

Communicating about Physician Sexual Misconduct

How are State Medical Boards Doing?



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The MBR is a national coalition of patient and consumer advocates interested in increasing public awareness and responsiveness of state medical boards to patients, families and the public. For more information, <https://www.patientsafetyaction.org/our-work/physician-oversight-and-accountability>. The MBR is part of the Patient Safety Action Network. <https://www.patientsafetyaction.org>

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Introduction

Considering the unique relationship between doctors and patients and the degree of resulting trauma, sexual misconduct is the ultimate breach of trust between doctors and patients. While an issue for decades, recent high-profile cases have again brought this concern to the forefront of public attention. The cases of Dr. Larry Nasser¹ and Dr. Robert Anderson² in Michigan, Dr. Richard Strauss³ in Ohio, and Dr. George Tyndall⁴ in California among many others, all raised questions in the public's mind about how these doctors were allowed to continue to practice and harm patients for as long as they did. State medical regulatory boards and other physician professional organizations should declare in their policies, and demonstrate in their actions, that they have zero tolerance for physician sexual misconduct.

As part of a larger effort to evaluate what types of information about doctors could be found on state medical board websites, the Informed Patient Institute (IPI) and the Patient Safety Action Network (PSAN) previously issued a report in January 2022 on the availability of online information about physician discipline, malpractice and actions from states.⁵ We also looked for information about physician sexual misconduct targeting the public and physicians. This report highlights what we found regarding state medical board transparency and education of the public and physicians about sexual misconduct.

¹ "A timeline of Nassar's abuse, charges and Michigan State's response," <https://statenews.com/article/2021/01/a-timeline-of-nassars-abuse-charges-and-michigan-states-response>; accessed 5/17/22.

² "Timeline of the Dr. Robert Anderson abuse scandal at University of Michigan," 1/2/22; <https://www.mlive.com/news/ann-arbor/2022/01/timeline-of-the-dr-robert-anderson-abuse-scandal-at-university-of-michigan.html>, accessed 4/22/22.

³ "DeWine Releases Medical Board/Strauss Findings," 8/30/19; <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/083019>; accessed 5/17/22.

⁴ "Ex-USC Doctor Accused Of Sexually Abusing Hundreds Of Women Surrenders Medical License," 9/10/19; <https://www.npr.org/2019/09/10/759623148/ex-usc-doctor-accused-of-sexually-abusing-hundreds-of-women-surrenders-medical-l>; accessed 5/17/22.

⁵ "Looking for Doctor Information Online," Jan 2022; <https://www.patientsafetyaction.org/wp-content/uploads/2022/03/Looking-for-Doctor-Information-Online-1-7-22.pdf> at <https://www.patientsafetyaction.org/> and <https://www.informedpatientinstitute.org/pdf/LookingForDoctorInformationOnline%20-%20Jan2022.pdf> at <https://www.informedpatientinstitute.org/>; accessed 5/2/22.

Background

The issue of sexual misconduct became so prominent over the last several years that the Federation of State Medical Boards (FSMB), a national organization representing state medical boards, convened a committee, conducted research on the topic and called for cultural change in a report issued in May 2020.⁶

According to the FSMB, 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. The behavior may be verbal or physical, can occur in person or virtually, and may include expressions of thoughts and feelings or gestures that are of a sexual nature or that a patient or surrogate may reasonably construe as sexual.*⁷

The FSMB report distinguished “sexual misconduct” from “sexual assault,” which they defined as any type of sexual activity or contact without consent (such as through physical force, threats of force, coercion, imposition of power etc.). The report noted that sexual assault is a criminal or civil violation and should be handled by medical boards in concert with law enforcement.⁸

Other medical professional organizations have addressed physician sexual misconduct. For example, the American College of Obstetricians and Gynecologists concluded in a detailed policy statement:

*Sexual misconduct by physicians is an abuse of professional power and a violation of patient trust. Such behavior jeopardizes the well-being of patients and carries immense potential for harm.*⁹

And, the American Academy of Orthopaedic Surgeons’ Opinion on Sexual Misconduct in the Physician-Patient Relationship stated:

*Sexual misconduct exploits the physician-patient relationship. The burden of recognizing this and avoiding this exploitation is always on the physician.*¹⁰

⁶ “Report and Recommendations of the FSMB Workgroup on Physician Sexual Misconduct;” Adopted as policy by the Federation of State Medical Boards, May 2020; <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; accessed 4/27/22.

⁷ FSMB Report, page 3.

⁸ FSMB report, page 4.

⁹ American College of Obstetricians and Gynecologists, “Sexual Misconduct,” Committee Opinion, Number 796, January 2020; <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/01/sexual-misconduct>; accessed 4/28/22.

¹⁰ American Academy of Orthopaedic Surgeons/American Association of Orthopaedic Surgeons, “Opinion on Ethics and Professionalism Sexual Misconduct in the Physician-Patient Relationship;” p.1;

In contrast, the American Medical Association's (AMA) "Code of Medical Ethics: Romantic or Sexual Relationships With Patients" Opinion stated:

*Romantic or sexual interactions between physicians and patients that occur concurrently with the patient-physician relationship are unethical. Such interactions detract from the goals of the physician-patient relationship and **may** (EMPHASIS ADDED) exploit the vulnerability of the patient, compromise the physician's ability to make objective judgements about the patient's healthcare and ultimately be detrimental to the patient's wellbeing.¹¹*

As one of the leading voices for doctors on policy issues, the AMA should more prominently and thoroughly address this pressing issue using clear and unequivocal language.

Incidence of Physician Sexual Misconduct

How often physician sexual abuse and misconduct occurs is unknown—but numerous researchers have attempted to estimate the prevalence. In a groundbreaking 2016 investigation, the *Atlanta Journal-Constitution* reviewed thousands of documents and found more than 2,400 doctors whose sexual misconduct cases clearly involved patients since 1999.¹² They concluded, however, that many violations never came to the attention of state medical boards, as hospitals, clinics and fellow doctors simply didn't report them, or cases were dealt with privately and confidentially.¹³ In addition, patient victims may choose not to report sexual abuse to anyone. Another analysis validated this, finding that "only 5–10% of victims of physician sexual assault report it" to medical boards.¹⁴

A study conducted in 2016 did a cross-sectional analysis of physician reports in the National Practitioner Data Bank (NPDB) from 2003 - 2013.¹⁵ The NPDB is a federal repository that contains a wide range of information on doctors including malpractice payments and actions against their licenses by federal and state agencies,

<https://aaos.org/contentassets/6507ec63e5ac4ea48375ad96d154daac/1208-sexual-misconduct.pdf>; accessed 4/27/22.

¹¹ American Medical Association, "Code of Medical Ethics: Romantic or Sexual Relationships with Patients," date unknown; <https://www.ama-assn.org/delivering-care/ethics/romantic-or-sexual-relationships-patients>, accessed on 5/1/22.

¹² Carrie Teegardin, Danny Robbins, *Atlanta Journal Constitution*, "Doctors and Sex Abuse" series, 2018; <https://doctors.ajc.com/>; accessed 5/22/22.

¹³ Lois Norder, Jeff Ernsthausen, Danny Robbins, "Why sexual misconduct is difficult to uncover," 2018; https://doctors.ajc.com/sex_abuse_numbers/?ecmp=doctorssexabuse_microsite_nav

¹⁴ James M. DuBois, Emily E. Anderson, John T. Chibnall, Jessica Mozersky & Heidi A. Walsh; "Serious Ethical Violations in Medicine: A Statistical and Ethical Analysis of 280 Cases in the United States From 2008–2016," 2019; *The American Journal of Bioethics*, 19:1, 16-34, DOI: 10.1080/15265161.2018.1544305; page 17 with reference to Carr 2003; Ernsthausen 2016; Tillinghast and Cournos 2000; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6460481/>; accessed 5/2/22.

¹⁵ Azza AbuDagga, Sidney M. Wolfe, Michael Carome, Robert E. Oshel, "Cross-Sectional Analysis of the 1039 U.S. Physicians Reported to the National Practitioner Data Bank for Sexual Misconduct, 2003–2013," Published: February 3, 2016 <https://doi.org/10.1371/journal.pone.0147800>; accessed 5/3/22.

hospitals and other entities. The study found that a total of 1,039 physicians had one or more sexual misconduct related reports. Three-quarters of the reports were from state medical boards while over 17% were reported as a result of a malpractice payment or restriction on clinical privileges taken by a hospital or other health provider. Particularly concerning was that 70% of the 253 physicians with at least one clinical privilege or malpractice payment report due to sexual misconduct were not disciplined by medical boards for this serious violation of their patients' trust. Given that the NPDB database, which includes these abusers, is not available to the public by law, in many cases there is no way that patients would know about these doctors who have a record of sexual misconduct.

Another group of researchers attempted to identify the prevalence of physician sexual misconduct in a March 2022 article and concluded that "the true extent of such misconduct remains uncertain." Still, the authors identified a total of 1,721 reports of physician sexual misconduct reported to the NPDB between 2000 and 2019. "These data reveal the annual incidence of sexual misconduct reports to average 10.78 per 100,000 U.S. physician licensees." Researchers noted that the incidence of physician misconduct in the United States, however, is almost certainly underreported.¹⁶

The FSMB 2020 report called for state medical boards to implement 38 recommendations to effectively address and prevent sexual misconduct. Three recommendations addressed transparency and education for patients and for health professionals:

- *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.*¹⁷
- *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.*¹⁸
- *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*

¹⁶ Kunal K Sindhu, Adam C Schaffer, I Glenn Cohen, Rebecca Haw Allensworth, Eli Y Adashi, Honoring the public trust: curbing the bane of physician sexual misconduct, *Journal of Law and the Biosciences*, Volume 9, Issue 1, January-June 2022, Isac007, <https://doi.org/10.1093/jlb/Isac007>; accessed 4/22/22 at <https://academic.oup.com/jlb/article/9/1/Isac007/6555415>; accessed 5/2/22.

¹⁷ FSMB Report, Recommendation #2, page 24; <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; accessed 5/3/22.

¹⁸ FSMB Report, Recommendation #36, page 28.

*collaboration with state physician health programs, state medical associations, hospital medical staffs, other organized physician groups, and medical schools and training programs.*¹⁹

This report focuses primarily on these recommendations relating to transparency and education of the public and physicians about sexual misconduct. There are many important aspects of the topic of sexual misconduct and state medical boards that are not addressed in this report, such as how boards handle complaints, investigate them and discipline violations.

¹⁹ FSMB Report, Recommendation #35, page 28; <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; accessed 5/3/22.

What We Did

Twelve volunteer researchers were trained to look for a variety of information provided to the public on 64 state medical and osteopathic board websites during March–May 2021. With reference to sexual misconduct, they answered the following two questions:

- Does the state medical board website include specific CONSUMER-oriented information about sexual abuse/misconduct/boundary violations?
- Does the website include PRACTITIONER-oriented information about sexual abuse/misconduct/boundary violations?

The data was then sent to each state medical and osteopathic board to confirm and clarify the information. Initially, we sought yes or no answers, that is, was there some information present on this subject directed at consumers and doctors or not. Our analysis for this report focused on further examining the type of information that was being conveyed to these two groups and whether it was easy to understand and find. We revisited each state board website that was identified as having information about sexual misconduct to see if useful information was provided. We also identified other examples of current materials and best practices with reference to transparency and education about sexual misconduct targeting the public and physicians. Throughout this report, we generally refer to state medical and osteopathic boards as “medical boards.”

What We Found

In the initial review by volunteer researchers, only eight out of the 64 websites reviewed had information about physician sexual misconduct directed at consumers/patients and 15 had information directed at physicians. Upon further examination of these and other sites, we found only a few with policies and materials that demonstrated to the public and doctors the seriousness with which these regulators handled such violations. These included state medical boards that had clear policy statements about sexual misconduct, informative and easy to find materials for the public and physicians and provided training on the topic. On the other hand, we also found state boards frequently used euphemistic language to obscure sexual misconduct. Many states didn't have any material that we could find.

Clear Policy Statements on Sexual Misconduct

We were confounded by the lack of clear policy statements directed to physicians and the public regarding the seriousness of physician sexual misconduct and information about the specific actions state medical boards would take to investigate and address the topic.

We did find some states that had strong policy statements on sexual misconduct. Alabama provided an example that was clearly identified and was followed by an extensive administrative rule articulating how they interpret and respond to such complaints:²⁰

The relationship between a physician and patient is inherently imbalanced. A physician is in a position of power in relation to the patient, and the patient is in a position of vulnerability which is heightened in light of the patient's trust in their physician.

When there is a violation of mutual trust 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.

The Board and Commission are committed to 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.

²⁰ Alabama Board of Medical Examiners & Medical Licensure Commission, "Investigations & Misconduct, Sexual Misconduct," <https://www.albme.gov/resources/licensees/investigations-misconduct/>; accessed 5/3/22.

As part of a Workgroup on Sexual Misconduct, the Oregon Medical Board reviewed statutes, rules and policies regarding the Board’s approach to sexual misconduct. The Workgroup called for instituting a “zero-tolerance culture” as part of their recommendations and is now in the process of drafting rules and other materials to implement them. They noted that the Notices of Proposed Discipline will include the term “sexual misconduct” rather than the non-specific term “unprofessional conduct.”²¹

A review of Oregon’s current materials on the topic may indicate the reason for their review and update. The state medical board had a sexual misconduct page under “philosophy” on their website that made it clear physicians were responsible for their actions and gives a list of proactive ways to “eliminate misunderstandings.” However, there was no “zero-tolerance” language and information only addressed “romantic” relationships. At the bottom of the page, under “sexual trauma support,” people who “have filed a sexual misconduct complaint with the Board and would like additional resources” were referred to the Attorney General’s website.²²

Issues of sexual misconduct are particularly important when the patient victim is a child, as most states require doctors to report child abuse to state authorities or law enforcement.²³ The FSMB report said, “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.”²⁴ But information about reporting sexual misconduct with a child victim to law enforcement is not visible on most medical board websites. We found one reference in an Alaska medical board regulation that listed “sexual abuse of a minor” under the definition of “unprofessional conduct,” but found no other elaboration on their website.²⁵

In contrast, a Kansas medical board document, *Guidelines for the Imposition of Disciplinary Standards*, included a section on Sexual Misconduct. Unfortunately, this was difficult for our researchers to find as we suspect it would be for Kansas physicians. The policy stated:

²¹ Oregon Medical Board, “Sexual Misconduct Workgroup,” <https://www.oregon.gov/omb/Topics-of-Interest/Pages/Sexual-Misconduct-Workgroup.aspx>; accessed 5/3/22.

²² Oregon Medical Board, Sexual misconduct, <https://www.oregon.gov/omb/board/Philosophy/Pages/Sexual-Misconduct.aspx> amended in 2019, accessed 4/28/22

²³ Administration for Children and Families, U.S. Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway, “Mandatory Reporters of Child Abuse and Neglect,” page 2. <https://www.childwelfare.gov/pubpdfs/manda.pdf>; accessed 4/27/22.

²⁴ FSMB Report, page 9; <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; accessed 4/27/22

²⁵ Title 12 Professional Regulations, Part 1 Boards and Commissions Subject to Centralized Licensing, Chapter 40 State Medical Board, Article 6 General Provisions; Section 12 AAC 40.967. Unprofessional conduct; <http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5BUIUMP:%2712+aac+40!2E967%27%5D/doc/%7B@1%7D?firsthit>; accessed 5/18/22.

The Board has a zero-tolerance policy when sexual misconduct involves a minor. In all situations a finding of sexual misconduct involving minors and related to professional practice should result in revocation of a license.

The Kansas board further discussed all types of sexual misconduct and concluded:

This category of misconduct is commonly deemed serious because in addition to the potential for patient harm, such misconduct erodes the public's trust and confidence in the health care profession and damages the credibility of the healing arts professions.²⁶

Finding Informative Materials on Sexual Misconduct

The first step in finding information about sexual misconduct for patients, the public and licensees is a well labeled and organized website that clearly directs the user towards this important topic. Given the attention to the topic in recent years, we expected to find more easily accessible information on state medical board websites. However, as we found in previous research, some state board websites made it easy to find this information and others made it more difficult.²⁷

One example of a clear pathway was on the California medical board website.²⁸ Under the “Consumer” tab on the homepage is the label “Sexual Misconduct” that led to a page on the topic. Statements there clearly identified the importance of the issue and noted that it was a priority, it was egregious, and the Board strongly encouraged filing complaints. The page also provided links to several citations in the law and included a link to a Department of Consumer Affairs document titled: “*Therapy Never Includes Sexual Behavior.*”²⁹ This document further detailed sexual misconduct in the course of professional therapy – including with psychiatrists or any other physician. It was also available in Spanish.

Information for physicians on the California medical board site was also well labeled in the “Information Pertaining to the Practice of Medicine” section, however several of the links were to documents over 15 years old.³⁰

Other examples of good pathways to this information included the Oregon medical board website where the home page has a “Topics of Interest” section which takes

²⁶ “Kansas State Board of Healing Arts Guidelines for the Imposition of Disciplinary Sanctions, 4. Sexual Misconduct,” page 6; <http://www.ksbha.org/documents/publications/SanctioningGuidelines2019.pdf>; accessed 4/27/22.

²⁷ “Looking for Doctor Information Online,” Jan 2022; <https://www.patientsafetyaction.org/wp-content/uploads/2022/03/Looking-for-Doctor-Information-Online-1-7-22.pdf> and <https://www.informedpatientinstitute.org/pdf/LookingForDoctorInformationOnline%20-%20Jan2022.pdf>; accessed 5/2/22

²⁸ Medical Board of California; <https://www.mbc.ca.gov/>; accessed 5/3/22.

²⁹ State of California, Department of Consumer Affairs, <https://www.dca.ca.gov/publications/proftherapy.shtml>; accessed 5/3/22.

³⁰ California Medical Board, “Information Pertaining to the Practice of Medicine, Sexual Misconduct,” <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/>, accessed 5/3/22

one to a long list of topics with “Sexual Misconduct Workgroup” and “Sexual Trauma Support” near the bottom.³¹ Some website search engines facilitated quick access to documents on sexual misconduct. For example, by entering the term “sexual misconduct” in the North Carolina medical board search box, we got a list of resources for patients and physicians.³²

Once the page with sexual misconduct information is found by a user, the material on the topic should be understandable and direct. We found a mix of quality on the websites that contained information and again would emphasize that most state medical board websites had no specific information we could find.

Ohio had a one-page fact sheet that told patients what their providers should do in the context of a physical exam, noted examples of red flags and misconduct and told them how to file a complaint and look up disciplinary information.³³ The board also had a short video that addressed the topic “Sexual Boundaries for Patients.”³⁴ Their one-page factsheet for licensees was equally clear in discussing the issues for doctors.³⁵ However, these good resources used the term “boundaries” rather than the more straightforward phrase “sexual misconduct” and we were unable to find them until the board sent us a link. Even so, with some alterations, these documents could easily be replicated in other states.

The Ohio board also made it difficult to find other significant website information on sexual misconduct because it was listed on the home page under the label of “Transparency” rather than “Sexual Misconduct Investigation.” This voluminous investigation was about the sexual misconduct case of Dr. Richard Strauss, an Ohio State physician whose repeated sexual abuse went unaddressed for over 20 years.³⁶ The investigation was established through a 2019 Executive Order calling on the medical board to identify how Dr. Strauss had continued to practice for many years despite the opportunity to pursue action.³⁷ This lack of clear labeling seemed to be a missed opportunity to show the people in Ohio that they took this issue seriously.

In contrast to Ohio, we thought it was remarkable that the Michigan medical board had no information that we could find about physician sexual misconduct since that state has had two high profile cases of doctors accused and convicted of sexually

³¹ <https://www.oregon.gov/omb/Topics-of-Interest/Pages/Topics-of-Interest-Overview.aspx>; accessed 5/18/22.

³² North Carolina Medical Board, <https://www.ncmedboard.org/>; accessed 5/18/22.

³³ State Medical Board of Ohio, Sexual "Sexual Boundaries in Health Care for Patients;" <https://med.ohio.gov/Portals/0/Resources/Duty%20to%20Report/Sexual%20Boundaries%20Infographic%20-%20Patient%20FINAL.pdf?ver=z1Sxtc06p4ZcRsUfjWYeHw%3d%3d>; accessed 3/30/22.

³⁴ <https://www.youtube.com/watch?v=K3h8SkFnvaU>; accessed 3/30/22.

³⁵ State Medical Board of Ohio, "Sexual Boundaries In Health Care For Medical Board Licensees;" <https://med.ohio.gov/Portals/0/Resources/Duty%20to%20Report/Sexual%20Boundaries%20Infographic%20-%20Licensee%20FINAL.pdf?ver=1UGRoGOXJzrBM5XOf6pF6g%3d%3d>; accessed 3/30/22.

³⁶ "DeWine Releases Medical Board/Strauss Findings," 8/30/19; <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/083019>; accessed 5/17/22.

³⁷ Medical Board of Ohio, "Governor's Working Group on Reviewing of the Medical Board's Handling of the Investigation Involving Richard Strauss;" <https://med.ohio.gov/Transparency>; accessed 4/22/22.

abusing college athletes. Dr. Larry Nassar³⁸ (convicted for abuse of Olympic gymnasts) and Dr. Robert Anderson³⁹ (whose abuse of college athletes was publicly revealed after he died). The state medical board did not seem to have developed public materials that could prevent these egregious cases from reoccurring.

Documenting sexual misconduct cases through annual reports is another way state medical boards inform the public about the topic. For example, in their 2020-2021 Annual Report, the California medical board indicated that they had put two physicians on probation for sexual misconduct and revoked the license of four doctors. Another 11 doctors surrendered their licenses. Health facilities required to report to the board sent in 116 sexual misconduct reports. Thousands of other complaints were still under investigation or processing during this time period so we could not tell how many of those related to sexual misconduct.⁴⁰

Other examples we found targeting the public or physicians included:

- North Carolina had a good patient-oriented brochure titled “Know the Signs of Sexual Misconduct” and a related video.⁴¹ The brochure addressed signs of misconduct and noted a physician’s duty to report another licensed physician who engaged in sexual activities with patients. It was also available in Spanish. The North Carolina medical board website also described their Victim’s Services program that identified resources for patients who had been sexually assaulted and guided them through the investigation process.⁴² However, the topic of sexual misconduct and similar materials were not covered in the Physician oriented “Professional Resources” section of the site.⁴³
- The Maryland medical board’s consumer-oriented FAQs page included the topic: “Sexual Misconduct” that had nine questions covering a range of topics, including the purpose of a chaperone and warning signs for sexual misconduct.⁴⁴

³⁸ Matt Mencarini; "Nassar's medical license revoked for 3 years," 4/6/17; <https://www.lansingstatejournal.com/story/news/local/2017/04/06/nassars-medical-license-revoked-3-years/100127402/> and "Larry Nassar," Wikipedia; https://en.wikipedia.org/wiki/Larry_Nassar; accessed 4/4/22.

³⁹ Samuel Dodge; "Timeline of the Dr. Robert Anderson abuse scandal at University of Michigan," Michigan Live; 1/2/22; <https://www.mlive.com/news/ann-arbor/2022/01/timeline-of-the-dr-robert-anderson-abuse-scandal-at-university-of-michigan.html>; accessed 4/4/22.

⁴⁰ Medical Board of California, "2020-2021 Annual Report," pages 14, 16-17; <https://www.mbc.ca.gov/Download/Reports/2020-2021-AnnualReportFinal-ADA.pdf>; accessed 3/30/22.

⁴¹ North Carolina Medical Board, "Know the Signs of Sexual Misconduct;" <https://www.ncmedboard.org/resources-information/consumer-resources/brochures>; accessed 4/7/22.

⁴² North Carolina Medical Board, "Support and assistance for victims of sexual misconduct;" <https://www.ncmedboard.org/landing-page/victim-services-program>; accessed 4/7/22.

⁴³ North Carolina Medical Board, "Resources & Information, Professional Resources;" <https://www.ncmedboard.org/resources-information/professional-resources>; accessed 4/7/22.

⁴⁴ Maryland Board of Physicians, "Sexual Misconduct / Boundary Violations FAQs;" https://www.mbp.state.md.us/resource_information/faqs/resource_faqs_misconduct.aspx; accessed 5/4/22.

- Maine had a five-page joint rule for both the medical and osteopathic boards on sexual misconduct that was straightforward and easy to understand, with definitions of various types of sexual misconduct and possible sanctions the board might take.⁴⁵
- The California osteopathic board,⁴⁶ the Iowa medical board⁴⁷ and the Kentucky medical board⁴⁸ all listed “sexual misconduct” as a type of complaint the boards may investigate, without providing any other details on the subject that we could find. The Nebraska medical board website only referenced the section of state law on violations of sexual abuse, misconduct, or exploitation, but the law was fairly easy to understand.⁴⁹

Many patients don’t know what to expect from a physician’s physical examination or understand why certain actions in the exam room may be needed, routine or completely inappropriate. While this is each physician’s responsibility in treating their patients, it would be helpful for medical boards to provide clear information to the public about what to expect from a physician exam, from the perspective of preventing sexual misconduct. North Carolina had a brochure about chaperones, how to advocate for yourself, reporting inappropriate care and patient dignity.⁵⁰ Numerous general health sites covered this issue; we did not do an exhaustive search but didn’t quickly find any that did so from the sexual misconduct viewpoint. The Rape, Abuse & Incest National Network (RAINN) has a useful article that covers acceptable physician conduct during various types of examinations.⁵¹

Using Euphemistic Language to Obscure Sexual Misconduct

Too often, we found that state medical boards used euphemistic, vague and outdated language in their discussion of sexual misconduct. For example, they focused on the “romance” aspect of doctor-patient relationships. Many used the terms “boundary

⁴⁵ Board of Licensure in Medicine, a joint rule with Board of Osteopathic Licensure, Department of Professional and Financial Regulation, “Chapter 10: Sexual Misconduct;” https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/Chapter%2010%20effective%2008.17.19_0.pdf; accessed 5/3/22.

⁴⁶ Osteopathic Medical Board of California, “How to Register a Complaint;” https://www.ombc.ca.gov/forms_pubs/complaints.shtml; accessed 5/18/22.

⁴⁷ Iowa Board of Medicine; <https://medicalboard.iowa.gov/physicians/enforcement>; accessed 5/18/22.

⁴⁸ Memo: “Information on Filing a Grievance, Consumers Guide to the Kentucky Board of Medical Licensure;” <https://kbml.ky.gov/grievances/Documents/Consumer%20Guide%20and%20Grievance%20Form.pdf>; accessed 5/18/22.

⁴⁹ Nebraska Department of Health and Human Services, Title 172 NAC 88, Section 009. Unprofessional Conduct; https://www.nebraska.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-172/Chapter-088.pdf; accessed 5/18/22.

⁵⁰ North Carolina Medical Board, “Undergoing a Physical Exam, Your Rights;” https://www.ncmedboard.org/images/uploads/publications_uploads/NCMB_PhysicalExamBrochure.pdf; accessed 5/18/22.

⁵¹ Rape, Abuse & Incest National Network (RAINN); “Sexual Abuse by Medical Professionals;” <https://www.rainn.org/articles/sexual-abuse-medical-professionals>; accessed 5/19/22.

issues” or “unprofessional conduct” that are unclear to all parties and fail to account for the seriousness of these physician-patient violations. We found many references to the term “sexual misconduct,” but few references to “violence” or “abuse/assault” or “sexual victimization,” all terms that harmed patients and advocates against sexual abuse would certainly use. The FSMB 2020 report emphasized this point:

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.⁵²

We also found warnings to physicians about escalating behaviors that boards should find concerning and moving towards crossing boundaries—a “slippery slope” leading to sexual misconduct. The FSMB report rightly named these behaviors as potential “grooming” activities including gift-giving, sharing personal information and special treatment. They noted:

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.⁵³

They go on to emphasize the importance of early reporting that includes these less egregious forms of misconduct because of evidence that if they go unreported, they often lead to more harmful sexual violations.⁵⁴ It can be very confusing to patients to discern when physician behavior is putting them at risk—especially if the guidance they receive is clouded in obscure and euphemistic words.

Other examples of concerning references to sexual misconduct we found in our examination:

- When we entered “sexual misconduct” on the Oklahoma medical board site search engine, it pulled up two articles. One document from 2006 was titled “Looking for Love in All the Wrong Places.”⁵⁵ Another was a 2011 newsletter article titled “BOUNDARIES: Captain of the ship or just someone who can’t say no?” The article continues:

⁵² FSMB Report, <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; page 4; accessed 5/1/22.

⁵³ FSMB Report, page 4.

⁵⁴ FSMB Report, page 8; accessed 5/19/22.

⁵⁵ <https://www.okmedicalboard.org/download/424/MD+Summer+2006.pdf>; accessed 5/4/22.

BOUNDARY is the current term used to describe the point where a doctor/patient relationship can turn from being mutually satisfying and beneficial to inappropriate and even criminal.⁵⁶

- The West Virginia medical board began its Statement of Public Policy on Sexual Misconduct with the phrase: "...ENTER ONLY FOR THE GOOD OF THE PATIENT...KEEP YOURSELF FAR FROM ALL SEDUCTION AND ESPECIALLY THE PLEASURES OF MEN AND WOMEN..." (cited as "Hippocratic Oath from a Federation 1992 Bulletin"). This offensive quote in capital letters might discourage the public from reading the 1993 policy statement (re-adopted in 2010), which went on address important content such as unacceptable sexual behavior, harm to patients, physician responsibility for their actions and the fact that the board intended to take action in these cases.⁵⁷
- The Spring 2022 newsletter of the Idaho medical board included a 5-page article by the Board Chair on "Professional Boundaries." While the article included a section on Sexual Relationships/Contact, it did not use the term "sexual misconduct" nor did it express a policy of zero tolerance by the board or possible criminal violations connected with such conduct. It described many other situations that cross ethical lines but referred the reader to a 2013 newsletter article where "issues associated with sexual boundaries" and the board's guidance were discussed.⁵⁸
- The California medical board site directed physicians and surgeons to "Information Pertaining to the Practice of Medicine" that listed Sexual Misconduct and that referred to articles from 1991, 1994, 2004 and an undated article, "Touch and the Practice of Medicine," that was prepared in 2019 by another organization.⁵⁹
- The Maryland medical board included a video "Crossing the Line," made in 1996 that discussed boundary issues and romantic relationships in language that was outdated.⁶⁰

In summary, our review found many materials were out of step with the current environment around physician sexual misconduct. They reflected a past where the issue was avoided by medical boards and shrouded in euphemisms, leaving abused

⁵⁶ Oklahoma Board of Medical Licensure and Supervision, Issues and Answers, Vol 18, Summer 2011, p. 2; <https://www.okmedicalboard.org/download/643/NewsletterSummer2011.pdf>; accessed 5/18/22.

⁵⁷ "Statement of Public Policy, Sexual Misconduct Statement of the West Virginia Board of Medicine," https://wvbom.wv.gov/download_resource.asp?id=14; accessed 5/18/22.

⁵⁸ Idaho Board of Medicine, Spring 2022 newsletter; <https://elitepublic.bom.idaho.gov/IBOMPortal/BOM/Newsletters/2022%20Spring%20Newsletter.pdf>; accessed 5/19/22.

⁵⁹ <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/>; accessed 5/18/22.

⁶⁰ "Crossing the Line," 1996 video; https://www.mbp.state.md.us/resource_information/faqs/resource_faqs_misconduct_videos.aspx; accessed 5/18/22.

patients feeling guilty and ashamed. Terms such as “boundary issues,” “romantic relationships” or “disruptive behavior” obscure the seriousness of the problem. Placing sexual misconduct in the “ethical” and “professional” sphere of physician behavior, often downplays or fails to acknowledge that sexual misconduct may be illegal and criminal. We found clear evidence that medical boards and other physician oversight organizations need to conduct a full audit of their websites and other communications in order to update their sexual misconduct policies and communications for both patients and physicians.

State Medical Board Training on Sexual Misconduct

Several states have conducted staff training on sexual misconduct and have gathered consumer-oriented information that help victims of sexual misconduct connect to resources. For example:

- Legislation passed in Georgia in 2021 (H.B. 458) required training on sexual misconduct for state medical board members, physicians, medical students and dentists. The law also called on the board to develop and identify educational resources and materials for physicians, board members and board staff.⁶¹ The law followed the reporting in the *Atlanta Journal Constitution’s* extensive series mentioned above.
- The Oregon Board included a Sexual Trauma Support section that provided links to other resources including those gathered by the Oregon Attorney General’s Sexual Assault Task Force and the Rape, Abuse & Incest National Network (RAINN).⁶²
- In 2019 the Texas medical board held a staff training led by the Texas Association Against Sexual Assault,⁶³ and the Washington state medical board was trained on this issue by a police-affiliated organization.⁶⁴

Some national and state non-profit sexual assault prevention organizations have developed materials that address physician sexual abuse that may be useful to state medical boards. For example, RAINN had specific information on “Sexual Abuse by Medical Professionals” that covered what to expect in a medical setting, what is acceptable physician conduct during various types of exams, and where to report incidents of abuse.⁶⁵ The organization also operates a national hotline.⁶⁶ Another

⁶¹ Georgia Legislature, Act 291, effective 7/1/21; <https://www.legis.ga.gov/legislation/59653>; accessed 5/4/22.

⁶² <https://www.oregon.gov/omb/Topics-of-Interest/Pages/Sexual-Trauma-Support.aspx>; accessed 4/27/22.

⁶³ Texas Medical Board Boundaries Task Force Committee Meeting Minutes, 2/28/19; <https://www.tmb.state.tx.us/dl/1FB0A2BB-47A0-E8C1-4FA3-02566269ADB7>; accessed 5/18/22.

⁶⁴ 4/4/22 email with Yanling Yu, appointed public member of the Washington Medical Commission.

⁶⁵ Rape, Abuse & Incest National Network; <https://www.rainn.org/articles/sexual-abuse-medical-professionals>; accessed 4/21/22

⁶⁶ Rape, Abuse & Incest National Network; <https://rainn.org/about-national-sexual-assault-telephone-hotline>; accessed 3/30/22.

good resource is a factsheet for survivors and advocates about sexual victimization by physicians available from the Ohio Alliance to End Sexual Violence.⁶⁷

The FSMB Sexual Misconduct report specifically recommended training for medical boards and staff on trauma-informed care.⁶⁸ This training recognizes the signs and symptoms of trauma in patients and responds by fully integrating knowledge of it into policies, procedures, and practices thereby not causing re-traumatization of patients.⁶⁹ According to the Centers for Disease Control and Prevention (CDC), the principles of trauma-informed care are safety; trustworthiness and transparency; peer support; collaboration; cultural humility and cultural responsiveness; and empowerment.⁷⁰ Whenever possible, the patient victim/survivor of abuse should be involved in the medical board's process of investigation and action. This also includes patient consent to intimate examinations in health care and shared decision making. These are concepts that are widely embraced by professional organizations and medical boards should be aware of them in their oversight of physicians.⁷¹

The FSMB also recommended additional training on implicit bias related to gender, gender identity, race, and ethnicity to help ensure fair and comfortable processes for victims.⁷² This is particularly important in sexual misconduct cases as African American women are at higher risk for sexual assault than other racial/ethnic groups and have an overall high prevalence of lifetime sexual assault.⁷³

There may be opportunities to coordinate support for victims of physician sexual abuse and collaborate with national and state organizations that work to end sexual violence to train state medical board staff and board members on appropriate handling of sexual misconduct cases. Given turnover among medical board staff and board members, boards should consider conducting these trainings at least every two years. Finally, to bring their important perspective and knowledge, State Boards could invite these organizations' staff to serve on state medical boards as public members.

⁶⁷ Ohio Alliance to End Sexual Violence, "Sexual Victimization of Patients by Physicians: A factsheet for Survivors & Advocates," <https://oaesv.org/wp-content/uploads/2021/04/oaesv-sa-of-patients-by-physicians.pdf>; accessed 5/1/22.

⁶⁸ FSMB report, page 11; <https://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>; accessed 5/3/22.

⁶⁹ FSMB report, page 5; citing the federal Substance Abuse and Mental Health Services Administration.

⁷⁰ CDC, Infographic: 6 Guiding Principles to a Trauma-Informed Approach; https://www.cdc.gov/cpr/infographics/6_principles_trauma_info.htm; accessed 5/19/22.

⁷¹ FSMB report, page 5 AND Stephanie Tillman, Journal of Midwifery and Women's Health, "Consent in Pelvic Care," Dec 2020; <https://onlinelibrary.wiley.com/doi/full/10.1111/jmwh.13189>; accessed 4/3/22.

⁷² FSMB report, page 11.

⁷³ Sarah E. Ullman, PhD & K. Lorenz, PhD, "Correlates of African American Sexual Assault Survivors' Medical Care Seeking;" <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7127928/>; accessed 5/19/22.

Other State Activities Addressing Sexual Misconduct

Our review of state medical board websites found additional activities that addressed sexual misconduct including legislation that required doctors on probation for sexual misconduct to inform their patients, reminding physicians of their duty to report their colleagues if they see sexual misconduct, and other activities to identify and make information about sexual misconduct more publicly accessible. We also identified two areas of concern to patient advocates: the use of Physician Health Programs to address physician sexual misconduct and the silence of state medical boards regarding complaints against physicians.

Patient advocates in two states have been involved with legislation that required physicians on probation for sexual misconduct (as well as other offenses such as drug and alcohol abuse and inappropriate prescribing) to notify patients of their probationary status:

- In California, the *Patient's Right to Know Act of 2018* went into effect on July 1, 2019. The law requires that licensees on probation disclose their probation status to patients or the patient's guardian on their first visit following the probationary order. The patient or guardian must sign the disclosure acknowledging they received it. According to the bill analysis, on average about 124 doctors are placed on probation each year by the California medical board.⁷⁴
- In Washington state, the “*Requiring Health Care Providers Sanctioned for Sexual Misconduct to Notify Patients*” bill was signed into law in April 2019. Similar to California, the medical practitioner on probation must disclose to patients or their surrogate decision maker their unprofessional conduct involving sexual misconduct—including the nature of the sanction. The patient or patient’s surrogate must sign the disclosure and a copy must be maintained in the patient’s file. The law went into effect Oct. 1, 2019.⁷⁵

In April 2021, New Jersey Attorney General Burbir Grewal announced a directive addressing sexual misconduct across 51 boards in the state—including the state medical board. The directive called on boards to adopt new policies and improve

⁷⁴ Patient's Right to Know Act of 2018, Medical Board of California <https://www.mbc.ca.gov/Enforcement/Probation/Patient-Notification.aspx>; accessed 5/19/22.

⁷⁵ SHB 1198, Synopsis as Enacted, <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1198-S%20HBR%20FBR%2019.pdf?q=20220307045339>; accessed 5/19/22.

existing processes to help prevent sexual misconduct from occurring, promote accountability among licensees and help victims who report it to receive support.⁷⁶

Patient advocates in New York have pushed for legislation titled The Adult Survivors Act (S66A). The bill would allow New Yorkers who suffered sexual abuse after the age of 18—including people assaulted by medical providers—to file civil lawsuits against their abusers within a one-year window of time, regardless of whether a statute of limitations on legal claims had expired. It was signed by the Governor on May 24, 2022.⁷⁷ Another bill (A8068/S6991) being considered, but currently stalled in committees would, among other things, establish a zero-tolerance policy for sexual misconduct by medical providers, establish conflicts of interest for expert consultants used in medical board investigation and include sexual misconduct in the definition of professional misconduct.⁷⁸

Other examples of what we found involving state medical boards and sexual misconduct:

- **Query of NPDB:** The Oregon medical board has adopted a rule that requires the medical board to use the National Practitioner Data Bank (NPDB) Continuous Query alert system for two years from the date of an allegation of sexual misconduct.⁷⁹ This creates an immediate and automatic notification to the licensing board when a new report is received by the NPDB on an enrolled physician.⁸⁰ The Board also sent a letter to law enforcement agencies throughout the state with information on how to contact the Board in the event a licensee is suspected of a sexual (or other) crime.⁸¹
- **Search Terms:** We discovered that putting “sexual misconduct” or “sexual” into the home page search boxes on the Oklahoma,⁸² Kansas,⁸³ Texas,⁸⁴ Minnesota⁸⁵ and Michigan⁸⁶ medical boards’ websites brought up materials on sexual misconduct but also information about board actions and, in some

⁷⁶ "AG Grewal Orders Sweeping Reforms to Crack Down on Sexual Misconduct by Licensed Professionals;" <https://www.njoag.gov/ag-grewal-orders-sweeping-reforms-to-crack-down-on-sexual-misconduct-by-licensed-professionals/>; accessed 5/19/22.

⁷⁷ Senate Bill S66A - Signed by Governor; <https://www.nysenate.gov/legislation/bills/2021/S66> and Governor Hochul Signs Adult Survivors Act; <https://www.governor.ny.gov/news/governor-hochul-signs-adult-survivors-act>; accessed 5/24/22.

⁷⁸ SO6991 Summary; https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S06991&term=2021&Summary=Y&Actions=Y; accessed 6/10/22.

⁷⁹ Chapter 847, Division 1, Procedural rules, 847-001-0024 Compliance; <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=282166>; accessed 5/19/22.

⁸⁰ 4/22/22 email from Bob Oshel, retired Associate Director for Research and Disputes, National Practitioner Data Bank

⁸¹ Sexual Misconduct Workgroup overview; <https://www.oregon.gov/omb/Topics-of-Interest/Pages/Sexual-Misconduct-Workgroup.aspx>; accessed 5/19/22.

⁸² <https://www.okmedicalboard.org/>; accessed 5/4/22.

⁸³ <http://www.ksbha.org/>; accessed 5/4/22.

⁸⁴ <https://www.tmb.state.tx.us/>; accessed 5/4/22.

⁸⁵ <https://mn.gov/boards/medical-practice/>; accessed 5/24/22.

⁸⁶ <https://www.michigan.gov/lara/bureau-list/bpl/health/hp-lic-health-prof/medical>; accessed 5/4/22.

cases, links to physician profiles of doctors who had been disciplined because of sexual misconduct. More states may have the same search option. This points to the importance of categorizing these cases as “sexual misconduct” and not hiding them behind general non-specific terms like “unprofessional conduct.” The Texas search also pulled up cases tagged as “sexual relationships,” which more appropriately should have been categorized as sexual misconduct.

- **Duty to Report:** The Minnesota medical board website included information on “Physicians’ Reporting Obligations in Sexual Misconduct Cases” in their section on “Reporting Obligations.” The article noted that, by law, physicians with personal knowledge of sexual misconduct by another physician must report that information, and if they did not, could be disciplined by the board. Notice of this duty appeared in a 1996 newsletter article that included a confusing disclaimer: “The material presented in the article is for informational purposes only and does not represent a statement of Board Policy.”⁸⁷ Ohio also has a duty to report law that included sexual misconduct. Effective in May 2021, physicians are required to complete one hour of Continuing Medical Education (CME) on the licensee’s duty to report misconduct as a condition for licensure. The board has developed a video on the topic.⁸⁸

Physician Health Programs: Our review of state medical board information about sexual misconduct identified the issue of relationships with Physician Health Programs (PHPs) for sexual misconduct remediation, which raised concern for consumer patient safety advocates. A PHP is described by the Federation of State Physician Health Programs (FSPHP),⁸⁹ a national membership association for these programs, as “a confidential resource for physicians, other licensed healthcare professionals, or those in training suffering from addictive, psychiatric, medical, behavioral or other potentially impairing conditions.” These programs, often affiliated with state medical societies, “coordinate effective detection, evaluation, treatment, and continuing care monitoring of physicians with these conditions.”⁹⁰

In May 2019, the FSPHP issued a “Statement on Sexual Misconduct in the Medical Profession” that began:

⁸⁷ Kent Harbison, JD, “Reporting Obligations-Physicians’ Reporting Obligations in Sexual Misconduct Cases;” <https://mn.gov/boards/medical-practice/board-information/laws-and-rules/related-laws/reporting-obligations.jsp#:~:text=The%20duty%20to%20report%2C%20of,the%20Minnesota%20Medical%20Practice%20Act> and Minnesota Medical Practice Act, Chapter 147.111; <https://www.revisor.mn.gov/statutes/cite/147.111> (note that the website article contains the wrong citation); accessed 5/20/22.

⁸⁸ State Medical Board of Ohio, Duty to Report Overview; <https://med.ohio.gov/Duty-to-Report> AND Video, Duty to Report to the State Medical Board of Ohio; <https://www.youtube.com/watch?v=cLBQnxqnZeM>; accessed 5/5/22.

⁸⁹ <https://www.fsphp.org/>; accessed 5/24/22.

⁹⁰ Federation of State Physician Health Programs, FAQs section: “What is a Physician Health Program?;” <https://www.fsphp.org/faqs>; accessed 5/16/22.

Professional sexual misconduct with patients is always wrong and violates ethical standards of the medical profession.

The statement went on to note that, while the PHP model provided an alternative to medical board disciplinary actions for impaired physicians with substance abuse and mental health issues, “because of the fundamental differences between these cases and cases involving sexual misconduct, PHPs cannot function as an alternative to discipline in these situations.” The statement then acknowledged that PHPs “are available to assist professionals with potentially impairing conditions depending on the circumstances, but the jurisdiction, discipline, and legal consequences of professional sexual misconduct are ultimately determined by the legal system and respective state medical boards.”⁹¹

This was concerning, as it appeared that these programs may be able to confidentially “monitor” physicians who committed sexual misconduct as long as they had a drug/alcohol or mental health problem. We searched each of the state PHP programs listed on the FSPHP website in May 2022 and found that 25 of the state programs listed “Sexual misconduct and/or boundary violations” under “Types of disease, illness, or conditions monitored.” We do not know how these PHPs are involved, but it would be extremely concerning if these confidential state-based programs could be used to enable possible sexual predators to escape discipline and public disclosure.

Complaints. Finally, our previous research indicated that no state medical board in the country provided information about the number and type of complaints received about specific doctors.⁹² This information is confidential under state laws and only becomes public when medical boards have finalized actions against a physician. We also know that boards can take months to years to conclude an investigation and, in the meantime, the doctor may still be practicing. This takes on added importance when sexual misconduct by a doctor is at issue. For example, the public was left to wonder how many complaints were received by medical boards and why there was a delay in acting on high profile cases such as Dr. Larry Nasser (MI),⁹³ Dr. Richard

⁹¹ FSPHP, “Statement on Sexual Misconduct in the Medical Profession,” May 2019; <https://www.fspHP.org/assets/docs/Sexual%20Misconduct%20in%20the%20Medical%20Profession%20State%20ment%20May%202019.pdf>; accessed 5/17/22.

⁹² “Looking for Doctor Information Online,” <https://www.patientsafetyaction.org/wp-content/uploads/2022/03/Looking-for-Doctor-Information-Online-1-7-22.pdf>, 1/7/22 accessed 5/17/22.

⁹³ “A timeline of Nasser’s abuse, charges and Michigan State’s response,” <https://statenews.com/article/2021/01/a-timeline-of-nassars-abuse-charges-and-michigan-states-response>; accessed 5/17/22.

Strauss (OH),⁹⁴ Dr. George Tyndall (CA),⁹⁵ Dr. Richard Curciani (NY),⁹⁶ Dr. Robert Hadden (NY),⁹⁷ Dr. Robert Anderson (MI),⁹⁸ and Dr. Daniel Tesfaye (GA).⁹⁹

We understand that perceived legal limitations, board resources, due process rights for health professionals, and other barriers often prevent boards from acting swiftly. The fact that final board action can take years to complete is the very reason why complaint information should be available—to provide signals to the public about physicians of concern. Since most boards categorize complaints by general description (such as gross negligence, standard of care violations, and unprofessional conduct), the number of complaints in serious categories that involve sexual misconduct could easily be included on each Physician’s Profile.

We recognize that changes in this area may require state legislative action. Given that state medical boards regularly interact with state legislatures, we call on them, acting on their mission to protect the public, to proactively support this increased transparency.

⁹⁴ "DeWine Releases Medical Board/Strauss Findings," 8/30/19; <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/083019>; accessed 5/17/22.

⁹⁵ "Ex-USC Doctor Accused Of Sexually Abusing Hundreds Of Women Surrenders Medical License," 9/10/19; <https://www.npr.org/2019/09/10/759623148/ex-usc-doctor-accused-of-sexually-abusing-hundreds-of-women-surrenders-medical-l>; accessed 5/17/22.

⁹⁶ "Former Pain Management Doctor Charged in Manhattan Federal Court with Sexually Abusing Patients Across Multiple States Over the Course of Over 15 years," 10/20/21; <https://www.justice.gov/usao-sdny/pr/former-pain-management-doctor-charged-manhattan-federal-court-sexually-abusing-patients>; accessed 5/17/22. <https://www.justice.gov/usao-sdny/pr/former-pain-management-doctor-charged-manhattan-federal-court-sexually-abusing-patients>

⁹⁷ "Former Obstetrician/Gynecologist Robert Hadden Charged In Manhattan Federal Court With Sexually Abusing Patients," 9/9/20; <https://www.justice.gov/usao-sdny/pr/former-obstetriciangynecologist-robert-hadden-charged-manhattan-federal-court-sexually>; AND, "Columbia University and New York-Presbyterian Reach \$71.5 Million Agreement with Past Patients of Former Gynecologist Robert Hadden," 12/1/21; <https://www.cuimc.columbia.edu/news/hadden-agreement>; all accessed 5/17/22.

⁹⁸ Timeline of Dr. Robert Anderson abuse scandal at University of Michigan 1/2/22; <https://www.mlive.com/news/ann-arbor/2022/01/timeline-of-the-dr-robert-anderson-abuse-scandal-at-university-of-michigan.html>; accessed 4/22/22.

⁹⁹ "He was caught on video, but Georgia doctor kept his medical license;" https://doctors.ajc.com/caught_on_video_but_kept_georgia_medical_license/; accessed 5/17/22.

Conclusion

Our review of state medical board websites revealed that much work remains for these regulatory agencies to give the topic of sexual misconduct the attention it deserves. While this report is not exhaustive, we were dismayed to find that most states have failed in even the most basic task of providing information for the public and doctors. Even those that did provide information, often failed to use straightforward language about sexual misconduct violations, instead opting for euphemistic or technical language that softened or obscured the seriousness of these violations. Boards often buried the information in outdated policy papers, confusing statements about board attitudes or by referring readers to difficult-to-read laws or regulations. Direct, accessible and clear information from boards about physician sexual misconduct notifies doctors and the public that they see these as serious violations of the trust that should go with a medical license.

Recommendations

In developing recommendations, we looked at numerous sources that have studied the issue of physician sexual misconduct, including FSMB and Public Citizen.¹⁰⁰ While there is much more that needs to be changed to ensure appropriate responses by medical boards when sexual misconduct occurs, our recommendations are focused on state medical board website information available for the public and for physicians as well as training and other activities.

State medical board websites should include:

1. A statement of zero tolerance for sexual misconduct.
2. Clearly labeled and easily accessible information for the public and for licensees about physician sexual misconduct. For example, in a “Resources” section for consumers and physicians using the specific label “sexual misconduct.” Ensure that overall site search functions can find sexual misconduct information.
3. Clear explanations for physicians and for patients regarding sexual misconduct behavior, including what patients should expect from a physical exam, how to file complaints, and laws, regulations or guidelines regarding the types of actions the board may take in response.
4. The number and type of complaints that the board has received from the public and others against a physician for sexual misconduct violations on each physician’s profile.
5. Specific terms on physician profiles when a physician is disciplined for “sexual misconduct” instead of general terms like “professional misconduct.”

State medical boards should:

1. Adopt regulations or guidelines on disciplinary actions to take in response to sexual misconduct allegations.
2. Conduct a complete audit of sexual misconduct information on their websites and update documents for both physicians and patients to reflect current awareness, policies and terminology about this subject.
3. Produce educational materials explaining to patients what should and should not be expected from a medical exam and how to report sexual misconduct. Consider developing age-appropriate materials for minors.
4. Publicly report annually regarding the number of sexual misconduct complaints received and their disposition.

¹⁰⁰ 15-Year Summary of Sexual Misconduct by U.S. Physicians Reported to the National Practitioner Data Bank, 2003 — 2017: In-Depth, Updated Evidence on White Coat Betrayal,” 5/26/20; <https://www.citizen.org/wp-content/uploads/2523.pdf?eType=EmailBlastContent&eId=cfae6104-8c44-4f07-87b5-f78353346c47>; accessed 4/21/22.

5. Establish the use of consistent terminology for documenting physician sexual misconduct in reports and physician profiles that reflects the seriousness of these specific violations rather than using general terminology like “boundary violations” or “professional misconduct.
6. Support and enforce “duty to report” laws requiring physicians to report to medical boards when they have knowledge of sexual misconduct by another doctor.
7. Provide board staff training about sexual misconduct at least every two years. Include information on trauma-informed practices and on implicit racial and gender bias in all aspects of the work for medical board members and staff.
8. Work with national, state and local sexual assault groups such as RAINN, the National Sexual Violence Resource Center (<https://www.nsvrc.org/>), the Center for Violence Prevention at the University of Texas Medical Branch (<https://www.utmb.edu/cvp/home>) or the Ohio Alliance to End Sexual Violence (<https://oaesv.org/what-we-do/resources-for-providers/advocates/>) to coordinate appropriate outreach, training and materials on physician sexual misconduct.
9. Proactively inform state legislatures of changes needed in the law to increase transparency and fulfill the board’s mission to protect the public. This includes requesting legislation that requires doctors to inform patients when they are on probation and requiring complaint statistics to be included on physician profiles.
10. Establish a practice of continuous query with the NPDB on all physicians with sexual misconduct complaints filed by patients or others. Even if boards get complaints and don’t act on them, this continuous query could help to keep an eye on doctors who have been flagged by complaints.

Resources Relating to Physician Sexual Misconduct

National Resources

National Sexual Violence Resource Center: Provides research and tools on sexual harassment, assault and abuse. <https://www.nsvrc.org/>
Includes a directory of organizations by state: <https://www.nsvrc.org/organizations>
Conducts online learning: <https://campus.nsvrc.org/>

The Rape, Abuse & Incest National Network (RAINN): Helps patients report sexual abuse to authorities and take legal action. <https://www.rainn.org>
Operates a national sexual assault phone hotline: 800-656-4673
Conducts education and training:
https://rainn.org/programs-and-expertise?&_ga=2.77765724.913516191.1622509675-347201505.1622509675#ConsultingTraining

Survivors Network of those Abused by Priests (SNAP): Support group for people wounded by institutional authorities. Founded by survivors of priest abuse but have a broader focus now that includes physicians. They spoke up for survivors of Dr. Larry Nassar's abuse and The *Atlanta Journal Constitution* listed them as a resource in their investigation of physician sexual abuse: "Groups such as SNAP, a network of survivors of institutional sexual abuse, offer advocacy and support for victims."
<https://www.snapnetwork.org/>

Patient and Physician Resources

Sexual Abuse by Medical Professionals - What can you expect in a medical setting?
RAINN <https://www.rainn.org/articles/sexual-abuse-medical-professionals>

Resources for Patients from *Atlanta Journal Constitution* Report: Doctors and Sex Abuse: https://doctors.ajc.com/doctors_sex_abuse_resources/

Factsheet for Survivors and Advocates on "Sexual Victimization of Patients by Physicians," Ohio Alliance to End Sexual Violence
<https://oaesv.org/what-we-do/resources-for-providers/advocates/> and
<https://oaesv.org/wp-content/uploads/2021/04/oaesv-sa-of-patients-by-physicians.pdf>

OH Medical board fact sheets: "Sexual boundaries in health care for patients"
<https://med.ohio.gov/Portals/0/Resources/Duty%20to%20Report/Sexual%20Boundaries%20Infographic%20-%20Patient%20FINAL.pdf?ver=z1Sxtc06p4ZcRsUtJWYeHw%3d%3d> and
"Sexual boundaries in health care for medical board licensees"
<https://med.ohio.gov/Portals/0/Resources/Duty%20to%20Report/Sexual%20Boundaries%20Infographic%20-%20Licensee%20FINAL.pdf?ver=1UGRoGOXJzrBM5XOf6pF6g%3d%3d>