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Dear Drs. Chaudhry, Walker-McGill, and King:

Public Citizen — a nonprofit consumer advocacy organization with more than 500,000 members and supporters nationwide — commends you on your recent Federation of State Medical Boards (FSMB) report and recommendations on physician sexual misconduct,<sup>1</sup> which are a significant improvement compared with your 2006 guidelines for state medical boards on this issue.<sup>2</sup>

We respectfully urge you to consider the findings and recommendations of our recent report, titled “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,”<sup>3</sup> which we released a few weeks after your report.

Our report provides important information that complements your report. Specifically, it provides an in-depth analysis of public and restricted National Practitioner Data Bank (NPDB)

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<sup>1</sup> Federation of State Medical Boards. Physician sexual misconduct: Report and recommendations of the FSMB Workgroup on Physician Sexual Misconduct. May 2020. <http://www.fsmb.org/siteassets/advocacy/policies/report-of-workgroup-on-sexual-misconduct-adopted-version.pdf>. Accessed August 19, 2020.

<sup>2</sup> Federation of State Medical Boards of the United States, Inc. Addressing sexual boundaries: Guidelines for state medical boards. May 2006.

<sup>3</sup> AbuDagga A, Carome A, Wolfe S, Oshel R. 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. May 26, 2020. <https://www.citizen.org/wp-content/uploads/2523.pdf?eType=EmailBlastContent&eld=cfae6104-8c44-4f07-87b5-f78353346c47>. Accessed August 19, 2020.

data for all physicians with sexual-misconduct–related adverse licensing, clinical-privileges, and malpractice-payment reports from January 2003 through December 2017 and includes multiple examples of how state medical boards and health care organizations too often dealt leniently with sexually abusive physicians. It summarizes the relevant literature about the various factors — including those related to the victim of such physicians, state medical board, and health-care organizations — that perpetuate this problem. The report concludes with actionable recommendations to address this important public health problem.

Among our key findings is that only 1,354 physicians — 0.2% of U.S. physicians — had sexual-misconduct–related licensing, clinical-privilege or malpractice-payment NPDB reports during our 15-year study period. This is an alarmingly low proportion compared with that for physicians who self-reported engaging in this unethical behavior in survey studies. For example, an anonymous random national survey of physician members of the American Medical Association showed that 3.4% of the respondents reported a history of personal sexual contact (genital-genital, oral-genital, or anal-genital) with one or more patients.<sup>4</sup>

Of the 1,354 physicians with sexual-misconduct reports, 93% had only one type of report: 77% had only licensing reports, 8% had only clinical-privileges reports, and 8% had only malpractice-payment reports. The remaining 7% had more than one type of these reports.

At least 19% of the physicians who had licensing actions and at least 17% of those with malpractice payments because of sexual misconduct had multiple victims. Moreover, at least 37% of those with clinical-privileges actions due to sexual misconduct had multiple victims, and 20% had “*a history or a pattern*” of such misconduct.

Most of the 1,354 physicians with these reports had only patient victims. Twenty-seven percent of those with clinical-privileges actions had only nonpatient victims, who were primarily employees in the organizations where these physicians worked. Seventeen percent of the physicians with licensing reports, 14% of those with clinical-privileges reports, and 50% of those with malpractice-payment reports related to sexual misconduct had patient victims with certain vulnerability factors (such as mental illness or being a minor).

Physical sexual contact or relations (including “inappropriate touching during an examination or procedure” and “rape”) and nonspecific sexual misconduct (including “boundary violation” or “harassment”) were the two most common primary forms of sexual misconduct committed by these physicians against their victims.

Fifty-two percent and 41% of the physician licensing and clinical-privileges reports, respectively, that listed sexual misconduct as a basis for action included at least one other basis for action. These additional bases included criminal convictions, violations of laws, unprofessional conduct, negligence or substandard care, patient abuse, and being an immediate threat to health or safety. Twenty-one percent of the malpractice-payment reports that listed sexual misconduct as a specific malpractice-act-or-omission allegation had additional allegations, including improper management and assault and battery.

We found that 510 (38%) of the 1,354 physicians with sexual-misconduct reports continued to hold active licenses and clinical privileges in the states where they were disciplined or had

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<sup>4</sup> Bayer T, Coverdale J, Chiang E. A national survey of physicians' behaviors regarding sexual contact with patients. *South Med J.* 1996;89(10):977-982.

malpractice-payment reports. We also found that out of the 317 physicians who had clinical-privileges actions or malpractice-payment reports because of sexual misconduct, 221 (70%) were not disciplined by any state medical board for their harmful behavior.

We respectfully ask you to adopt the following recommendations presented in our report and to assist the state medical boards represented by the FSMB to implement them as well to protect the public from sexually abusive physicians:

- (1) Replace the term “sexual misconduct” with the term “sexual abuse of patients” in all regulations, policies, and communications when referring to any physician conduct that involves contact between physicians and their patients or any behavior or remarks of a sexual nature by physicians toward their patients. For all forms of sexual misconduct not involving patients, use the term “sexual misconduct not involving patients.”
- (2) Classify physician sexual abuse of patients as a “never event” and implement a zero-tolerance standard for such conduct (as has been adopted by other countries, including New Zealand and parts of Canada) and require state medical boards to do the same.
- (3) Encourage the use of trained practice monitors for all physical examinations and procedures involving the breast, full-body, genital, or rectal areas.
- (4) Educate physicians about the impact of sexual abuse of victims, how to avoid it, and how to seek help if they are struggling with keeping professional boundaries with patients.
- (5) In collaboration with state medical boards, educate the public about how to prevent, recognize, and report physician sexual abuse. Particularly, establish and disseminate to the public detailed guidelines for how medical services (including examinations, procedures, or treatments) involving breast, full-body, genital, or rectal areas should be conducted. Also, encourage all physicians to maintain and protect medical records referencing these examinations and procedures.
- (6) Assist state medical boards in facilitating reporting by patients, patient surrogates, physicians, and other health care professionals of physician sexual abuse by, among other things, improving reporting processes and permitting anonymous and proxy reporting of physician sexual misconduct and by having patient-advocate professionals on staff with whom patients and their surrogates can be encouraged to discuss such allegations.
- (7) Encourage state medical boards to collaborate with health care institutions in their states to establish and fund programs to provide subsidized psychological counseling for all patients who were found to be sexually abused by their physicians.
- (8) Advise state medical boards on how they can improve their investigation processes of complaints of alleged physician sexual abuse of patients and conduct hearings if there are grounds for proceeding. Encourage state medical boards to investigate all these complaints and recommend that all board staff involved in investigating alleged physician sexual abuse of patients undergo sensitivity training to be better equipped to help the victims without retraumatizing them.
- (9) Encourage state medical boards to take effective disciplinary actions against physicians who have engaged in any form of sexual abuse of patients. Work with state medical boards to establish and enforce clear mandatory penalties against sexually abusive physicians and be firm in enforcing these penalties, starting with first offenses. Encourage

state medical boards to mandate license revocations for all physicians found to have engaged in any form of physical sexual contact with their patients.

- (10) Encourage state medical boards to report physicians who were found to have engaged in sexual intercourse or other forms of physical sexual contact or relations with any patient to law enforcement authorities in all cases.
- (11) Disclose on your DocInfo website complete information concerning all adverse licensing actions against named physicians found to have sexually abused their patients. Encourage state medical boards to do the same on their websites. Such information should be written in lay-friendly language and be made easily accessible to the public. Instruct state medical boards to do the same.
- (12) Guide state medical boards to work with their state legislature to strengthen state laws to protect the public from physician sexual abuse by (a) criminalizing all forms of physician sexual abuse of patients, (b) implementing patient “right-to-know” laws that require physicians who are on probation for sexual abuse or other offenses to notify their patients of these offenses, (c) strengthening and enforcing duty-to-report laws and setting penalties for noncompliance, and (d) lengthening or eliminating statutes of limitation for criminal offenses involving sexual abuse of patients by their physicians.
- (13) Encourage state medical boards to enroll all their licensed physicians in the “continuous NPDB query” program, a feature that automatically sends copies to your board of new reports submitted by other entities anywhere in the U.S. regarding an enrolled physician, and take appropriate action in response to the receipt of new reports involving sexual abuse of patients by any of your licensed physicians. The use of this query option is particularly valuable when physicians are licensed in multiple states because only the board of the state in which a clinical-privileges action is taken or a malpractice payment is made would automatically receive a copy of the report of such action or payment that is submitted to the NPDB.

If you have any questions about our report or the above recommendations, please contact Azza AbuDagga at (202) 588-7732 or at [aabudagga@citizen.org](mailto:aabudagga@citizen.org).

Sincerely,



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