

Patricia A. King, MD, PhD

Dr. King is a Past Chair of the Federation of State Medical Boards (FSMB) Board of Directors and was a member of the Vermont Board of Medical Practice from 2003 to 2015, including service as the Vermont Board Chair.

Dr. King was the Chair of FSMB's Workgroup on Education about Medical Regulation, and the FSMB's Workgroup on Physician Sexual Misconduct. She currently serves on the FSMB Foundation Board, the FSMB Pandemic Preparedness Workgroup, and the FSMB Education Committee. In addition, Dr. King is a member and past Chair of the United States Medical Licensing Examination (USMLE) Composite Committee and serves on the National Board of Medical Examiners (NBME). She previously served on the FSMB Workgroup on Innovations in State-Based Licensure, Interstate Compact Taskforce, and Editorial Committee for the *Journal of Medical Regulation*.

Dr. King is currently a Professor of Medicine at the University of Vermont Larner College of Medicine where she is active in medical school curriculum development and medical student teaching. She also has a practice in primary care internal medicine with the University of Vermont Medical Group. In addition, she has served on the Ambulatory Care Test Material Development Committee for the USMLE. Dr. King earned her PhD in Physiology from Brown University and MD from the University of Vermont College of Medicine.

Mark L. Staz, MA

In his role at the FSMB, Mr. Staz is responsible for developing organizational policy related to medical regulation, advising on educational initiatives and supporting the FSMB's work in Ethics and Professionalism and the Workgroup on Physician Sexual Misconduct. He also supports the FSMB's international collaborations with medical regulators outside of the U.S., including its involvement in the International Association of Medical Regulatory Authorities (IAMRA).

Mr. Staz is the Immediate Past-President of the Coalition for Physician Enhancement, serves as teaching faculty for the Professional Problem-based Ethics Program (PROBE), has worked in medical regulation in Canada as a policy analyst for the College of Physicians and Surgeons of Ontario (CPSO) and has been involved in several policy and research initiatives addressing human resources for health, social determinants of health, and physician performance enhancement. He received his master's degree in philosophy at York University and is currently writing a doctoral dissertation on conflicting rights in health policy.

Protecting
Advocating
Serving

FSMB Policy on Physician Sexual Misconduct

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California Medical Board

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Presentation Outline

1. Background
2. FSMB Workgroup
3. Key Issues
4. Workgroup Recommendations
5. Q&A



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Doctors won't face discipline hearing over sex assault allegation

State lets doctors accused of sexual abuse on patients keep practicing

State Boards, Regulators Paralyzed on Physician Sex Assaults

Larry Nassar And A Former USA Gymnastics Athletic Trainer Indicted In Texas



Abusive doctors seem immune to #MeToo

America's Medical Profession Has a Sexual Harassment Problem

More former Ohio State students accuse Richard Strauss of sexual misconduct and university neglect in new lawsuit

Pennsylvania sports doc faces sex charges in 6th case

16 more women accuse former USA Gymnastics doctor of sexual abuse

USC Student and ex-USC Student to Detail Complaints Against USC Doctor
Alleged victims of sexual assault by doctors push for 'real change' by state medical boards

Pressure mounts on medical boards to root out sexual predator doctors

Current FSMB Policy



Addressing Sexual Boundaries: Guidelines for State Medical Boards

Adopted as policy by the House of Delegates of the Federation of State Medical Boards

May 2006

Section I. Introduction

Sexual misconduct by physicians and other health care practitioners is a form of behavior that adversely affects the public welfare and harms patients individually and collectively. The purpose of this report is to provide state medical boards with a framework within which to handle sexual misconduct cases'. Physician sexual misconduct exploits the physician-patient relationship, is a violation of the public trust, and is often known to cause harm, both mentally and physically, to the patient.

Sexual misconduct is an issue that affects all jurisdictions and is not limited by geographic or socioeconomic boundaries. It is the primary responsibility of state medical boards to protect the safety and welfare of the public it serves. In doing so, it is medical boards' responsibility to inform licensees that sexual misconduct, in any form, will not be tolerated and, when sexual misconduct does occur, to take prompt and decisive action against any licensee found to have participated in such conduct. As state medical boards are required to respond to an increasing number of complaints, it becomes imperative that medical boards use guidelines for dealing with sexual boundary issues and take measures to educate their licensees about sexual boundary issues.

Regardless of whether sexual misconduct is viewed as emanating from an underlying form of impairment, it is unarguably a violation of the public's trust. It should be noted that although an addictive disorder, mental disorder, sexual disorder, phase of life crisis may be a contributory circumstance, boards are still charged with taking appropriate steps to see that the public is protected. While sexual addiction is a frequently used phrase,

Workgroup on Physician Sexual Misconduct

1. Collect and review available disciplinary data related to sexual misconduct
2. Identify and evaluate barriers to reporting sexual misconduct to state medical boards
3. Evaluate the impact of state medical board public outreach on reporting
4. Assess the prevalence of sexual misconduct training in medical and graduate medical education
5. Review existing FSMB policy and provide guidance and recommendations to state medical boards



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Workgroup Approach – Grassroots and Inclusive

- Information and input sought from State Medical Boards
 - Broad medical board representation on Workgroup (12 boards represented)
 - 2018 FSMB Annual Meeting – Sexual Boundaries breakout session
 - Survey of State Medical Boards on issues related to Sexual Misconduct
 - 2019 FSMB Annual Meeting – Sexual Boundaries Keynote Panel and Board Forum (200+ participants)
 - Full-day symposium to gather input from boards on key issues
 - Extensive consultation on draft report and recommendations



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Workgroup Approach – Building Consensus

- Emphasis on board responsibilities, but also shared accountability across medical profession
 - 2-day Stakeholder Summit held in Washington, D.C.
 - Several partner organizations represented
 - Shared their approaches and suggestions for FSMB and member boards
 - Survivors of sexual assault by physicians represented
- Engaging partners to build consensus and impact culture of professional integrity



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Key issues Identified

- Barriers to Reporting
 - Limited public knowledge about state medical boards
 - Power imbalance between patient and physician
 - Professional hierarchies
 - Lack of protection for reporter
- Data and Transparency
 - Need for evaluation of content of board action
 - Public scrutiny of state medical boards
- Chaperones/Practice Monitors
 - Formal training
 - Appointment vs Employment



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Key issues Identified

- Remediation and Reentry
 - Can an offender be remediated?
 - What is the threshold for automatic revocation?
- Need for Training in Cases Involving Trauma
 - Treatment of complainants
 - Training for investigators, attorneys and board members



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Comment Period and Stakeholder Feedback

- Notification to law enforcement
- Feasibility of and best practices for remediation
- Duty to report, including peer and institutional reporting, whistleblower protection
- Transparency of data, regulatory processes, complaints, and bases for discipline
- Notification to existing patients of stipulation and to new patients of previous disciplinary action
- Education of clinicians, state medical boards and the public
- Chaperones and practice monitors



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Key Recommendations - 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



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Key Recommendations - Transparency

State medical boards should ensure that sufficient information is publicly available to justify regulatory decisions and provide sufficient rationale to support them

- Clear coding processes
- Accurate descriptions of behaviors underlying discipline
- Consistent Terminology
- Maximize reach and impact to public



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Key Recommendations - Complaints

Provide easily accessible information, education and clear guidance about how to file a complaint, and why complaints are necessary for supporting effective regulation and safe patient care

- Frequent communication with complainants throughout the complaint and investigative process
- Address sexual misconduct complaints as quickly as possible
- Specially trained complainant liaison/navigator on board staff



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Key Recommendations - Reporting

- Ability to levy fines against institutions for failing to report
- Results of peer review processes should be shared with state medical boards when sexual misconduct is involved
- Stronger hospital reporting requirements
- Sanctions for non-reporting among physicians
- Whistleblower protection for physicians who report instances of sexual misconduct



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Key Recommendations - Investigations

If investigation indicates a reasonable probability that the physician has engaged in sexual misconduct, the state medical board should intervene to ensure the protection of the patient and the public

- Review of previous complaints to identify patterns
- Impose interim terms or limitations
- Training and trauma-informed processes



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Key Recommendations - Discipline

Certain serious forms of unprofessional conduct should presumptively provide the basis for revocation of a license in order to protect the public

- Consider revocation for repeated commission of lesser acts
- “Practice Monitors” over “Chaperones” and only under specified conditions
- Appropriate remediation determined through risk stratification
- Detailed and rigorous remediation process



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Key Recommendations - Education

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

- Education on professionalism and professional culture
- Education for patients about what to expect during intimate exams
- FSMB support for identification and development of materials



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Key Recommendations - Implementation

FSMB should facilitate adoption and operationalization by providing an abridged version of the report which highlights key points and associates them with resources

- Model legislation (e.g., Duty to Report)
- Collection of background data on state laws, made publicly available
- Education across the continuum and to the public about appropriate examinations and treatment of patients
- Education of the public about reporting to state medical boards
- Facilitation of development and exchange of best practices among boards
- Facilitation and provision of training on implicit bias and trauma-informed investigations
- Funding for data development, coding, and analysis pilots by boards and others



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Thank You!

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PROMOTING THE HIGHEST STANDARDS FOR
MEDICAL LICENSURE AND PRACTICE



Protecting
Advocating
Serving