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August 19, 2020

State Medical or Osteopathic Board

Dear Executive:

Public Citizen, a national nonprofit consumer advocacy organization with more than 500,000 members and supporters nationwide, respectfully urges you to review the findings and recommendations of our recent attached 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."[1]

Our report provides a comprehensive assessment of physician sexual misconduct. It begins with an in-depth analysis of public and restricted National Practitioner Data Bank (NPDB) data for all physicians with sexual-misconduct–related adverse licensing, clinical-privileges, and malpractice-payment reports over a 15-year period (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. The report then summarizes the relevant literature about the various factors — including those related to the victims of such physicians, state medical boards, and health care organizations — that perpetuate this public health problem. It concludes with several actionable recommendations to address this important public health problem.[2]

Among the key findings of the report is that only 1,354 physicians — 0.2% of U.S. physicians — had sexual-misconduct–related licensing, clinical-privileges or malpractice-payment NPDB reports during the 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.[3]

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.

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[1] 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&eId=cfae6104-8c44-4f07-87b5-f78353346c47. Accessed August 19, 2020.

[2] Department of Health and Human Services, Health Resources and Services Administration. NPDB guidebook. October 2018. https://www.npdb.hrsa.gov/resources/NPDBGuidebook.pdf. Accessed August 19, 2020.

[3] 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.

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 sexual-misconduct–related 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.

The report 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 malpractice-payment reports. It 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 consider implementing the following recommendations presented in our report to protect the public from sexually abusive physicians:

(1) Replace the term "sexual misconduct" with the term "sexual abuse of patients" in all your regulations, policies, and communications when referring to any physician conduct that involves any sexual 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).

(3) Encourage the use of trained practice monitors for all physical examinations and procedures involving the breast, full body, genital, or rectal areas.

(4) In collaboration with health care institutions in your state, 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, require all physicians to maintain and protect medical records referencing these examinations and procedures.

(5) Encourage and facilitate 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.

(6) In collaboration with health care institutions in your state, establish and fund programs to provide subsidized psychological counseling for all patients who were found to be sexually abused by their physicians.

(7) Investigate each complaint of alleged physician sexual abuse of patients and conduct hearings if there are grounds for proceeding. Ensure that 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.

(8) Take effective disciplinary actions against physicians who have engaged in any form of sexual abuse of patients. Establish and enforce clear mandatory penalties against sexually abusive physicians and be firm in enforcing these penalties starting with first offenses. Mandate license revocations for all physicians found to have engaged in any form of physical sexual contact with their patients.

(9) 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.

(10) Disclose on your website complete information concerning all adverse licensing actions against named physicians found to have sexually abused their patients. Such information should be written in lay-friendly language and be made easily accessible to the public.

(11) Work with your 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.

(12) Enroll all your 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.

Please share this letter and our report with all your leadership team, board members, and other appropriate staff.

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.

Sincerely,

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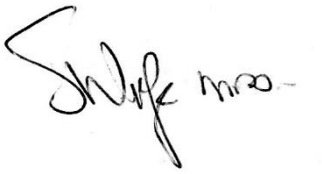

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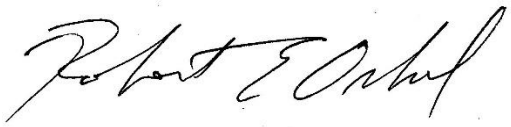

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