduate Medical Education (ACGME).

Section 20-10, Connecticut General Statutes allows for an applicant to complete an equivalent program approved by the Board with the consent of the Department.

Please accept this as a summary of the documentation submitted in support of Dr. Flores' application.

**Medical Education:** Tecnologico de Monterrey Escuela de Medicina Monterrey, Mexico-2014

**Educational Commission for Graduates of Foreign Medical Schools (ECFMG):** Certified 6/26/2021

**United States Medical Licensing Examination:** Step 1: 10/30/2018  
Step 2: (CK) 2/25/2021  
Step 3: 12/8/2021

**Post Graduate Training Completed:**

**3/1/2014-2/28/2017:** Instituto de Oftalmología "Conde de Valencia", Mexico- Ophthalmology Resident  
Dr. Flores held a training license in Ontario. There has been no discipline on this license.

Dr. Flores will be taking a position at Connecticut Children's Hospital once licensed.

**Letter from a Senior Physician Executive:** Letters have been provided by Christine Finck, MD, FACS Vice-Chairman Dept. of Surgery Professor of Surgery and Pediatrics. University of Connecticut School of Medicine. Peter Decker's Endowed Chair of Surgery. Surgeon-in-Chief, EVP, Connecticut Children's.

As well as a reference letter from  
Professor Anthony T. Moore  
Emeritus Professor of Ophthalmology  
UCSF Department of Ophthalmology  
The Wayne and Gladys Valley Center for Vision- San Francisco, CA

# Mariana Aracely Flores Pimentel

Date of Birth:

Country of birth: Mexico

Mobile: +52 81 2625 7119

Current position: Private practice /

Assistant Professor-Clinical instructor (ITESM)

E-Mail: [mariana.flores.md@gmail.com](mailto:mariana.flores.md@gmail.com)

## EDUCATION

**July 2019 – Dec 2020 Paediatric Ophthalmology and Strabismus Fellowship.**

Hospital for Sick Children, University of Toronto, Ontario, Canada.

Examined, diagnosed and treated inpatients and outpatients in the referral Pediatric Hospital. Surgical experience in anterior segment (cataract surgery, glaucoma surgery), plastics (lacrimal duct, dermoid cysts, lid repairs), strabismus (children and adults) and laser treatments. Supported the training of medical students and junior residents on all aspects of ophthalmic care, including conducting wet labs and senior coverage on call. Special interest in ROP, with a dedicated 6-month fellowship extension dedicated to the examination and treatment of premature babies. Research interest neuro-ophthalmology in general, with dedicated research project in Neurofibromatosis type 1.

*Research projects:*

1. Presence of choroidal abnormalities in pediatric patients with molecular confirmed Neurofibromatosis type 1 and clinical diagnosis only.

Mentor: Dr. Vicent Ajoy, MBBS, MS

**July 2017 – Jan 2019 Post-Doctoral Research Fellowship in Paediatric Ophthalmology.**

University of California in San Francisco (UCSF), United States.

*Research projects:*

1. Ascertainment, phenotype assessment and Molecular Genetic Analysis of Patients with Eye Anomalies and Multiple Congenital Anomaly Syndromes with Consent for Exome and Whole Genome Sequencing and Data Sharing.
2. Developing electrophysiological testing in infants and young children. This involve developing testing protocols for visually evoked potentials and electroretinography in awake children. Correlating visual pathway function as measured electrophysiologically with MRI imaging in children with brain injury.

Mentor: Dr. Anthony Moore MA, FRCS, FRCOphth FMedSci

3. Data collection from premature children at risk of retinopathy of prematurity. To understand better the risk factors involved in the development of this vascular retinopathy in the US as well as in other countries in Latin America. Assisting with grant writing, manuscript preparation and data analysis.

Mentor: Alejandra de Alba Campomanes, MD, MPH.

# Mariana Aracely Flores Pimentel

Mar 2014 – Feb 2017 **Ophthalmology Residency Program.**

UNAM. Instituto de Oftalmología “Conde de Valenciana”, F.A.P. Mexico City

Major Eye Hospital/referral center in Mexico (provides service for ~ 200,000 patients/year for subspeciality care and 24/7 acute emergency eye care). Examined, diagnosed and treated outpatients. Performed surgical procedures such as cataract, glaucoma, pterygium, lid repairs, laser for retinal diseases and glaucoma. Participated in the training of medical students and junior residents.

### *Research projects:*

1. Prospective observational cohort study. Description and relationship of RNFL parameters and axial length in a cohort of healthy pediatric population (3-17 years of age).

Mentor: Karla Dueñas, MD

Jan 2013 – Feb 2014 **Medicine: Social Service -- Pediatrics Department**

Hospital Regional Materno Infantil de Alta Especialidad. Mexico

### *Project:*

1. Develop healthy eating habits in pediatric population with metabolic syndrome in the pediatric clinic. Successfully enrolling and following fifty children for one year. Resulting in the improvement of their metabolic status at the end of the project (laboratories, clinical findings).

Aug 2007 – Dec 2012 **Bachelor of Medicine and Surgery/MD**

Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM).  
Campus Monterrey, Nuevo Leon. Mexico.

### *Research Experience:*

March – June 2011. Neurosurgery Research Clerkship. The Johns Hopkins Hospital. Baltimore.

Mentor: Dr. Alfredo Quiñones-Hinojosa, MD.

Pre-medical: Undergraduate biomedical engineering courses.

## **CERTIFICATIONS**

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2021	<b>SVAP/PALS (#215643712160)</b>
2021	<b>ECFMG (July 2021). USMLE 3 (2021)</b>
2017	<b>CITI Program.</b> Good Clinical Practices and Human Subject Research
2017	<b>Mexican Ophthalmology Board.</b> Specialist Certificate (#3667)
2016	<b>FICO Exam: The Advanced ICO Examination.</b>
2016	<b>ICO Exams: The Clinical Science Examination.</b>
2015	<b>ICO Exams: The Basic Science Examination.</b>

2014 **ICO Exams: The Optics & Refraction and Use of Instruments Exam.**

## HONORS AND AWARDS

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- 2019 Morin Award: Outstanding Paediatric Ophthalmology Fellow
- 2016 Best Clinical Case Poster Presentation. XXXII Annual National Ophthalmology Meeting. Mexico City.
- 2013 Award for Outstanding results in the General Examination for bachelor's degree Graduates. (National Center of Evaluation for Higher Education-CENEVAL)
- 2007 Excellence Scholarship for college education at Tecnológico de Monterrey Campus Monterrey.
- 2004 Excellence Scholarship for high school at Tecnológico de Monterrey Campus Saltillo. Best high school student of the Occident Region scholarship to course the fall semester at Mount Royal College, Alberta, Canada.

## PUBLICATIONS

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- **Flores Pimentel, M;** Heath, A; Wan, MJ; Hussein, R; Leahy, KE; MacDonald, H; Tavares, E; VandenHoven, C; MacNeill, K; Kannu, P; Parkin, P; Heon, E; Reginald, A; Vincent, A. Choroidal abnormalities and Lisch Nodules in Children Meeting Clinical and Molecular Diagnosis of Neurofibromatosis Type 1. *Transl Vis Sci Technol.* 2022; 11(2): 10. Received: October 21, 2021. Published: February 4, 2022.
- Daigle, P; Ming-Han Lee, M; **Flores Pimentel, M;** Campisi, M; De Angelis, D. Capnocytophaga sputigena as a cause of severe orbital cellulitis and subperiosteal abscess in a child: A case report and review of literature. *Canadian Journal of Ophthalmology/Journal Canadien d'ophtalmologie.* Received Jun 16, 2020. Accepted Oct 16, 2020.
- **Flores-Pimentel, M;** Duncan, JL. De Alba Campomanes, A, Moore, AT. Dark without pressure retinal changes in a pediatric age group. population. *Eye.* Accepted 8 July 2020. Published online: 20 July 2020.
- Kang, M.; **Flores-Pimentel, M;** de Alba Campomanes, AG. Images in Pediatric Ophthalmology. Peripheral Retinal Changes in Regressed Retinopathy of Prematurity. Accepted on August 7, 2019. Posted I March 1, 2020. *Journal of Pediatric Ophthalmology & Strabismus* 2020; 57 (2): 136
- Law, M.; **Flores-Pimentel, M;** Oldenburg CE; de Alba Campomanes, AG. Major Article. Positive predictive value and screening performance of GoCheckKids in a primary care university clinic. *J AAPOS.* Published: January 12, 2020. Vol 24 (1): P17.E1-17. E5
- **Flores-Pimentel, M.;** De la Huerta, I.; Duncan, JL; Slavotinek, AM.; Moore, AT.; De Alba Campomanes, AG. Phenotypic heterogeneity in a family with X-linked FEVR with prevention



## Mariana Aracely Flores Pimentel

of visual loss in an affected male with laser treatment in infancy. *Retinal Cases & Brief Reports*. Accepted June 3, 2018. Epub-ahead of print. August 01, 2018.

- **Flores-Pimentel, M;** De Alba Campomanes, AG. Ocular injury during fetal endoscopy surgery. *J AAPOS*. Accepted October 22, 2017. Published: June 2018. Vol 22(3): 227-229.
- Gutiérrez M, Rodríguez JL, Zamora-De la Cruz, D, **Flores Pimentel MA**, Jiménez-Corona A, Novak LC, Cano Hidalgo R, Graue F. (2016). Pars Plana vitrectomy alone versus pars plana vitrectomy and scleral buckle for giant retinal tear. *COCHRANE Intervention Review*. Published April 2017. DOI: 10.1002/14651858.CD012646
- Chaichana, KL; **Flores, M;** Achayra, S; Sampognaro, P; Bettegowda, C; Rigamonti, D; Weingart, J; Olivi, O; Gallia, G; Brem, H; Lim, M; Quinones-Hinojosa, A. (2013) Survival and Recurrence for Patients Undergoing Surgery of Skull Base Intracranial Metastases. *J Neurol Surg B*, 74(04): 228-235 DOI: 10.1055/s-0033-1342925
- Chaichana, KL; Achayra S; **Flores M;** Wijesekera, O; Rigamonti, D; Weingart, J; Olivi, A; Bettegowda, C; Gallia, G; Brem, H; Lim, M; Quinones-Hinojosa, A. (2013). Identifying better surgical candidates among RPA class 2 patients who underwent surgery for intracranial metastases. *World Neurosurg*. Accepted: August 15, 2013. Online published: September 24, 2013. DOI 10.1016/j.wneu.2013.08.031 pii: S1878-8750 (13) 01052-8.

### PAPERS UNDER REVIEW

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- Arjmand, P; **Flores-Pimentel, M;** Tehrani, N; Mireskandari, K; Kertes, P. Atypical molecular confirmed FEVR case in a premature infant.

### PRESENTATION AT MEETINGS

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- “Choroidal abnormalities and Lisch Nodules in Children Meeting Clinical and Molecular Diagnosis of Neurofibromatosis Type 1”. Platform Oral Presentation at NANOS Meeting. 2022
- “Cycloplegic Refractive error and amblyopia risk factors found after photo-screening”. Poster for presentation at AAPOS Meeting. 2019
- “Retinopathy of prematurity after intravitreal ranibizumab monotherapy”. Poster for presentation at AAPOS Meeting. 2018
- Clinical Case presentation. Bay Area Strabismus Club Meeting.
- Pediatric Ophthalmology Grand Round Presentation. 2017
- “Spectral-Domain Optical Coherence Tomography in Children with developmental glaucoma versus healthy children”. Poster Presentation. 7th World Glaucoma Congress. Helsinki, Finland.

## Mariana Aracely Flores Pimentel

- “Ocular Manifestations of von Hippel-Lindau Disease” Poster Presentation. XXXV Annual Reunion Retina Mexican Society. Leon, Guanajuato. Mexico 2016
- “Ocular Emergencies: Necrotizing Fasciitis”. Poster Presentation. XXXII Annual National Ophthalmology Meeting. Mexico City.
- Cataract and lens surgery. Poster presentation. World Ophthalmology Congress (WOC). Guadalajara, Mexico.
- “Risk Factors Associated with non arteritic anterior ischemic optic neuropathy in young patients at a reference center in Mexico City”. Poster Presentation. XXXI. Pan-American Congress. Colombia 2015
- “Cataract surgery as an etiology of sympathetic ophthalmia” Poster Presentation. XXXIII ESCRS
- “Cataract surgery as an etiology of sympathetic ophthalmia”. Poster presentation. VIII International Meeting ALACCSA-R.
- “Risk Factors Associated with non arteritic anterior ischemic optic neuropathy in young patients at a reference center in Mexico City”. Poster Presentation. ARVO Meeting
- “Retinitis Pigmentosa: unilateral or asymmetrical? A Clinical Case”: Poster Presentation. XXXI Annual National Ophthalmology Meeting. Mexico City

**Connecticut Medical Examining Board**

410 Capitol Avenue, MS#13PHO

P.O. Box 340308

Hartford, CT 06134-0308

March 2, 2022

RE: *Personal Statement – Mariana Aracely Flores Pimentel, M.D.*

Dear Members of the Connecticut Medical Examining Board,

I am writing to thank you for your consideration of my licensing request. I am a fellowship-trained Pediatric Ophthalmologist and Strabismus Specialist with over a year of clinical experience in private practice. My ultimate goal is to provide the best care possible to my patients and their families.

Early on, I became committed with excellence and learning, obtaining an academic scholarship to complete my medical education at the internationally recognized Instituto Tecnológico y de Estudios Superiores de Monterrey. My academic performance was recognized with national and international clerkships. My clerkship at the John's Hopkins Hospital cleared the path to choose Ophthalmology as a career. I successfully completed my residency program in one of the three largest eye centers in the country. These clinical training and research experience opened the door to obtain a Post-Doctoral Research Fellowship at the University of California in San Francisco (UCSF), where I honed my skills and experience in clinical research.

I completed an AUPO-compliant clinical/surgical fellowship in Pediatric Ophthalmology and Adult Strabismus in Toronto, Canada. After 18 months of training and amid the unprecedented pandemic, I returned to Mexico and have been practicing independently as a Pediatric Ophthalmologist and volunteering to teach in an Ophthalmology Residency Program. In my search for further growth and development, I was offered a wonderful opportunity to work and nurture a career at the Connecticut Children's Hospital.

If you consider it appropriate, my plans after obtaining licensing will be to excel the expectations that the team at the Connecticut Children's Hospital has. I plan to continue providing the best possible care to the children in Connecticut and their families. I am interested in working with the Ophthalmology Department to find efficient workflows and particular-interest multidisciplinary clinics to improve the timing for new referrals and pipeline surgical care, when required. Some of my major interests are the care of premature children with retinopathy, genetic ocular conditions, and strabismus. From my talks with the Hospital Senior Managers, there is a big area of opportunity to care for the children in the city and the state. I want to become an agent of change and grow as a professional for the benefit of our patients.

Thank you for your time and kind consideration.

Yours respectfully,



Mariana Aracely Flores Pimentel, MD



March 2, 2022

CT Gov  
License and Applications Analyst  
Dept of Public Health  
[Dph.healingarts@ct.gov](mailto:Dph.healingarts@ct.gov)

To Whom It May Concern,

With this letter, CT Children's is enthusiastically providing its support for Dr. Flores in her position as a pediatric ophthalmologist. As you know, pediatric ophthalmologists are in high demand and our current practice has a significant waiting list of patients (currently 3 month wait to get an appointment). Dr. Flores with her training will be able to provide the expertise needed for these patients. She is a fantastic physician who will be a great addition to our current providers.

As can be seen from her CV, she has trained at several premier institutions. She received her medical degree from Instituto Tecnológico y de Estudios de Monterrey in Mexico and did residency in Mexico City. She then went on to several Post-Doctoral Research Fellowships at the University of California and a second Pediatric and Strabismus Fellowship at the Hospital for Sick Children in Toronto. This is a top institution in training for pediatric subspecialties. Since graduation, she has been in a private practice in Mexico and gaining experience in pediatric ophthalmology.

In summary, we enthusiastically support Dr. Flores in joining our team. She has the needed expertise and qualities that will provide optimal care for our pediatric patients.

Sincerely,

A handwritten signature in cursive script that reads "Christine Finck MD".

Christine Finck, MD, FACS  
Vice-Chairman Department of Surgery  
Professor Surgery and Pediatrics  
University of Connecticut School of Medicine  
Peter Decker's Endowed Chair of Surgery  
Surgeon-in-Chief, EVP, Connecticut Children's



**Department of Ophthalmology**

Professor Anthony T Moore  
Emeritus Professor of Ophthalmology  
UCSF Department of Ophthalmology  
The Wayne and Gladys Valley Center for Vision  
490 Illinois St.  
San Francisco, CA 94158  
Email: [tony.moore@ucsf.edu](mailto:tony.moore@ucsf.edu)  
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Connecticut Medical Examining Board  
410 Capitol Avenue, MS #13PHO  
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Hartford, CT 06134-0308

2 March 2022

Dear Colleagues,

Re Letter of Recommendation for D. Mariana Flores

It is a pleasure to provide a reference for Mariana Flores who has applied for a medical license to practice in Connecticut. I have known Dr Flores for the last 5 years and worked closely with her when she was an international fellow in pediatric ophthalmology working with me and my pediatric ophthalmology colleagues at UCSF School of Medicine, from July 2017 to January 2019. At that time I held an endowed chair in ophthalmology at UCSF; I retired from clinical practice in July 2020. Dr Flores left UCSF to take up a position as a pediatric ophthalmology fellow at the Hospital for Sick Children Toronto. This is one of the top fellowship programs in North America.

Dr. Flores had her medical school training and residency in Mexico. It is evident from her CV that she has a very strong academic background. Before she came to UCSF she had completed her residency in Mexico City in one of the best ophthalmology residency programs in Mexico, had passed the International Council exams and is board certified in ophthalmology in Mexico. She was highly recommended by her mentors in Mexico City. She proved to be an outstanding fellow. She is very bright, hardworking and gets on extremely well with patients and staff at all levels. She establishes very good rapport with children. She is completely trustworthy and professional and always puts patients first.

Dr Flores was able to attend the various subspecialty pediatric ophthalmology clinics, OR lists and ROP rounds; international fellows at UCSF are not allowed to operate, so I cannot comment on her surgical skills. Dr Flores was able to take part in all academic activities. She organized our monthly genetic eye disease meetings where she presented the patients,



**Department of Ophthalmology**

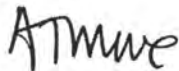
reviewed the relevant literature, and generally made an excellent job of running these meetings. She also presented cases at the UCSF Grand Rounds and did this very well. She has also been involved in a number of research projects with me and my colleague Dr de Alba. She helped me to develop an awake ERG and VEP service for children and was also been the key person in a project to carry out next generation sequencing on infants with congenital cataract and other developmental abnormalities of the eye. With Dr de Alba she was involved in analysing a large dataset of pre-term infants with ROP and with evaluating a local photo-screening program. She brought great enthusiasm and energy to these projects. She published a number of papers during the fellowship; she writes very well. She also took advantage of the courses and academic activities that are available at UCSF including taking courses in 3-D printing and in statistics.

I have the highest regard for Dr Flores. She was a very successful recruit to our international fellowship program; she is an excellent clinician and a very good colleague. She was very popular with her colleagues and patients alike and has excellent interpersonal and communications skills. Mariana speaks excellent English. She was a real pleasure to work with.

She has now had an excellent medical and surgical training in pediatric ophthalmology in her fellowship program in Toronto and is ready for a faculty position. I have no reservations at all about her suitability for a medical license. She was completely professional in all respects whilst working at UCSF and I know of no concerns about her fitness to practice. I am confident that she will be a great asset to any institution she joins as faculty

With best wishes,

Yours sincerely



Anthony T. Moore MA FRCS FRCOphth FMedSci  
Emeritus Professor of Ophthalmology  
University of California School of Medicine

Emeritus Professor of Ophthalmology  
University College London

Please respond to:  
P.O. Box 016880, Miami, FL 33101-6880

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**Connecticut Medical Examining Board**

410 Capitol Avenue, MS #13PHO  
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Hartford, CT 06134-0308

c/o Celeste Dowdell  
License and Applications Analyst  
Dept. of Public Health  
Practitioner Licensing & Investigations Section  
Ph: 860-509-7603, #3  
Fax 860-707-1931  
Email: celeste.dowdell@ct.gov

**March 2, 2022**

**Re: Character reference for Mariana Flores, MD**

To Whom It May Concern:

I have known Dr. Mariana Flores since July 2020, when she was completing her AUPO-compliant fellowship training in Pediatric Ophthalmology & Strabismus at the University of Toronto Hospital for Sick Children in Toronto, Canada. At the time, I was also completing my fellowship training in Pediatric Cornea & External Diseases at the same hospital, so we worked closely together both in clinic and the operating room throughout the year.

As a colleague, Dr. Flores is one of the most hardworking, dedicated, and caring physicians with whom I have ever had the pleasure of working. She never hesitates to help others and can always be depended upon to do what is necessary for optimal patient care. As an example, there was one instance where a staff ophthalmologist called out sick the morning of their clinic; despite it being her day off, Dr. Flores selflessly volunteered to cover the clinic and the patients that could not be rescheduled or had urgent concerns. She also enjoys teaching and mentorship, often spending many extra hours outside of clinical duties to help instruct the resident trainees and medical students.

Professionally, Dr. Flores is extremely skilled in her ophthalmological specialty both surgically and clinically. She has successfully run her own private practice pediatric ophthalmology & strabismus clinic in Saltillo, Mexico while also teaching ophthalmology residents at the Tecnológico de Monterrey Health System since January 2021. She has also excelled in research and academic endeavors, having previously completed a research fellowship at the University of California in San Francisco with multiple peer-reviewed publications and presentations at national meetings. She is fluent in English and Spanish, with all her postgraduate fellowship training having been performed in English-speaking countries (United States and Canada).

In addition to the above, Dr. Flores is a true pleasure to work with. She is honest, enthusiastic, and will go above and beyond for her patients, colleagues, and community. Her excellent communication skills (both written and verbal) allow her to establish rapport with people of all ages and backgrounds.

In summary, I **highly recommend Dr. Mariana Flores without reservation** for full medical licensing privileges within the United States. She is an outstanding, ethical, and competent physician who will continue to excel at any position that she may pursue.

Please feel free to contact me directly should you need any additional information.

Sincerely yours,



**Angela Y. Zhu, MD**

Assistant Professor of Clinical Ophthalmology  
Pediatric & Adult Cornea, Cataract, and External Diseases  
Bascom Palmer Eye Institute, University of Miami Miller School of Medicine  
900 NW 17 St.  
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March 2, 2022

**Connecticut Medical Examining Board**

410 Capitol Avenue, MS #13PHO

P. O. Box 340308

Hartford, CT 06134-0308

RE: Letter of Recommendation- Mariana Flores Pimentel, MD

Dear members of the Connecticut Medical Examining Board,

It is my distinct pleasure to write this letter of recommendation on behalf of **Mariana Flores Pimentel, MD**, who is in consideration for a pediatric ophthalmology position at the Connecticut Children's Hospital. I had the opportunity to work closely with Dr. Flores during her pediatric fellowship at the University of California San Francisco (UCSF.)

I can attest that Dr. Flores has outstanding clinical capabilities, tremendous work ethic, and operational efficiency. She also shows genuine concern for her patients and goes out of her way to follow up with them after business hours to ensure their well-being.

Dr. Flores clearly possesses a wide range of medical knowledge and actively participates in research. She has first authored several publications and presented them at both national and international conferences. Most recently, she gave a well-received podium talk, titled "*Prevalence of Choroidal Abnormalities and Lisch Nodules in Children Meeting Clinical/ Molecular Diagnosis of NF1*," at The North American Neuro-Ophthalmology Society (NANOS) in Austin, TX.

Dr. Flores is also an effective leader and teacher. Aside from her academic accolades, she is warm, friendly, and always willing to mentor residents and medical students. I wholeheartedly recommend Dr. Flores for a position at Connecticut Children's Hospital and have no doubt she will be an asset to the Department of Ophthalmology. If you have any additional questions, please do not hesitate to contact me.

Yours sincerely,



Qinyun Wang, MD

Comprehensive Ophthalmologist

CEO and co-founder of Quadrant Eye

San Francisco, CA | 848-565-5720

# Physician Sexual Misconduct

*Report and Recommendations of the FSMB Workgroup on Physician Sexual Misconduct*

*Adopted as policy by the Federation of State Medical Boards  
May 2020*

## **Section 1: Introduction and Workgroup Charge**

The relationship between a physician and patient is inherently imbalanced. The knowledge, skills and training statutorily required of all physicians puts them in a position of power in relation to the patient. The patient, in turn, often enters the therapeutic relationship from a position of vulnerability due to illness, suffering, and a need to divulge deeply personal information and subject themselves to intimate physical examination. This vulnerability is further heightened in light of the patient's trust in their physician, who has been granted the power to deliver care, prescribe needed treatment and refer for appropriate specialty consultation.

It is critical that physicians act in a manner that promotes mutual trust with patients to enable the delivery of quality health care. When there is a violation of that relationship through sexual misconduct, such behavior and actions can have a profound, enduring and traumatic impact on the individual being exploited, their family, the public at large, and the medical profession as a whole. Properly and effectively addressing sexual misconduct by physicians through sensible standards and expectations of professionalism, including preventive education, as well as through meaningful disciplinary action and law enforcement when required, is therefore a paradigmatic expression of self-regulation and its more modern iteration, shared regulation.

In May of 2017, Patricia King, M.D., Ph.D., Chair at the time of the Federation of State Medical Boards (FSMB), created and led a Workgroup on Physician Sexual Misconduct (hereafter referred to as "the Workgroup"), and charged its members with 1) collecting and reviewing available disciplinary data, including incidence and spectrum of severity of behaviors and sanctions, related to sexual misconduct; 2) identifying and evaluating barriers to reporting sexual misconduct to state medical boards, including, but not limited to, the impact of state confidentiality laws, state administrative codes and procedures, investigative procedures, and cooperation with law enforcement on the reporting and prosecution/adjudication of sexual misconduct; 3) evaluating the impact of state medical board public outreach on reporting; 4) reviewing the FSMB's 2006 policy statement, *Addressing Sexual Boundaries: Guidelines for State Medical Boards*, and revising, amending or replacing it, as appropriate; and 5) assessing the prevalence of sexual boundary/harassment training in undergraduate and graduate medical education and developing recommendations and/or resources to address gaps.

In carrying out its charge, the Workgroup adopted a broad lens with which to scrutinize not only the current practices of state medical boards and other professional regulatory authorities in the United States and abroad, but also elements of professional culture within American medicine, including notions of professionalism, expectations related to reporting instances of misconduct or

impropriety, evolving public expectations of the medical profession, and the impact of trauma on survivors of sexual misconduct. In analyzing these issues, the Workgroup benefited tremendously from discussions with several of the FSMB's partner organizations and stakeholders that also have a role in addressing the issue of physician sexual misconduct. The Workgroup extends its thanks, in particular, to the American Association of Colleges of Osteopathic Medicine (AACOM), Association of American Medical Colleges (AAMC), Student Osteopathic Medical Association (SOMA), Australian Health Practitioner Regulation Agency (AHPRA), American Medical Association (AMA), American Medical Women's Association (AMWA), American Osteopathic Association (AOA), Council of Medical Specialty Societies (CMSS), Federation of Medical Regulatory Authorities of Canada (FMRAC), Federation of State Physician Health Programs (FSPHP), several provincial medical regulatory colleges from Canada, subject matter experts from Justice3D, PBI Education, and additional physician experts, and especially the victim and survivor advocates who bravely shared their experiences with Workgroup members. This report has been enriched by these partners' valuable contributions.

### *A call for cultural change*

The Workgroup acknowledged the importance of the environment and culture, from medical school to practice, for the development of and commitment to positive professional values and behaviors in medicine. In this regard, the Workgroup also acknowledged the existence of several highly problematic aspects of sexual misconduct in medical education and practice, many of which permeate the prevailing culture of medicine and self-regulation. The National Academies of Sciences report that organizational culture plays a primary role in enabling harassment and that sexually harassing behaviors are not typically isolated incidents.<sup>1</sup> Medical students and trainees who are subjected to environments in which harassment is accepted suffer not only as victims, but may also be undermined in their educational and professional attainment, resulting in loss of talent for the profession. To the extent that a culture that is permissive of sexual harassment results in perceived license to engage in such conduct oneself, patients are ultimately put at risk of dire consequences. Permissive environments could also reduce the likelihood that bystanders will feel responsibility to report misconduct.

Beyond the many instances, both reported and unreported, of sexual assault and boundary violations, concerns about sexual misconduct in medicine include various aspects of the investigative and adjudicatory processes designed to address them; the professional responsibility of health care practitioners to report suspected instances of sexual misconduct and patient harm; variation in state medical board policies and processes, as well as in state laws; transparency of state medical board processes and actions; a widespread need for education and training among medical regulators, board investigators, attorneys, and law enforcement personnel about trauma and how it might impact complainant accounts and the investigative process; and challenges posed for decisions about re-entry to practice and remediation.

This report summarizes these problematic elements so that they may be more widely appreciated, while offering potential solutions and strategies for state medical boards to consider for their

<sup>1</sup> National Academies of Sciences, Engineering, and Medicine. 2018. *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. Washington, DC: The National Academies Press. doi: <https://doi.org/10.17226/24994>.

jurisdictions. It aspires to provide best practice recommendations and highlight existing strategies and available tools to allow boards, including board members, executive directors, staff, and attorneys, to best protect the public while working within their established frameworks and resources. The report also advocates for an educational focus to change and improve culture, awareness, and behaviors across the continuum of medical education and practice, so as to improve care for and protection of patients.

## **Section 2: Principles**

The analysis in this report is informed by the following principles:

- **Trust:** The physician-patient relationship is built upon trust, understood as a confident belief on the part of the patient in the moral character and competence of their physician.<sup>2</sup> In order to safeguard this trust, the physician must act and make treatment decisions that are in the best interests of the patient at all times.
- **Professionalism:** The avoidance of sexual relationships with patients has been a principle of professionalism since at least the time of Hippocrates. Professional expectations still dictate today that sexual contact or harassment of any sort between a physician and patient is unacceptable.
- **Fairness:** The principle of fairness applies to victims (also sometimes described as survivors) of sexual misconduct, who must be granted fair treatment throughout the regulatory process and be afforded opportunities to seek justice for wrongful conduct committed against them. Fairness also applies to physicians who are subjects of complaints in that they must be granted due process in investigative and adjudicatory processes; proportionality should be considered in disciplinary actions.
- **Transparency:** The actions and processes of state medical boards are designed in the public interest to regulate the medical profession and protect patients from harm. As such, the public has a right to information about these processes and the bases of regulatory decisions.

## **Section 3: Terminology:**

### *Sexual Misconduct:*

For the purposes of this report, physician sexual misconduct is understood as behavior that exploits the physician-patient relationship in a sexual way. Sexual behavior between a physician and a patient is never diagnostic or therapeutic. This behavior may be verbal or physical, can occur in person or virtually,<sup>3</sup> and may include expressions of thoughts and feelings or gestures that are of a sexual nature or that a patient or surrogate<sup>4</sup> may reasonably construe as sexual. Hereinafter, the term “patient” includes the patient and/or patient surrogate.

<sup>2</sup> Beauchamp T and Childress J., (2001) *Principles of Biomedical Ethics*, 5<sup>th</sup> ed., 34.

<sup>3</sup> Federation of State Medical Boards, *Social Media and Electronic Communication*, 2019.

<sup>4</sup> Surrogates are those individuals closely involved in patients’ medical decision-making and care and include spouses or partners, parents, guardians, and/or other individuals involved in the care of and/or decision-making for the patient.

Physician sexual misconduct often takes place along a continuum of escalating severity. This continuum comprises a variety of behaviors, sometimes beginning with “grooming” behaviors which may not necessarily constitute misconduct on their own, but are precursors to other, more severe violations. Grooming behaviors may include gift-giving, special treatment, sharing of personal information or other acts or expressions that are meant to gain a patient’s trust and acquiescence to subsequent abuse.<sup>5</sup> When the patient is a child, adolescent or teenager, the patient’s parents may also be groomed to gauge whether an opportunity for sexual abuse exists.

More severe forms of misconduct include sexually inappropriate or improper gestures or language that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient. These may not necessarily involve physical contact, but can have the effect of embarrassing, shaming, humiliating or demeaning the patient. Instances of such sexual impropriety can take place in person, online, by mail, by phone, and through texting.

Additional examples of sexual misconduct involve physical contact, such as performing an intimate examination on a patient with or without gloves and without clinical justification or explanation of its necessity, and without obtaining informed consent.

The severity of sexual misconduct increases when physical contact takes place between a physician and patient and is explicitly sexual or may be reasonably interpreted as sexual, even if initiated by the patient. So-called “romantic” behavior between a physician and a patient is never appropriate, regardless of the appearance of consent on the part of the patient. Such behavior would at least constitute grooming, depending on the nature of the behavior, if not actual sexual misconduct, and should be labeled as such.

The term “sexual assault” refers to any type of sexual activity or contact without consent (such as through physical force, threats of force, coercion, manipulation, imposition of power, etc., or circumstances where a person lacks the capacity to provide consent due to age or other circumstances) and may be used in investigations where there is a need to emphasize the severity of the misconduct and related trauma. Sexual assault is a criminal or civil violation and should typically be handled in concert with law enforcement. Sexual assault should be reported to law enforcement immediately, except in cases where reporting would contravene the wishes of an adult complainant and non-reporting in such an instance is permitted by applicable state law.

While the legal term “sexual boundary violation” is a way of denoting the breach of an imaginary line that exists between the doctor and patient or surrogate, and is commonly used in medical regulatory discussions, the members of the Workgroup felt that it was an overly broad term that may encompass everything from isolated instances of inappropriate communication to sexual misconduct and outright sexual assault. Thus, this report avoids the term in favor of more specific terms.

<sup>5</sup> American Academy of Pediatrics “Protecting Children from Sexual Abuse by Health Care Providers,” Committee on Child Abuse and Neglect, 2010-2011, Published in *Pediatrics*, August 2011, Vol. 128, Issue 2.

### *Trauma:*

For the purposes of this report, the definition of trauma provided by the Substance Abuse and Mental Health Services Administration (SAMHSA) is used:

“Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.”<sup>6</sup>

According to SAMHSA, “a program, organization, or system that is *trauma-informed* realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.”<sup>7</sup>

### *Patient:*

A patient is understood as an individual with whom a physician is involved in a care and treatment capacity within a legally defined and professional physician-patient relationship.

### *Physician:*

While this report primarily addresses physician licensees, the content and recommendations should be viewed as applying to all health professionals licensed by member boards of the FSMB, as well as other members of the health care team, including medical students.

## **Section 4: Patient Rights and Expectations for Professional Conduct in the Physician-Patient Encounter**

### *Communication and Patient Education*

Communication between a physician and patient should occur throughout any examination or procedure (provided the patient is not under general anesthetic during the procedure), including conveying the medical necessity, what the examination or procedure will involve, any discomfort the patient might experience, the benefits and risks, and any findings. This is especially important during the performance of an intimate examination. This not only lays out the parameters of the interaction for both parties; it may also help minimize the possibility that the patient will misinterpret the physician’s actions.

<sup>6</sup> Substance Abuse and Mental Health Services Administration. *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach*. HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

<sup>7</sup> *Id.* Emphasis added.

The use of educational resources to educate patients about what is normal and expected during medical examinations and procedures is encouraged and should be provided by both physicians and state medical boards.

### *Informed Consent and Shared Decision-Making*

The informed consent process can be a useful way of helping a patient understand the intimate nature of a proposed examination, as well as its medical necessity. The informed consent process should include, at a minimum, an explanation, discussion, and comparison of treatment options with the patient, including a discussion of any risks involved with proposed procedures; an assessment of the patient's values and preferences; arrival at a decision in partnership with the patient; and an evaluation of the patient's decision in partnership with the patient. This process must be documented in the patient's medical record.

Where possible, the consent process should take place well in advance of any procedure so that the patient has an opportunity to consider the proposed procedure in the absence of competing considerations about cancellation or rescheduling. Requiring decisions at the point of care puts patients at a disadvantage because they may not have time to consider what is being proposed and what it means for themselves and their values. However, it is recognized that obtaining consent well in advance is not always possible for urgent, emergency, or same-day procedures. The consent process should also include information about the effects of anaesthesia, including the possibility of amnesia, because these can be particularly problematic with respect to sexual misconduct. Use of understandable (lay, or common) language during the consent process is essential.

In instances where a patient is unable to provide consent to a pelvic or otherwise intimate examination due to the presence of anesthesia or for any other reason, an intimate examination should only be performed when it is medically necessary. Intimate examinations must never be performed for purely educational purposes when consent cannot be obtained.

## **Section 5: Complaints and the Duty to Report**

In order for state medical boards to effectively address instances of sexual misconduct, they must have access to relevant information about licensees that have harmed or pose a significant risk of harming patients. The complaints process and physicians' professional duty to report instances of sexual misconduct are therefore central to a regulatory board's ability to protect patients.<sup>8</sup>

### *Complaints and Barriers to Complaints*

It is essential for patients or their surrogates to be able to file complaints about their physicians to state medical boards in order that licensees who pose a threat to patients may be investigated and appropriate action taken. However, studies have estimated that sexual misconduct by physicians

<sup>8</sup> Additional reporting to entities other than state medical boards may also be warranted for purposes of patient protection, including law enforcement, hospital or medical staff administration, and medical school or residency program directors and supervisors.

is significantly under reported, and several challenges which may dissuade patients from filing complaints must be overcome.<sup>9</sup> These include distrust in the ability or willingness of institutions such as state medical boards, hospitals and other health care organizations to take action in instances of sexual misconduct; fear of abandonment or retaliation by the physician; societal or personal factors related to stigma, shame, embarrassment and not wanting to relive a traumatic event; a lack of awareness about the role of state medical boards and how to file complaints; or uncertainty that what has transpired is, indeed, unprofessional and unethical.

State medical boards can play an important role in providing clarity about the complaints process by providing information to the public about the process itself and how, why, and when to file a complaint. Recommended methods for optimizing the complaints process include:

- Providing the option to file complaints via multiple channels, including in writing, by telephone, email, or through online forms
- Making the process accessible to patients with information about filing complaints that is clearly posted on state medical board websites
- Ensuring that information about the complaints process is made available via translation for complainants who do not speak English

State medical boards, the FSMB and its partner organizations representing medical specialties whose members perform intimate examinations and procedures may also wish to provide education for patients on topics such as:

- The types of behavior that should be expected of physicians
- Types of behavior that might warrant a complaint
- What to do in the event that a physician's actions make a patient uncomfortable
- Circumstances that would warrant a report directly to law enforcement

State medical boards can also restore public trust and confidence in the complaints process by demonstrating swift and appropriate action on verified complaints.

The ability to file a complaint anonymously may be especially important in instances of sexual misconduct. The trauma and fear associated with sexual misconduct can pose barriers to legitimate complaints, especially when anonymity is not granted. While the ability of complainants to remain anonymous to the general public is recommended, complainant anonymity to the state medical board may not be possible.

State medical boards should address complaints related to sexual misconduct as quickly as possible for the benefit and protection of the complainant and other patients. Initial stages of investigations should be expedited to determine whether there is a high likelihood of imminent risk to the public, meriting steps to modify or cease practice while the investigation is completed.

<sup>9</sup> Dubois J, et al. Sexual Violation of Patients by Physicians: A Mixed-Methods, Exploratory Analysis of 101 Cases. *Sexual Abuse* 2019, Vol. 31(5) 503–523



State medical board staff and board investigators of administrative complaints are encouraged to communicate frequently with complainants throughout the complaint and investigative processes and to ask complainants about their preferred mode and frequency of communication, as well as their expectations from the process. Where possible, boards should consider having a patient liaison or navigator on staff who would be specially trained to provide one-on-one support to complainants and their families.

### *Duty to Report*

In a complaint-based medical regulatory system, it is imperative that state medical boards have access to the information they require to effectively protect patients.<sup>10</sup> In addition to a robust complaints process, it is therefore essential that patients, physicians and everyone involved in healthcare speak up whenever something unusual, unsafe or inappropriate occurs. All members of the healthcare team, as well as institutions, including state medical boards, hospitals and private medical clinics also have a legal as well as an ethical duty to report instances of sexual misconduct and other serious patient safety issues and events. This duty extends beyond physician-patient encounters to reporting inappropriate behavior in interactions with other members of the healthcare team, and in the learning environment.

Early reporting of sexual misconduct is critical. This includes reporting of those forms of misconduct at the less egregious end of the spectrum that fall under potential grooming behaviors. Evidence indicates that less egregious violations that go unreported frequently lead to more egregious ones. Less egregious acts and grooming behaviors are almost always committed in private or after hours where they cannot be witnessed by parties external to the physician-patient encounter and therefore go unreported. Early reporting is therefore one of the only ways in which sexual misconduct with patients can be prevented from impacting more patients.

The ethical duty to report has proven insufficient in recent years, however, to provide the information state medical boards must have to stop or prevent licensees from engaging in sexual misconduct. There are likely several factors that inhibit reporting, including the corporatization of medical practice, which has led many institutions to deal with instances of misconduct internally. While corporatization increases accountability for many physicians and internal processes may be effective in addressing some types of sexual misconduct, it can also cause some institutions to neglect required reporting and the need for transparency. Physicians may also avoid reporting because of the moral distress and discomfort some physicians feel when asked to report their colleagues, and the impracticality of reporting where power dynamics exist and where stakes are high for reporters.

Thus, rather than relying on professional or ethical duties alone, alternative strategies and approaches should be considered. State medical boards should have the ability to levy fines against institutions for failing to report instances of egregious conduct. While many boards already have statutory ability to do so, they are reluctant to engage in legal proceedings with hospitals or other institutions with far greater resources at their disposal. An ability to publicize reasons for levying fines may also be helpful as the reputational risk to an institution could provide added incentives to report.

<sup>10</sup> Federation of State Medical Boards, *Position Statement on Duty to Report*, 2016.

Results of hospital and health system peer review processes should also be shared with state medical boards when sexual misconduct is involved. This type of conduct is fundamentally different from other types of peer review data related to performance and aimed at quality improvement and, while still relevant to medical practice, should be subject to different rules regarding reporting. Hospitals should also be required to report to state medical boards instances where employed physicians have been dismissed or are forced to resign due to concerns related to sexual misconduct.

Boards should have the authority to impose disciplinary action on licensees for failure to report. Where such authority does not currently exist, legislative change may be sought.<sup>11</sup> Language used in state laws describing when reporting is mandatory varies and can include “actual knowledge” of an event, “reasonable cause” to believe that an event occurred, “reasonable belief,” “first-hand knowledge,” and “reasonable probability” (as distinguished from “mere probability”).<sup>12</sup> Despite the variance in language, the theme of reasonability runs throughout. If it is reasonable to believe that misconduct occurred, this should be reported to the state medical board and, in most instances, to law enforcement.

### *Reporting to Law Enforcement*

There is variability in state laws that address when state medical boards are required to report instances of sexual misconduct to law enforcement. Despite this variability, best practices dictate that boards have a duty to report to law enforcement anytime they become aware of sexual misconduct or instances of criminal behavior. When reporting requirements are unclear, consultation with a board attorney is recommended, but boards are encouraged to err on the side of reporting. Protocols and consensus can also be established in collaboration with law enforcement to help clarify reporting requirements. This can also help to clarify circumstances where law enforcement should report instances of physician sexual misconduct to state medical boards.

In limited circumstances, boards may choose not to report to law enforcement. These may involve less egregious forms of sexual misconduct such as inappropriate speech or include circumstances where a complainant requests that law enforcement not be notified, as long as there is no law establishing a mandatory reporting requirement. Wishes of complainants should be respected in such circumstances, as victims may be at different stages of coming to terms with the trauma they’ve experienced. However, reporting to law enforcement must occur for any instance of child abuse, abuse of a minor, and abuse of a dependent adult, regardless of whether the complainant wants reporting to occur. In any instance where reporting sexual misconduct to law enforcement is considered, especially in instances where a decision is made *not* to report, a clear rationale for the board’s decision should be documented. Boards can also facilitate the reporting process for patients by offering assistance or educational resources about the reporting process and relevant contact information.

<sup>11</sup> See, e.g., N.C. Gen. Stat. § 90-5.4

<sup>12</sup> Starr, Kristopher T Reporting a Physician Colleague for Unsafe Practice: What’s the Law? *Nursing2019*: [February 2016 - Volume 46 - Issue 2 - p.14](#)

## *Cultivating Professionalism*

Empowering physicians and physicians in training to report violations of professional standards is essential given the barriers posed by the hierarchical structure of most health care institutions.<sup>13</sup> Those in a position to observe and report sexual misconduct should be protected from retaliation and adverse consequences for medical school matriculation, training positions, careers or promotions. Cultivating positive behavior through role modelling and establishing clear guidance based on the values of the profession is the responsibility of multiple parties, not the state medical board alone. A broader notion of professionalism should be adopted that goes beyond expectations for acceptable conduct to include a duty to identify instances of risk or harm to patients, thereby making non-reporting professionally unacceptable. Physicians who fail to report known instances of sexual misconduct should be liable for sanction by their state medical board for the breach of their professional duty to report.

Unscrupulous, frivolous or vexatious reporting motivated by competition or personal animus is counterproductive to fulfilling this notion of professionalism and protecting the public, so should be met with disciplinary action. Processes for reporting and complaints should be normalized by making them a core component of medical professionalism, rather than a burdensome responsibility that befalls particular unfortunate individuals. This may help physicians feel less like investigators and more like responsible stewards of professional values. Those physicians and other individuals who do report in good faith should be protected from retaliation through whistleblower legislation and given the option to remain anonymous.

### **Section 6: Investigations**

#### *State Medical Board Authority*

It is imperative that state medical boards have sufficient statutory authority to investigate complaints and any reported allegations of sexual misconduct. State medical boards should place a high priority on the investigation of complaints of sexual misconduct due to patient vulnerability unique to such cases. The purpose of the investigation is to determine whether the report can be substantiated in order to collect sufficient facts and information for the board to make an informed decision as to how to proceed. If the state medical board's investigation indicates a reasonable probability that the physician has engaged in sexual misconduct, the state medical board should exercise its authority to intervene and take appropriate action to ensure the protection of the patient and the public at large.

Each complaint should be investigated and judged on its own merits. Where permitted by state law, the investigation should include a review of previous complaints to identify any such patterns of behavior, including malpractice claims and settlements. In the event that such patterns are identified early in the investigation, or the physician has been the subject of sufficient previous complaints to suggest a high likelihood that the physician presents a risk to future

<sup>13</sup> Dubois J. et al. Preventing Egregious Ethical Violations in Medical Practice, Evidence-Informed Recommendations from a Multidisciplinary Working Group. *Journal of Medical Regulation* 2018, Vol.104(4), 23-31.

patients, or in the event of evidence supporting a single egregious misconduct event, the state medical board should have the authority to impose terms or limitations, including suspension, on the physician's license prior to the completion of the investigation.

The investigation of all complaints involving sexual misconduct should include interviews with the physician, complainant(s) and/or patient and/or patient surrogate. The investigation may include an interview with a current or subsequent treating practitioner of the patient and/or patient surrogate; colleagues, staff and other persons at the physician's office or worksite; and persons that the patient may have told of the misconduct. Physical evidence and police reports can also be valuable in providing a more complete understanding of events.

In many states, a complaint may not be filed against a physician for an activity that occurred beyond a certain time threshold in the past. There is a growing trend among state legislatures in recent years to extend or remove the statute of limitations in cases of rape, sexual assault and other forms of sexual misconduct. Given the impact that trauma can have on a victim of sexual misconduct, the length of time that it may take to understand that a violation has occurred, to come to terms with it, or be willing to relive the circumstances as part of the complaints process, the members of the Workgroup feel that no limit should be placed on the amount of time that can elapse between when an act of misconduct occurred and when a complaint can be filed.

#### *Trauma-Informed Investigations*

Because of the delicate nature of complaints of sexual misconduct and the potential trauma associated with it, state medical boards should have special procedures in place for interviewing and interacting with such complainants and adjudicating their cases. In cases involving trauma, emotions may not appear to match the circumstances of the complaint, seemingly salient details may be unreported or unknown to the complainant, and the description of events may not be recounted in linear fashion. Symptoms of trauma may therefore be falsely interpreted as signs of deception by board investigators or those adjudicating cases.

Professionals who are appropriately trained and certified in the area of sexual misconduct and victim trauma should conduct the state medical board's investigation and subsequent intervention whenever possible. Best practices in this area suggest that board members and staff should undergo specialized training in victim trauma. It is further recommended that all board staff who work with complainants in cases involving sexual misconduct undergo this training to develop an understanding of how complainants' accounts in cases involving trauma can differ from other types of cases. This can inform reasonable expectations on behalf of those investigating and adjudicating these cases and help eliminate biases. The FSMB and state medical boards should work to identify and ensure the availability of high-quality training in trauma and a trauma-informed approach to investigations. While a greater understanding of victim trauma is a priority, additional training in implicit bias related to gender, gender identity, race, and ethnicity would also help ensure fair and comfortable processes for victims.

Where state medical boards have access to investigators of different genders, boards should seek the complainant's preference regarding the gender of investigators and assign them accordingly. State medical boards should also allow inclusion of patient advocates in the interview process

and treat potential victims (survivors) with empathy, humanity, and in a manner that encourages healing. Questioning of both complainants and physicians should take the form of an information-gathering activity, not an aggressive cross-examination.

### **Section 7: Comprehensive Evaluation**

State medical boards regularly use diagnostic evaluations for health professionals who may have a physical or mental impairment. Similarly, the use of diagnostic evaluations when handling a complaint regarding sexual misconduct provides significant information that may not otherwise be revealed during the initial phase of the investigation. A comprehensive evaluation may be valuable to the board's ability to assess future risk to patient safety.

A comprehensive evaluation is not meant to determine findings of fact. Rather, its purpose is to:

- assess and define the nature and scope of the physician's behavior,
- identify any contributing illness, impairment, or underlying conditions that may have predisposed the physician to engage in sexual misconduct or that might put future patients at risk,
- assist in determining whether a longstanding maladaptive pattern of inappropriate behavior exists, and
- make treatment recommendations if rehabilitative potential is established.

If its investigation reveals a high probability that sexual misconduct has occurred, the state medical board should have the authority to order an evaluation of the physician and the physician must be required to consent to the release to the board all information gathered as a result of the evaluation. The evaluation of the physician follows the investigation/intervention process but precedes a formal hearing.

The evaluation of a physician for sexual misconduct is complex and may require a multidisciplinary approach. Where appropriate, it should also include conclusions about fitness to practice.

### **Section 8: Hearings**

Following investigation and evaluation (if appropriate), the state medical board should determine whether sufficient evidence exists to proceed with formal charges against the physician. In most jurisdictions, initiation of formal charges is public and will result in an administrative hearing unless the matter is settled.

#### *Initiation of Charges*

In assessing whether sufficient evidence exists to support a finding that sexual misconduct has occurred, corroboration of a patient's testimony should not be required. Although establishing a pattern of sexual misconduct may be significant, a single case is sufficient to proceed with a

formal hearing. State medical boards should have the authority to amend formal charges to include additional complainants identified prior to the conclusion of the hearing process.

### *Open vs Closed Hearings*

If state medical boards are required, by statute, to conduct all hearings in public, including cases of sexual misconduct, many patients may be hesitant to come forward in a public forum and relate the factual details of what occurred. State medical boards should have the statutory authority to close the hearing during testimony which may reveal the identity of the patient. Where closing a hearing is not possible, great care should be taken to deidentify any personally identifying or sensitive information in transcripts and medical records. The decision to close the hearing, in part or in full, should be at the discretion of the board. Neither the physician nor the witness should control this decision. Boards should allow the patient the option of having support persons available during both open and closed hearings.

### *Patient Confidentiality*

Complaints regarding sexual misconduct are highly sensitive. Therefore, enhanced attention must be given to protecting a patient's identity, including during board discussion, so that patients are not discouraged from coming forward with legitimate complaints against physicians. State medical boards should have statutory authority to ensure nondisclosure of the patient's identity to the public. This authority should include the ability to delete from final public orders any patient identifiable information.

### *Testimony*

Sexual misconduct cases involve complex issues; therefore, state medical boards may consider the use of one or more expert witnesses to fully develop the issues in question and to define professional standards of care for the record. Additionally, the evaluating/treating physician or mental health care practitioners providing assessment and/or treatment to the respondent physician may be called as witnesses. The evaluating clinician may provide details of treatment, diagnosis and prognosis, especially the level of insight and change by the practitioner. Also, a current or subsequent treating practitioner of the patient, especially a mental health provider, may be called as a witness. All these witnesses may provide insight into factors that led to the alleged sexual misconduct, an opinion regarding the level of harm incurred by the patient, and describe the physician's rehabilitative potential and risk for recidivism.

### *Implicit Bias*

In any case that comes before a state medical board, it is important for those responsible for adjudicating the case to be mindful of any personal bias that may impact their review and adjudication. Bias can be particularly strong where board members themselves have been victims of sexual assault or have been subject to previous accusations regarding sexual misconduct. Bias may even influence the decisions of state medical board members by virtue of their being

physicians themselves. Training about implicit bias is recommended for board members and staff in order to help identify implicit bias and mitigate the impact it may have on their work.<sup>14</sup>

Diverse representation on state medical boards in terms of gender, age, and ethnicity is important for ensuring balanced discussion and decisions. The inclusion of public members on state medical boards can also contribute to the reduction of bias in adjudication, while also amplifying the patient perspective through commitment to the priorities and interests of the public.<sup>15</sup> In order to ensure effective and meaningful participation from public members, appropriate orientation and education about their role should occur.

## **Section 9: Discipline**

State medical boards have a broad range of disciplinary responses available to them that are designed to protect the public. Upon a finding of sexual misconduct, the board should take appropriate action and impose one or more sanctions reflecting the severity of the conduct and potential risk to patients. Essential elements of any board action include a list of mitigating and aggravating factors, an explanation of the violation in plain language, clear and understandable terms of the sanction, and an explanation of the consequences associated with non-compliance.

Findings of even a single case of sexual misconduct are often sufficiently egregious as to warrant revocation of a physician's medical license. Certain serious forms of unprofessional conduct should presumptively provide the basis for revocation of a license in order to protect the public. Misconduct in this class would include sexual assault, conduct amounting to crimes related to sex, regardless of whether charged or convicted, or egregious acts of a sexual nature. State medical boards should also consider revocation in instances where a physician has repeatedly committed lesser acts, especially following remedial efforts.

In a limited set of instances, state medical boards may find that mitigating circumstances do exist and, therefore, stay the revocation and institute terms and conditions of probation or other practice limitations. If a physician is permitted to remain in practice and gender- or age-based restrictions are used by state medical boards, consideration may also be given to coupling these restrictions with additional regulatory interventions such as education, monitoring or other forms of probation.

In determining an appropriate disciplinary response, the board should consider the factors listed in **Table 1**.

<sup>14</sup> Project Implicit, accessed November 13, 2019 at <https://implicit.harvard.edu/implicit/>

<sup>15</sup> Johnson DA, Arnhart KL, Chaudhry HJ, Johnson DH, McMahon GT, The Role and Value of Public Members in Health Care Regulatory Governance *Acad Med*, Vol. 94, No. 2 / February 2019

**Table 1: Considerations in determining appropriate disciplinary response**

<ul style="list-style-type: none"> <li>• Patient Harm<sup>16</sup></li> <li>• Severity of impropriety or inappropriate behavior</li> <li>• Context within which impropriety occurred</li> <li>• Culpability of licensee</li> <li>• Psychotherapeutic relationship</li> <li>• Existence of a physician-patient relationship</li> <li>• Scope and depth of the physician-patient relationship</li> <li>• Inappropriate termination of physician-patient relationship</li> </ul>	<ul style="list-style-type: none"> <li>• Age and competence of patient</li> <li>• Vulnerability of patient</li> <li>• Number of times behavior occurred</li> <li>• Number of patients involved</li> <li>• Period of time relationship existed</li> <li>• Evaluation/assessment results</li> <li>• Prior professional misconduct/disciplinary history/malpractice</li> <li>• Recommendations of assessing/treating professional(s) and/or state physician health program</li> <li>• Risk of reoffending</li> </ul>
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Boards should not routinely consider romantic involvement, patient initiation or patient consent to be a legal defense. Sexual misconduct may still occur following the termination of a physician-patient relationship, especially in long-standing relationships or ones that involve a high degree of emotional dependence. Time elapsed between termination of the relationship is insufficient in many contexts to determine that sexual contact is permissible. Other factors that should be considered in assessing the permissibility of consensual sexual contact between consenting adults following the termination of a physician-patient relationship can include documentation of formal termination; transfer of the patient's care to another health care provider; the length of time of the professional relationship; the extent to which the patient has confided personal or private information to the physician; the nature of the patient's health problem; and the degree of emotional dependence and vulnerability.<sup>17</sup> Termination of a physician-patient relationship for the purposes of allowing sexual contact to occur is unacceptable and would still constitute sexual misconduct because of the trust, inherent power imbalance between a physician and patient, and patient vulnerability that exist leading up to, during and following the decision to terminate the relationship. Any consent to sexual or

<sup>16</sup> Broadly understood as inclusive of physical and emotional harm, resulting distrust in the medical system and avoidance of future medical treatment, and other related effects of trauma.

<sup>17</sup> Washington Medical Commission, *Guideline on Sexual Misconduct and Abuse*, 2017.



romantic activity provided by a patient within the context of a physician-patient relationship or immediately after its termination should be considered invalid.

Society's values and beliefs evolve, and some individuals may be slower to abandon long-held beliefs, even where these may be sexist or prejudiced in other ways. However, adherence to an outdated set of generational values that has since been found to be unacceptable is not a reason to overlook or excuse sexual misconduct.

The potential existence of a physician workforce shortage or maldistribution, or arguments related to particular restrictions being tantamount to taking a physician "out of work" should also not be used as reasons for leniency or for allowing patients to remain in harm's way. In cases involving sexual misconduct, it is simply not true that unsafe or high-risk care is better than no care at all. A single instance, let alone many instances, can cause an extremely high degree of damage to individuals and the communities in which they reside. However, staying true to the principle of proportionality also means considering the fact that some forms of discipline, including public notifications, generate significant shame upon the disciplined physician. This can compound the degree of severity of a disciplinary action and may be taken into consideration by state medical boards where less egregious forms of sexual impropriety are involved.

#### *Temporary or Interim Measures:*

In the event that a state medical board decides to remove a licensee from practice or limit the practice of a licensee as a temporary measure in order to reduce the risk of patient harm while an investigation takes place, there are several different interim measures that can be used. Common measures include an interim or summary suspension/cessation of practice, restrictions from seeing patients of a certain age or gender, restrictions from seeing patients altogether, or the mandatory use of a practice monitor (to be understood as distinct from a chaperone, as explained below) for all patient encounters.

The appropriateness of age and gender-based interim restrictions should be considered carefully before being imposed by state medical boards. Sexual misconduct often occurs for reasons related to power, rather than because of a sexual attraction to a particular gender or age group, thereby making these restrictions ineffective to protect patients in many cases.

#### *Remediation*

As discussed above, many forms of sexual misconduct and harmful actions that run against the core values of medicine should appropriately result in revocation of licensure. However, there may be some less egregious forms of sexual impropriety with mitigating circumstances for which a physician may be provided the option of participating in a program of remediation to be able to re-enter practice or have license limitations lifted following a review and elapse of an appropriate period of time.

The decision to allow a physician who has committed an act of sexual misconduct the opportunity to undergo a program of remediation with an end goal of potential license reinstatement is difficult for boards to make. Boards are therefore encouraged to draw from the

professional resources that already exist in making determinations about remediation potential and license reinstatement.

State medical boards should be mindful that not all physicians who have committed sexual misconduct are capable of remediation. Reinstatement and monitoring in such a context would therefore be inappropriate. For those who are considered for remediation, if at any point it becomes clear that the physician presents a risk of reoffending or otherwise harming patients, the remediation process should be abandoned, and reinstatement should not occur.

In determining whether remediation is feasible for a particular physician, state medical boards may wish to make use of a risk stratification methodology that considers the severity of actions committed, the mitigating and aggravating factors listed in section 9 above (Discipline), the character of the physician, including insight and remorse demonstrated, as well as an understanding of how their actions violated standards of professional ethics and state medical practice acts, and the perceived likelihood that they may reoffend. The consequences to patients and the general public of allowing a physician to engage in remediation and re-enter practice after a finding of sexual misconduct should be considered, including any erosion of the public trust in the medical profession and the role of state medical boards.

The goals of the remediation process should be clearly outlined, including expectations for acceptable performance on the part of the physician. The process of remediation should take place in-person (online or other forms of distance learning would not be sufficient), require full disclosure of and relate to the physician's offense(s) and be targeted to identified gaps in understanding of their particular vulnerabilities and other risks for committing sexual misconduct. As a condition of successful completion of a program of remediation, participants should be required to articulate not only *why* their actions were wrong, but also *how* they arrived at the point at which they were willing to commit them, and *how* they will guard against arriving at such a point again. For this to occur, assessment and remediation partners must be provided access to investigative information in order to properly tailor remedial education to the particular context in which the misconduct occurred. Finally, state medical boards should be mindful that remediation cannot typically be said to have "occurred" following successful completion of an educational course. Rather, a longitudinal mechanism must be established for maintaining the physician's engagement in a process of coming to terms with their misconduct and avoiding the circumstances that led to it. The longitudinal mechanism both demonstrates the physician's commitment to accountability and the effectiveness of a board's monitoring reach.

The members of the Workgroup acknowledge that shortcomings exist in the current evidence base regarding the effectiveness of remediation in instances of sexual misconduct. As noted elsewhere in this report, recidivism is exceedingly difficult to study well. Recommendations about the use of consistent terminology and improving the tracking of disciplined physicians will contribute to understanding what kinds of remedial interventions are most appropriate and effective in the context of sexual misconduct. Moreover, the Workgroup feels that further research is needed in several other areas, such as group learning experiences, instruction in victim empathy, remedial instruction with or without additional interventions, and identification of subgroups of offenders who may be at higher risk of reoffending.

### *License Reinstatement/Removal of License Restriction(s)*

In the event of license revocation, suspension, or license restriction, any petition for reinstatement or removal of restriction should include the stipulation that a current assessment, and if recommended, successful completion of treatment, be required prior to the medical board's consideration to assure the physician is competent to practice safely. Such assessment may be obtained from the physician's treating professionals, state physician health program (PHP),<sup>18</sup> or from an approved evaluation team as necessary to provide the board with adequate information upon which to make a sound decision.

### *Transparency of board actions:*

As state medical boards regulate the profession in the interest of the public, it is essential that evolving public values and needs are factored into decisions about what information is made publicly available. It has been made clear in academic publications and popular media, as well as through the #MeToo and TimesUp movements that the public increasingly values transparency regarding disciplinary actions imposed on physicians. It is likely that any action short of a complete revocation of licensure will draw scrutiny from the public and popular media. Such scrutiny can also be expected regarding decisions to reinstate a license or remove restrictions. The public availability of sufficient facts to justify a regulatory decision and link it to a licensee's behavior and the context in which it occurred can help state medical boards to explain and justify their decision.

The ability to disclose particular details of investigative findings and disciplinary actions is limited by state statute in many jurisdictions. State medical boards are encouraged to convey this fact to the public in order to protect the trust that patients have in boards, but also make efforts to achieve legislative change, allowing them to publicize information that is in the public interest. Where disclosure is possible, boards should select means for conveying information that will optimally reach patients. This should include making information available on state medical board websites and reporting to the FSMB Physician Data Center, thereby allowing for disciplinary alerts to be sent to other jurisdictions in which the physician holds a license and making information about disciplinary actions publicly available through FSMB's docinfo.org website, and the National Practitioner Data Bank. The use of private agreements or letters of warning in cases involving sexual misconduct is inappropriate because of the importance of disclosure for public protection and data sharing with other state medical boards or medical regulatory authorities from other jurisdictions.

Boards should also consider additional means of communicating, such as through mobile phone applications,<sup>19</sup> notices in newspapers and other publications. California<sup>20</sup> and Washington<sup>21</sup> both

<sup>18</sup> "A Physician Health Program (PHP) is a confidential resource for physicians, other licensed healthcare professionals, or those in training suffering from addictive, psychiatric, medical, behavioral or other potentially impairing conditions. PHPs coordinate effective detection, evaluation, treatment, and continuing care monitoring of physicians with these conditions." Source: Federation of State Physician Health Programs.

<sup>19</sup> The Medical Board of California has launched a new mobile application allowing patients to receive updates about their physician, including licensure status and practice location.

<sup>20</sup> CA Bus and Prof Code §1007 (2018)

<sup>21</sup> RCW 18.130.063

require that patients be notified of sexual misconduct license stipulations/restrictions at the time of making an appointment and that the patient verify this notification. Other boards have required licensees to obtain signatures from all patients in their care acknowledging their awareness of an adjudication for professional sexual misconduct. Boards may wish to consider whether these could be viable options in their states.

State medical boards are also encouraged to implement clear coding processes for board actions that provide accurate descriptions of cases, and clearly link licensee behaviors to disciplinary actions. Where sexual misconduct has occurred, the case should be labeled as such. A label of “disruptive physician behavior” or even “boundary violation” is less helpful than the more specific label of “sexual misconduct.” State medical boards and the FSMB should work together to develop consistent terminology that allows a violation and the underlying causes of discipline to be stated explicitly, thereby promoting greater understanding for the public and the state medical boards, while also enabling the tracking of trends, frequencies, recidivism and the impact of remedial measures.

Where particular actions on the part of the physician may not meet a threshold for disciplinary action, but might nonetheless constitute grooming or other concerning behaviors, state medical boards should consider ways in which to allow previously dismissed cases to be revisited during subsequent cases, such as through non-disciplinary letters of education or concern which remain on a licensee’s record. The ability to revisit previous cases involving seemingly minor events can help identify patterns of behavior in a licensee and provide additional insight into whether a licensee poses a risk to future patients.

## **Section 10: Monitoring**

Following a finding of sexual misconduct, if a license is not revoked or suspended, it is essential that a state medical board establish appropriate monitoring of the physician and their continued practice. Monitoring in the context of sexual misconduct occurs differently from monitoring substance use disorders and the resources available to boards differ from state to state. Many PHPs do not offer monitoring services for physicians who have faced disciplinary action because of sexual misconduct and even where such monitoring by a PHP is possible, it is typically only part of a way forward, rather than a solution on its own.<sup>22</sup>

For the purposes of this report, the members of the Workgroup understand the use of a *chaperone* as an informal arrangement of impartial observation, typically initiated by physicians themselves. A chaperone in this context is meant to protect the doctor in the event of a complaint, although their presence may also offer comfort to the patient.<sup>23</sup> The patient may request that the chaperone not be present for any portion of the clinical encounter. The American College of Obstetricians and Gynecologists (ACOG) has recently recommended that a chaperone be present for all breast, genital, and rectal examinations because of the profoundly negative

<sup>22</sup> Federation of State Physician Health Program Statement on Sexual Misconduct in the Medical Profession, May 2019.

<sup>23</sup> Paterson, R. Independent review of the use of chaperones to protect patients in Australia, Commissioned by the Medical Board of Australia and the Australian Health Practitioner Regulation Agency, February 2017.

effect of sexual misconduct on patients and the medical profession and the association between misconduct and the absence of a chaperone.<sup>24</sup>

The Workgroup supports ACOG's recommendation because of the potential added layer of protection that an impartial third party brings, while acknowledging that the use of board-mandated chaperones has been discontinued in some international jurisdictions and by particular state medical boards, because of a belief that they merely provide the illusion of safety and may therefore allow harmful behaviors to go unnoticed. There is risk of this occurring in instances where a chaperone is untrained or uninformed about their role, is an employee or colleague of the physician being monitored or does not adequately attend to their responsibilities. In order to distinguish a chaperone in a less formal arrangement with a physician from one mandated by a state medical board with established reporting requirements and formal training, the Workgroup recommends referring to the latter individual as a "practice monitor."

A *practice monitor* differs from a chaperone. We define a practice monitor as part of a formal monitoring arrangement mandated by a state medical board, required at all patient encounters, or all encounters with patients of a particular gender or age. The practice monitor's primary responsibility is to the state medical board and their presence in the clinical encounter is meant to provide protection to the patient through observation and reporting. Costs associated with employing a practice monitor are typically borne by the monitored physician, but practices may vary across states. The patient must be informed that the practice monitor's presence is required as part of a practice restriction. As the practice monitor is mandated for all clinical encounters, the patient may not request that the practice monitor not be present for any portion of the encounter. If a patient is uncomfortable with the presence of a practice monitor, they will need to seek care from a different physician. Patient supports (parents, family members, friends) may be present during examinations but do not replace, nor can they be used in lieu of a board mandated practice monitor.

While even this formal arrangement with a clearly defined role, training and direct reporting may have limitations, the practice monitor may be a useful option for boards in certain specific circumstances. In particular, in instances where there is insufficient evidence to remove a physician from practice altogether, but significant risk is believed to be present, the opportunity to mandate practice monitoring provides boards with an additional option, short of allowing a potentially risky physician to return to independent practice. As such, when practice monitors are implemented judiciously, the Workgroup believes that their use can enhance patient safety and should therefore be considered by state medical boards.

Practice monitors should only be used if the following conditions have been met:

- The practice monitor has undergone formal training about their role, including their primary responsibility and direct reporting relationship to the state medical board (as opposed to the physician being monitored).

<sup>24</sup> Sexual misconduct. ACOG Committee Opinion No. 796. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2020;135:e43–50.

- It is highly recommended that all practice monitors have clinical backgrounds. If they do not, their training must include sufficient content about clinical encounters so they can be knowledgeable about what is and is not appropriate as part of the monitored physician's clinical encounters with patients.
- The practice monitor should be approved by the state medical board and cannot be an employee or colleague of the monitored physician that may introduce bias or otherwise influence their abilities to serve as a practice monitor and report to the board or intervene when necessary. Pre-existing contacts of any sort are discouraged, but where a previously unknown contact is not available, the existing relationship should be disclosed. In some states, practice monitors are required to be active licensees of another health profession as it is felt that this reinforces their professional duty to report. When health professionals serve as practice monitors, they should not have any past disciplinary history.
- The practice monitor has been trained in safe and appropriate ways of intervening during a clinical encounter at any point where there is confidence of inappropriate behavior on the part of the physician, the terms of the monitoring agreement are not being followed, or a patient has been put at risk of harm.
- The practice monitor submits regular reports to the state medical board regarding the monitored physician's compliance with monitoring requirements and any additional stipulations made in a board order.
- Where possible, state medical boards should consider establishing a panel of different practice monitors that will rotate periodically among monitored physicians to ensure monitor availability and that a collegial relationship does not develop between a practice monitor and a monitored physician, unduly influencing the nature of the monitoring relationship.

Monitoring should be individualized and based on the findings of the multidisciplinary evaluation, and, as appropriate, subsequent treatment recommendations. If a diagnosis of contributory mental/emotional illness, addiction, or sexual disorder has been established, the monitoring of that physician should be the same as for any other mental impairment and state medical boards are encouraged to work closely with their state physician health program as a resource and support in monitoring. Conditions, which may also be used for other violations of the medical practice act, may be imposed upon the physician. Examples are listed in **Table 2**.

**Table 2: Possible Conditions of Practice Following a Finding of Sexual Misconduct**

- Supervision of the physician in the workplace by a supervisory physician
- Requirement that practice monitors are always in attendance and sign the medical record attesting to their attendance during examination or other patient interactions as appropriate.<sup>25</sup>
- Periodic on-site review by board investigator or physician health program staff if indicated.
- Practice limitations as may be recommended by evaluator(s) and/or the state physicians health program.
- Regular interviews with the board and/or state physician health program as required to assess status of probation.
- Regular reports from a qualified and approved licensed practitioner, approved in advance by the board, conducting any recommended counseling or treatment.
- Completion of a program in maintaining appropriate professional boundaries, which shall be approved in advance of registration by the board.

## **Section 11: Education**

Education and training about professional boundaries in general and physician sexual misconduct in particular should be provided during medical school and residency, as well as throughout practice as part of a physician's efforts to remain current in their knowledge of professional expectations.

### *State Medical Board Members and Staff*

State medical boards and the FSMB should take a proactive stance to educate physicians, board members and board staff about sexual misconduct and the effects of trauma. Members of state medical boards and those responsible for adjudicating cases involving sexual misconduct can also experience trauma. Education for dealing appropriately with traumatic elements of cases and finding appropriate help and resources would also be valuable for board members.

<sup>25</sup> Where a practice monitor does not have authority to make entries in a medical record, alternatives such as handwriting and scanning the attestation should be considered.

### *Medical Education and Training*

Education and training should include information about professionalism and the core values of medicine; the nature of the physician-patient relationship, including the inherent power imbalance and the foundational role of trust; acceptable behavior in clinical encounters; and methods of reporting instances of sexual misconduct. For both medical schools and residency programs, this education and training should also include tracking assessment across the curriculum, identification of deficiencies in groups and individuals, remediation, and reassessment for correction, appropriate self-care, and the potential for developing psychiatric illness or addictive behaviors. Early identification of risk for sexual misconduct and unprofessionalism is central to public protection and maintaining public trust.

### *Physicians*

For practicing physicians, because of lack of education or awareness, physicians may encounter situations in which they have unknowingly violated the medical practice act through boundary transgressions and violations. A reduction in the frequency of physician sexual misconduct may be achieved through education of physicians and the health care team. Engagement in accredited continuing medical education that addresses professionalism, appropriate and acceptable behavior, and methods for reporting sexual misconduct should be encouraged among physician licensees and other members of the healthcare team.

Resources should also be made available to physicians to help them develop better insight into their own behavior and its impact on others. These could include multi-source feedback and 360-degree assessments, and self-inventories with follow-up education based on the results. As with apology legislation, the use of these resources and the results from self-assessment or other forms of assistance should not be used against physicians. Such resources would likely be used more broadly if they came from specialty and professional societies, rather than from state medical boards alone.

### *Cooperation and Collaboration*

State medical boards should develop cooperative relationships with state physician health programs, state medical associations, hospital medical staffs, other organized physician groups, and medical schools and training programs to provide physicians and medical students with educational information that promotes awareness of physician sexual misconduct. This information should include a definition of physician sexual misconduct, what constitutes appropriate physician-patient boundaries, how to identify and avoid common “grooming” behaviors such as adjusting appointment timing to facilitate time alone with a particular patient, contacting patients outside of clinical hours, or divulging personal information to a patient, and the potential consequences to both the patient and the physician when professional boundaries are not maintained. Physicians should be educated regarding the degree of harm patients experience as a result of sexual misconduct.



## *Patients*

Education for patients is also essential so that they may be better informed about what to expect during a clinical encounter, what would constitute inappropriate behavior, and how to file a complaint with their state medical board. Information about boundary issues, including physician sexual misconduct, should be published in medical board newsletters and pamphlets. Media contacts should be developed to provide information to the public. Efforts should also be made by state medical boards and the FSMB to better educate the public about the existence and role of state medical boards.

## **Section 12: Summary of Recommendations**

The goal of this report is to provide state medical boards with best practice recommendations for effectively addressing and preventing sexual misconduct with patients, surrogates and others by physicians, while highlighting key issues and existing approaches.

The recommendations in this section include specific requests of individual entities, as well as general ones that apply to multiple parties, including state medical boards, the FSMB and other relevant stakeholders. The Workgroup felt strongly that effectively addressing physician sexual misconduct requires widespread cultural and systemic changes that can only be accomplished through shared efforts across the medical education and practice continuum.

### **Culture:**

1. Across the continuum from medical education to practice, continue to eliminate harassment and build culture that is supportive of professional behavior and does not tolerate harassment of any type.

### **Transparency:**

2. State medical boards should ensure that sufficient information is publicly available (without breaching the privacy of complaints) to justify regulatory decisions and provide sufficient rationale to support them.
3. State medical boards should implement clear coding processes for board actions that provide accurate descriptions of behaviors underlying board disciplinary actions and clearly link licensee behaviors to disciplinary actions.
4. State medical boards and the FSMB should work together to develop consistent terminology for use in board actions that allows greater understanding for the public and the state medical boards, while also enabling the tracking of trends, frequencies, recidivism and the impact of remedial measures. These should support research and the early identification of risk to patients.

5. The means of conveying information to the public about medical regulatory processes, including professional expectations, reporting and complaints processes, and available resources should be carefully examined to ensure maximal reach and impact. Multiple communication modalities should be considered.

### **Complaints:**

6. State medical boards are encouraged to provide easily accessible information, education and clear guidance about how to file a complaint to the state medical board, and why complaints are necessary for supporting effective regulation and safe patient care. The FSMB and its partner organizations representing medical specialties whose members perform intimate examinations and procedures should provide education to patients about the types of behavior that can be expected of physicians, what types of behavior might warrant a complaint, what to do in the event that actions on the part of a physician make a patient uncomfortable, and circumstances that would warrant a report to law enforcement.
7. State medical boards and board investigators of administrative complaints are encouraged to communicate frequently with complainants throughout the complaint and investigative process, according to the preferred mode and frequency of communication of the complainant.
8. Complaints related to sexual misconduct should be addressed as quickly as possible given their traumatic nature and to protect potential future victims.
9. State medical boards should have a specially trained patient liaison or navigator on staff who is capable of providing one-on-one support to complainants and their families.

### **Reporting:**

10. Institutions should be required by statute to report instances of egregious conduct to state medical boards and be subject to fines levied by the state medical board, another appropriate regulatory agency or the state attorney general for failing to report.
11. Results of hospital and health system peer review processes should be shared with state medical boards when sexual misconduct is involved.
12. Hospitals should be required to report to state medical boards instances where employed physicians have been dismissed or are forced to resign due to concerns related to sexual misconduct.
13. Physicians who fail to report known instances of sexual misconduct should be liable for sanction by their state medical board for the breach of their professional duty to report.

14. Unscrupulous, frivolous or vexatious reporting motivated by competition should be met with disciplinary action.
15. Physicians and other individuals who report in good faith should be protected from retaliation and given the option to remain anonymous.

**Investigations:**

16. If the state medical board's investigation indicates a reasonable probability that the physician has engaged in sexual misconduct, the state medical board should exercise its authority to intervene and take appropriate action to ensure the protection of the patient and the public at large.
17. Where permitted by state law, investigations should include a review of previous complaints to identify any patterns of behavior, including malpractice claims and settlements.
18. State medical boards should have the authority to impose interim terms or limitations, including suspension, on a physician's license prior to the completion of an investigation.
19. Limits should not be placed on the length of time that can elapse between when an act of alleged physician sexual misconduct occurred and when a complaint can be filed.
20. Investigators should use trauma-informed procedures when interviewing and interacting with complainants alleging instances of sexual misconduct and adjudicating these cases.
21. State medical board members involved in sexual misconduct cases (either in investigation or adjudication) and all board staff who work with complainants in cases involving sexual misconduct should undergo training in the area of sexual misconduct, victim trauma, and implicit bias.
22. Where possible, boards should seek the complainant's preference regarding the gender of investigators and assign them accordingly.
23. State medical boards should also allow inclusion of patient advocates in the interview process.
24. The FSMB and state medical boards should work to identify and ensure the availability of high-quality training in sexual trauma and a trauma-informed approach to investigations.

### **Comprehensive Evaluation:**

25. State medical boards should have the authority to order a comprehensive evaluation of physicians where investigation reveals a high probability that sexual misconduct has occurred.

### **Hearings:**

26. State medical boards should have statutory authority to ensure nondisclosure of the patient's identity to the public, including by closing hearings in part or in full, and deleting any identifiable patient information from final public orders. Patient identity must also be protected during board discussion.

### **Discipline:**

27. Certain serious forms of unprofessional conduct should presumptively provide the basis for revocation of a license in order to protect the public. Misconduct in this class would include sexual assault, conduct amounting to crimes related to sex, regardless of whether charged or convicted, or egregious acts of a sexual nature. State medical boards should also consider revocation in instances where a physician has repeatedly committed lesser acts, especially following remedial efforts.
28. Gender and age-based restrictions should only be used by boards where there is a high degree of confidence that the physician is not at risk of reoffending.
29. Practice monitors should only be used as a means of protecting patients if the conditions outlined in this report have been met, including appropriate training, reporting relationship to the state medical board and lack of pre-existing relationship with the monitored physician.
30. When considering remedial action after sexual misconduct, state medical boards should employ a risk stratification model that also factors in risk of erosion of public trust in the medical profession and medical regulation.
31. As part of remedial efforts, any partners in the assessment and remediation of physicians should be provided access to investigative information in order to properly tailor remedial education to the context in which the sexual misconduct occurred.
32. Following remedial activities, state medical boards should monitor physicians to ensure that they avoid being in circumstances similar to those in which they engaged in sexual misconduct.

33. State medical boards should consider ways in which to allow pertinent information from previously dismissed cases to be revisited during subsequent cases, such as through non-disciplinary letters of concern or education which remain on a licensee's record.

**Education:**

34. Education and training about professional boundaries and physician sexual misconduct should be provided during medical school and residency, as well as throughout practice as part of a physician's efforts to remain current in their knowledge of professional expectations. This should include education about how to proceed with basic as well as sensitive/intimate exams and the communication with the patients that is required as a component of these exams. This education should be informed by members of the public, as best possible.
35. State medical boards and the FSMB should provide education to physicians, board members and board staff about sexual misconduct and the effects of trauma. This should include resources to help physicians develop better insight into their own behavior and its impacts on others. Resources and materials should be developed in collaboration with state physician health programs, state medical associations, hospital medical staffs, other organized physician groups, and medical schools and training programs.
36. As stated in Recommendation #6 regarding complaints, state medical boards are encouraged to provide easily accessible information, education and clear guidance about how to file a complaint to the state medical board, and why complaints are necessary for supporting effective regulation and safe patient care. The FSMB and its partner organizations representing medical specialties whose members perform intimate examinations and procedures should provide education to patients about the types of behavior that can be expected of physicians, what types of behavior might warrant a complaint, what to do in the event that actions on the part of a physician make a patient uncomfortable, and circumstances that would warrant a report to law enforcement.
37. The FSMB, state medical boards, medical schools, residency programs, and medical specialty and professional societies should provide renewed education on professionalism and the promotion of professional culture. A coordinated approach facilitated by ongoing communication is recommended to ensure consistency of educational messaging and content.
38. The FSMB should facilitate the adoption and operationalization of the recommendations in this report by providing state medical boards with an abridged version of the report which highlights key points and associates them with resources, model legislation, and educational offerings.

## Appendix A: Sample Resources

The following is a sample list of resources available to support greater understanding of sexual misconduct, sexual boundaries, the impacts of trauma, and implicit bias. The FSMB has not conducted an in-depth evaluation of individual resources, and inclusion herein does not indicate, nor is it to be interpreted as, an endorsement or guarantee of quality. Further, while some resources listed below are available free of charge, others are only accessible through purchase.

### 1. Sexual misconduct, sexual/personal/professional boundaries:

- AMA: Code of Medical Ethics: Sexual Boundaries
  - [Romantic or Sexual Relationships with Patients](#)
  - [Romantic or Sexual Relationships with Key Third Parties](#)
  - [Sexual Harassment in the Practice of Medicine](#)
- AMA: [CME course: Boundaries for physicians](#)
- AAOS: [Sexual Misconduct in the Physician-Patient Relationship](#)
- [FSMB Directory of Physician Assessment and Remedial Education Programs](#)
- North Carolina Medical Board: [Guidelines for Avoiding Misunderstandings During Patient Encounters and Physical Examinations](#)
- University of Vermont: [Mandatory Reporters and CSAs \(Sample Reporting Guidelines\)](#)
- Vanderbilt University Medical Center: [Online CME Course: Hazardous Affairs – Maintaining Professional Boundaries](#)
- Vanderbilt University Medical Center: [Boundary Violations Index](#)

### 2. Trauma-related resources:

- SAMHSA: [Concept of Trauma and Guidance for a Trauma-Informed Approach](#)
- National Institute for the Clinical Application of Behavioral Medicine: [How Trauma Impacts Four Different Types of Memory](#)
- Frontiers in Psychiatry: [Memory distortion for traumatic events: the role of mental imagery](#)
- Government of Canada, Department of Justice: [The Impact of Trauma on Adult Sexual Assault Victims](#)
- National Institutes of Health: [Trauma-Informed Medical Care: A CME Communication Training for Primary Care Providers](#)
- Western Massachusetts Training Consortium: [Trauma Survivors in Medical and Dental Settings](#)
- American Academy of Pediatrics: [Adverse Childhood Experiences and the Lifelong Consequences of Trauma](#)
- American Academy of Pediatrics: [Protecting Physician Wellness: Working With Children Affected by Traumatic Events](#)
- Public Health Agency of Canada: [Handbook on Sensitive Practice for Health Care Practitioners](#)
- Psychiatric Times: [CME: Treating Complex Trauma Survivors](#)
- NHS Lanarkshire (Scotland): [Trauma and the Brain \(Video\)](#)
- London Trauma Specialists: [Brain Model of PTSD - Psychoeducation Video](#)

### 3. Implicit bias:

- AAMC: [Online Seminar: The Science of Unconscious Bias and What To Do About it in the Search and Recruitment Process](#)
- AAMC: [Proceedings of the Diversity and Inclusion Innovation Forum: Unconscious Bias in Academic Medicine](#)
- AAMC: [Exploring Unconscious Bias in Academic Medicine \(Video\)](#)
- ASME Medical Education: [Non-conscious bias in medical decision making: what can be done to reduce it?](#)
- APHA: [Patient Race/Ethnicity and Quality of Patient–Physician Communication During Medical Visits](#)
- Institute for Healthcare Improvement: [Achieving Health Equity: A Guide for Health Care Organizations](#)
- BMC Medical Education: [Training to reduce LGBTQ-related bias among medical, nursing, and dental students and providers: a systematic review](#)
- American Psychological Association: [CE - How does implicit bias by physicians affect patients' health care?](#)
- Joint Commission: [Implicit bias in health care](#)
- Oregon Medical Board: [Cultural Competency – A Practical Guide for Medical Professionals](#)
- StratisHealth: [Implicit Bias in Health Care \(Quiz\)](#)

## **WORKGROUP ON PHYSICIAN SEXUAL MISCONDUCT**

Patricia A. King, MD, PhD, FACP (Workgroup Chair)  
Vermont Board of Medical Practice

Michael J. Baron, MD, MPH  
Tennessee Board of Medical Examiners

Kevin D. Bohnenblust, JD (Staff Fellow)  
Wyoming Board of Medicine

Elliott J. Crigger, PhD  
American Medical Association

Katherine L. Fisher, DO  
Oregon Medical Board

Vikisha Fripp, MD, FACS  
District of Columbia Board of Medicine

Maroulla S. Gleaton, MD  
Maine Board of Licensure in Medicine

Alexander S. Gross, MD  
Georgia Composite Medical Board

Teresa A. Hubka, DO  
American Osteopathic Association

Venkata R. Jonnalagadda MD  
North Carolina Medical Board

Anne K. Lawler, JD, RN (Staff Fellow)  
Idaho Board of Medicine

Fleur-Ange Lefebvre, PhD  
Federation of Medical Regulatory Authorities of Canada

Jean L. Rexford  
FSMB Director-at-Large  
Connecticut Medical Examining Board

Michael Schottenstein, MD  
State Medical Board of Ohio

### **Subject Matter Experts**

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Catherine V. Caldicott, MD  
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Scott A. Steingard, DO  
FSMB Chair  
Arizona Board of Osteopathic  
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FSMB Chair-elect  
North Carolina Medical Board

Humayun J. Chaudhry, DO, MACP  
FSMB President and CEO

### **Staff Support**

Mark L. Staz  
FSMB Management Consultant,  
Regulatory Policy



# SEXUAL MISCONDUCT

Presentation to the Connecticut Medical Examining Board  
based upon the Report of the *FSMB Workgroup on Sexual Misconduct*

Jean Rexford  
Harold Sauer, M.D.

February 15, 2022



# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- A. CULTURE

Across the continuum from medical education to practice, continue to eliminate harassment and build culture that is supportive of professional behavior and does not tolerate harassment of any type.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- B. TRANSPARENCY

- Boards should ensure information is publicly available.
- There needs to be a clear coding process for Board actions and an accurate description for reporting to the FSMB.
- The FMSB should lead the way in defining consistent terminology for reporting actions.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- C. COMPLAINTS

- How to File a Complaint: SMB's are encouraged to provide easily accessible information, education, and clear guidance – with secondary roles played by FSMB and medical specialty societies which perform intimate examinations.
- SMB's and Board Investigators should communicate frequently with complainants throughout the complaint and investigative processes.
- Complaints related to sexual misconduct should be addressed as quickly as possible.
- SMB's should have a specially trained patient liaison or navigator who is capable of providing one-on-one support to complainants and their families.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- D. REPORTING

- This section deals with the importance of hospitals and hospital systems as well as individual physicians to report abuse.
- [Other entities such as medical societies and associations should also be required to report sexual abuse and misconduct when it comes to their attention.]
- Physicians and other individuals who report in good faith should be protected from retaliation and given the option of remaining anonymous.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- E. INVESTIGATIONS

- There must be adequate statutory authority to investigate complaints.
- Investigation should include a review of any previous complaints to identify patterns.
- The best practice is to interview complainant and physician.
- A Statute of Limitations should not apply to sexual assault and sexual misconduct complaints.
- Because of the sensitive nature of complaints, professionals who are appropriately trained and certified in sexual misconduct and victim trauma should conduct the investigation.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- F. COMPREHENSIVE EVALUATION

- State Medical Boards must have the authority to order a comprehensive evaluation where investigation reveals a high probability that sexual misconduct has occurred.

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- G. HEARINGS

- State Medical Boards should have statutory authority to ensure nondisclosure of the patient's identity to the public, including by closing hearings in part or in full, and deleting any identifiable patient information from final public orders. Patient identity must also be protected during board discussion.



# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- H. DISCIPLINE
- To be discussed at the next CMEB meeting
- [Use of chaperones should also be postponed until the next meeting.]

# REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT

## SUMMARY OF RECOMMENDATIONS

- I. EDUCATION

- Board members should be educated about sexual misconduct and the effects of trauma.
- Resources for physicians to develop better insight need to be developed and available.
- Clear guidance about how to file a complaint to the State Medical Board needs to be shared with licensed physicians.
- The FSMB, SMB's, medical schools, residency/fellowship programs, and medical specialty and professional societies should provide renewed education on professionalism and the promotion of professional culture.

# **REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT - CONNECTICUT-SPECIFIC CONSIDERATIONS**

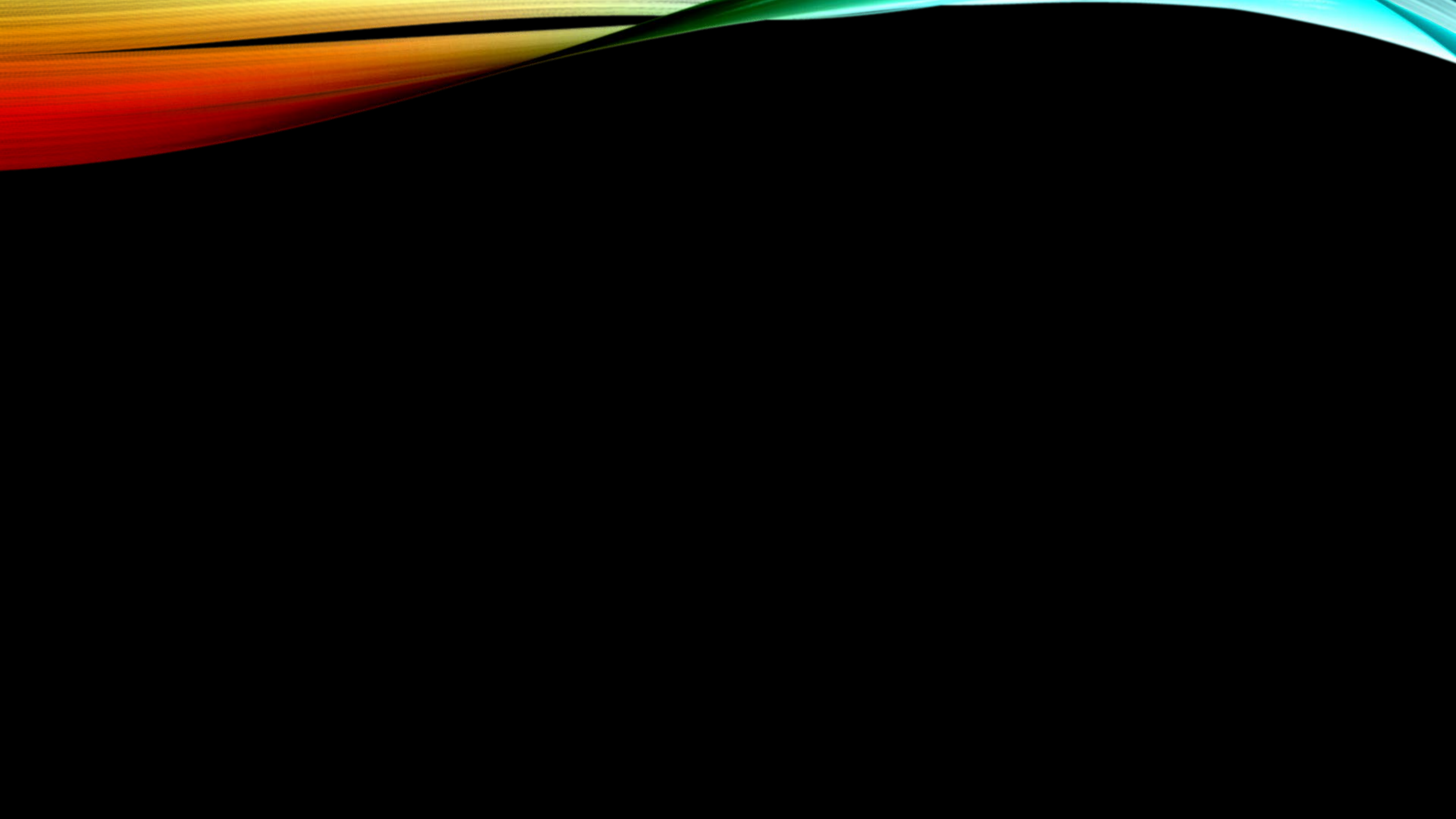
- 1. There is no statute of limitations for sexual misconduct cases.
- 2. Sexual misconduct cases are reported to the Department of Public Health by victims, media reports, law enforcement, medical practitioners and others.
- 3. Hearings are required to be open.
- 3. Patient confidentiality is maintained. Executive sessions can be utilized to accept testimony from a patient.
- 4. Connecticut has no recommended sexual misconduct curricula for medical students or residents/fellows in training.
- 5. Restrictions imposed upon a physician after a finding of sexual misconduct may include: no solo practice (other staff must be on site), requirement for a chaperone, and restrictions on treating patients of a certain gender.

# **REPORT OF FSMB WORKGROUP ON SEXUAL MISCONDUCT - FOLLOW-UP FROM OTHER SMB'S**

- Form a workgroup to compare and contrast the Report of the FSMB Workgroup on Sexual Misconduct within current law and practices of the SMB.
- TX – Additional Training in sexual misconduct and related investigations and Board follow-up is being created for Board members.
- UT – specific guidelines and protocols for discipline for sexual misconduct as well as guidelines for re-entry into practice are being developed.
- WY – Specific investigative procedures for sexual misconduct are being formalized.



# DISCUSSION



# Federation of State Medical Boards - Appendix

- **Report of Workgroup on Sexual Misconduct** – Jean Rexford was a member of the workgroup – the report was adopted by FSMB House of Delegates in May, 2020
- The Report Consists of 12 Sections:
  - 1) Introduction and Workgroup Charge
  - 2) Principles: Trust, Professionalism, Fairness, and Transparency
  - 3) Terminology
  - 4) **Patient Rights and Expectations for Professional Conduct in the Physician-Patient Encounter**
  - 5) Complaints and the Duty to Report
  - 6) Investigations
  - 7) Comprehensive Evaluation
  - 8) Hearings
  - 9) Discipline
  - 10) Monitoring
  - 11) Education
  - 12) Summary of 38 Recommendations presented in 9 Sections

# EXTRA SLIDE (#13) AT END OF PRESENTATION – ***DO NOT USE!***

- HS to present Sections A, C, E, G, and I.
- JR to present Sections B, D, F, and H.
- We should work on the *Conclusions* when we talk.



**STATE OF CONNECTICUT  
CONNECTICUT MEDICAL EXAMINING BOARD**

John Lynch, II, M.D.  
License No. 018686

Petition No. 2021-726

**MEMORANDUM OF DECISION**

*Procedural Background*

On November 8, 2021, the Department of Public Health (“Department”) filed a Statement of Charges (“Charges”) with the Connecticut Medical Examining Board (“Board”) against John Lynch, M.D.’s (“Respondent”) license number 018686. The Charges allege that Respondent’s license number 018686 is subject to disciplinary action pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) §§ 19a-17 and 20-13c, including but not limited to 20-13c(2) and (3). Board (“Bd.”) Exhibit (“Ex.”) 4.

On November 8, 2021, the Department also filed a Motion for Summary Suspension Order with the Board based on the allegations in the Charges, affidavits, and the Department’s information and belief that Respondent’s continued practice as a physician and surgeon presented a clear and immediate danger to public health and safety. Bd. Ex. 3.

On November 16, 2021, pursuant to Conn. Gen. Stat. §§ 4-182(c) and 19a-17(c), the Board ordered that Respondent’s license number 018686 to practice as a physician and surgeon be summarily suspended pending a final determination by the Board of the allegations contained in the Charges (“Summary Suspension Order”). Bd. Ex. 1.

Respondent did not file an Answer to the Charges. Transcript (“Tr.”) pp. 15-16.

On November 16, 2021, the Summary Suspension Order, Charges, and a Notice of Hearing (“Notice”) were transmitted to Respondent’s email addresses of record on file with the Department at [johndlintz@outlook.com](mailto:johndlintz@outlook.com) and [johndlynch839@gmail.com](mailto:johndlynch839@gmail.com).<sup>1</sup> Bd. Ex. 2. The Notice was also sent to Respondent by certified mail return receipt requested and by first class mail to 2222 Stuart Avenue, Apt #1, Richmond, Virginia, which is Respondent’s address of record on file with the Department. The Notice informed the parties that the hearing was scheduled for December 1, 2021 and would be held remotely via Microsoft Teams/teleconference. *Id.*

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<sup>1</sup> P.A.21-2 sec. 149 provides for notification via electronic transmission, as defined in P.A. 21-2, sec. 147.

The hearing convened on December 1, 2021 before a duly authorized panel of the Board (“Panel”) comprised of Raymond Andrews, Jr., Esq., William C. Kohlhepp, DHSc, PA-C, and C. Steven Wolf, M.D. Bd. Ex. 2; Tr. p. 3.

Respondent failed to appear and was not represented by counsel. Tr. p. 3. Attorney Craig Sullivan represented the Department. Both parties were afforded the opportunity to present witnesses and evidence, examine and cross-examine witnesses, and provide argument on all issues.

The Panel conducted the hearing in accordance with Chapter 54 of the Connecticut General Statutes, the Uniform Administrative Procedure Act, and § 19a-9-1 et seq. of the Regulations of Connecticut State Agencies (“Regulations”).

At the hearing, the Department moved on the record to deem allegations admitted since Respondent failed to file an Answer to the Charges. Tr. p. 16. The panel members granted the Department’s Motion to Deem Allegations Admitted. *Id.*

All Panel members involved in this Memorandum of Decision (“Decision”) attest that they have heard the case and/or read the record in its entirety. The Board reviewed the Panel’s proposed final decision in accordance with the provisions of Conn. Gen. Stat. § 4-179.

In rendering its decision, the Board considered whether Respondent poses a threat, in the practice of medicine, to the health and safety of any person. The Board’s decision is based entirely on the record and the specialized professional knowledge of the Panel in evaluating the evidence. *See* Conn. Gen. Stat. § 4-178; *Pet v. Department of Health Services*, 228 Conn. 651, 666 (1994). To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc., v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (Md. Tenn. 1985).

### ***Allegations***

#### **Count One**

1. In paragraph 1 of the Charges, the Department alleges that Respondent, of Richmond Virginia, is, and has been at all times referenced in the Charges, the holder of Connecticut physician and surgeon license number 018686.
2. In paragraph 2 of the Charges, the Department alleges that on or about June 19, 2012, the Board revoked Respondent’s license based on Respondent’s abuse or utilization of alcohol to excess.

3. In paragraph 3 of the Charges, the Department alleges that on or about January 21, 2020, the Board issued a Memorandum of Decision (“MOD”) in Petition No. 2019-100 reinstating Respondent’s license and placing it on probation for three years.
4. In paragraph 4 of the Charges, the Department alleges that the MOD required Respondent in part, to: a) undergo a post-licensure or re-entry clinical skills evaluation within the first six months of probation; b) submit to random observed urine screens; c) attend anonymous or support group meetings eight to ten times per month and submit quarterly report; and d) participate in regularly scheduled therapy sessions and submit monthly reports.
5. In paragraph 5 of the Charges, the Department alleges that from approximately February 18, 2021 to the present, Respondent failed to undergo a post-licensure or re-entry clinical skills evaluation.
6. In paragraph 6 of the Charges, the Department alleges that from approximately February 18, 2021 through approximately April 28, 2021, Respondent failed to submit to random observed urine screens as the MOD required.
7. In paragraph 7 of the Charges, the Department alleges that from approximately June 23, 2021 to the present, Respondent failed to submit to random observed urine screens as the MOD required.
8. In paragraph 8 of the Charges, the Department alleges that on or about April 30, 2021, May 31, 2021, and/or about July 31, 2021 to the present, Respondent failed to attend regularly scheduled therapy sessions, and/or to submit monthly therapist reports.
9. In paragraph 9 of the Charges, the Department alleges that from approximately April 2, 2021 to the present, Respondent failed to attend anonymous or support group meetings, and/or to submit quarterly reports of his attendance.
10. In paragraph 10 of the Charges, the Department alleges that on or about June 24, 2021, Respondent’s therapist’s report stated that Respondent was not able to practice medicine with reasonable skill or safety.
11. In paragraph 11 of the Charges, the Department alleges that the above facts constitute violations of the terms of probation as set forth in the MOD, and subject Respondent’s license to revocation or other disciplinary action authorized by Conn. Gen. Stat. §§ 20-13c and 19a-17, including but not necessarily limited to Conn. Gen. Stat. §§ 20-13c (2) and 20-13c (3).

Count Two

12. In paragraph 12 of the Charges, the Department alleges that paragraph 1 of Count One is incorporated herein by reference as if set forth in full.

13. In paragraph 13 of the Charges, the Department alleges that from on or about March 11, 2021 to the present, Respondent has or has had an emotional disorder and/or mental illness.
14. In paragraph 14 of the Charges, the Department alleges that Respondent's emotional disorder and/or mental illness does, and/or may, affect his practice as a physician and surgeon.
15. In paragraph 15 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to Conn. Gen. Stat. §§ 20-13c including but not necessarily limited to Conn. Gen. Stat. §§ 20-13c (2).

### ***Findings of Fact***

1. On November 16, 2021, the Summary Suspension Order, Charges, and Notice were sent to Respondent's email address of record on file with the Department. The Summary Suspension Order, Charges, and Notice were also mailed to Respondent at 2222 Stuart Avenue, Apt. #1, Richmond, VA, his address of record on file with the Department, by first class and certified mail return receipt. The record is devoid of any evidence that the email, first class and certified mail were not delivered. Tr. pp. 15-17.
2. Respondent had reasonable and adequate written notice of the hearing and the allegations contained in the Charges. *Id.*
3. Respondent did not appear at the hearing and was not represented by legal counsel. Tr. p. 3.
4. Respondent did not request a continuance.
5. Respondent did not file an Answer to the Charges. Tr. pp. 15-16.
6. The factual allegations contained in paragraphs 1 through 10, 12-14 of the Charges are deemed admitted and true. Bd. Ex. 4; Tr. p. 16.

### ***Discussion and Conclusions of Law***

Conn. Gen. Stat. § 20-13c provides, in pertinent part, that:

The board is authorized to restrict, suspend, or revoke the license or limit the right to practice of a physician or take any other action in accordance with section 19a-17, for any of the following reasons: . . . (2) emotional disorder or mental illness; (3) abuse or excessive use of drugs, including alcohol, narcotics, or chemicals; . . .

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727, 739-40 (2013).

Pursuant to Conn. Gen. Stat. §§ 20-13c (2) and (3), the Board is authorized to restrict suspend or revoke the license or limit the physician's right to practice or take any other action in accordance with Conn. Gen. Stat. § 19a-17, for any of the following reasons: emotional disorder or mental illness; and/or abuse or excessive use of drugs, including alcohol, narcotics, or chemicals.

In accordance with Conn. Agencies Regs. § 19a-9-20, a hearing shall proceed "at the time and place specified in the notice of hearing, notwithstanding any failure of Respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted." Since Respondent did not file an Answer and did not appear at the hearing to contest the Charges, the allegations are deemed admitted. *See* Conn. Agencies Regs. § 19a-9-20.

Thus, the allegations are deemed admitted, and the record establishes that the Department sustained its burden of proof by a preponderance of the evidence with respect to each allegation contained in the Charges.

In addition to the fact that the allegations have been deemed admitted, the Department established by a preponderance of evidence the facts as set forth below.

On June 19, 2012, the Board issued a MOD which revoked Respondent's license after the Department established by a preponderance of the evidence that at various times on or about October 5, 2010, Respondent abused alcohol and/or used alcohol excessively, and that such alcohol abuse affected Respondent's practice as a physician and surgeon. Department ("Dept.") Ex. 1, p. 2.

The record also establishes that on December 12, 2018, Respondent filed a petition for reinstatement of his medical license. Dept. Ex. 1, p. 1. Upon Respondent's completion of a more formal application for reinstatement, on January 15, 2019, the Board notified Respondent in writing that it would review Respondent's reinstatement application on January 29, 2019. *Id.*

After a number of continuances granted at Respondent's requests, an administrative hearing was held on July 16, 2019, to adjudicate Respondent's license reinstatement request. Dept. Ex. 1, p. 2.

On January 21, 2020, the Board issued a MOD to reinstate Respondent's license and placed it on a three-year probation under certain terms and conditions. *See* Dept. Ex. 1, pp. 7-12. Specifically, under the terms of the 2020 MOD/Order, Respondent was required to submit to random, observed drug screenings for three years, twice a week during the first year and every other week during the second and third years of probation. *Id.* The record evidences that Respondent's drug screens were negative until June 22, 2021, when he discontinued testing without notifying the Department's monitoring program. Dept. Ex. 9, p. 21 (under seal). Respondent failed to respond to the monitoring program's inquiry regarding his rationale to discontinue drug testing. *Id.*

The Order also required Respondent to attend, within the first six months of the probationary period, a post-licensure or re-entry clinical skills evaluation program, which the Department must preapprove. Dept. Ex. 1, p. 7.

On March 16, 2021, the monitoring program approved Center for Personalized Education for Professionals ("CPEP"), the post-licensure program information about which Respondent had provided on March 11, 2021. Dept. Ex. 2 (under seal). On May 20, 2021 and June 1, 2021, Respondent notified the monitoring program that the scheduling of the final report of his clinical competency evaluation would exceed the August 18, 2021 deadline by which he must comply with the Order. Dept. Exs. 3, 4 (under seal). Respondent expressed concerns that missing the deadline would put him in violation of the six-month deadline of the Order. *Id.* As of September 28, 2021, Respondent no longer communicated with the monitoring program about whether he had completed the clinical skills evaluation of the CPEP. Dept. Ex. 9, p. 22 (under seal).

Respondent was also required to participate in regularly scheduled therapy and management of psychotropic medications with a licensed psychiatrist for the entire three-year probationary period. Dept. Ex. 1, p. 8. The monitoring program approved of Respondent's treatment with a psychiatrist located in Virginia. Dept. Ex. 9, p. 22 (under seal). Respondent's therapy reports in March, April, and May 2021 expressed no concerns about Respondent's ability to practice medicine in a safe, competent, alcohol- and substance-free environment. *Id.* However, the June 24, 2021 therapy report included a caveat that Respondent's ability to practice as previously described would be difficult because he could only afford a cheaper medication to manage his mental illness. *Id.* Subsequently, on August 11, 2021, Respondent's therapy report stated that while Respondent's urine tests were negative, and he was attending therapy regularly,

Respondent's mental illness was a substantial problem that would make "[i]t tough for [Respondent] to practice medicine [with reasonable skill or safety] right now." Dept. Ex. 9, p. 23 (under seal). The monitoring program did not receive any therapy reports for the months of July, August, or September 2021. *Id.*

Finally, the Order required Respondent to attend "anonymous" or support group meetings a minimum of 8 to 10 times per month for the entire probationary period, with quarterly reports to the Department to document his attendance. Dept. Ex. 1, p. 10. Respondent provided only one attendance report, which was for the month of March 2021. Dept. Ex. 9, p. 23 (under seal). Respondent submitted no additional attendance reports after March 2021. *Id.*

### ***Conclusion***

The Board finds that Respondent failed to engage in the following required conduct: undergo post-licensure or re-entry clinical skills evaluation within the first six months of the probation, submit to random observed urine screens and reports, attend anonymous or support group meetings and written reports documenting such attendance, participate in therapy, and submit written monthly reports as ordered in the MOD.

The Board further finds that Respondent's failure to comply with the probationary terms of the MOD not only to be extremely concerning, but in violation of the Board's January 2020 Order in Petition No. 2019-100, which was issued as a means of providing Respondent with a rehabilitative path for his return to practice and ensuring that his return to the practice of medicine does not pose a threat to the health and safety of his patients.

Inasmuch as Respondent violated the Board's January 2020 Order, and Respondent's therapist reports that Respondent is not able to practice medicine and surgery with reasonable skill or safety, the Board finds that Respondent cannot, at this time, practice medicine and surgery with reasonable skill or safety.

In conclusion, the Department sustained its burden of proof with regard to the allegations contained in Count 1 and Count 2 of the Charges. Accordingly, with respect to allegations contained in Count 1 and Count 2 of the Charges, the Board concludes Respondent's conduct, as described above, constitutes violations upon which to impose discipline on Respondent's license pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-13c(2) and (3), warranting the following Order.

***Order***

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by Conn. Gen. Stat. §§ 19a-17 and 20-13c, the Board finds, with respect to Respondent's license number 018686 that the violations alleged and proven in Petition No. 2021-726 warrant the following disciplinary action. The Board further finds that the conduct alleged and proven is severable and the findings for Count 1 and Count 2 each warrant revocation of Respondent's license:

1. Respondent's license number 018686 to practice medicine and surgery in the State of Connecticut is hereby **REVOKED** based upon the proven violations in Count 1 of the Charges.
2. Respondent license number 018686 to practice medicine and surgery in the State of Connecticut is hereby **REVOKED** based upon the proven violations in Count 2 of the Charges.
3. This Memorandum of Decision becomes effective upon signature.

The Connecticut Medical Examining Board hereby informs Respondent, John D. Lynch, II, M.D., and the Department of this decision.

Dated at Stamford, Connecticut this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CONNECTICUT MEDICAL EXAMINING BOARD

By \_\_\_\_\_  
Kathryn Emmett, Esq., Chair