



Department of
Public Safety

CLOSING REPORT
GOVERNOR'S WORKING GROUP
on Reviewing of the Medical Board's
Handling of the Investigation
Involving Richard Strauss

March 10, 2021



Department of Public Safety

Mike DeWine, Governor
Jon Husted, Lt. Governor

Thomas J. Stickrath, Director

March 10, 2021

Dear Governor DeWine:

As the Chair of the Working Group on Reviewing of the Medical Board's Handling of the Investigation Involving Richard Strauss, which you initiated in Executive Order 2019-16D, I am pleased to present to you this Closing Report.

After the Working Group provided you with our recommendations on August 31, 2019, you directed the State Medical Board of Ohio (SMBO) to conduct a thorough review of all sexual assault allegations against physicians and other licensed medical personnel that were investigated and closed without action over the past 25 years and to identify any Ohio medical license holders who knew or suspected Strauss' criminal misconduct and investigate whether there were actionable failures to report. As a result, the SMBO reopened 91 of those closed cases as sexual impropriety investigations and recommended that an additional 42 cases be reopened for failure to report, including an investigation against Ted Grace for a failure to report Richard Strauss in the 1990s. I appreciate the tremendous and urgent work of the SMBO to review these cases and take appropriate action.

In response to your request to other boards that regulate the licenses of health care professionals to submit a report to the Working Group detailing their processes, the health care boards shared their responses with the Working Group and each other. Collaboratively, building upon lessons learned, these boards have made important improvements to policies and rules, and are implementing training for investigators, staff and in some cases, licensees. I am thankful for the efforts by the health care boards and staff and applaud the manner in which changes have been and continue to be made. To support the future investigations of the health care boards, the Closing Report includes recommended minimum standards on future training for investigator and enforcement staff.

This closing report is a culmination of the hard work and support of many- the working group members, their staff, the medical board, and the other health care boards, and I am grateful for their willingness to critically review and improve existing law and policies and for their collaborative efforts.

It has truly been an honor to serve as Chair of this Working Group.

Sincerely,

Director Tom Stickrath
Ohio Department of Public Safety

**CLOSING REPORT
OF THE
WORKING GROUP ON REVIEWING OF THE MEDICAL BOARD’S HANDLING OF THE
INVESTIGATION INVOLVING RICHARD STRAUSS**

On August 30, 2019, the Governor’s Working Group on Reviewing of the Medical Board’s Handling of the Investigation Involving Richard Strauss tendered its Report to Ohio Governor Mike DeWine, pursuant to Executive Order 2019-16D.¹ At Governor DeWine’s press conference releasing the Report, Governor DeWine announced that the Working Group would continue meeting to monitor the response to the Report’s recommendations. The Working Group held the last of its follow-up meetings on December 8, 2020, and submits this report on the work of the Medical Board and Ohio’s other health care boards in response to Governor DeWine establishing the Working Group.

At the Working Group’s December 8, 2020 meeting the consensus was that the Medical Board genuinely grasped the gravity of the Report and recommendations, that it worked diligently and in good faith to implement the recommendations, and that it also appreciated the invitation from Governor DeWine and the Working Group to take a hard look at its handling of sexual impropriety allegations today, despite the failings relating to Strauss occurring decades ago.² The Medical Board President and Executive Director, who worked closely with the Working Group throughout the follow-up process, shared tangible improvements resulting from the Working Group’s efforts. These changes serve what the Board President called the “crucial mission of protecting the health and safety of patients in Ohio.” While work remains, the Working Group found that the Medical Board has substantially addressed the specific recommendations of the Report. In addition, at Governor DeWine’s direction, the Board conducted an historical review of 25 years of closed cases. The Board hired external reviewers to spearhead the look-back effort. Among other things, that review resulted in 91 sexual impropriety cases being reopened and treated as current, active investigations. The team recommended that another 42 cases be reopened to investigate a failure to report the misconduct of a fellow licensee. One pending failure-to-report case relates directly to the Working Group’s purview. The public report of enforcement matters in the minutes of the Board’s July 8, 2020 meeting included: “Ted W. Grace, M.D., M.P.H.: Based on failure to report Dr. Richard Strauss at the Ohio State University in the 1990s; and a false statement related to the practice of medicine.”

The Medical Board has made real and meaningful strides toward ensuring that never again would it fail to act when it holds credible, actionable information about one of its licensees, such as it had with Strauss. Below, the Working Group summarizes the meetings held since issuing its Report, highlights advances made by the Medical Board and other health care boards, and offers its closing recommendations.

¹ The Report is available at: <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/083019>.

² In a letter issued the same day as the Report, the President of the Medical Board, Dr. Michael Schottenstein, signaled the Board’s commitment to working with the Working Group. A copy of that letter is attached as Appendix 1. Dr. Schottenstein reiterated that sentiment, which the work of the Board reflected, throughout the follow-up monitoring by the Working Group.

WORKING GROUP MEETINGS

The Working Group met five times after issuing its August 30, 2019, Report. The Report called for a written response from the Medical Board. On October 1, 2019, the Board submitted its initial report and project plan. The initial project plan tracked each of the Report's recommendations, with over 200 comments regarding Board feedback, planned work, and task status. The Medical Board's October 16 and November 13, 2019, monthly meetings included discussion over the project plan, including within the committee dedicated to that purpose. The Working Group then met on November 18, 2019, to review the Board's response and progress, with the aid of the Medical Board's President, one of the public Board Members, the new Executive Director, and a Board attorney. The Working Group met again to discuss the Medical Board's progress on January 16, June 16, October 13, and December 8, 2020. The Medical Board President, Executive Director, or both, presented to the Working Group at each of its follow-up meetings except one, when the Working Group meeting conflicted with the Board's own meeting. The Medical Board also submitted monthly updates and progress reports to the Working Group, eventually narrowing the work plan elements to just over 100 specific items, collected into 36 topical areas, still tracking the Report's recommendations. The Board reported 100% completion of 33 of the 36 topical areas in its October 15, 2020, progress report – just over a year after its initial report and project plan.³

The January 16, 2020, meeting of the Working Group also engaged members and leadership from other Ohio health care boards. On September 13, 2019, the Working Group issued an information request to the health care boards. The request largely tracked the recommendations in the Report, including how sexual impropriety allegations were handled, licensees' duty to report, and how the boards engaged with law enforcement. Ten health care boards, including the Medical Board, participated in the January 16, 2020, discussions drawn from the Working Group's information request and health care boards' responses. This broad array of regulatory boards provided insight to the Working Group, and, brought together in that venue, engaged one another to discuss not only difficulties in their practice areas but, more importantly, how their individual responses and acumen might be leveraged to improve their response to their shared responsibility to protect those served by their licensees. The June and December 2020 meetings also included reports on additional submissions from Ohio's other health care boards. At the December meeting, Missy Anthony, Executive Director of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, reflected on the applicability of the Report to Ohio's other health care boards and shared her Board's changes implemented since the Working Group's formation. Those efforts included, for example, reviewing the report of the Ohio State University to identify potential licensees that may be subject to enforcement action, reemphasizing the duty to report by including it in trainings and the license renewal process, and assessing cases for referral to law enforcement and use of a victim advocate.

³ The Medical Board's progress reports are available on the "Transparency" tab of the Medical Board's website at: <https://med.ohio.gov/Transparency>. The Transparency tab also includes statistics on the 25-year look back at closed cases, and on open and closed cases. The Board's meeting minutes, which include the minutes of the Sexual Misconduct Committee that the Board sunsetted after its November 2020 meeting, reflect work on multiple fronts to address the Working Group's recommendations, and are available on its website at: <https://med.ohio.gov/The-Board/Board-Meetings-Minutes>. On January 6, 2021, the Medical Board submitted a summary report to the Working Group, which is attached as Appendix 2.

MONITORING IMPACT OF THE REPORT AND RECOMMENDATIONS

The Working Group tracked the Medical Board's response to its Report through presentations by the Medical Board at the follow-up meetings, written submissions and progress reports from the Board, and reports from sub-groups of Working Group members who had, in addition, attended Medical Board meetings, reviewed the minutes of those meetings, and worked directly with the Board or its staff.

One item on which the Medical Board provided continuing updates was the review of 25 years of closed cases. The Medical Board reported that, by the October 13, 2020, Working Group meeting, the outside review team's work was complete. The internal review for potential investigation and enforcement action, which continued as external reviewers forwarded recommendations, finished in November 2020.⁴ The team identified 1,254 closed sexual impropriety cases. Of those, the reviewers recommended that 991 required no additional action. For the remaining 263, the reviewers recommended:

- 213 cases be reopened if feasible to review the allegation of sexual impropriety, of these
 - the Board is treating 91 cases as active investigations, and
 - the remainder either already were the subject of formal action or the reviewers recognized that the ability to pursue action on the license appeared infeasible (the Board chose to submit for review cases on which some action had already been taken);
- 39 be reopened for potential violation of the duty to report fellow licensee misconduct;
- 8 be referred to law enforcement;
- 3 both be referred to law enforcement and also reopened to investigate potential failure of the duty to report.

Enforcement on these cases will become public if decisions are made to cite the licensee. Such enforcement actions are likely to be taken in 2021.

The Working Group established four sub-groups around its enumerated recommendations to report back to the Working Group. Before turning to each sub-group below, a common thread among them of work that remains is the Medical Board's continued contemplation of legislative changes. The Working Group's Recommendations 1-5 and 7 to the Medical Board specifically called for, or intimated, changes to the Ohio Revised Code or Ohio Administrative Code. The Board's progress reports reflect that it worked on proposed changes relating to each recommendation, variously employing committee and full Board discussion, stakeholder input, and advice from prosecutors and the Ohio Attorney General. The Board minutes and monthly report transmittal letters reflect debate and review of drafts and of updated drafts. This approach is thorough, and time and labor-intensive. The Working Group credits the ongoing

⁴ The minutes of the June 10, 2020, meeting of the Sexual Misconduct Committee, that Committee's report to the Board at the meeting later that day, and the Board President's letter transmitting the June monthly update elaborate on the internal review process, including highlighting the involvement of the victim advocate. The "Historical Complaint Review" section of the Board's January 6, 2021, summary report details how that effort progressed, and reports that the outside reviewers committed some 3,000 hours to the process.

work of the Medical Board on the legislative endeavors. In this vein, the Working Group notes that the Medical Board’s progress reports refer to steps in its plan of action. As a result, when the Board reports 100% completion, it refers to the steps it laid out for itself; that does not translate to 100% implementation of the Working Group’s recommendations, particularly when that recommendation hinged on legislative approval. The January 6, 2021, Medical Board summary report has a “Legislation” section detailing future plans, which includes the specific statutes and a description of the changes forming the legislative agenda “endorsed by the board.” With that in mind, and because the Board’s legislative efforts continue, this Closing Report does not remark on specific legislative efforts with the exception of those relating to the Medical Board’s confidentiality statute, below.

1. Medical Practice Sub-Group

Recommendation No. 1: Duty to Report to the Medical Board

Recommendation No. 4: Confidentiality and Transparency

Working Group member Mark Hurst, MD headed this effort. While on the Working Group, Dr. Hurst held positions as Medical Director for the Ohio Department of Mental Health and Addiction Services and then as Medical Director for the Ohio Department of Health, before retiring. Dr. Hurst continued his commitment to the Working Group in his retirement. Among other things, Dr. Hurst attended Medical Board meetings, including meetings of the Sexual Misconduct Committee formed in the wake of the Working Group’s Report, reviewed Board minutes, and worked with the Medical Board Executive Director on follow-up questions.

Highlights of the Medical Board’s Response to Recommendations No. 1 and No. 4

- The Medical Board’s review of closed cases included identifying cases that required additional investigation into possible violations for a failure to report misconduct. The review resulted in 42 recommendations to re-open the case to investigate a potential failure to report (three of which also carried recommendations for referral to law enforcement). The Medical Board also reviewed the report from Ohio State University to identify current license holders who may have failed to meet their duty to report.
- The Medical Board’s minutes from its July 8, 2020, meeting included among the citations being pursued, which were made public at that meeting, the following entry: “Ted W. Grace, M.D., M.P.H.: Based on failure to report Dr. Richard Strauss at the Ohio State University in the 1990s; and a false statement related to the practice of medicine.”
- The Medical Board adopted a mandatory reporting rule for its staff, including but not limited to investigators, who become aware of potential sexual impropriety by licensees or a licensee’s failure in the duty to report sexual impropriety.
- The Medical Board drafted and continues to pursue a revision to Administrative Code Section 4731-10-02, entitled “Requisite hours of continuing medical education [“CME”] for license renewal or reinstatement,” to specifically require CME on the duty to report as a condition to maintaining licensure. The Joint Commission on Agency Rule Review held a hearing on the proposed rule, and on December 29, 2020, the Board placed the proposed revision into “To Be Refiled” status. On March 1, 2021, it did refile that rule. If the current draft prevails, Section A of the new rule will include the

following: “A licensee must complete a minimum of one hour of CME, approved by the board, on the topic of a licensee's duty to report misconduct under section 4731.224 of the Revised Code.” The Board is also continuing work on a video for licensees that will meet the CME responsibility regarding the duty to report. Further, the Board will incorporate some information on the duty to report into educational activities, regardless of topic.

- As a condition of all initial and renewal licenses, the Medical Board now requires applicants to acknowledge their duty to report. The Medical Board noted, in particular, the desire to correct an apparent misunderstanding among licensees that may cause them to assume their duty is discharged by reporting to an entity other than the Board, such as to their employer, which their application process also addresses.
- The Medical Board reports de-identified case information under the Transparency tab of its website showing open cases (by complaint and license type, as well as reporting average length of time open) and closed cases (by complaint type and closure code, which can be filtered by license type, as well as showing average length of time open).

Recommendation No. 4 called upon the Medical Board to balance its statutory confidentiality provision with public transparency. The Working Group recognizes that altering the restrictions of Ohio Revised Code § 4731.22(F)(5) requires legislative action. The Board’s meeting minutes reflect debate on altering confidentiality, or adopting or recommending a practice that will remove confidentiality in those cases, like Strauss, where no corrective action is pursued, or on other bases suggested by the Working Group or used by other states or boards. The transmittal letter of the Board’s August 2020 monthly report stated in part: “At the August board meeting, [State Medical Board of Ohio (“SMBO”)] staff had a conversation with Board members about the Board’s confidentiality statute, ORC 4731.22(F)(5). The Board members provided guidance on potential good cause and/or public safety exceptions to the confidentiality of the Board’s investigations. They also provided guidance on possible time limits to the confidentiality of the Board’s investigations. SMBO staff will draft legislation responsive to the Board’s feedback. Those drafts also will be shared with stakeholders.” In part because of recommendations from the Federation of State Medical Boards (“FSMB”), before fully tackling confidentiality, the Board may first assess changes to the case-review role of the Secretary and Supervising Member, and possibly other Board members, which itself may necessitate a statutory change. The January 6, 2021, summary report recognized the need to continue analyzing § 4731.22(F)(5). Notwithstanding the need for legislative action, the Working Group continues to hold to its original recommendations that support increased sunlight, and with it increased public accountability. The call for increased transparency remains.

In his final report to the Working Group, Dr. Hurst further noted that the work of the Medical Board appears already to have had an impact not only on the culture of the Medical Board but within the community of licensees. Diligent pursuit of cases and the sharing of data with the public as a measure of accountability are encouraging and bode well for the continued development of what has the potential to become a model approach to sexual impropriety cases.

2. Law Enforcement and Investigations Sub-Group
Recommendation No. 2: Law Enforcement
Recommendation No. 6: Sexual Impropriety Investigations

Working Group member Jeff Newton, the Chief of Police and Public Safety Director for the University of Toledo, coordinated review of law enforcement engagement and investigative reform. Chief Newton worked with the Medical Board Executive Director to supplement his review of updates, progress reports, and Board meeting minutes.

Highlights of the Medical Board’s Response to Recommendations No. 2 and No. 6

- The Board adopted a law enforcement notification protocol and a sexual misconduct case protocol and revised its investigation manual. Together they encourage interaction with law enforcement, including the investigator contacting law enforcement as early as practical in a sexual impropriety case and incorporating trauma-informed investigative techniques. The Board engaged Chief Newton to review the manual and consulted with him on law enforcement engagement.⁵
- The board initially contracted with victim advocates to provide support. Since March 2020, an existing Board investigator with appropriate training has acted as a victim advocate. The Board offers a victim advocate in sexual misconduct cases. The victim advocate works not only with victims but closely with investigators and other Board staff. The advocate works with the investigative team from the outset, for example, to develop a victim-witness interview plan (which includes working with the victim-witness without dictating locations and times of interviews as the previous manual had), to identify witnesses, and to conduct recorded interviews.
- The Board undertook an effort to reach out to local law enforcement to establish or strengthen ties, catalogued its law enforcement contacts, and reported law enforcement agencies reaching out to the Board to learn more about its plans to engage law enforcement.
- The Board pursued multiple training opportunities, with particular focus on a trauma-informed approach including (1) instituting an annual training plan, to include sexual misconduct complaint investigation and enforcement, as well as trauma-informed investigation; (2) investigator and enforcement personnel took a 5-day Forensic Experiential Trauma-Informed (FETI) training focusing on trauma-informed investigations; (3) investigators, enforcement attorneys, and legal staff received a half-day training through the Ohio Victim Witness Association; and (4) all Board members receiving training in trauma-informed care.
- The Board signaled a commitment to cementing its new approach when it reported that

⁵ The Board President’s February 2020 letter transmitting the monthly report gave an early indication on the progress and intent with specific regard to law enforcement engagement: “[L]aw enforcement is to be notified for anything criminal. The protocol also spells out the benefit and sometimes need to consult with law enforcement on cases of sexual misconduct that may not rise to a criminal threshold. These more discretionary consultations are those where law enforcement may benefit from the information or where the SMBO may want more context about the licensee from law enforcement. SMBO staff continues to document existing law enforcement relationships; where relationships are lacking, SMBO staff will work to develop those relationships.” The January 6, 2021, summary report reflected the realization of that commitment, including the adoption of a law enforcement contact protocol and the Board leadership reaching out to law enforcement.

its future budget will include a full-time victim advocate as well as additional investigative and enforcement staff which, the Board reported, will allow for more specialized training and attention to sexual impropriety cases.

In his final report to the Working Group, Chief Newton reflected on the tremendous amount of work the Medical Board accomplished in the roughly one year since the Working Group Report. He applauded the commitment to investigator training and collaboration with law enforcement, and to incorporating victim advocates. While it will be a challenge to maintain the level of rigor that the Board had shown, the progress achieved indicated that the Board was up to that challenge, and has the commitment required to sustain and improve upon the change reflected in the Working Group recommendations.

3. Quality Assurance and Structure Sub-Group

Recommendation No. 3: Quality Assurance

Recommendation No. 5: Board and staff structure and process

Lance Himes, Esq. of the Ohio Department of Health led this sub-group. Since the Working Group issued its Report, the Department of Health naturally has been consumed by working to combat the COVID-19 pandemic. During that time, Mr. Himes held roles as Senior Advisor and Chief Legal Counsel, then as Interim Director of the Department, and then as Senior Deputy/Chief of Staff, tasked to continue work with local health commissioners and efforts to distribute the then-forthcoming COVID-19 vaccines. He also reviewed the Medical Board's progress reports and consulted with the Working Group Chair, Director of the Ohio Department of Public Safety, Tom Stickrath, and his staff.

Highlights of the Medical Board's Response to Recommendations No. 3 and No. 5

- The Medical Board engaged the FSMB to conduct an audit of its practices. The 7-member team of experts issued its report on June 30, 2020, which included 59 specific recommendations.⁶
- The Board adopted a collaborative model to assess sexual misconduct cases, with investigative and enforcement staff working together from the outset, and with staff decisions on sexual misconduct cases reviewed prior to recommending closure without further action. Specific to the conflict the Working Group identified with investigative staff, but also to develop an overall more coordinated and informed staff, the Board has expanded weekly executive staff meetings to include investigation chiefs, involved the investigative staff in rewriting the investigation manual, fostered investigator discretion in the manual and related protocols, and undertaken a "staff climate survey."
- The Board created the position of Deputy Director of Enforcement and Investigations, among other things to review closure recommendations in, and the complaint process for, sexual misconduct cases. The Board hired an experienced former prosecutor and attorney with the Ohio Attorney General's Office for the role. The Deputy Director is

⁶ The June 30, 2020, FSMB Report is posted on the Medical Board's website, under its Transparency tab. In addition, the Medical Board's August 2020 monthly update letter, also available under the Transparency tab: (1) attached a color-coded plan of action on the FSMB recommendations; and, (2) contains a hyperlink to the roughly 90-minute discussion with the FSMB team at the August Board meeting.

at the top of several layers of review for sexual misconduct cases that investigators recommend to close without further action, each of which may return the matter for additional investigation.

- The Board tracks open cases, in part to ensure that cases do not languish in an “open” but inactive status as occurred in the Strauss case. Indeed, as a result of the Working Group Report and the Board’s review of 25 years of closed cases, the Board shared in its January 6, 2021, report that it has adopted the policy “to **never** close a complaint solely based on the age of the matter.” (Emphasis in original.) The Board updated its tracking system to allow for more real-time entries, and therefore oversight reports, on investigation status. The Board publishes on the “Transparency” tab of its website the length of time cases are open.

The Board’s work in the area of quality assurance has focused on work prior to the Secretary and Supervising Member reviewing the matter. Work remains to assess the role of the Secretary and Supervising Member and to add some measure of full Board review of the decisions by those members to close cases without action. In early 2021, the Medical Board intends to engage the Office of Internal Audit of the Office of Budget and Management to “review of the board’s operationalization of the new sexual misconduct protocol.” Also, a new Board committee is planned to be convened in January 2021 to consider, for example, the roles of the Secretary and Supervising Member, adding a public Board member to the review of cases, the FSMB recommendation to establish a quality assurance committee, and an audit process for Board members to receive more de-identified data on cases closed prior to presentation to the full Board.

Mr. Himes’ work for the Department of Health prevented him from attending the Working Group’s December meeting. The final report of this sub-group, taken from Mr. Himes’ reports to Director Stickrath and Mr. Himes’ written comments, noted the ongoing work of the Board but that the Board had worked diligently, developed a plan in response to each of the recommendations, and that the updates to the processes and procedures appear likely to result in sexual impropriety complaints being heard in a timely and thorough manner.

4. Other Ohio Health Care Boards

Recommendations No. 8: Considerations for Additional Study or Information by Ohio Health Care Boards

Director Stickrath coordinated the engagement with Ohio’s other health care boards. The boards participating in the January 2020 meeting or otherwise providing information in response to the Working Group’s requests were:

1. Ohio Board of Nursing
2. Ohio Board of Psychology
3. Ohio Chemical Dependency Professionals Board
4. Ohio Counselor, Social Worker and Marriage and Family Therapist Board
5. Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board
6. Ohio Speech and Hearing Professionals Board
7. Ohio State Chiropractic Board

8. Ohio State Cosmetology and Barber Board⁷
9. Ohio State Dental Board
10. State Board of Emergency Medical, Fire, and Transportation Services
11. State of Ohio Board of Pharmacy
12. State Vision Professionals Board

The Working Group issued three requests for information to these health care boards, on September 13, 2019, February 20, 2020, and November 25, 2020.⁸ The boards noted, and their responses indicated, the wide differences among them in numbers of licensees, scope of practice and attendant risk of sexual impropriety claims, and investigative and enforcement staffing. Despite the differences, taken together, the responses indicate a recognition that sexual impropriety claims are of utmost importance, whether in terms of sexual misconduct specifically, or in the broader context of ethical standards, boundary issues, or patient informed consent.

The boards' initial responses reported a low incidence of sexual misconduct complaints in relation to both the number of complaints received and licensees. They shared an increased focus on sexual impropriety cases and investigations. The definitions relating to licensee sexual impropriety varied widely, with many basing enforcement on existing practice standards that did not explicitly single out a definition of sexual misconduct. The boards reported existing or anticipated plans for tracking sexual misconduct complaints or establishing a clear mandate to investigate sexual impropriety complaints (whether to pursue action on the license or in order to work with law enforcement).

The boards generally shared emphasis on developing and reiterating the duty to report licensee misconduct. The initial responses indicated that each board, with the exception of the Ohio State Cosmetology and Barber Board, had a duty to report, with some limitations, practice violations of fellow licensees. Each, with the exception of the Ohio Board of Psychology⁹ and Ohio State Cosmetology and Barber Board, had some form of a self-reporting duty, though not expressly linked to sexual impropriety.

Every board recognized the benefit of law enforcement engagement. Several boards, in light of the particularly vulnerable populations they serve, relayed licensee duties to report directly to law enforcement. Most indicated a willingness and experience with engaging with law enforcement, but that engagement appeared sporadic, frequently was not tracked, and the reports did not indicate an obvious link specific to engaging law enforcement on sexual impropriety cases.

⁷ The Working Group recognizes that the Ohio State Cosmetology and Barber Board is not one traditionally considered a health care board, nor are its licensees subject to the same historical or statutory standards as those of health care boards. Nevertheless, clients of its licensees are vulnerable in settings that include touching or customers in various states of undress, such as with waxing, tanning, or relaxation massage. As a result, the Working Group included them in this effort. It does so acknowledging that the Ohio State Cosmetology and Barber Board's efforts are viewed, and the recommendations made here will apply to it, somewhat differently than the other boards, but their inclusion will expand the reach of the lessons learned from other health care boards, and in the process broaden the protections to prevent and detect sexual impropriety.

⁸ Correspondence relating to these inquiries, without exhibits, is attached as Appendices 3(A)-(C), respectively.

⁹ In spring, 2021, the Ohio Board of Psychology staff intends to recommend self-reporting of any violation of its rules of professional conduct updated effective November 2019, which includes conduct toward clients that is sexual in nature or improper sexual relationships, including after the client relationship has ended.

Most boards reported statutory confidentiality provisions similar to those of the Medical Board, shielding the investigations from public scrutiny except to the extent that they are disclosed through a formal citation and enforcement action (though continuing to protect, for example, patient medical information). The Ohio Chemical Dependency Professionals Board, State Board of Emergency Medical, Fire, and Transportation Services, and State Vision Professionals Board indicated that files become public, with appropriate redactions, after the investigation is closed or at the conclusion of an enforcement action. The Ohio State Cosmetology and Barber Board is not restricted by any investigative confidentiality.

The trend across disciplines was toward increased investigator training, with emphasis on trauma-informed investigations of sexual impropriety cases. The health care boards identified outside training that they and other boards may continue to leverage.¹⁰ The responses to the first request for information generally indicated that such training, however, was not mandated for investigators.

Highlights Relating to Ohio’s Other Health Care Boards

- Recognizing that health care boards’ varying budgets and staffing may not fit with outside training, Working Group members Chief Newton, Kelly Heile, Esq., Chief of the Child/Sexual Assault Division at the Butler County Prosecutor’s Office, and Amy Priddy, Victim Advocate at the Ohio Attorney General’s Office, drafted minimum recommended training standards for investigation of sexual impropriety cases to guide all investigative staffs in a health care setting in developing in-house, cross-board training opportunities.¹¹
- Specific advances since Governor DeWine convened the Working Group included:
 - The Board of Nursing updated its continuing education rule 4723-14-03 to include training on “recognition and handling of . . . victims of sexual assault” as a qualifying topic, and provided trauma-informed investigator training.
 - The Ohio Chemical Dependency Professionals Board began tracking sexual misconduct case-specific data “to analyze trends and the number of these cases more efficiently.”
 - The Ohio Counselor, Social Worker and Marriage and Family Therapist Board adopted, in May 2020, a Sexual Offense Investigation and Training Policy.
 - The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, in addition to the items presented by Executive Director Anthony noted above, has submitted language that would allow for permanent revocation of a license and clarify enforcement references to sexual misconduct in the Administrative Code.
 - The Ohio Speech and Hearing Professionals Board updated multiple practice area codes of ethics, defining unprofessional conduct to include “dual relationship with a client or former client, [and] commitment of an act of sexual abuse, misconduct, or exploitation of a client or former client.”
 - The Ohio State Chiropractic Board added questions regarding the duty to report suspected violations of practice standards, and bolstered questions regarding sexual misconduct, on both its continuing education and examination that applicants for

¹⁰ A table describing trainings reported to the Working Group is attached as Appendix 4.

¹¹ A copy of the standard is attached as Appendix 5.

- licensure must pass. It also reported advances in working with victim-witnesses and involving law enforcement in complaints of sexual misconduct.
- The Ohio State Cosmetology and Barber Board staff began tracking complaints that allege sexual misconduct.
 - The Ohio State Dental Board’s investigators completed the National Certified Investigator & Inspector training and joined the Ohio Investigators Association.
 - The State Board of Emergency Medical, Fire, and Transportation Services updated its tracking software specifically to track the status of sexual misconduct cases.
 - The State of Ohio Board of Pharmacy adopted a policy entitled “Trauma-Informed Sexual Violence Training” outlining required training, reexamined cases over the prior five years for sexual misconduct issues potentially previously unidentified, and implemented a rule requiring a duty to report among a number of other rules that impact its response to sexual impropriety complaints taking effect in December 2019.
 - The State Vision Professionals Board revised its Code of Ethics, Ohio Administrative Code 4725-5-05, making explicit the definitions and prohibitions relating to sexual misconduct and dual relationships, effective January 14, 2021.

CLOSING RECOMMENDATIONS

Efforts to implement the Working Group’s August 30, 2019, recommendations will continue and must continue to receive the support of the members and leadership of the Medical Board and other health care boards. The following supplement the Working Group’s extant recommendations.

1. Training. All health care licensing boards should invest in improved and continuing education (a) of investigators involved in sexual impropriety cases, (b) of licensees, and (c) of the public on what is improper and how to report it.

- The Working Group recognizes the varied roles, needs and resources of Ohio’s health care boards, and, mindful of them, prepared a standard of minimum requirements for investigator and staff training relating to sexual impropriety cases. A copy of the standard is attached as Appendix 5.
- Ohio’s health care boards should work together to develop and share investigator and other staff training to promote survivor-centered, trauma-informed investigations in sexual impropriety cases.
- Like the Medical Board, other health care boards should require continuing education of licensees on the duty to report and incorporate acknowledgement of that duty into the license renewal process.
- Ohio’s health care boards should take steps to educate patients to empower them to recognize potential sexual misconduct of licensees, and to be confident in how to report it.
- The Ohio Department of Administrative Services has agreed to be the health care boards’ point of contact to help develop, implement, and host investigator training.

2. Health Care Board Coordination. Building on the experience before the Working Group, Ohio health care board executive directors should continue to meet and to pursue joint opportunities to make their programs models for avoiding and addressing sexual impropriety complaints.

- Ohio’s health care boards shall engage in more formal collaboration, including through regular meetings, to benefit from one another’s insight, experience, and critical analysis in, at least, the areas identified in the Working Group’s reports regarding the Medical Board, such as investigator training, licensee compliance and education, and increased transparency.
- To initiate this recommendation, the Working Group asks the Executive Director of the Medical Board to convene this collaboration and to facilitate identifying health care board executive directors as co-chairs to develop the processes.

3. Transparency. The Working Group reiterates its recommendation that the Medical Board should take steps within Ohio Revised Code § 4731.22(F)(5), and pursue appropriate amendment to that provision, to ensure that the investigation confidentiality not be a shield from oversight of inappropriate inaction such as that in the Strauss investigation.

- While pursuing legislative endeavors, the Medical Board should offer its board members and the public de-identified data that provides not only statistical information on the handling of sexual impropriety cases and reason for closure, but assurance that the decision to close a case without action was justifiable.

APPENDICES

- Appendix 1. August 30, 2019, letter to the Working Group from State Medical Board of Ohio President, Dr. Michael Schottenstein
- Appendix 2. January 6, 2021, Medical Board final, summary report to the Working Group
- Appendix 3. (A) Correspondence regarding September 13, 2019, Working Group request
(B) Correspondence regarding February 20, 2020, Working Group request
(C) Correspondence regarding November 25, 2020, Working Group request
- Appendix 4. Reported Trainings
- Appendix 5. Working Group Standard on Training and Policy for Ohio Health Care Boards’ Investigation of Allegations of Sexual Impropriety



Dr. Michael Schottenstein
President, State Medical Board of Ohio
30 E. Broad St., 3rd Floor
Columbus, Ohio 43215

Strauss Investigation Working Group
C/O: Director Thomas J. Stickrath, J.D.
Ohio Department of Public Safety
1970 W Broad St.
Columbus, OH 43223

August 30, 2019

Dear Director Stickrath,

On behalf of the State Medical Board of Ohio members and staff, I would like to extend my gratitude to your office, and to the Strauss Investigation Working Group, for the thorough and fair review of past and present board processes. We value the Working Group's recommendations and appreciate the time, perspective, and expertise of the members. Additionally, we would like to thank your staff members for their courtesy and professionalism throughout this process.

We look forward to continued engagement with the Working Group to implement the changes suggested in the report. In addition to Working Group meetings, I would welcome an ongoing dialogue with you directly, to keep you more frequently apprised of our progress on operational improvements. It is our goal to use the lessons learned from these tragic events to become a more effective regulatory board, supporting our crucial mission of protecting the health and safety of patients in Ohio.

If you would be so kind as to share this letter with the Working Group members and the staff who assisted their efforts, I would be very appreciative.

Respectfully,

Dr. Michael Schottenstein



The Governor's Working Group on Richard Strauss
C/O: Director Thomas J. Stickrath, J.D.
Ohio Department of Public Safety
1970 W Broad St. Columbus, OH 43223

January 6, 2021

Director Stickrath and Members of the Governor's Working Group on Richard Strauss:

The State Medical Board of Ohio (herein referred to as the "SMBO" or the "board") is pleased to report to you a summary of actions taken by the board relative to our work on how we handle sexual misconduct complaints made to us about our licensees.

We remain grateful for all the time, energy, and engagement that the Working Group members have provided to the SMBO on our continued journey to improve upon the way we handle sexual misconduct complaints. We believe the expertise of the Working Group has taken us far past an 'improved' status and has helped us to develop high quality practices and procedures that ensure public confidence in our handling of sexual misconduct complaints.

Our report details our work on the historical complaint review of the past 25 years of closed sexual misconduct complaints, as requested by Governor DeWine. We also provide you a summary of the policies, practices, and procedures that we have either updated or implemented since the Working Group's report in August 2019. Finally, you will read about the board's continued work regarding licensee sexual misconduct that will occur in calendar year 2021.

Through the fall of 2019 until November 2020, the board met monthly in an ad hoc committee focused on licensee sexual misconduct. Each month, staff reported out on various activities responsive to the Working Group's report, as well as other best practice work. The board's subcommittee, and often, the full board, provided direction and insight on all activities summarized in this report. The work of the subcommittee has been sunset as our updated practices, policies and procedures on handling sexual misconduct complaints have been integrated into daily practice. The board remains committed to a state of constant improvement on the way we handle sexual misconduct complaints.

If you have any questions, comments, or concerns about the enclosed report, please do not hesitate to reach out.

With continued gratitude,

Michael Schottenstein, M.D.
State Medical Board of Ohio
Past President, 2019 and 2020

Mark Bechtel, M.D.
State Medical Board of Ohio
President, 2021

Historical Complaint Review

The SMBO greatly appreciates the Governor’s recommendation to review 25 years of closed sexual misconduct complaints. Not only does the review provide the public a greater trust in the Board’s previous actions, but the staff has also been provided the opportunity to learn from past policies and procedures.

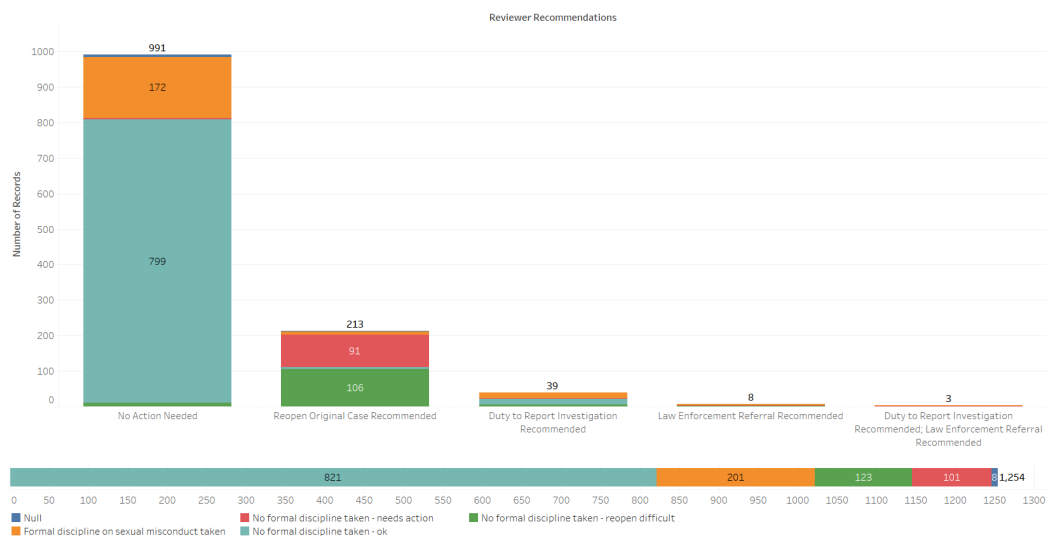
File Preparation

To begin the historical complaint review, paper files were pulled, and sometimes consolidated with more current electronic files, in the board’s online licensing system. A total of 1254 licensees with closed sexual misconduct complaints from the past 25 years were reviewed, some with multiple complaints. The review consisted of approximately 500,000 pages of scanned files, coupled with approximately the same number of pages that have been stored electronically in more recent years. A complete packet of all relevant information housed by the board was then electronically created for each of the 1254 licensees, with each packet receiving a new, unique complaint number.

External Review

The board determined that the most appropriate method for review should be to have external, contract reviewers assess the information for each licensee. Accordingly, board staff onboarded approximately 20 external reviewers to assess the 25 years of closed complaints. The reviewers brought a wide variety of experience to the project. Their backgrounds included former and current prosecutors, assistant attorneys general, detectives from local law enforcement agencies and former agents from the Bureau of Criminal Investigations. The reviewers were provided access and training to the board’s online system, as well as an overview of board processes and laws. After passing a quality assurance process, the reviewers were then assigned complaints by board staff. The board engaged the reviewers for approximately 3,000 hours of file review.

The external review of the complaint files was completed in October 2020. Reviewers were instructed to opine on three things: should the complaint be reopened for further board investigation or enforcement; did the board miss acting on another licensee’s duty to report and should the board have notified law



enforcement about the underlying complaint. For those complaints that the reviewer recommended be reopened, the reviewer also noted whether it would be difficult to do so given the circumstances and materials outlined in the files.

The final breakdown of external reviewer recommendations includes:

- No Action Needed: **991**
- Reopen Original Case Recommended: **213**
 - 9 already had formal action taken
 - 106 recognized as Reopen may be Difficult
- Duty to Report Investigation Recommended: **39**
- Law Enforcement Referral Recommended: **8**
- Duty to Report Investigation Recommended and Law Enforcement Referral Recommended: **3**

Internal Review

Following the external review process, each licensee packet was then turned over to an internal team. The internal team consisted of a handful of investigators, an investigator supervisor, an enforcement attorney, and leadership from board staff. Additionally, the board's new victim advocate was consulted throughout the internal review process. The internal team was tasked to take each packet and conduct a second layer of review, even on complaints where the external reviewers recommended a continued close for the complaint. The team's work is ongoing; it works collaboratively to review each licensee, determining for those the external reviewer recommended to reopen, the path forward for both an investigation and enforcement. The team makes recommendations to the board's secretary and supervising member on each complaint the reviewer recommends should be reopened. The team's recommendations are documented in the board's licensing system, as part of the licensee's packet. This work is ongoing, and while most of the 1254 licensees have the requested investigative work complete, the board hopes to have those licensees who may have enforcement taken assessed for next steps by March 2021.

Of note, for those complaints recommended to be reopened by the external reviewers, the internal reviewers, with more knowledge of the medical board processes and case law, noted different things that may make some of those complaints difficult to reopen. Specifically, in some circumstances, licensees were not taken through enforcement, but the board did take some action by requiring the licensee to engage in remedial education about sexual boundaries. Additionally, on some complaints, reviewers suggested a reopen because it seemed investigations were incomplete based on the information in the file. After thorough reviews, board investigators were able to find missing information and thereby deem the matter thoroughly investigated and recommend the complaint remain closed.

Lessons Learned

The work on the historical complaint review, coupled with the Working Group recommendations, influenced many of the updated practices, policies, and procedures you will read about in the rest of the report. By and large, the biggest take away is the need to prioritize complaints in a way that allows for timely enforcement and to **never** close a complaint solely based on the age of the matter. Additionally, the work on the internal review team highlights the need for continued collaborative approaches to working sexual misconduct complaints. These complaints are unique and require special training, focus and specific strategy for enforcement. In calendar year 2021, utilizing existing policies and procedures, board staff will continue to enhance those practices, policies and procedures, as well as evaluate and adapt staffing models, to refine the board's day to day approach to sexual misconduct complaints in a collaborative, strategic manner.

As is expected, some complaints that may have been recommended for a reopen by external reviewers, are unable to move forward for enforcement due to a variety of reasons. Specifically, victims have been consulted and may not want to proceed given how much time has passed, or victims may be lost or deceased. In some circumstances, reviewers did not fully understand the rules and laws of the medical board; at certain points in time over the 25 years of review, some activities did not rise to the level of a violation of board rules or laws. Finally, for some of the complaints marked as reopen for a failure of the licensee's duty to report, board staff has done more investigating and determined that some licensees thought they were reporting to the appropriate entities. Where appropriate, the board will provide education to these licensees about the duty to report. Likewise, in egregious situations, the board will take appropriate enforcement action on the failure to report.

Policies, Practices and Procedures

In addition to the work on the historical complaint review, the SMBO has spent a great deal of time refining our policies, practices, and procedures to ensure the public confidence in our handling of sexual misconduct complaints.

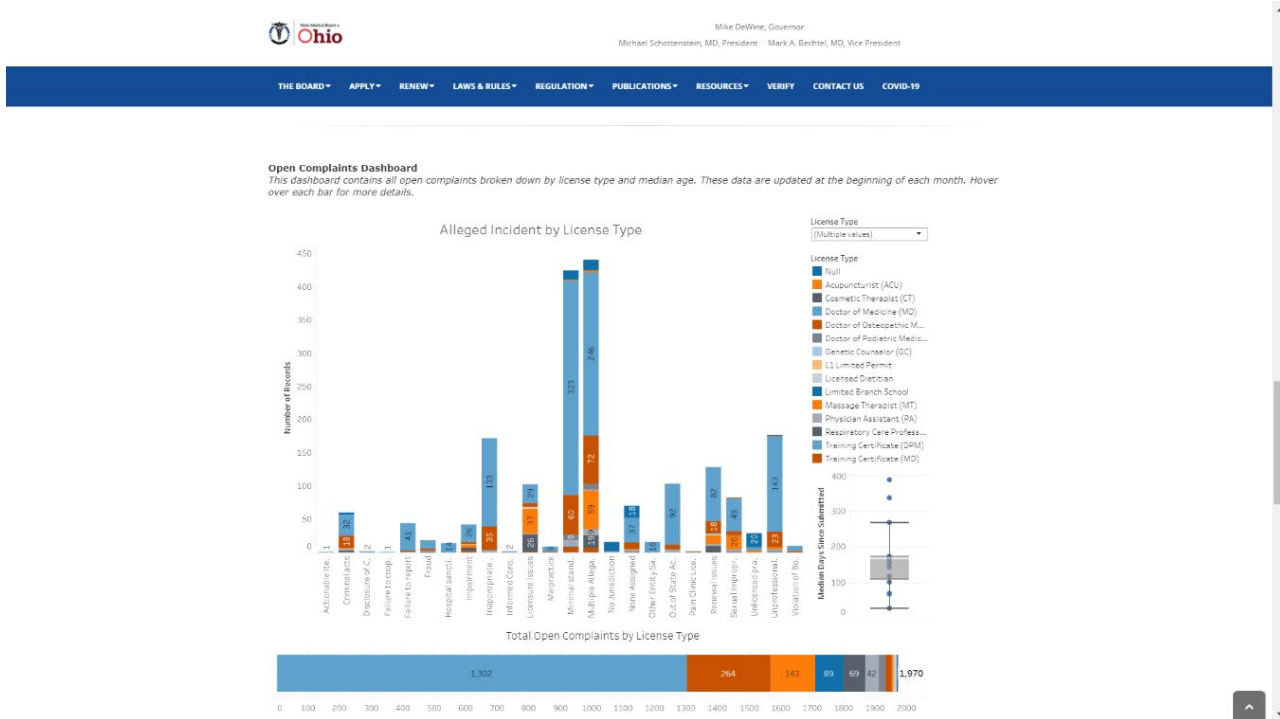
Transparency

To provide the public the confidence that a case like Richard Strauss's will never again go without action, the SMBO is committed to providing sunshine to board processes and complaint information. Given how many unsubstantiated allegations the SMBO receives each year, this transparency must be balanced with the need to protect the licensee's livelihood. Finding the balance for transparency, protection of the licensee's livelihood, patient information and whistleblower protection entails a complicated legal analysis with much stakeholder input. The board's efforts for transparency will continue over the next calendar year, and likely beyond.

In the meantime, the SMBO has taken steps to provide complaint information in aggregate data to the public, created a complaint hotline, and with the newly created victim advocate position, shared more information with victims and complainants.

Dashboards

On the SMBO website, an open complaints dashboard was created. **This interactive dashboard shows the total number of all current open complaints and contains information regarding the type of allegation, license type, and median days open.** With each allegation type, the graph displays how many complaints for each license type with that allegation.



The next evolution of the Open Complaints dashboard will include information that details the workflow status of complaints. The SMBO licensing system was recently enhanced to have the staff member who owns the complaint at a current stage be able to update that status change. This is one of a handful of steps the SMBO is doing to transition to a day to day, real time case management practice. Understanding the status of the complaint, coupled with how long something has been at that stage, will identify areas for efficiency. It will also help board leaders provide more real time guidance as efforts are prioritized.

In addition to the Open Complaints dashboard, a Closed Complaints dashboard was created. **This interactive dashboard shows all complaints closed each month, again, listed out by the allegation and license type.** Just as the SMBO will add a current status to all open complaints, board staff are now adding “close reasons” for each complaint closed by the board. Once this enhancement is fully operationalized, the Closed Complaints dashboard will include information on close reasons. Again, this additional information will help the SMBO prioritize work, monitor trends and keep accurate historical records for all complaints.

Complaint hotline

In November 2019, the **SMBO activated a dedicated phone line for complaints**. The hotline allows individuals to make anonymous complaints with the board via voicemail. While complainants may also submit a complaint via the board's website or by calling during business hours, the board felt it important to have an option available for complainants to call 24 hours a day. This hotline also helps make the public aware that a key function of the SMBO is to receive complaints. To date, 80 complaints have been received from the hotline. The board continues to advertise the hotline on its webpage and in educational outreach.

Working with Law Enforcement

A key takeaway from the Working Group's report was the need for the SMBO to appropriately engage with law enforcement on any possible criminal matters reported to the board. Additionally, it was noted the board must develop (or maintain) meaningful relationships with law enforcement entities throughout the state to ensure cooperation and collaboration on future matters.

Protocol

With the help of investigators, enforcement attorneys, board legal staff and board leadership, **a law enforcement notification protocol was created**. The protocol details when law enforcement must be contacted and who makes the notification when board staff is made aware of potential criminal activity by a licensee. For non-criminal activity, the protocol encourages staff to use discretion to reach out to law enforcement where it may be helpful to gain additional information.

Relationships

Through tenure at the SMBO and sometimes through previous careers in law enforcement, many board staff members have existing law enforcement relationships throughout the state. However, it is noted that the work to foster and maintain relationships is never complete. Additionally, newer staff members, particularly those who do not have a law enforcement background, need to identify and develop local relationships. Accordingly, staff in **the investigations unit catalogued all existing relationships** in the state. Staff has also created a plan to continue to develop that catalogue with new relationships, however outreach efforts have largely been sidelined by Covid-19. Visits to local law enforcement, including prosecutors, will resume when safe to do so. Additionally, **board leadership met with various law enforcement associations** to explain the desire to work more collaboratively. The associations were very receptive, inviting board staff to attend conferences and make presentations. Again, that work will resume when safe and practical to do so.

Organizational Accountability

To ensure success of the board's mission to protect the public, the SMBO organizational culture must be healthy and staff must be prepared.

Culture

The SMBO, like every organization, must always be attentive to culture. Specifically, a coordinated, informed, collaborative staff will achieve better outcomes. Efforts have been undertaken to create an environment where staff feels comfortable sharing and working with other units and leadership. Additionally, leadership has become more transparent with staff at all levels with respect to the work of the board. Board leadership believes that staff needs to understand where each individual fits in the organization and how they, as individuals, can be successful with what is expected of their roles.

Specific initiatives to improve culture over the last year have included: **expansion of the weekly executive staff meetings** to include the chiefs of investigation and enforcement; **creation of a weekly report** to be shared amongst the unit leaders at the board; **multiple all staff meetings** providing relevant board updates; **encouragement of staff to watch the board meetings** each month so they may see their work in action and understand the tone and direction of the board; **distribution of a staff climate survey** followed with a report out of the results and next steps; **regular email updates** to all staff from the executive director; sharing of the **executive director's 2021 goals** with all staff (to kick off agency wide goal setting and performance evaluation expectations in early 2021); a **series of small group sessions hosted by the executive director** in which all staff members participated and discussed the role of the board in maintaining public safety, ideas for board improvements and any staff concerns (groups were preselected to include staff members from various units in each discussion); the **creation of protocols with staff input**, followed by a common roll out and information session; and **enhancements to the board's licensing system** to allow for more accurate data and better reporting.

Training

All board members participated in a trauma informed care training in December 2019. Additionally, SMBO staff have engaged in a variety of trainings so they may be best prepared for their roles. Specifically, the investigations unit, the enforcement attorneys and the agency's legal team participated in a 5-day Forensic Experiential Trauma Informed (**FETI training event**). Those same units also participated in a half-day training specifically designed for the SMBO to **better understand working with sexual misconduct victims**, hosted by the Ohio Victim Witness Association. Additionally, all investigators onboarded over the last two years participated in a **multi-day training on the basics of investigative techniques**. Finally, work is under way to implement **an annual training plan** for all board staff in 2021, with some unit specific trainings on relevant topics.

The Complaint Process

The Working Group had multiple recommendations relative to the way SMBO manages complaints received. Improvements made over the last year are detailed below. Additionally, the board will continue to look at ways to improve processes and protocols for complaint management.

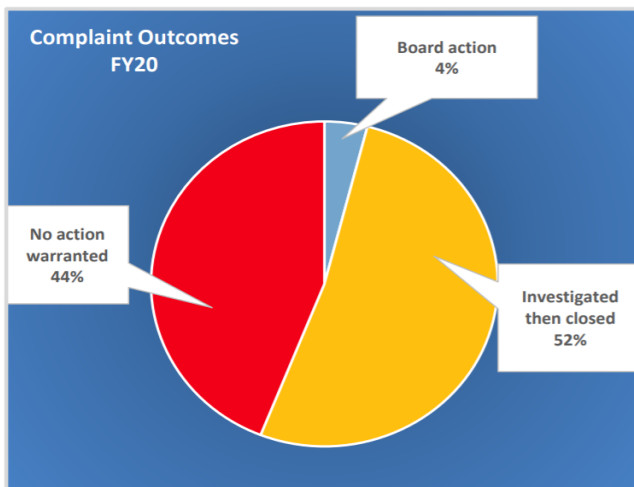
Background information

SMBO staff currently includes approximately 20 investigators (throughout the state of Ohio; including 3 investigator supervisors), 8 enforcement attorneys and 2 nurse investigators. 1195 investigations were completed by the investigations unit in FY20 and 611 standard of care allegations were reviewed. Of those complaints reviewed for standard of care, 493 of the complaints met the board’s minimum standard of care and were closed, while 118 complaints were referred for further investigation or enforcement action. 776 complaints were sent to the enforcement unit and 124 citations were issued by the board.

The below table shows the trends of complaints received and closed by the board each year.

Complaint Metric	FY20	FY19	FY18	FY17	FY16
New complaints received	7,343	6,485	5,553	5426	4,867
Closed complaints (includes disposition of complaints received prior to FY20)	5,777	5,612	5,783	5687	5,583
Average number of processing days from receipt of complaint to closure	86	102	207	19	40

The below table shows the complaint outcomes from FY20. Of note, approximately 4% of all complaints result in formal disciplinary action by the board. Of the 52% of complaints investigated and closed, those complaints may have resulted in non-formal discipline such as a caution letter, an office conference with board members or a referral for further education.



No action warranted

2,533 complaints closed as the issue involved profession not regulated by board or no further review needed

Investigated then closed

2,999 complaints were closed after investigation as information obtained about allegation did not support board action. Although there was no formal discipline, licensee could have received a cautioning letter, met with board Secretary and Supervising Member, or been referred to further education

Board action

245 complaints resulted in disciplinary action by the Medical Board

Investigator Manual

The SMBO Investigator Manual was overhauled and operationalized this past year. The development of the revised manual was a **collaborative effort**. The supervisors in the investigations unit created the

initial draft. Once the supervisors had consensus, they then provided the manual to investigators for input. The manual was then presented to board leadership for final approval.

The primary focus of the rewrite of the manual was to **allow for more investigatory discretion**. The updates to the manual are mindful of achieving outcomes, as opposed to the previous version that was more focused on restricting investigator behavior. The manual **incorporates newly updated board protocols and procedures**, such as the law enforcement notification protocol and the duty to report policy that all staff must sign. The updated manual is also **more victim-focused and trauma informed**. It specifies that multiple attempts to reach victims are encouraged, it encompasses understanding of the trauma victims face and that they may not be immediately responsive (thereby necessitating a longer investigation). As opposed to dictating the location and manner of an interview, like the previous manual, the revised manual **empowers a person-centered approach** with allowing investigators to meet victims in a variety of locations, at a variety of times. Finally, the manual emphasizes that non-cooperation by a victim may not be a basis to automatically close a complaint.

Sexual Misconduct Protocol

The SMBO has **created a specific protocol for the handling of sexual misconduct complaints**. The protocol, originally created in July 2019, was recently updated to reflect lessons learned in the historical complaint review, as well as include the expertise of individuals who specialize in sexual misconduct. The new protocol provides guidance on **how complaints are triaged** when they are received by the board, and how and when sexual misconduct complaints should be the highest priority. This should allocate our resources in a more judicious manner and allow for better handling of the more serious allegations. The protocol **adds provisions about certain investigative techniques**, as well as provisions on working with law enforcement. The protocol also adds information on **the appropriateness of pursuing summary suspensions** in certain situations. Finally, the updated protocol **streamlines the internal complaint review process** before complaints are presented to the board's Secretary and Supervising Member for next steps. Contemplated in this change is that, going forward, key positions will be required to have some background experience in sexual misconduct complaints or prosecution.

Audit

The Working Group recommended the SMBO engage in an audit of its protocols. Given the need to substantively understand the best way to handle sexual misconduct complaints at a healthcare licensing agency, the board bid the opportunity, accordingly. The Federation of State Medical Boards (FSMB) was awarded the audit opportunity and reviewed the board's complaint processes, with a particular focus on the handling of sexual misconduct complaints, during the spring and early summer of 2020. **The FSMB produced a report to the board in June 2020**. The report made a series of recommendations on all aspects of the SMBO's handling of complaints.

In August 2020, board leadership shared an assessment of the FSMB report with the full board. The assessment provided the board with information on those recommendations that are both sound ideas and easy to achieve, recommendations that should proceed but are more difficult and

recommendations that are not tenable for the board. Staff also presented items that need further board discussion before proceeding. **Recommendations in progress or already implemented include** implementation of a staff climate survey, maintenance of communication across the entire board when implementing changes, implicit bias training for staff, providing board members with updates on current caseload, utilization of a team-based approach on complaints, and looking into complaint management software. In October 2020 at the board's retreat, board leadership presented items that need further board discussion. Next steps for two of those FSMB recommendations (the role of the Secretary and Supervising Member and the board's review of closed complaints), concerns also noted in the Working Group report, are detailed below in the Future Plans section of this report. The FSMB recommendations will continue to be evaluated through calendar year 2021, including very specific provisions that are detailed below in the Future Plans section of this report.

Aged Complaint Review

The Working Group noted the SMBO's need to continue to review complaints for age and ensure that complaints no longer languish unnecessarily. Following the Working Group report, a policy was implemented that **complaints shall never be closed because of age**. This means the SMBO needs to continue to assess the large volume of complaints each year and determine how to expeditiously resolve complaints and still achieve outcomes that protect the public. While some complaints do take a seemingly long time to resolve, there are instances where the complaint is on a law enforcement hold or the board is working through complex, competing expert opinions. To prioritize those complaints that can move, the SMBO's **licensing system has been enhanced to add current status fields**. Reports are run to allow employees and managers the ability to see the existing caseload and the length of time each complaint is open. The data has shown board leadership that calendar year 2021 priorities will include additional staffing, a more sophisticated document management system and new individual and supervisory management techniques to balance caseload.

Victim advocates

Significant, and appropriate, attention in the Working Group's report was devoted to the SMBO's need to utilize victim advocates in the handling of sexual misconduct complaints.

The board's initial response to the Working Group's recommendations was to engage with contract victim advocates around the state. However, board staff quickly realized the difficulties with that model. The contracted advocates were not familiar with the administrative processes of the board. Additionally, the temporary nature of the work did not always allow for the readiness of the advocate when needed. Finally, staff became increasingly concerned about the continuity of contractors working with victims on complaints.

Luckily, the SMBO has a staff member educated and continually trained in victim advocacy work. **The board is currently repurposing that staff member to serve as the board's victim advocate**. The victim advocate is actively engaged with investigators as they work on investigative strategies. She also works with the board's enforcement attorneys as they recommend enforcement decisions, and most important, she offers information and consultation to victims as they engage with board staff.

Specifically, the **sexual misconduct complaint protocol and the investigator manual have been revised to include the work of the victim advocate** at various steps. The SMBO has requested funding in Fiscal Year 2022 to properly staff the victim advocate role without pulling from other critical resources.

Duty to Report

As noted in the Working Group’s report, the Ohio Revised Code requires SMBO licensees to report violations of the board’s statutes and rules, when the licensee has reason to believe a violation has occurred. To bolster the knowledge of this responsibility, the board has taken multiple steps to educate licensees. While enforcement is certainly an option, the board’s goals remain focused on educating licensees about the duty to report. With widespread knowledge, the board will more easily and readily hold licensees accountable for their duty to report. SMBO staff will continue to track progress of reports from fellow licensees; with more education, reports should increase.

Following the Working Group’s report, **the board updated all licensee applications with a new attestation**. Now, before applying for initial licensure or for renewal, licensees must attest to their knowledge of the duty to report to the board violations of the board’s laws and rules. Additionally, **board staff include reminders of the duty to report in the board’s educational opportunities and materials**, both with active licensees and with those prospective licensees in training programs. Finally,

the board is in the rulemaking process of implementing **mandatory education on the duty to report in Ohio Administrative Code 4731-10-02**. The rule has been through the public hearing process, and despite some concerns raised by the licensee community that the board should not dictate specific topics

for required education, the board has continued with the proposed requirement and expects that rule to be finalized in the rulemaking process in early calendar year 2021.

Future plans

While the SMBO has accomplished a great deal over the past year, there are specific actions from both the Working Group report and from the FSMB report that are planned for calendar year 2021.

The screenshot shows a web form titled "License Selection" and "Eligibility". Under "License Selection", there are three dropdown menus: "Select a Board" (Medical Board), "Select a License" (Doctor of Medicine (MD)), and "Select an Application Type" (General Application). Below this is a section titled "Eligibility" with a question: "Do you acknowledge your personal duty to report to the State Medical Board of Ohio when you believe that any individual licensed by the Board has violated the Board's laws or rules?". It includes a list of violations and a "Yes/No" radio button selection.

Audit

As a second phase of audit review, in late winter, early spring of 2021, the SMBO will engage with Office of Budget and Management, Office of Internal Audit to conduct a **review of the board's operationalization of the new sexual misconduct protocol**.

Board committee work

Beginning in January 2021 and monthly thereafter, a committee will meet to review two FSMB and Working Group report recommendations. The committee will discuss and **make recommendations to the full board on the role of the Secretary and Supervising Member**. The FSMB report recommended that a public member be added to the work that the Secretary and Supervising Member currently oversee with board staff's handling of complaints. The committee will also discuss options on how the full board can play a more active role in the review of closed complaints. The FSMB has recommended the **creation of a standing Quality Assurance committee**. The recommended committee would meet monthly and review deidentified complaints to ensure the proper handling of complaints, as well as identify any trend spotting on concerns or questions for staff. The committee is expected to make recommendations to the full board by July 2021.

Duty to report video

SMBO staff is working to **produce an educational video** that will meet the board's licensees' continuing education requirement on the duty to report board violations. The video will be made available, for free, to all board licensees. The video will regularly be updated with relevant content.

Staffing

As noted above in the Aged Complaint Review section of this report, board leadership has identified **the need for additional staff members**. Additionally, as the Working Group noted and as board leadership has recognized, the additional staff should have specialized training and focus on the handling of sexual misconduct complaints. To properly handle both the complexity and volume of all the board's complaints, the board has made a fiscal year 2022 budget request for three additional investigators, an enforcement attorney and a victim advocate. These positions will allow for a team specialized in sexual misconduct complaints and assist in better dispersing the caseload of all the board's complaints.

Legislation

The Working Group recommended the board review and potentially make changes in various Ohio Revised Code Sections for better outcomes in the handling of sexual misconduct complaints. The board's sexual misconduct committee worked on potential legislative changes throughout the past year. Additionally, staff worked with various stakeholders, including prosecutors, on the recommended changes. Of note, further revisions to the board's confidentiality statute, 4731.22(F)(5) will continue in the committee work referenced above, as well as with continued legal analysis and discussion with policy makers and stakeholders.

The current draft package of legislation, endorsed by the board, includes:

- Revisions to ORC 2907.01, Sexual Offenses general definitions, and ORC 2907.03, Sexual Battery to define the licensed medical professionals to whom the changes would apply and to criminalize both sexual contact and sexual conduct by a licensed medical professional in the course of medical treatment
- Requirements for prosecutors and courts to notify the board of certain convictions of licensed medical professionals
- Revisions to both the criminal reporting statute and the board's reporting statute to ensure timely, robust reporting of criminal conduct by a licensed medical professional
- Updates to ORC 2305.252, the Peer Review statute, to permit the board to issue investigative subpoenas for material related to allegations of sexual misconduct or criminal conduct of licensed medical professionals
- Revise ORC 4731.99 to make failure to report sexual misconduct and/or criminal conduct as misdemeanors of the fourth degree
- Adoption of a new ORC 4731.991 that is directed at providing valuable information to patients about licensees who have been placed on probation by the board for specific types of offenses involving harm to patients
- Revisions to 4731.22 to allow the board to provide investigative status updates to the complainant
- Revision to 4731.22 to require immediate suspension of a license for charges of certain felony offenses

Conclusion

The SMBO remains committed to ensure the proper handling of all complaints. The board will continue its focus on the handling of sexual misconduct complaints. With the board's commitment and insight, the recommendations of the Working Group and the report from the FSMB, the SMBO is poised to become a national leader in the handling of sexual misconduct complaints by an administrative licensing entity.



Ohio Board of Nursing

www.nursing.ohio.gov

17 S. High Street, Suite 660 • Columbus, Ohio 43215-3466 • 614-466-3947

November 4, 2019

Via Email Delivery: rlmcguirerose@dps.ohio.gov

Robin L. McGuire Rose, Chief Legal Counsel

Ohio Department of Public Safety

1970 West Broad Street

Columbus, Ohio 43223

Re: September 13, 2019 Request for Information

Dear Chief Legal Counsel McGuire Rose:

The following are responses to the questions you emailed to the Ohio Board of Nursing (Board) on September 13, 2019.

- 1. How many complaints does your board/committee receive annually (provide most recent five years)**
 - a. How many of these result in citation or some enforcement?**
 - b. How many are unfounded?**
 - c. If known, how many of these complaints allege sexual misconduct?**

CALENDAR YEAR	2014	2015	2016	2017	2018
COMPLAINTS	8,994	8,780	8,710	7,755	7,725
TOTAL DISCIPLINARY ACTIONS	1,310	1,448	1,205	1,173	1,152
CLOSED WITHOUT ACTION	7,684	7,332	7,188	6,090	5,746
CURRENTLY OPEN	0	0	317	492	827
ALLEGED SEXUAL MISCONDUCT	2	4	4	7	1

- 2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?**
 - a. If yes, provide citation to statute/rule/policy**

The Ohio Nurse Practice Act, Chapter 4723., ORC, does not contain a statute requiring licensees to report misdemeanors or felonies to law enforcement. However, Section 2921.22, ORC, requires reporting of felonies to law enforcement; Section 5101.63, ORC, requires reporting regarding elder

and/or disabled adult abuse, neglect or exploitation to law enforcement; and Section 2151.421, ORC, requires reporting of child abuse to law enforcement.

3. Are your licensees required to self- report violations?

a. If yes, provide citation statute/rule/policy

b. If yes, how do you track?

Regarding institutional self-reporting, Section 4723.34, ORC, mandates reporting to the Board, by designated licensee(s) on behalf of employers or other entities, as follows:

(A) A person or governmental entity that employs, or contracts directly or through another person or governmental entity for the provision of services by, registered nurses, licensed practical nurses, dialysis technicians, medication aides, or certified community health workers and that knows or has reason to believe that a current or former employee or person providing services under a contract who holds a license or certificate issued under this chapter engaged in conduct that would be grounds for disciplinary action by the board of nursing under this chapter or rules adopted under it shall report to the board of nursing the name of such current or former employee or person providing services under a contract. The report shall be made on the person's or governmental entity's behalf by an individual licensed by the board who the person or governmental entity has designated to make such reports.

Should a complaint be submitted to the Board from another source indicating that an employer/entity failed to comply with Section 4723.34, ORC, the Board would have a basis to impose disciplinary action on the licensee designated by the employer/entity as the mandatory reporter. See Section 4723.28(B)(16), ORC. There is no method to determine non-compliance absent a complaint/information submitted from another source.

Regarding self-reporting by individual licensee and applicants, the Board requires reporting of misdemeanors, felonies, and investigations by a licensing board upon application for a license and biennial license renewal. Failure to report would be a basis for Board disciplinary action (see Section 4723.28(B)(16), ORC, Section 4723.28(A), ORC, and Rule 4723-4-06(P)(1), OAC).

In order to track non-compliance, the Board relies upon criminal records checks for licensure and upon application for reinstatement if a license has been inactive for five years or more. In addition, since March 2012, the Board has contracted with the Ohio Courts Network (Ohio Supreme Court) in order to access the OCN database of court/jail records to determine if licensees/applicants have been involved in criminal activity. OCN includes not only convictions, but arrest and jail records. Non-compliance would also be determined based on complaint/information submitted from another source.

4. Are your licensees required to report violations of fellow licensees?

a. If yes, citation:

b. If yes, how is it tracked?

See response to #3, above.

5. Does your board/commission encourage/promote regulation of self/ fellow licensees?

Yes.

a. If yes, how?

i. Self

ii. Fellow licensees

The Board has consistently promoted both mandatory and voluntary peer and self-reporting through articles published in *Momentum*, a periodical published by the Board. *Momentum* is distributed to approximately 280,000 nurses, administrators, faculty and nursing students, four times per year across Ohio, at no cost to taxpayers, and is posted on the Board’s website. For sample *Momentum* articles discussing reporting violations to the Board, see, e.g., *Spring 2019*; *Winter 2019*; *Spring 2013*; *Spring 2015*; *Spring 2010*. In addition, for many years, Board members and staff have prepared presentations and conducted on-site training and continuing education workshops encouraging peer reporting, self-reporting and mandatory reporting. Presentations audiences have included Ohio health system nurse executives, staff nurses, risk managers, human resources personnel, as well as nursing associations (e.g., Ohio Health, OSU Wexner Medical Center, Miami Valley Medical Center, Ohio Organization of Nurse Executives, Ohio Association of School Nurses).

Regarding self-reporting, the Board requires self-reporting of misdemeanors, felonies, and investigations by a licensing board upon biennial license renewal. Failure to report would be a basis for Board disciplinary action (see Section 4723.28(B)(16), ORC; 4723.28(A), ORC; Rule 4723-4-06(P)(1), OAC).

6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable

a. Licensing matters:

Other than criminal matters that impact licensure (see below), non-criminal laws/rules the agency is aware of that impact licensing matters include:

- ORC 4723.91, 3123.43, 3123.41 to 3123.50, which require the Board to suspend a license pursuant to a notice of child support default;
- ORC 1349.05, which requires the Board to suspend licenses of practitioners with three violations of marketing laws.

Related to licensing inquiries by law enforcement, the Board responds immediately to requests for licensing information, and license status information is current online at: https://elicense.ohio.gov/oh_verifylicense.

The Board is also authorized to share investigative information with law enforcement to assist in its investigation of a licensee. See Section 4723.28(I), ORC.

b. Criminal matters:

Automatic License Suspensions

The following statutes require the Board to suspend a license related to a criminal matter:

- ORC 3719.121(C) (felony drug abuse crimes);
- ORC 4723.281(C) (aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, aggravated burglary);
- ORC 4776.50, 4723.92 (human trafficking).

Licensure Ineligibility

- ORC 4723.092 makes an individual with one of the preceding crimes set forth in ORC 4723.281(C) ineligible for licensure;
- ORC 4723.09, 4723.75, 4723.84, make an individual who is required to registered as a sex offender under Chapter 2950., ORC or a substantially similar law of another state, U.S., or another country ineligible for licensure.

Unauthorized Practice

- ORC 4723.03, 4723.40, 4723.99 set forth a process and criminal sanctions for engaging in unauthorized practice.

Mandatory Prosecutor/Court Reporting

- ORC 4723.34, 2929.17, 2925.38, 3719.12, 2929.42 mandate that prosecutors and/or courts report the following to the Board: conviction of, plea of guilty to, a judicial finding of guilt of, plea of no contest to, or receiving diversion or ILC for: any felony; any misdemeanor in the course of practice or course of business; any crime involving moral turpitude / gross immorality; violation of municipal, county, state or federal drug laws; and/or a court order dismissing such crimes/charges on technical or procedural grounds.

The Board has periodically distributed a Prosecutor/Court Mandatory Reporting Form to all 88 Ohio county prosecutors, and recently requested assistance from the Ohio Courts Network in re-distributing the form.

Mandatory Felony Reporting

The Board, its investigators and employees are required to comply with Section 2921.22, ORC, which mandates reporting of felonies to law enforcement; Section 5101.63, ORC, requires reporting regarding elder and/or disabled adult abuse, neglect or exploitation to law enforcement; and Section 2151.421, ORC, requires reporting of child abuse to law enforcement. Board investigators are required to submit a Felony Reporting Form to law enforcement if the investigation indicates felonious conduct. Board investigators are required to caution licensees during investigative interviews that the investigator is required to engage in felony reporting to law enforcement.

Collaboration with Law Enforcement

The Board is heavily invested in collaboration with law enforcement at the local, state and at times, federal levels. Examples include, but are not limited to investigations involving:

- Drug theft, diversion, trafficking, and illegal prescribing;
- Patient abuse/neglect and boundaries violations, including but not limited to predatory financial and/or sexual conduct;
- Billing/fraud cases.

Board investigators may be the primary investigator, and would notify local law enforcement and other state agencies if law enforcement had not yet been advised; or may conduct joint investigations with local law enforcement, the State Board of Pharmacy, the State Medical Board, Ohio Department of Health, or the Attorney General's Office/Healthcare Fraud Unit. Board investigators routinely testify at Grand Jury and in criminal trials on behalf of the county prosecutor. Investigators also have worked with federal regulators (Homeland Security, DEA, CMS).

The Board Supervising Attorney who oversees investigators is a former prosecutor and has significant experience in triaging cases and working directly with local law enforcement. The Board Compliance Manager is a JD/RN who has worked for over 20 years in triaging cases and working directly with law enforcement at all levels of government. The Compliance Manager works closely with the Attorney General's Health Care Fraud Unit, and attends a monthly state agency workgroup meeting that includes the Ohio Attorney General's Health Care Fraud Unit, (including investigations of patient abuse and neglect), the Ohio Department of Medicaid, the Ohio Department of Health, the Ohio Department of Aging, Board of Executives of Long-Term Services Supports, and the Ohio Long-Term Care Ombudsman.

The Board has collaborated with the administration, legislators, law enforcement, drug task forces, and state boards and agencies in the ongoing effort to combat prescription drug abuse and the opioid epidemic. Since 2011, Board staff have participated in the Governor's Cabinet Opiate Action Team.

For additional information regarding collaboration with law enforcement, *see Attachment A*, Ohio Board of Nursing Annual Report (July 1, 2018 – June 30, 2019) and *Attachment C*, Strategic Plan 2019-2020. For Annual Reports dating back to 2007, see: www.nursing.ohio.gov.

7. Does your committee/board’s investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes, see response to #6, above.

8. If yes, and if documented, provide number of referrals for the most recent five years

The Board, its investigators and employees are required to comply with Section 2921.22, ORC, which mandates reporting of felonies to law enforcement. This is a uniform policy and applies to all investigations of complaints. The Board documents each case reported to law enforcement, but does not have a record showing cumulative totals. However, data can be extrapolated based on: (i) a uniform policy of felony reporting; (ii) published data showing annual complaints categorized as criminal, fraud (theft), fraud (Medicare/Medicaid), imposter, patient abuse, boundaries, drugs/alcohol. The following sets forth those categories of complaints received in fiscal years 2014-2019 with the totals reflecting cases that typically would be reported to law enforcement.¹

Type of Complaint	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Boundaries	55	60	40	25	45
Criminal	416	371	409	391	455
Drugs/Alcohol	750	787	891	783	761
Fraud (Theft)	200	159	140	74	42
Fraud (Medicare/Medicaid)	20	23	2	9	12
Imposter/Never Licensed	25	37	29	35	17
Patient Abuse	93	69	72	90	66
Totals	1,559	1,506	1,583	1,407	1,398

9. Investigative process:

a. Does your board incorporate trauma-informed investigative techniques?

Yes.

i. If yes and required by your statute/rule/policy please cite

The Board of Nursing currently employees 13 investigators, 8 of whom are Registered Nurses with

¹ Data limitations: Because some of the cases may have been evaluated to involve non-felony conduct, the actual reporting numbers would be lower. For example, a boundary case involving acceptance of a gift would not be a felony, but a boundary case involving taking a patient’s assets may be a felony. The cases categorized as “criminal” are those that do not otherwise involve a violation of the Nurse Practice Act but are solely based on criminal conduct, and in many of those cases, the conduct would be reported to the Board by law enforcement rather than the reverse.

professional training in investigative techniques specific to trauma victims; and 5 of whom have a law enforcement background, including Ohio Peace Officer Training Academy (OPOTA) training in sexual assault investigations. Cases that involve alleged patient abuse or trauma (elder abuse, physical, sexual, or other traumas) are assigned to RN investigators, who have training in investigative techniques including:

- SANE (Sexual Assault Nurse Examiners are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient/victim who has experienced sexual assault or abuse);

- Human Trafficking;
- Post-Intensive Care Syndrome;
- Trauma-Informed Care;
- Child Sexual/Physical Abuse;
- Victim Impact.

In addition, both pre and post-licensure registered nursing education typically includes trauma-victim related coursework such as SANE, Trauma Informed Care, Human Trafficking, Intimate Partner Violence, Sexual Assault and Forensic Nursing.

b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct ?

Yes.

i. If yes, what sexual assault training is required of your committee/board investigators?

1. Upon hire:

See response to #9, above. Registered nurses investigators are classified as Compliance Agents, and this job classification requires a RN license as a component, which typically involves training in sexual assault patients/victims. In addition, the Board employs Enforcement Agents, which job classification requires a background in law enforcement. Typically, law enforcement training includes sexual assault victim investigations (for example, this is part of the standard curriculum at OPOTA).

2. Periodic or other:

All Board investigators are encouraged to maintain currency in trauma training including sexual assault training.

ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share

SANE Training

See:

- <https://www.forensicnurses.org/page/aboutSANE> (includes calendar of training events)
- <https://my.clevelandclinic.org/departments/nursing/conferences/sane>
- <https://www.metrohealth.org/emergency-room/the-sane-program>

Child Sexual/Physical Abuse Investigations in Today's Law Enforcement Climate

See:

- https://www.bja.gov/Events.aspx?Event_ID=28446#event_id=28446
- <https://www.mrcac.org/course/abuse-investigations/>

State of Ohio Human Trafficking Training

See:

- https://publicsafety.ohio.gov/wps/portal/gov/odps/what-we-do/our-services/human_trafficking_training
- <https://www.apps.das.ohio.gov/HT/>

Investigating Sexual Abuse

See:

- <https://www.ohioattorneygeneral.gov/Individuals-and-Families/Victims/Trainings-for-Victim-Service-Providers/Sexual-Assault-Response-Team-Profile-of-a-Case-Tr>
- <https://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/EOPOTA-Courses>

Trauma-Informed Care

12 of the Board's 13 investigators recently attended training conducted by the Ohio Department of Mental Health and Addiction Services (10.21.19). Training materials are available:

- <https://mha.ohio.gov/Health-Professionals/About-Mental-Health-and-Addiction-Treatment/Trauma-informed-Care#targetText=Ohio's%20Trauma%2DInformed%20Care%20Initiative,and%20equality%20among%20consumers%2Fclients>.

10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

- ORC 4723.02 states that the Board shall elect one of its registered nurse members to serve as the Supervising Member for disciplinary matters. This position is elected on an annual basis.
- ORC 4723.061 states that the Board is not required to act on minor violations of this chapter, or the rules adopted under it, if the violations are committed by individuals licensed under this chapter

and the Board determines that the public is adequately protected by issuing a notice or warning to the alleged offender.

- See **Attachment B**, Disciplinary Complaint Protocol; Discipline Priorities and Guidelines Protocol (May 2019) (Protocols). Both Protocols are reviewed and approved by the Board on at least an annual basis.

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

Section 4723.28(H), ORC states that the Board “shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule of the Board.”

All complaints are subject to investigation unless no violation of the Nurse Practice Act or rules is alleged (for example, the case may involve an individual who is not licensed by the agency), or unless the case is subject to closure based on the Protocols. The Board utilizes a robust electronic record case management system (“Filemaker”) that includes complaint and investigative information, records, and investigator and attorney case notes. Any case closed without Board action requires attorney documentation regarding the basis for the closure. The only attorneys authorized by the Protocols to close cases are the Compliance Unit Manager, Chief Legal Counsel, or Supervising Attorney, and as indicated, information substantiating the basis for closure according to Protocol is required. Whether the case is closed following review by the Supervising Member or according to Protocols, documentation is required to indicate the basis for closure (for example, “closed after review by the Supervising Member finding, according to Section 4723.061, ORC, the violation to be minor and the public to be adequately protected by an Advisory Letter”).

12. Do/how does the board/committee ensure that complaints are closed for good cause

a. Do you conduct review to ensure good cause?

i. If yes, is it required by statute/rule/policy? Citation if applicable

See responses to #10 and #11; **Attachment B**, Disciplinary Complaint Protocol; Discipline Priorities and Guidelines Protocol (May 2019). Both Protocols are reviewed and approved by the Board on at least an annual basis. Cases cannot be closed by investigators, administrative staff, or staff attorneys; cases may only be closed as authorized by the Board Supervising Member, the Compliance Unit Manager, Chief Legal Counsel or Supervising Attorney.

13. Are your committee/board investigative files public?

No.

a. Cite to relevant confidentiality provisions

- ORC Section 4723.28(I)

b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff

remaining accountable to the board and the board remaining accountable to the public?

See *Attachment C*, Board Strategic Plan 2019-2020. The Strategic Plan requires the Compliance Unit Manager and Chief Legal Counsel to audit investigation data, which is readily accessible in the Board electronic Filemaker case management system, to ensure that investigations are completed according to established timeframes. The Strategic Plan is reviewed by the Board at its April and September meetings. During these meetings, staff review with the Board the outcome measures. Board meetings are open to members of the public. Other internal techniques and processes have been developed for investigative oversight (for example, all investigators provide weekly itineraries, participate in weekly conference calls and in-person status sessions with the Supervising Attorney).

In addition, the Board was selected as one of ten states to participate in the National Council of State Boards of Nursing's Discipline Efficiency Project, a two-year pilot project that was launched in April 2018. The Project goals including:

- Tracking Board processes for discipline cases to provide data points for analysis;
- Examining steps in discipline cases to identify efficient and effective models for case management.

Data contributed by the Board will be utilized by NCSBN researchers to develop national standards for efficient handling of investigations, including criteria for closing cases; the research should prove to be an excellent public reference tool.

c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

- ORC Section 4723.28(I)

14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

Section 4723.28(H), ORC states that the Board “shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule of the Board.”

The evidence may be from any source (e.g., media/newspaper, telephone calls, letters, email, fax, verbal reports, law enforcement contacts) in addition to formal complaints submitted in any format (verbal, email, fax, telephone calls).

15. Can complainant(s) check on status of complaints they've made?

Yes. However, investigative information is confidential, and the Board is generally not authorized to share investigation information (ORC 4723.28(I)), beyond what is needed to conduct the investigation.

a. If yes, how?

Complainants are typically witnesses, and would be contacted and interviewed by Board investigators as part of the investigation.

16. How does a complainant find out the disposition of a complaint made?

If a complaint results in disciplinary action, the action is published in *Momentum* and posted on the Board’s website at: www.nursing.ohio.gov. A copy of the action can be obtained by website link (<http://www.nursing.ohio.gov/iw-DisciplineRecReq2.htm>), by telephone or email. Action taken against a license is public record, and is evident when the license is verified at: https://elicense.ohio.gov/oh_verifylicense.

If the complaint is closed without Board action, while the Board is not able to share details of the investigation with the public, Board staff would typically direct a complainant who inquires as to the outcome to the Ohio elicense verification site, which would show that the individual/licensee did not have Board disciplinary action imposed.

17. Records retention

a. What are your retention requirements for investigative records?

- See *Attachment D*, Public Records Request and Records Retention Policy (October 2018) (Records Retention Schedule at p.6, COMP-03).

b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?

Evidence collected during an investigation is considered an “investigation record” for purposes of the Records Retention Schedule.

c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.

The Records Retention Schedule for investigation records (COMP-03) includes preservation of records for legal, historical, or administrative value.

Respectfully submitted,



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Ohio Board of Psychology

To: Governor's Working Group on the Medical Board/Richard Strauss

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety

From: Ronald R. Ross, Ph.D., CPM
Executive Director

Date: October 1, 2019

Re: Report of Psychology Board Investigation Processes

In the wake of the Working Group's report to the Governor dated August 30, 2019, Governor DeWine has called on Ohio's health care regulatory boards to submit reports detailing how each board oversees investigations, works with law enforcement, incorporates survivor-centered investigative techniques, and balances transparency and confidentiality. This serves as a report from the Ohio Board of Psychology, which regulates psychologists, school psychologists authorized to practice outside of school settings, and certified Ohio behavior analysts. There are approximately 4,300 active licenses. Thank you for your interest in the processes used by our Board in support of our mission to protect the health, safety, and welfare of recipients of psychological and behavior analytic services. In response to the questions posed in the email received September 13, 2019:

1. How many complaints does your board/committee receive annually (provide most recent five years)
 - a. How many of these result in citation or some enforcement?
 - b. How many are unfounded?
 - c. If known, how many of these complaints allege sexual misconduct?

Please see the following table for a summary of complaints, actions, and closures without action.

	FY15	FY16	FY17	FY18	FY19
Formal complaints received	73	48	36	57	132
Formal complaints closed	93	48	37	63	129
Complaints closed with disciplinary action	16	6	7	6	8
Total sexual misconduct complaints received	2	1	1	2	2
Sexual misconduct complaints closed no evidence/no basis	0	0	0	1	2
Sexual misconduct complaints revocation/suspension	2	1	1	1	0
Percentage complaints closed with disciplinary action	17%	13%	19%	10%	8%
Percentage complaints closed no fault/no basis	83%	87%	81%	90%	92%

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

- Aside from ORC 2921.22, which requires all citizens to report knowledge of a felony to law enforcement, there are no laws, rules, or policies requiring license holders to report other license holders to law enforcement.

3. Are your licensees required to self-report violations?

No. There are no laws, rules, or policies requiring license holders to self-report violations to the Board. Nevertheless, some license holders make self-reports as a way of self-monitoring and acceptance of responsibility.

4. Are your licensees required to report violations of fellow licensees?

- Yes
 - a. If yes, citation: OAC 4732-17-01 (J)(4)
 - b. If yes, how is it tracked? Upon receipt of a professional report of alleged misconduct, an investigation file is opened in eLicense Ohio and it is noted that the reporting licensee complied with the relevant rule OAC 4732-17-01 (J)(4) by filing a report.

5. Does your board/commission encourage/promote regulation of self/fellow licensees?

- Yes. If yes, how?
 - i. Self: The Board encourages self-regulation through practice alerts and advisories on current topics, including those found to need attention based on complaint patterns and inquiries to the Board (e.g., access to records, conflicts of interest when working with high-conflict families). Although the Board does not have a sufficient number of license holders to justify a Board-run colleague assistance program, the Ohio Psychological Association has a program the Board can refer licensees to and utilize for discipline-related interventions and assessments.
 - ii. Fellow licensees. The rule requiring reports of suspected misconduct by others [OAC 4732-17-01 (J)(4)] is well known in the community of psychologists in Ohio, and it is reinforced through Board advisories and less formal interactions with license holders calling the Board.

6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable.

- The Psychology Board has periodic, infrequent interactions with law enforcement, generally related to Board investigations into rare instances of the commission of felonies or other crimes by license holders or applicants. ORC 4732.16 allows the Board to share information it receives in an investigation with law enforcement agencies, licensing boards,

and other governmental agencies that are prosecuting, adjudicating or investigating alleged violations of statutes or administrative rules. Any agency that receives information from the Board must comply with the same confidentiality requirements as the Board. Over the past eighteen (18) years, the Board has on one occasion provided its complete investigative files to a local law enforcement agency conducting an investigation into a revoked license holder's alleged sexual misconduct. The Board's investigator spoke directly to the assigned detective and, having established some previous rapport with the victim, reached out to her directly to convey the law enforcement agency's desire to speak to her about her interactions with the revoked license holder and to provide her with relevant contact information. This provided the victim an opportunity to first hear from someone with whom she was familiar instead of receiving an abrupt "cold call" from a local detective about a traumatizing event in her life that occurred years earlier. In this way, the Board can serve as a liaison for both law enforcement and for complainants in an effort to reduce stress and facilitate interactions.

- a. Licensing matters: N/A
- b. Criminal matters: ORC 4732.16

7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement?

- Over the past eighteen (18) years, the Board has not initiated any referrals to law enforcement based on alleged criminal misconduct. However, in a few matters related to possible criminal conduct by a license holder, Board staff has interacted with police specific to records and allegations, although in each case the law enforcement entity was already aware of possible criminal conduct, and it was not initiated by the Board.

8. If yes, and if documented, provide number of referrals for the most recent five years.

0

9. Investigative process:

a. Does your board incorporate trauma-informed investigative techniques?

- Yes. When the Board is presented with allegations of substantial misconduct resulting in harm, including violations of sexual boundaries, the focus of the Board is on timely actions to assess the veracity of the allegations, stop the behavior if necessary, minimize harm, and enforce accountability. Complaints about unlawful sexual behavior can be complicated because, absent some significant physical evidence or a pattern of similar complaints, it is known immediately if the allegations are true. Additionally, allegations of sexual misconduct that aren't true can result in significant distress to the accused professional. The violation of a patient's rights (especially sexual boundary violations by professionals in a position of power and trust) can be a devastating life event. When serious harm is perpetrated by a license holder in the context of a professional relationship, filing a complaint can raise anxiety and fear. Complainants assessed by the

assigned investigator to have needs for a survivor-centered focus are provided with information and support in hopes of minimizing additional trauma. Some complainants need this, while others do not. The Board uses a complainant-centered approach tailored to the circumstances to ensure compassionate and timely completion of investigations in a nonjudgmental manner. The Executive Director is a psychologist, and Board investigators are trained to assess a complainant's needs and provide basic support and/or referrals to help minimize additional trauma. Complainants have direct access to the investigators via the board's toll-free number, the investigators' direct lines, and email. Complainants are provided regular updates related to the investigation process and possible outcomes of the investigation. Complainants are encouraged to work with their treatment providers to address issues impacting their mental health. When appropriate, they are encouraged to seek legal opinions relative to specific issues that go beyond the purview of the Board, particularly when the evidence is insufficient to prove misconduct. The primary goals of prioritizing the complainant's needs is to demystify the process, reduce fear and anxiety, and provide reassurance about the process through accurate information.

- i. If yes and required by your statute/rule/policy please cite: N/A
 - b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct ?
 - Yes
 - i. If yes, what sexual assault training is required of your committee/board investigators?
 - Upon hire: Investigator on the job training includes a review of the dynamics of sexual boundary violations and sexual misconduct in the practice of psychology.
 - Periodic or other: Although there is no formal classroom training for investigators concerning sexual boundary violations, the introduction of sex into the professional relationship is forbidden because of the violation of trust and exploitation present, and this is a lynchpin in the training of psychologists.
 - ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share: N/A
10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.
- Yes. Board policy prohibits the closure of a complaints alleging misconduct unless reviewed independently by at least two (2) members of the Board. Please see #12 "Good cause/second member review."

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

- All complaints and underlying investigative records are maintained in the Board office on schedules approved by the Department of Administrative Services (DAS) State Records Management Office. Complaint narratives, evidence, internal memos, emails, and investigation reports are secured after closure of a case for storage and possible review as warranted.

12. Do/how does the board/committee ensure that complaints are closed for good cause

a. Do you conduct review to ensure good cause?

- Board investigations are rooted in procedures outlined in ORC 4732.16. Complaints are generally submitted in the eLicense Ohio system, although they are accepted in other formats. The Board's two (2) investigators follow specific procedures for processing, documenting, and investigating complaints. Complaints are initially assigned to one investigator and one member of the Board ("Supervising Member"). Investigations are completed under the direct oversight of the Executive Director (a psychologist), in consultation with the Board's assistant attorney general. Psychologist members of the Board carry caseloads of investigations, which are all completed in a team format.

The Board's investigators are responsible for opening complaints, conducting reviews of allegations and evidence, conducting interviews, and consulting with the Executive Director and Board counsel. Each investigation is assigned to a Supervising Board Member, who serves as a consultant, guide, and expert on issues specific to the complaint allegations, evidence collection, and specific issues including but not limited to test interpretation, application of the laws and rules, and prevailing standards of care. Generally, the Supervising Member provides written feedback to the investigator addressing various issues including, but not limited to: imminent risks to the public, including need for summary suspension of the license prior to a hearing; if the allegations have merit; if the license holder's conduct and/or professional practice complies with current laws, rules, and/or prevailing standards; specific conduct (or lack thereof) that needs to be addressed with the license holder; practices that, while not rising to rule violations, may require additional education or reminders; and, if there is a need for accountability through formal disciplinary action.

Good cause/second member review: In approximately 85% of cases, the outcome of an investigation results in a determination by the Supervising Member, the investigator, and the Executive Director that the license holder did not commit a violation. In such cases, a process is followed whereby a second Board member serves as "second member reviewer" for the purpose of checks and balances. Complaints that allege violations of the laws and rules are only closed without disciplinary action upon the recommendation of the Supervising Board Member and concurrence from a second member of the Board after an independent review of the investigation file. This "second member review" process is a safety net that serves to ensure that each investigation receives a second opinion prior

to closure. The second member reviewer may concur with the recommendation to close the case, or may identify meritorious allegations or evidence previously unidentified, and request that additional investigation be completed.

- i. If yes, is it required by statute/rule/policy? All investigation processes are governed under ORC 4732.16, related rules, and policy. The second member review process is established by Board policy, and has been successfully deployed since approximately 1999.

13. Are your committee/board investigative files public?

- Records of complaints and investigations are confidential unless and until the complaint results in a formal disciplinary action, in which case a public record is formed. The public record contains the entire investigative file except for those records withheld as exempt from Public Records Law.
 - a. Cite to relevant confidentiality provisions:
 - ORC 4732.16 (B)(1) The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given or, in the case of a patient, the patient privilege has been waived by the patient. Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.
 - ORC 149.43 (A)(1)(v): This statute requires that certain records be exempt from public disclosure, including personally identifiable educational records (FERPA, 1974) and medical records. This statute also provides agency discretion relative to releasing other information, including confidential law enforcement records:
 - The Board withholds records that would have a high probability of disclosing a number of things, including: The identity of an uncharged suspect; The identity of an information source or witness to whom confidentiality has been promised; and, Specific confidential investigative techniques or procedures or work products.
 - b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?
 - The Board's investigative files of complaints resulting in formal disciplinary action are public records, with mandatory exemptions honored and discretionary exemptions managed on a case-by-case basis.
 - Balancing test for cases closed without disciplinary action: Board records underlying investigations that do not result in a public disciplinary action

are withheld as confidential. Rationale: Most Board complaints do not result in disciplinary action, and many complaints do not even allege a violation of Board laws and rules. Therefore, license holders enjoy a right to have meritless allegations withheld from public view out of concerns that frivolous allegations could impact one's reputation and professional livelihood. In such cases, a process is followed whereby a second Board member serves as "second member reviewer" for the purpose of checks and balances. Complaints that allege violations of the laws and rules are only closed without disciplinary action upon the recommendation of the Supervising Board Member plus concurrence from a second member of the Board after an independent review of the investigation file. This "second member review" process is a safety net that serves to ensure that each investigation receives a clean, second opinion prior to closure. The second member reviewer may concur with the recommendation to close the case, or may identify meritorious allegations or evidence previously unidentified, and request that additional investigation be completed. Therefore, investigation files closed by the Board without formal action are reviewed by no fewer than two (2) psychologists and often by three (3) psychologists.

- c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed.
 - ORC 149.43 (A)(1)(v): This statute requires that certain records be exempt from public disclosure, including personally identifiable educational records (FERPA, 1974) and medical records. This statute also provides agency discretion relative to releasing other information, including confidential law enforcement records:
 - The Board withholds records that would have a high probability of disclosing a number of things, including: The identity of an uncharged suspect; The identity of an information source or witness to whom confidentiality has been promised; and, Specific confidential investigative techniques or procedures or work products.
14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)
 - Since June 2017, the Board has participated in the eLicense Ohio database, where complaints are filed. For those without access to the internet, we also accept complaints via mail or in person.
15. Can complainant(s) check on status of complaints they've made? Yes.
 - a. If yes, how?
 - Board investigators provide updates on complaints each month via email or phone. Complainants have ready access to the investigators via telephone, email, and office appointments.

16. How does a complainant find out the disposition of a complaint made?

Complainants have open access to the investigators via telephone, email, and office appointments.

17. Records retention

- a. What are your retention requirements for investigative records?
 - Records of investigations closed without disciplinary action: File materials retained five (5) years after case closure if the file is not re-opened within that time frame secondary to a new complaint or new evidence.
 - Public records of cases closed with a formal disciplinary action: Retain for 5 years after death of licensee unless under court order to retain longer.
- b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?
 - No different.
- c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.
 - Confidential medical records associated with cases that closed with disciplinary action: Retain until death of licensee, then destroy.

On behalf of the Ohio Board of Psychology, thank you for your work and your interest in our processes. Please do not hesitate to reach out if there are questions. I can be reached at (614) 466-1085.

Sincerely,



Ronald R. Ross, Ph.D., CPM
Executive Director



11.15.19 Report from the Chemical Dependency Professionals Board to inform the Governors' Ohio Health Care Boards Working Group

Note: The Chemical Dependency Professionals Board has experienced multiple executive director successions and e-license transition that has resulted in some data retrieval impediments. As such, the reporting information (numbers/years) provided may be less the 5 years requested.

Q1: How many complaints does your board/committee receive annually (provide most recent five years)

A: Approximately 348 total complaints for the last 3 years; average of 116 complaints annually.

Q1a: How many of these result in citation or some enforcement?

A: E-license reported 69 board actions since 2016.¹

Q1b. How many are unfounded?

A: 24 since 2016 for no ethical violation or not a licensee.

Q1c: If known, how many of these complaints allege sexual misconduct?

A: In responding to this question, the board has chosen to use the broadest definition of "sexual misconduct." This aligns with the board's mission to support the recovery process and acknowledges the gravity of the damages caused by sexual misconduct. As such, the board has liberally identified 26 *current* complaints containing allegations of sexual misconduct of various levels under investigation. *Historically*, of the 69 actions identified in response to Q1a above, 16 contained sexual misconduct.²

Q2: Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

¹ This number may not include voluntary surrendered credentials

² There were 9 data loss or corrupted files on E-license that are not accounted for in this calculation.

A: Yes. “The certificate holder shall comply with all mandatory reporting requirements set forth in the Revised Code to include, but not limited to: duty and report abuse, neglect, or exploitation of a child or adult.” Ohio Adm.Code 4758-8-03(B)(1)(m). This O.A.C. provision implicates R.C. 2151.421, 2921.22, 5101.63, and any other reporting statutes.

Q3: Are your licensees required to self-report violations?

A: Yes. “The licensee or certificate holder shall report any violation of this code of ethics to the board.” Ohio Adm.Code 4758-8-01(B)(5)(b). There is also a mandatory reporting for discipline in other jurisdictions. Ohio Adm.Code 4758-8-01(B)(4)(a).

Q3b: If yes, how do you track?

A: A grievance is opened and the investigate report distinguishes between self or peer report as a mitigating factor.

Q4: Are your licensees required to report violations of fellow licensees?

A: Same as response to Q3 above.

Q5: Does your board/commission encourage/promote regulation of self/fellow licensees?

A: See response to Q3 above. Additionally, continuing education, including ethics training, for all licensees is required every 2 years. Ohio Adm.Code 4758-13-01(A)(1)(c)

Q6: If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable.

A: See response to Q2 above generally. Additionally, all matters are handled on a case-by-case basis regardless of the nature being licensing or criminal. Internally, the board would engage with law enforcement in the process of a fact-finding investigation and back-ground checks for applications, Ohio Adm.Code 4758-4-01. If the matter was more than mere fact-finding, then we would consult with our assigned Assistant Attorney General (AAG). The O.A.C. only references “law enforcement” once under 4758-20-04(A)(10) regarding access to confidential personal information.

Q7: Does your committee/board’s investigators or other staff refer allegations of criminal conduct to law enforcement?

A: See response to Q6 above; consult to AAG.

Q8: n/a

Q9a: Does your board incorporate trauma-informed investigative techniques?

A: Since the nature of our board is cognizant of the trauma that surrounds substance use and recovery, trauma-informed investigations are inherently conducted as a matter of course. There is no specific statute/rule/policy; however, rules and policies are under review.

Q9b: Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct?

A: The board refers allegation of sexual misconduct of licensees with other boards as needed.

i./ii: Past Training:

- Trauma Informed Care OHMHAS (in-service). (periodic)
 - State of Ohio Training annual compliance training includes domestic violence and human trafficking. (upon hire)
 - CLEAR³ Training: National Certified Investigation & Inspector Training NCIT Basic. *See table of contents from training attached.* (periodic)
- Future CLEAR Training: Investigating Allegations of Sexual Misconduct. *See program schedule attached.* (periodic)
-

Q10: Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

A: “The chemical dependency professionals board shall employ an executive director. The board may employ and prescribe the powers and duties of employees and consultants as are necessary for it to carry out the board's duties under this chapter and the rules adopted under it.” R.C. 4758.15. The executive director may dismiss a complaint received in which the allegations do not implicate a violation under the Code of Ethics, Ohio Adm.Code 4758-8, by authority of the Board’s directive granted on 11/8/19. The executive director may dismiss a complaint based on the evidence received at the time with caution, after consultation with a member of the ethics committee or alternatively a member of the board, by authority of the Board’s directive granted on 11/8/19. At any time, the AAG may also be consulted with questions as well.

³ Council on Licensure, Enforcement & Regulation.

Q11: How does the board ensure that complaints closed with/without investigation or citation are adequately documented?

A: All complaints are reviewed and there is a running excel log. Additionally, there are standardized forms which are kept with each record. Also, the board follows the standard DAS records retention schedule.

Q12: How does the board ensure that complaints are closed for good cause?

A: See answer to Q10 above.

Q13: Are your committee/board investigative files public?

A: Yes.

A13a: “The board shall ensure, in accordance with rules adopted under section [4758.20](#) of the Revised Code, that all records it holds pertaining to an investigation remain confidential during the investigation. After the investigation, the records are public records except as otherwise provided by federal or state law.” R.C. 4758.31. “For the purpose of section 4758.31 of the Revised Code, methods of ensuring that all records the board holds pertaining to an investigation remain confidential during the investigation[]” R.C. 4758.20(A)(8).

Q13b: Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?

A13b: The board uses confidential keys and redactions, identification by case numbers and initials, and complies with legal subpoenas. The board is cognizant of the public’s right to disclosure by law while protecting the due process and right to privacy. As stated above, after the investigation, the records are public records except as otherwise provided by federal or state law. The board complies with the Public Records Act and the separate statutes throughout the Ohio Revised Code. The board uses Ohio Sunshine Laws manual for and consultation with the AAG for guidance on the protected items not subject to a public records request.

Q13c: Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

A13c: The board is cognizant of the public’s right to disclosure by law while protecting the due process and right to privacy.

Q14: Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

A: The board accepts complaints in writing on a template form. The form is available as follows: downloadable PDF on website, by mail, or pick-up at the office. The written complaint form may be fax, mailed, emailed, or submitted by hand-delivery to the office.

Q15: Can complainant(s) check on status of complaints they've made?

A: No, investigative files are confidential until board action is taken by O.A.C. rules.

Q16: How does a complainant find out the disposition of a complaint made?

A: Board actions are reported in board minutes and on e-license.ohio.gov license look-up.

Q17: Records retention

A: The board follows the standard DAS Records retentions schedule, which can be found at: <https://apps.das.ohio.gov/rims/General/general.asp>

I am happy to clarify or provide supplemental responses upon request.

Respectively submitted by:

Jill Smock, Executive Director

Chemical Dependency Professionals Board

Jill@ocdp.ohio.gov 614.387.1114

Statutory Citations reviewed by:

Lisa Haywood, Assistant Attorney General

Ohio Attorney General's Office



Counselor, Social Worker & Marriage and Family Therapist Board

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<http://cswmft.ohio.gov> & cswmft.info@cswb.ohio.gov

To: Robin L. McGuire Rose, Ohio Department of Public Safety

From: Brian Carnahan, Executive Director

Re: Responses to Healthcare Board Questions to Inform the Governor's Working Group

Date: 11/4/2019

Attached is the Board's to the working group questions submitted to healthcare-related boards regarding complaints and investigations. I have attached information regarding investigations and complaints from the prior five years following the prepared questions.

I would be happy to discuss the Board's responses with you should you have any questions. I can be reached by telephone at 614.752.5161 or by email at brian.carnahan@cswb.ohio.gov.

1. How many complaints does your board/committee receive annually (provide most recent five years) **Please see the data on page #4.**
 - a. How many of these result in citation or some enforcement?
 - b. How many are unfounded?
 - c. If known, how many of these complaints allege sexual misconduct?
2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct? **Licensees are mandated reporters as defined in OAC 4757-5-10.**
 - a. If yes, provide citation to statute/rule/policy: **Please see OAC 4757-5-10.**
3. Are your licensees required to self- report violations? **Yes.**
 - a. If yes, provide citation statute/rule/policy: **Please see OAC 4757-5-10.**
 - b. If yes, how do you track? **A case is opened based on the self-report. Investigations are conducted using the same procedures as would be used when investigating a complaint from another party.**
4. Are your licensees required to report violations of fellow licensees?
 - a. If yes, citation: **Please see OAC 4757-5-10.**
 - b. If yes, how is it tracked? **All complaints are assessed, and a case is opened as appropriate. The Board's investigatory process does not vary based on the source of a complaint.**
5. Does your board/commission encourage/promote regulation of self/ fellow licensees? **Yes.**
 - a. If yes, how? **Licensees must self-report violations as defined in OAC 4757-5-10. In addition, of the thirty hours of continuing education licensees must complete every two years, a minimum of three hours must cover ethics.**
 - i. Self – **Please see OAC 4757-5-10.**
 - ii. Fellow licensees – **Please see OAC 4757-5-10.**
6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable. **See Rule 4757-11-03 which gives the Board authority to share information with law enforcement or other Ohio licensure boards regarding complaints.**
 - a. Licensing matters: **See Rule 4757-11-03.**
 - b. Criminal matters: **See Rule 4757-11-03.**
7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement? **Please see OAC 4757-11-03.**
8. If yes, and if documented, provide number of referrals for the most recent five years. **The Board has made no referrals in the last five years; however, the Board has responded to referrals from prosecutors as submitted to the Board in accordance with ORC 2907.17 and 2907.18, which director prosecutors to notify boards when a licensee is indicted or charged with a sex-related offense.**
9. Investigative process:
 - a. Does your board incorporate trauma-informed investigative techniques? **Board investigators completed trauma-informed care training October 21, 2019. Board investigators conduct investigations in such a way as to minimize the impact on complainants. Often it is possible to pursue a case based on records.**

However, if a complainant must be interviewed or if he or she wishes to speak with an investigator, they may do so. The Board's investigators take their public protection role seriously and thus behave in ways that support complainants while impartially considering allegations against licensees.

- i. If yes and required by your statute/rule/policy please cite. N/A
 - b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct? **Please refer to OAC 4757-5-04, OAC 4757-5-10, and OAC 4757-11-03.**
 - i. If yes, what sexual assault training is required of your committee/board investigators? **Presently no specific training is required.**
 1. Upon hire: N/A
 2. Periodic or other: N/A
 - ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share: N/A
10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy. **Please see ORC 4757.04 and ORC 4757.36.**
11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented? **All opened cases result in a written report that discusses whether the investigation yielded information indicating a violation (s) of ORC 4757 and OAC 4757.**
12. Do/how does the board/committee ensure that complaints are closed for good cause
 - a. Do you conduct review to ensure good cause? **Please see #11.**
 - i. If yes, is it required by statute/rule/policy? Citation if applicable: N/A
13. Are your committee/board investigative files public? **No.**
 - a. Cite to relevant confidentiality provisions: **Please see ORC 4757.38**
 - b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public? **Please refer to ORC 4757.38 and ORC 149.43(A)(1)(h), 149.43(A)(2).**
 - c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed; **Please refer to ORC 4757.38 and ORC 149.43(A)(1)(h), 149.43(A)(2).**
14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.) **The Board requests that all complaints be made in writing via elicense.ohio.gov. However, the Board accepts complaints made via email. The Board can initiate a complaint based on a phone call, but owing to the need to seek records, the Board often seeks a release from complainants.**
15. Can complainant(s) check on status of complaints they've made? **Yes.**

- a. If yes, how? **Investigators will respond to inquiries from complainants as needed and provide a status update indicating whether the investigation is open or closed.**
16. How does a complainant find out the disposition of a complaint made? **Once an investigation is closed, regardless of the outcome, the complainant is notified via letter and/or email. The notification includes a brief description of the outcome. Investigators will discuss the outcome with complainants who seek additional clarification and information.**
17. Records retention
 - a. What are your retention requirements for investigative records? **The Board retains records in accordance with Agency Series Schedule CSW-04. This schedule allows for the destruction of investigative records related to uncharged offenses five or more years after the case is closed. If the case resulted in discipline the files must be retained for five years or until all appeals are exhausted, whichever is greater.**
 - b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)? **The retention policy for evidence is not different from that of other investigative records.**
 - c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period. **N/A**

Complaint Data

1. How many complaints does your board/committee receive annually (provide most recent five years)

2019 (YTD): 557 (157 cases are still under investigation)

2018: 604 (6 cases are still under investigation)

2017: 355

2016: 271

2015: 277

2014: 293

a. How many of these result in citation or some enforcement?

2019 (YTD): 23 disciplined, 96 closed with caution letter

2018: 53 disciplined, 182 closed with caution letter

2017: 54 disciplined, 125 closed with caution letter

2016: 39 disciplined, 110 closed with caution letter

2015: 49 disciplined, 107 closed with caution letter

2014: 52 disciplined, 117 closed with caution letter

b. How many are unfounded?

2019 (YTD): 181 unfounded/unsubstantiated, 66 closed due to no jurisdiction, 8 duplicate complaints

2018: 275 unfounded/unsubstantiated, 66 closed due to no jurisdiction, 10 duplicate complaints

2017: 143 unfounded/unsubstantiated, 26 closed due to no jurisdiction

2016: 112 unfounded/unsubstantiated, 10 closed due to no jurisdiction

2015: 107 unfounded/unsubstantiated, 14 closed due to no jurisdiction

2014: 111 unfounded/unsubstantiated, 13 closed due to no jurisdiction

c. If known, how many of these complaints allege sexual misconduct? **(1) (2)**

2019 (YTD): 2 sexual boundary violations with clients

2018: 8 sexual boundary violations with clients

2017: 19 sexual boundary allegations with clients, 5 sexual harassment at work

2016: 16 sexual boundary allegations with clients, 1 sexual harassment at work

2015: 18 sexual boundary allegations with clients, 1 sexual harassment at work

2014: 20 sexual boundary allegations with clients, 4 sexual harassment at work

(1) Sexual misconduct is defined under OAC 4757-5-04.

(2) Cases closed with findings resulting in discipline.



Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

Governor
Mike DeWine
Executive Director
Missy Anthony

November 15, 2019

Governor's Working Group
Office of Governor Mike DeWine
77 South High Street
30th Floor
Columbus, OH 43215

To the Working Group:

Thank you for the opportunity to provide information on how the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers (OTPTAT) Board reviews and handles complaints and investigations, with particular emphasis on those related to sexual assault. The OTPTAT Board regulates nine professions: occupational therapists, occupational therapy assistants, physical therapists, physical therapist assistants, athletic trainers, orthotists, prosthetists, pedorthists, and orthotist-prosthetists. The Board currently licenses approximately 34,350 people.

I believe the OTPTAT Board has solid processes in place, but there is certainly always room for improvement. The Board has identified a couple of areas where current work is happening to strengthen efforts to appropriately handle enforcement and discipline.

1. Definition of sexual conduct in 4755.47(A)(25) may be too limiting.
2. Self-report of action against other licenses in Ohio and out of state.
3. Best practices on how to handle victims.

On behalf of the OTPTAT Board, I look forward to further discussions with the working group and any recommendations on best practices that are relevant to all of the health care boards.

Sincerely,

Missy Anthony, MPA



Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

Governor
Mike DeWine
Executive Director
Missy Anthony

Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board
Responses to Governor’s Working Group – Ohio Health Care Boards Questions

1. How many complaints does your board/committee receive annually (provide most recent five years)
 - a. How many of these result in citation or some enforcement?
 - b. How many are unfounded?
 - c. If known, how many of these complaints allege sexual misconduct?

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Number of complaints*	101	60	151	91	186 (so far)
Number resulting in citation or some enforcement	55	24	112	37	117 (so far)
Unfounded**	8	1	5	6	2 (so far)
Alleging sexual misconduct	1	1	3	4	6 (so far)

*The variance from year-to-year may be due to two factors:

1. Prior to 2018, the Board was not regularly conducting audits for continuing education. Efforts have been made to “catch up” with this auditing requirement. The 2019 number is higher due to complaints created due to audit failures.
2. In 2016, the Board converted to eLicense Ohio, which because the primary complaint intake source. The impact of this conversion is unknown.

**We do not typically use the designation “unfounded.” A complaint is more likely to be found as “unable to substantiate.”

3. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?
 - a. If yes, provide citation to statute/rule/policy

ORC 2151.421	Mandatory reporters of child abuse and neglect
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4. Are your licensees required to self- report violations?
 - a. If yes, provide citation statute/rule/policy

Occupational Therapy: 4755-7-08 (E)*	(E) A licensee shall self report to the occupational therapy section, within thirty days, any of the items outlined in paragraphs (E)(1) to (E)(7) of this rule. Failure to comply with paragraphs (E)(1) to (E)(7) of this rule may be grounds for disciplinary action pursuant to section <u>4755.11</u> of the Revised Code and in accordance with Chapter 119. of the Revised Code.
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	<p>(1) Impairment by physical or mental illness, chemical use, or chemical dependency, that affects the applicant's or licensee's ability to practice with reasonable skill and safety.</p> <p>(2) Conviction of a felony.</p> <p>(3) Conviction of a misdemeanor when the act that constituted the misdemeanor occurred during the practice of occupational therapy.</p> <p>(4) The termination, revocation, or suspension of membership by a state or national occupational therapy professional association.</p> <p>(5) The termination, revocation, suspension, or sanctioning of a credential issued by a state or national occupational therapy credentialing organization.</p> <p>(6) A positive drug and/or alcohol screening.</p> <p>(7) A finding of malpractice by a court of competent jurisdiction.</p>
<p>Physical Therapy: 4755-2706*</p>	<p>A license holder shall self report to the physical therapy section, within thirty days, any of the items outlined in paragraphs (A) to (G) of this rule. Failure to comply with this rule may be grounds for disciplinary action pursuant to section 4755.47 of the Revised Code and in accordance with Chapter 119. of the Revised Code.</p> <p>(A) Impairment by physical or mental illness, chemical use, or chemical dependency, that affects the applicant's or license holder's ability to practice with reasonable skill and safety.</p> <p>(B) Conviction of a felony.</p> <p>(C) Conviction of a misdemeanor when the act that constituted the misdemeanor occurred during the practice of physical therapy.</p> <p>(D) The termination, revocation, or suspension of membership by a state or national physical therapy professional association.</p> <p>(E) The termination, revocation, suspension, or sanctioning of a credential for any state license issued by a state or national physical therapy credentialing organization, including the PT compact.</p> <p>(F) A positive drug and/or alcohol screening.</p> <p>(G) A finding of malpractice by a court of competent jurisdiction.</p>
<p>Athletic Trainers: 4755-41-03*</p>	<p>A license holder shall self-report to the athletic trainers section, within thirty days, any of the items outlined in paragraphs (A) to (G) of this rule. Failure to comply with this rule may be grounds for disciplinary action pursuant to</p>

	<p>section 4755.64 of the Revised Code and in accordance with Chapter 119. of the Revised Code.</p> <p>(A) Impairment by physical or mental illness, chemical use, or chemical dependency, that affects the applicant's or license holder's ability to practice with reasonable skill and safety.</p> <p>(B) Conviction of a felony.</p> <p>(C) Conviction of a misdemeanor when the act that constituted the misdemeanor occurred during the practice of athletic training.</p> <p>(D) The termination, revocation, or suspension of membership by a state or national athletic training professional association.</p> <p>(E) The termination, revocation, or suspension of certification status by a national credentialing organization, including, but not limited to, the board of certification.</p> <p>(F) A positive drug and/or alcohol screening.</p> <p>(G) A finding of malpractice by a court of competent jurisdiction.</p>
Orthotics, Prosthetics, and Pedorthics**	No requirement.

*The Board is adding a requirement to report “termination, revocation, suspension, or sanctioning of any professional license in the state of Ohio or any other state.” We ask this question upon renewal, but it is not in the required reporting. Rule revisions are in the early stages.

**Rule revisions for orthotics, prosthetics are in process. This Board was a separate entity until January 2018. The rules are being revised to line up with the OTPTAT professions, including the self-report requirement.

b. If yes, how do you track?

Self-reports are treated like a complaint and are evaluated by the enforcement staff and/or a member of the board for further action. The bulk of the self-reporting comes in during the renewal time when they are asked questions related to all of the instances cited in rule.

5. Are your licensees required to report violations of fellow licensees?

a. If yes, citation:

Occupational Therapy - 4755-7-08 (A)(9)	Licensees shall report to the occupational therapy section any unprofessional, incompetent, or illegal behavior of an occupational therapist or occupational therapy assistant of which the licensee has knowledge.
Physical Therapy – 4755-27-05 (A)(10)	A licensee shall report to the physical therapy section any unprofessional, incompetent, or illegal behavior of a physical

	therapist or physical therapist assistant of which the licensee has knowledge.
Athletic Trainers – 4755-41-01 (D)(12)	(12) Athletic trainers shall report to the athletic trainers section any unprofessional, incompetent, unethical, or illegal behavior of an athletic trainer of which the person has knowledge. An obligation to report is inherent in the profession.
Orthotics, Prosthetics, and Pedorthics	No such provision. Planned addition to the Ohio Administrative Code.

- b. If yes, how is it tracked?
Such reports are treated like a complaint and are evaluated by the enforcement staff and/or a member of the board for further action. When investigating a complaint that was not a report from a fellow licensee, the Board may discover licensees who had knowledge but did not make a report. Such discoveries are also evaluated for potential discipline.
6. Does your board/commission encourage/promote regulation of self/ fellow licensees?
a. If yes, how?
i. Self: This is regularly covered in annual ethics presentations by the Board for continuing education credit and to presentations to students at schools. Questions are also asked in the optional jurisprudence exam for ethics credit for occupational therapy and athletic training and will be asked in the soon-to-be required ethics module for physical therapy.
ii. Fellow licensees: Same as above. Additionally, there is a duty to report brochure on the Board website that is also distributed at conferences.
7. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable
a. Licensing matters: Only if an applicant reports a violation upon initial application to the Board. Consultation regarding the violation with law enforcement may be necessary to determine whether the individual should be licensed.
b. Criminal matters: If a complaint comes in which is a violation of criminal law, the Board can and does share the information, typically through referral to the county prosecutor. If law enforcement is conducting a parallel investigation, the Board seeks to cooperate with those efforts where possible. Although complaint information is protected from public records, ORC 4755.02 (E)(2) allows it to be shared with “any federal, state, or local law enforcement, prosecutorial, or regulatory agency or its officers or agents engaging in an investigation the board believes is within the agency’s jurisdiction.”
8. Does your committee/board’s investigators or other staff refer allegations of criminal conduct to law enforcement? Yes.
9. If yes, and if documented, provide number of referrals for the most recent five years. This would require an individual search of complaints; it is not a field that we currently track.
10. Investigative process:

- a. Does your board incorporate trauma-informed investigative techniques? *All members of the enforcement staff have had training to varying degrees.*
 - i. If yes and required by your statute/rule/policy please cite. *Not required.*
 - b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct? *Yes.*
 - i. If yes, what sexual assault training is required of your committee/board investigators?
 - 1. Upon hire: *Human trafficking training conducted by DPS*
 - 2. Periodic or other: *OTPTAT Board investigators all attend CLEAR's National Certified Investigator and Inspector training – both basic and specialized. They will also be attending the "Investigating Allegation of Sexual Misconduct Workshop." They also attended a recent training conducted by the Ohio Department of Mental Health and Addiction Services on trauma informed care.*
 - ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share *The Council on Licensure, Enforcement, and Regulation - <https://www.clearhq.org/NCIT>*
11. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.
- Per written procedure that is periodically reviewed by Board members who work with enforcement, staff may close a complaint without consulting with a Board member if it is a criminal misdemeanor unrelated to the practice, a traffic violation (including OVI unless it is a series of arrests that demonstrate a habitual problem), if the criminal case is closed because the individual complied with terms of probation (unless it is recent, within the past five years). All other complaints are reviewed by the "Enforcement Review Panel" which includes a member (or two depending on the section size) of the board, enforcement staff, executive director, and assistant attorney general. The panel consults regularly with disciplinary guidelines and previous history to ensure continuity in enforcement practices. The Enforcement Review Panel operates per Board policy.*
12. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?
- All complaints are documented in the enforcement database, unless they are not in the Board's jurisdiction and need to be referred elsewhere (such as a different regulatory board). The enforcement staff also retain case files per records retention policy.*
13. Do/how does the board/committee ensure that complaints are closed for good cause
- a. Do you conduct review to ensure good cause?
 - i. If yes, is it required by statute/rule/policy? Citation if applicable *The enforcement review panel process described in question 11 endeavors to ensure that both legal and professional expertise are involved in nearly all enforcement decisions made by the Board. The Enforcement Review Panel operates per Board policy.*
 - ii. Are your committee/board investigative files public? *No.*

- b. Cite to relevant confidentiality provisions [ORC 4755.02 \(E\)](#)
 - c. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?
[The enforcement review panel process ensures regular review of all complaints by diverse group, including a member of the Board. Action on cases is established by consensus led by the Board member. The Board receives a case status report at each meeting.](#)
 - d. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed; [ORC 4755.02 \(E\)](#)
14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.) [We will take a complaint however we can get it. Online \(primarily through eLicense\) is the primary source. We can receive them via telephone, fax, in person, and through the mail. The Board encourages a written account to be made, but we will still investigate without a written account.](#)
15. Can complainant(s) check on status of complaints they've made?
- a. If yes, how? [They may contact the investigator assigned to the case.](#)
16. How does a complainant find out the disposition of a complaint made? [All cases result in a "closure letter." The reason for closure may be vague. If disciplinary action is taken, all documentation will be available on the eLicense look up.](#)
17. Records retention
- a. What are your retention requirements for investigative records?
[If case is closed with no action taken, retain in office area for 5 years after closure date, then destroy. If action is taken, retain in office area for 10 years after the date of the action, then destroy. Do not destroy any notices for opportunity for hearing, consent agreements, and/or adjudication orders, since those documents have historic and reference value. Records need maintained for a period of time following the completion of the investigation in case of future complaints against the licensee. If no action taken, legal counsel stated that there is little value in the records after 5 years. For those disciplined, the records maintain value for a longer time period. After 10 years, the confidential case materials are of no use if there are subsequent investigations into that licensee.](#)
 - b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)? [Same.](#)
 - c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.
 - [Probation Notice \(Copy of probation order issued by the Board. Included with the notice is a list of conditions that must be fulfilled to restore the license to unrestricted practice.\): Retain until license is restored to unrestricted status and no further legal action is pending.](#)
 - [Notice of hearings \(These are notices sent to individuals when their application is denied or the section intends to consider the suspension or revocation of a license indicating that they are to receive a hearing.\): Retain 1 year, then destroy provided no further legal action is pending.](#)

- Investigation Summary for Board review (These are summaries of investigations, on-site inspections, and consent agreements for enforcement review panel review.): Retain 1 year, then destroy
- BCI/FBI records checks: For no records identified, record that records check was received and then immediately dispose of the record. For check with criminal records, contact the appropriate courts to obtain the official documents identified on the report and then immediately dispose of the record. These reports are highly confidential under state and federal law and the Board is advised to dispose of the record as quickly as possible once the needed information is obtained.



Speech and Hearing Professionals Board



November 1, 2019

Robin L. McGuire Rose, Esq.
Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street
Columbus, Ohio 43223

RE: Ohio Speech and Hearing Professionals Board Response to Healthcare Board
Workgroup Questions

Dear Ms. McGuire:

In follow-up to your e-mail dated September 13, 2019, below please find the Ohio Speech and Hearing Professionals Board's (SHP) response to questions posed by Governor DeWine's Ohio Healthcare Board Workgroup. Please note that references to Ohio Revised and Administrative Code Chapters 4747 pertain to hearing aid dealers and fitters, and Ohio Revised and Administrative Code Chapters 4753 pertain to audiologists and speech-language pathologists. Any reference to Ohio Revised and Administrative Code Chapter 4744 pertains to formation and prescribed duties of SHP. If you any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Thornton".

Gregg B. Thornton, Esq.
Executive Director

Attachment

1. How many complaints does your board/committee receive annually (provide most recent five years)?

The number of complaints received by SHP over the last five years are as follows:

Ohio Board of Speech-Language Pathology and Audiology

FY2014 - 58

FY2015 - 99

FY2016 - 68

FY2017 - 65

*FY2018 - 22

**CY2018 – 87

Ohio Hearing Aid Dealers and Fitters Licensing Board

CY2014 – 18

CY2015 – 25

CY2016 – 44

CY2017 – 26

***CY2018 – 3

*FY2018 is from July 1, 2017 through January 20, 2018 as a result of the board consolidation that abolished the Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

**CY2018 is from January 21, 2018 through December 31, 2018

***CY2018 is from January 1, 2018 through January 20, 2018 as a result of the board consolidation Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

- a. How many of these result in citation or some enforcement?

Ohio Board of Speech-Language Pathology and Audiology

FY2014 - 88

FY2015 - 68

FY2016 - 42

FY2017 - 40

*FY2018 - 9

**CY2018 – 20

Ohio Hearing Aid Dealers and Fitters Licensing Board

CY2014 – 3

CY2015 – 6

CY2016 – 4

CY2017 – 0

***CY2018 – 0

*FY2018 is from July 1, 2017 through January 20, 2018 as a result of the board consolidation that abolished the Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

**CY2018 is from January 21, 2018 through December 31, 2018

(Please note that the number of citations or enforcements are based upon the fiscal year that the citation or enforcement was issued.)

***CY2018 is from January 1, 2018 through January 20, 2018 as a result of the board consolidation Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

b. How many are unfounded?

Ohio Board of Speech-Language Pathology and Audiology

FY2014 – 4

FY2015 – 4

FY2016 – 0

FY2017 – 2

*FY2018 – 0

**CY2018 – 0

Ohio Hearing Aid Dealers and Fitters Licensing Board

CY2014 – 8

CY2015 – 15

CY2016 – 27

CY2017 – 26

***CY2018 – 3

*FY2018 is from July 1, 2017 through January 20, 2018 as a result of the board consolidation that abolished the Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

**CY2018 is from January 21, 2018 through December 31, 2018

***CY2018 is from January 1, 2018 through January 20, 2018 as a result of the board consolidation Ohio Board of Speech-Language Pathology and Audiology and the Ohio Hearing Aid Dealers and Fitters Licensing Board and created the Ohio Speech and Hearing Professionals Board.

c. If known, how many of these complaints allege sexual misconduct?

There were 4 complaints that alleged sexual misconduct during the last five years.

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?
 - a. If yes, provide citation to statute/rule/policy

There is no specific rule that SHP has that requires a licensee to report a licensee or other person to law enforcement if the person is suspected to have engaged in sexual misconduct. However, the Board does have a requirement that would include suspected sexual misconduct. Pursuant to Ohio Administrative Code (OAC) section 4747-1-23(B)(11) and OAC section 4753-9-01(B)(11), a licensee who has knowledge that a colleague is unable to provide professional services with reasonable skill and safety shall report this information to the appropriate authority, internally if a mechanism exists and, otherwise externally. In addition, licensees are mandatory reporters under R.C. 2151.421, reporting child abuse or neglect, and R.C. 5101.63, elder abuse.

3. Are your licensees required to self-report violations?
 - a. If yes, provide citation statute/rule/policy

Yes, licensees are required to self-report to the board within thirty days of a conviction, being found guilty, or entering a plea of guilty or nolo contendere to any felony or misdemeanor convictions, other than minor traffic violations, including the case number and the court within thirty days of the conviction, plea, or finding of guilt pursuant to OAC section 4747-1-23 (B)(12), effective 8/12/2019, and OAC section 4753-9-01(B)(12), effective 8/12/2019. Prior to this self-report requirement, licensees were required to report criminal convictions on their license renewal applications.

In addition, licensees who have been publicly sanctioned or denied a license or a professional credential by any professional association, professional licensing authority or board, or other professional regulatory body shall self-report by notifying the board in writing of the final action or disposition and shall provide a copy of the final action, sanction or disposition within thirty days – see OAC section 4747-1-23(B)(13) and OAC section 4753-9-01(B)(13).

- b. If yes, how do you track?

The Board tracks self-reporting through the eLicense, Ohio Professional Licensure management system, which has a case tracking module that the Board utilizes.

4. Are your licensees required to report violations of fellow licensees?
 - a. If yes, citation:

Yes, the previous rule citations referenced under question two would be applicable and require licensees to report to the board any violation of the board rules or any breach of the board's code of ethics that the licensee is aware of pursuant to OAC section 4747-1-23 (B)(10), effective 8/12/2019, and OAC section 4753-9-01(B)(10), which has been in effect since at least 1992.

In addition, as previously stated in question number two, pursuant to OAC section 4747-1-23(B)(11) and OAC section 4753-9-01(B)(11), a licensee who has knowledge that a colleague is unable to provide professional services with reasonable skill and safety shall

report this information to the appropriate authority, internally if a mechanism exists and, otherwise externally.

- b. If yes, how is it tracked?

The Board tracks self-reporting through the eLicense case tracking module.

- 5. Does your board/commission encourage/promote regulation of self/fellow licensees?
 - a. If yes, how?
 - i. Self
 - ii. Fellow licensees

For both sections under question 5(a)(i) and (ii), the Board promotes regulation of self and fellow licensees through a required two hours of continuing education related to ethics. Licensees under Chapters 4747 and 4753 are governed under respective Codes of Ethics, which are enforceable by the Board.

- 6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable
 - a. Licensing matters:
 - b. Criminal matters:

For both questions 6(a) and (b), the Board will refer matters to appropriate law enforcement agencies when matters are brought to our attention.

- 7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes, the Board has an Investigative Review Group (IRG) consisting of the Board's Executive Director, Investigator, one Board Member chairing the committee, and the Assistant Attorney General. The IRG will refer allegations of criminal conduct to appropriate law enforcement as necessary.

- 8. If yes, and if documented, provide number of referrals for the most recent five years.

The Board has not made any referrals of allegations of criminal conduct to law enforcement within the last five years.

- 9. Investigative process:
 - a. Does your board incorporate trauma-informed investigative techniques?
 - i. If yes and required by your statute/rule/policy please cite

The Board does not currently incorporate trauma-informed investigative techniques. However, the board's investigator has recently completed training related to child sexual/physical abuse investigations.

- b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct?
- i. If yes, what sexual assault training is required of your committee/board investigators?
1. Upon hire: The Board's Executive Director, in consultation with the IRG Committee would assess the training and experience of any newly hired investigator and determine which training would be necessary.
 2. Periodic or other: The Board's current investigator has been with the board since 2006 and completes annual investigative training.
- ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share.

The most recent training completed are as follows:

- 9/26/19 - Child Sexual/Physical Abuse Investigations in Today's Law Enforcement Climate (90-minute webinar)
- 10/10/19 - Medical Evaluation of Child Sexual Abuse: Why Can't We Be More Like CSI? (90-minute webinar)

10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

Complaints that are not substantiated are closed after an investigation and review by the Investigative Review Group (IRG). As previously stated, the IRG consists of the Board's Executive Director, Investigator, one Board Member chairing the IRG, and the Assistant Attorney General.

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

All complaints are documented and tracked through the eLicense Ohio Professional Licensure management system via the enforcement module. If a complaint is not investigated, it is because the Board does not have jurisdiction over the allegations.

12. Do/how does the board/committee ensure that complaints are closed for good cause

a. Do you conduct review to ensure good cause?

i. If yes, is it required by statute/rule/policy? Citation if applicable

Complaints received by the Board are investigated and if a determination is made that the complaint be closed on the basis of not being substantiated, it is determined by the IRG Committee.

13. Are your committee/board investigative files public? Yes

a. Cite to relevant confidentiality provisions

The Board's investigative files are public once the investigation is closed and/or all disciplinary action has been concluded. Investigative files that are closed without formal action are still subject to public records review, but certain information may need to be redacted pursuant to R.C. 149. The Board does not have any specific statutes under Chapters 4744, 4747, or 4753 that mandate its investigative files be kept confidential; therefore, our investigative files are governed under Ohio's public records law.

b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?

This question is not applicable since the Board's investigative files are subject to Ohio's public records law.

c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

The Board's investigative files are covered under Ohio's Public Records Law, R.C. Chapter 149.

14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

The Board may receive complaints via eLicense Ohio, e-mail, telephone, mail, and in-person.

15. Can complainant(s) check on status of complaints they've made?

a. If yes, how?

Yes, complainants receive an acknowledgement letter with their case number and provided with the name, telephone number, and e-mail of our investigator. They may contact the investigator with any questions and to check on the status of their complaint.

16. How does a complainant find out the disposition of a complaint made?

The Board will send the complainant a letter with the final disposition of their complaint.

17. Records retention

a. What are your retention requirements for investigative records?

Investigative records are retained for a period of 3 years.

- b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?

The period of time would be the same as question 17(a), e.g., 3 years.

- c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.

No



State of Ohio
Ohio State Chiropractic Board

November 15, 2019

Robin L. McGuire Rose, Esq.
Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

Re: Ohio State Chiropractic Board
Response to Healthcare Board
Workgroup Questions

Dear Ms. McGuire Rose:

Attached please find the Ohio State Chiropractic Board's response to the Governor's Working Group questions.

In preparing this response, the Board reviewed the Working Group's input and recommendations made to the State Medical Board regarding the Strauss Investigation. Clearly, many of the recommendations made by the Group are applicable to the Chiropractic Board's investigations and procedures. The Board has identified the need to implement changes, particularly in the areas of balancing confidentiality with transparency, utilizing trauma informed investigative techniques, enhancing licensees duty to report/self-report, and working more closely with law enforcement. Additionally, the Board needs to identify victim advocates/sexual abuse response teams and resources available to link victims of sexual abuse to services and treatment. The Board will work on these improvements in consultation with the Attorney General's Office over the next several months.

If I may provide any additional information or clarification, I'd be happy to do so.

Sincerely,

Kelly Caudill

Kelly Caudill
Executive Director

OHIO STATE CHIROPRACTIC BOARD

1. How many complaints does your board/committee receive annually (provide most recent five years)

FY 2019: 92

FY 2018: 85

FY 2017: 58

FY 2016: 66

FY 2015: 61

- a. How many of these result in citation or some enforcement?

FY 2019: 16

FY 2018: 15

FY 2017: 15

FY 2016: 15

FY 2015: 30

- b. How many are unfounded?

2019: 76

2018: 70

2017: 43

2016: 51

2015: 31

- c. If known, how many of these complaints allege sexual misconduct?

2019: 14

2018: 19

2017: 6

2016: 3

2015: 5

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

Not required by ORC Chapter 4734 governing the practice of chiropractic. ORC Section 2921.22 requires a person knowing that a felony has been or is being committed report the information to law enforcement.

- a. If yes, provide citation to statute/rule/policy

3. Are your licensees required to self- report violations?

Yes, licensees are required to report licensure discipline, convictions, impairment, sexual civil child abuse registry, or sex offender registration biennially on their license renewal application.

- a. If yes, provide citation statute/rule/policy ORC Section 4734.25

2. Periodic or other: Sexual Assault training, trauma informed training is earned whenever there is an opportunity. As previously stated, the Board desires more training opportunities on this topic and will send investigative staff for training as it becomes available.

ii. If yes, who, what person/entity has conducted your training.
Council on Licensure, Enforcement and Regulation.
Please provide any training materials you can share.

10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

Complaints are not presented to the entire board. This is so that remaining Board members may vote on any recommended sanction without any indicia of bias toward or against the doctor or complainant. Case review meetings are held to review completed investigations, and sometimes ongoing investigations. The meetings include the Investigator, Board Designate (Board Member), Executive Director, Paralegal and the Board's Assistant Attorney General. The Board Designate determines if a case can be closed.

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

All complaints are documented in eLicense with notation as to why a complaint was closed with/without investigation.

12. Do/how does the board/committee ensure that complaints are closed for good cause?
Completed investigations are thoroughly reviewed at case review meetings.

- a. Do you conduct review to ensure good cause? Yes, via case review meetings.
 - i. If yes, is it required by statute/rule/policy? Citation if applicable.
There is no applicable statute/rule/policy.

13. Are your committee/board investigative files public? No

- a. Cite to relevant confidentiality provisions. ORC Section 4734.45
- b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?
Investigators are accountable to the Board through the Board Designate at case review meetings. The Board's disciplinary actions are the public's accountability.
- c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed; ORC Section 4734.45.

14. Generally, how do you receive complaints? Please list all options for complaints (i.e.: online, telephone, in person, etc.) Complaints are primarily received online through eLicense. Complaints are also accepted via telephone, fax and in person. Complaints may be made anonymously.
15. Can complainant(s) check on status of complaints they've made?
No, complaints are confidential.
a. If yes, how?
16. How does a complainant find out the disposition of a complaint made?
By looking up the licensee via the eLicense.ohio website.
17. Records retention
- a. What are your retention requirements for investigative records? 3 years
 - b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)? 3 years
 - c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period. No.

1. How many complaints does your board/committee receive annually (provide most recent five years)
 - a. How many of these result in citation or some enforcement? **See chart below**
 - b. How many are unfounded? **See chart below**
 - c. If known, how many of these complaints allege sexual misconduct? The Ohio State Cosmetology and Barber Board does not track the basis of any complaint.

2014	186 complaints	18 violations	168 unfounded
2015	189 complaints	22 violations	167 unfounded
2016	109 complaints	14 violations	95 unfounded
2017	474 complaints	66 violations	408 unfounded
2018	586 complaints	78 violations	508 unfounded

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct? **No, not by virtue of the license issued by the Ohio State Cosmetology and Barber Board.**
 - a. If yes, provide citation to statute/rule/policy
3. Are your licensees required to self- report violations? **No.**
 - a. If yes, provide citation statute/rule/policy
 - b. If yes, how do you track?
4. Are your licensees required to report violations of fellow licensees? **No.**
 - a. If yes, citation:
 - b. If yes, how is it tracked?
5. Does your board/commission encourage/promote regulation of self/ fellow licensees? **Yes. We require the posting of sanitation standards and instructions on how to file a complaint in those facilities in which the State Cosmetology and Barber Board inspects.**
 - a. If yes, how?
 - i. Self
 - ii. Fellow licensees
6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable
 - a. Licensing matters: **ORC 4713.14**
 - b. Criminal matters: **Agency counsel refers to enforcement with jurisdiction.**
7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement? **Yes, if instructed to be agency counsel.**
8. If yes, and if documented, provide number of referrals for the most recent five years, **The State Cosmetology and Barber Board does not track this information.**
9. Investigative process:
 - a. Does your board incorporate trauma-informed investigative techniques? **No.**
 - i. If yes and required by your statue/rule/policy please cite
 - b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct ? **No.**
 - i. If yes, what sexual assault training is required of your committee/board investigators?

1. Upon hire:
 2. Periodic or other:
 - ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share
10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy. **Yes, under Policy # 2.4 – Appointment of Executive Director and Delegated Duties which reads as follows:**

The Board shall annually appoint an Executive Director in compliance with section 4713.06 of the Revised Code, who will serve at the pleasure of the Board.

1. The Executive Director shall serve as the Appointing Authority and the chief administrative officer of the Board and shall be responsible to the Board for the daily activities and management of its staff, resources, board operations, functions, and other duties, as stipulated.
2. Pursuant to sections 4709.05(J), 4713.06, and 4713.07(B) of the Revised Code, and rule 4713-1-02 of the Administrative Code, the Executive Director of the State Cosmetology and Barber Board may, on behalf of the Board and as delegated by the Board, perform the following specific duties:
 - a. Carry out provisions of sections 4709.05(A)-(J) and 4713.07(A) of the Revised Code as determined by the Board and do all things necessary for the proper administration and enforcement of Chapters 4709 and 4713 of the Revised Code. The Executive Director, through the Board members, is responsible for all appropriate R.C./O.A.C. enforcement and governance;
 - b. Modify alleged violations of R.C. 4709 or 4713 for the purpose of issuing notices of opportunity for hearing based on prior Board Administrative Review Group recommendations and respective Board approval.
 - c. Employ office staff and contract for services, as necessary, to carry out the Board's responsibilities under Chapters 4709 and 4713 of the Revised Code, including inspectors, examiners, consultants, clerks, and other individuals necessary for the administration of Chapters 4709 and 4713 of the Revised Code. The Executive Director may employ, discipline, or terminate Board staff in accordance with the Ohio Civil Service Employees Association, AFSCME local 11 contract with the state of Ohio. The Executive Director may employ, discipline, or terminate unclassified, exempt staff;
 - d. Accept employee resignations on the Board's behalf. An acceptance of resignation should be made in writing, including thorough written documentation, which may be, for example, electronic mail, instant messaging, text messaging, or other electronic means;
 - e. Sign, on behalf of the Board, Position Description Authorizations, and Personnel Actions authorizing any of the above actions;
 - f. Review and approve timesheets and payable time of employees and Board members.

- g. Approve all vouchers of the Board pursuant to section 4713.05 of the Revised Code, deposit receipts, and approve requisitions and pay invoices for materials and equipment necessary to meet the daily operations of the agency;
 - h. Serve as the authorized representative of the State Cosmetology and Barber Board for filing business forms required to carry out the daily responsibilities of the agency, including carrying out responsibilities on the Board's behalf under Chapter 119 of the Revised Code with reference to promulgating, filing, conducting public rules hearings, and final filing rules on behalf of the Board;
 - i. Issue and renew licenses, permits, and registrations in accordance with Chapters 4709 and 4713 of the Revised Code;
 - j. Review and approve pet exemptions pursuant to rule 4713-1-09 of the Administrative Code; and
 - k. Scheduling Board meetings.
3. The Executive Director must report on the status of the agency at each regular board meeting, including fiscal, licensing and personnel status. Capital equipment purchases not planned in the biennial budget, exceeding five thousand dollars, shall be reviewed and approved by the Board Chairperson.
 4. Pursuant to sections 4709.05(J) and 4713.07(B) of the Revised Code, the Executive Director may delegate any of the duties listed above to an individual designated by the Executive Director.

Revised: 3/11/2019

Prior effective Date: 5/12/2015, 2/14/2017, 1/22/2018

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented? **The Board is required to note the basis for closure in the state e-License system.**
12. Do/how does the board/committee ensure that complaints are closed for good cause. **Situations outside of the norm are forwarded to the agency counsel and/or Executive Director, if needed.**
 - a. Do you conduct review to ensure good cause? **Only if necessary.**
 - i. If yes, is it required by statute/rule/policy? Citation if applicable
13. Are your committee/board investigative files public? **Yes.**
 - a. Cite to relevant confidentiality provisions
 - b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?
 - c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

14. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.) **Citizens may file a complaint via our 1-800 toll free complaint line, via e-mail, the e-License portal, social media or phone call.**
15. Can complainant(s) check on status of complaints they've made? **Yes.**
 - a. If yes, how? **Citizens may follow up by contacting the Investigation Supervisor of the Cosmetology and Barber Board.**
16. How does a complainant find out the disposition of a complaint made? **Citizens may inquire by contacting the Investigation Supervisor of the Cosmetology and Barber Board or by making a public records request.**
17. Records retention
 - a. What are your retention requirements for investigative records? **Investigated complaints are to be kept for 3 years after the completion of the investigation.**
 - b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)? **Inspection reports are retained for 5 years.**
 - c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period. **No.**



Ohio State Dental Board
77 S. High Street, 17th Floor
Columbus, Ohio 43215-6135

(614) 466-2580 Tel
(614) 752-8995 Fax
Dental.Ohio.Gov

Mike DeWine, Governor Jon Husted, Lt. Governor Kumar Subramanian, DDS, President Harry Kamdar, Exec. Director

November 14, 2019

Ms. Robin L. McGuire Rose,
Chief Legal Counsel,
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

Re: Response to Governor's Working Group from the Ohio State Dental Board

Ms. McGuire Rose:

Thank you for the opportunity to respond to questions asked of all healthcare licensing boards by the Governor's Working Group. In this regard, please find attached the Ohio State Dental Board's response that is being submitted for your review.

The Ohio State Dental Board has taken this assignment very seriously and has conducted the necessary due diligence in reviewing historical records along with policies and practices. In the spirit of brevity and efficiency, we attempted to keep our answers succinct and to the point. However, we will be glad to provide additional information as deemed necessary by the Governor's Working Group.

In the meantime, feel free to reach out to Steve Kochheiser, Chief Legal Counsel or myself if you have any questions.

Sincerely,

Harry Kamdar
Executive Director
Ohio State Dental Board

Attachment: 1

cc: Dr. Kumar Subramanian, President, Ohio State Dental Board
Mr. Steve Kochheiser, Chief Legal Counsel, Ohio State Dental Board

Response from the Ohio State Dental Board for the Governor's Working Group

1. How many complaints does your board/committee receive annually (provide most recent five years)

FY 2014 – 430

FY 2015 – 579

FY 2016 – 511

FY 2017 – 415

FY 2018 – 427

FY 2019 – 472

a. How many of these result in citation or some enforcement?

Enforcement is tracked by the fiscal year during which Board action was taken and not by the fiscal year in which the correlating complaint was filed. Detailed statistics of citations and enforcement actions are provided in the Board's Annual Reports which are located on the Board's website. On average, approximately 19% of complaints result in citation or some enforcement action.

b. How many are unfounded?

Approximately, 81% of complaints do not result in citation or some enforcement action.

c. If known, how many of these complaints allege sexual misconduct?

The Board does not have a complaint category exclusively for sexual misconduct. Some complaints involving allegations of sexual misconduct would be categorized as "lewd or immoral conduct in connection with the provision of dental services," which encompasses a continuum of conduct that may include sexual misconduct and may result in disciplinary action under R.C. section 4715.30(A)(7). However, some complaints alleging sexual misconduct may also be categorized by another type of complaint based on the facts alleged in the complaint. For example, if sexual misconduct resulted in a felony conviction that was self-reported or reported by a prosecutor, then the case may be classified as a "felony." The following are complaints received alleging "lewd or immoral conduct in connection with the provision of dental services":

FY 2014 – n/a

FY 2015 – 0

FY 2016 – 2

FY 2017 – 0

FY 2018 – 3

FY 2019 – 6

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

Yes, they are in some instances.

a. If yes, provide citation to statute/rule/policy

Dentists are required to report child abuse under R.C. section 2151.421 and elder abuse under R.C. section 5101.63. Therefore, a dentist would likely be required to report sexual misconduct constituting child abuse or elder abuse. Additionally, under R.C. section 2921.22, any person giving aid to a sick or injured person must report to law enforcement any gunshot or stab wound treated or observed, or any serious physical harm that the person knows or has reasonable cause to believe resulted from an offense of violence. For this reason, a dentist, dental hygienist, or other licensee of the Board may be required to report any sexual misconduct involving a gunshot, stab wound, or serious physical harm. To fully comply with these laws, a dentist would be responsible for ensuring that their staff reports sexual misconduct to the dentist so that they can report it in accordance with law.

3. Are your licensees required to self-report violations?

Yes

a. If yes, provide citation statute/rule/policy

Dentists are required to self-report adverse occurrences (any untoward event requiring hospital admission or any mortality which occurred as a direct result of treatment in an out-patient dental facility) within seventy-two hours pursuant to OAC rule 4715-5-06.

All licensees are required to self-report criminal convictions, discipline by other regulatory or licensing agencies, substance abuse issues, and suspension or revocation of clinical privileges on their biennial license renewal application.

b. If yes, how do you track?

Any self-reported offense or evidence that appears to show a violation of law or rule has occurred is then opened as investigation and assigned to an investigator to review the self-reported offense or incident. All investigations are tracked in the Board's case management system, MatrixInvestigator.

4. Are your licensees required to report violations of fellow licensees?

Yes, they are in some instances as described below.

a. If yes, citation:

Dentists are required to report any suspected child abuse under R.C. section 2151.421 and elder abuse under R.C. section 5101.63. Therefore, a dentist would likely be

required to report another licensee to law enforcement suspected of child abuse or elder abuse.

Additionally, under R.C. section 2921.22, any person giving aid to a sick or injured person must report to law enforcement any gunshot or stab wound treated or observed, or any serious physical harm that the person knows or has reasonable cause to believe resulted from an offense of violence. For this reason, a dentist, dental hygienist, or other licensee of the Board may be required to report another licensee to law enforcement if they suspect they were involved in conduct that would require reporting under these statutes.

b. If yes, how is it tracked?

Any offense or incident reported or evidence that appears to show a violation of law or rule has occurred is then opened as investigation and assigned to an investigator to review the self-reported offense or incident. All investigations are tracked in the Board's case management system, MatrixInvestigator.

5. Does your board/commission encourage/promote regulation of self/ fellow licensees?

Yes

a. If yes, how?

- i. Self** – the Board routinely provides outreach through stakeholders such as professional associations and academia as well as sending bulletins to licensees and posting updates to the Board's website regarding regulatory issues to licensees to compliance with law.
- ii. Fellow licensees** – the Board is permitted to ensure anonymity to complainants under R.C. section 4715.036(D), which allows employees and other staff to file complaints with the Board.

6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable

Pursuant to Board protocol, investigators routinely engage with law enforcement upon receipt of a complaint or information that indicates that criminal conduct has occurred. Under R.C. section 4715.30(J), the Board may share any information it receives pursuant to an investigation with law enforcement agencies, including patient records and patient record information. Additionally, under R.C. section 4715.035, the time limits imposed on the Board to discipline licensees after the initiation of an investigation are tolled if the Board is asked to suspend their investigation by law enforcement.

- a. Licensing matters:** The Board engages with law enforcement regarding licensing matters to obtain additional information regarding a charge or conviction disclosed or discovered in the application process and to serve as a witness in an administrative hearing regarding an application.

- b. Criminal matters:** The Board engages with law enforcement regarding criminal matters whenever the Board receives evidence or information indicating that criminal conduct has occurred. The Board may place their investigation on hold. Board investigators frequently directly assist law enforcement in the investigation of criminal matters.

7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes.

If yes, and if documented, provide number of referrals for the most recent five years

The Board regularly refers allegations to law enforcement upon receipt of a complaint or information that indicates that criminal conduct has occurred. Although not tracked statistically, the number of cases referred to law enforcement each year likely total approximately twenty each year. The most common types of cases referred to law enforcement involve allegations of drug law violations as well as allegations of Medicaid fraud. In the past five years, the Board has referred cases to and directly assisted law enforcement agencies with criminal investigations, including:

- Ohio Attorney General's Health Care Fraud Section
- Ohio Highway Patrol
- Ohio State Board of Pharmacy
- Federal Bureau of Investigation
- Ohio Department of Insurance
- Bureau of Workers Compensation
- Numerous local law enforcement agencies and drug task forces

8. Investigative process:

a. Does your board incorporate trauma-informed investigative techniques?

No. The Board is currently working to identify courses regarding trauma-informed investigative techniques and ensure that its investigators and managers attend training in trauma-informed investigative techniques.

i. If yes and required by your statute/rule/policy please cite

b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct ?

Yes.

i. If yes, what sexual assault training is required of your committee/board investigators?

- 1. Upon hire:** None. However, this is currently under review and will include the addition of trauma-informed investigative techniques along with other training requirements for investigators to complete at or near the time of hiring in addition to Reid Technique of Behavioral Analysis Interview Questions course, Council on Licensure, Enforcement & Regulation (CLEAR) course, and OPOTA courses on behavior and deception, interrogation and interview technique, and report writing.
- 2. Periodic or other:** None. However, this is currently under review and will likely include the addition of trauma-informed investigative techniques for current investigators.

ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share

9. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

Complaints must be closed by a concurrence of a majority of the members of the Board pursuant to R.C. section 4715.03(B). However, the Board does not hear the facts of the complaint and the name of any uncharged suspect is not disclosed during the Board meeting. The Board closes the case based on a recommendation by the Board's Secretary and Vice Secretary as the Supervisory Investigative Panel. *See* R.C. sections 4715.03(D), 4715.032, 4715.034(B). The Supervisory Investigative Panel is prohibited from participating in any deliberations the Board has regarding a case for which they made a recommendation. R.C. section 4715.034.

10. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

Cases are closed without an investigation if the complaint does not appear to show that any person has violated any provision of R.C. chapter 4715 because the Board lacks jurisdiction to investigate such cases pursuant to R.C. section 4715.03(D). Cases closed without an investigation are assigned a case number and uploaded to the Board's electronic case management system, MatrixInvestigator. Cases that are investigated pursuant to R.C. section 4715.03(D) and closed with an investigation are documented in the case file, including a paper file and any records uploaded to the Board's electronic case management system, MatrixInvestigator.

11. Do/how does the board/committee ensure that complaints are closed for good cause
a. Do you conduct review to ensure good cause?

Yes.

i. If yes, is it required by statute/rule/policy? Citation if applicable

All cases within the Board's jurisdiction under R.C. section 4715.03(D) are investigated by Board staff and then reviewed by the Supervisory Investigative Panel, consisting of two Board members who are dentists. Any recommendation regarding Board action including to close a case must be made by the Panel upon review of the investigative file. *See* R.C. sections 4715.03(D), 4715.032, 4715.034(B).

12. Are your committee/board investigative files public?

If a public hearing takes place, investigative files for the case that are not subject to HIPAA or some other law requiring confidentiality are available to the public. Personal identifying information that would reveal the identity of the complainant would be redacted as required by R.C. section 4715.036(C)(3).

If a public hearing does not take place, any investigative files related to the case are confidential under R.C. section 4715.03(D).

a. Cite to relevant confidentiality provisions

R.C. sections 4715.03(D); 4715.036(C)(3)

b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?

Investigators are held accountable by Board management who supervise their work as well as the two Supervisory Investigative Panel members. Confidentiality ensures that patient or complainant's privacy is protected as well as the privacy of the uncharged licensee under investigation. The Board releases statistical information regarding investigations to remain accountable to the public while still complying with law.

c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

Disclosure or public inspection of investigative files is prohibited by law if no public hearing takes place. R.C. sections 4715.03(D); 4715.036(C)(3).

13. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

The Board receives complaints from all available methods of communication, including written (hand delivered, mail, or e-mail), telephone, and in person as well as through Board-generated complaints from news sources and public records. The Board strongly prefers complaints submitted on its complaint form to allow the complainant to provide a signed release for their dental records to the Board.

14. Can complainant(s) check on status of complaints they've made?

Yes.

a. If yes, how?

Complainants may call the Board office or the investigator assigned to their case to inquire whether the case is still open.

15. How does a complainant find out the disposition of a complaint made?

When a case is closed by the Board, the complainant is notified by mail. If public disciplinary action is taken, they may access this information via <http://elicense.ohio.gov>.

16. Records retention

a. What are your retention requirements for investigative records?

Complaint investigation files closed by the Board after an investigation that do not result in formal disciplinary action are retained for at least two years in physical files and then permanently stored on electronic media pursuant to the Board's record retention schedule.

b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?

Same as above.

c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.

Complaints that do not appear to show that any person has violated any provision of R.C. chapter 4715 and over which the Board lacks jurisdiction to investigate pursuant to R.C. section 4715.03(D) are retained for at least six months and then destroyed pursuant to the Board's record retention schedule.

TO: Governor's Working Group on Reviewing of the Medical Board's Handling of the Investigation Involving Richard Strauss

FROM: Melvin R. House, Executive Director
State Board of Emergency Medical, Fire, and Transportation Services

DATE: November 4, 2019

RE: Ohio Health Care Boards Questions

As requested, the answers to questions regarding how the State Board of Emergency Medical, Fire, and Transportation Services regulates the licenses of emergency medical service professionals are provided below. The answers detail how the Board, through the Ohio Department of Public Safety, Division of Emergency Medical Services, oversees investigations, works with law enforcement, incorporates survivor-centered investigative techniques, and balances transparency and confidentiality.

1. How many complaints does your board/committee receive annually (provide most recent five years)

The Division of EMS Investigative Services ("DEMS Investigations") conducts investigations on behalf of the Ohio State Board of Emergency Medical, Fire, and Transportation Services Board ("Board") and the Firefighter & Fire Safety Inspector Training Committee ("FFSI"). The Board has authority over EMS and medical transportation services, and the FFSI provides advice and counsel to the DEMS Executive Director on fire related matters. Over the past five years, DEMS Investigations has received on average 730 complaints per year. FY2015: 735; FY2016: 718; FY2017: 735; FY2018: 764; FY2019: 698. It should be noted that all complaints become case investigations.

a. How many of these result in citation or some enforcement?

Over the past five years, the EMFTS Board & Executive Director have issued on average 395 actions involving complaints received by DEMS Investigations. Actions include Consent Agreements, Adjudication Orders, and Notices of Opportunity for Hearing (NOH) on both EMS and Fire cases. FY2015: 353; FY2016: 364; FY2017: 372; FY2018: 424; FY2019: 463

b. How many are unfounded?

DEMS does not account for cases "unfounded." Cases may be closed as non-violations, non-jurisdictional issues, or matters for local departments and their medical directors to address. Over the past five years, DEMS Investigations,

through the Board and the Executive Director with the FFSI, have closed on average 410 case per year. FY2015: 520; FY2016: 435; FY2017: 346; FY2018: 346; FY2019: 402.

c. **If known, how many of these complaints allege sexual misconduct?**

With the recent case system update, cases involving sexual misconduct were not tracked until the fall of 2018. These cases have involved a certificate holder being charged with a sexually-related criminal violation after being investigated by law enforcement. A total of 13 cases involved sexual misconduct. FY2018: 6; FY2019: 7.

2. **Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?** No.

a. **If yes, provide citation to statute/rule/policy.** N/A

3. **Are your licensees required to self-report violations?**

Yes, these violations are to be reported to the Division of EMS. Note: The Division of EMS is reliant on self-reports and reporting from other certificate holders as there is no background check requirement for certification and recertification as a Fire or EMS provider.

a. **If yes, provide citation statute/rule/policy:** OAC 4765-9-01(G) & (M) for EMS matters & 4765-22-01(D) & (F) for Fire matters.

b. **If yes, how do you track?** Upon receipt at the Division of EMS, all complaints and self-reported violations are referred to DEMS Investigations and entered into the case management system.

4. **Are your licensees required to report violations of fellow licensees?**

Yes, these are reported to the Ohio Division of EMS.

a. **If yes, citation:** OAC 4765-9-01(G) for EMS matters & 4765-22-01(E) for Fire matters.

b. **If yes, how is it tracked?** Upon receipt at the Division of EMS, all complaints and reported violations are referred to DEMS Investigations and entered into the case management system.

5. **Does your board/commission encourage/promote regulation of self/ fellow licensees?**

Yes.

a. **If yes, how?** The Division of EMS consistently includes the professional standards from Ohio Administrative Codes in their public speaking engagements at various industry meetings and has information posted on the Division's website for certificate holders to reference. These referenced professional standards include the self-reporting and reporting of any violations of Ohio Administrative Code to the Division of EMS. Furthermore, DEMS Investigations presented at the Ohio State Firefighter's Association conference on August 9, 2019, covering topics of professional standards, examples of misconduct, and the disciplinary process. NOTE: On April 1, 2019, the Division of EMS amended the Ohio Administrative Code 4765-23-01 involving Fire investigations to be consistent with the EMS rule (Ohio Administrative Code 4765-10-02) so anonymous complaints shall be investigated involving both EMS and Fire. Prior to this rule amendment, DEMS Investigations was only permitted to investigate anonymous complaints involving EMS referrals but not those involving Fire referrals.

- i. Self: When submitting initial and renewal applications for Fire and/or EMS certification, applicants and certificate holders are asked questions about past and pending criminal convictions. Ohio Administrative Code 4765-9 (Ethical Standards of Conduct for EMS) and Ohio Administrative Code 4765-22 (Professional Standards for Fire) details the obligations of reporting misconduct (convictions and/or other violations of Ohio Administrative Code 4765). For the certificate holder's reference, DEMS Investigations posts the complaint form and the investigative process for reference on the Division of EMS' website.
- ii. Fellow licensees: The Division of EMS website has disciplinary matters, the investigative process, complaints forms, and links to the Ohio Administrative Code 4765 for reference.

6. If and how does your board/commission engage with law enforcement?

Citations to statute/rule/policy if applicable If a matter received at DEMS is a potential criminal matter, a referral is sent to the appropriate law enforcement entity pursuant to Ohio Revised Code 4765.102(C). If during a departmental investigation criminal activity is uncovered, it is staffed with Division management and referred to the appropriate authority. NOTE: The Case Review Team (aka "CRTM") may direct DEMS Investigations to refer matters to law enforcement or regulatory authorities as well during case reviews.

- a. **Licensing matters:** Referrals are made via letter to local, state, or federal governmental regulatory agencies/commissions (e.g. Medicaid, Health & Human Services, etc.). Information may be shared between agencies via formal requests and/or subpoenas. *Reference ORC 4765.102(C)
- b. **Criminal matters:** Referrals are made via letter to local, state, or federal law enforcement (e.g. Ohio AG's Office-Medicaid Fraud Control Unit, Ohio Board of Pharmacy, HHS-OIG, etc.). DEMS Investigations may obtain information via formal requests and/or subpoenas as part of a case investigation. *Reference ORC 4765.102(C)

7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes, but infrequently as the majority of cases have already been investigated by law enforcement. Referrals to law enforcement have involved "uncertified/unauthorized practice."

8. If yes, and if documented, provide number of referrals for the most recent five years:

Any referrals are documented in the individual case; however, they are not tracked as a specific subset at this time.

9. Investigative process:

- a. **Does your board incorporate trauma-informed investigative techniques?** No.
 - i. **If yes and required by your statute/rule/policy please cite:** N/A
- b. **Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct:**

Yes, cases have involved sexual misconduct as mentioned earlier where law enforcement has already investigated the activity. In regards to these cases,

DEMS Investigations has not been the lead investigative agency. DEMS Investigations have worked on investigations in the past involving dual certified individuals with other agencies (e.g. Ohio Boards of Nursing & Pharmacy) but these cases have not involved sexual misconduct. We have not been contacted by other boards or commissions to work jointly on sexual misconduct matters.

i. **If yes, what sexual assault training is required of your committee/board investigators?** None

1. **Upon hire:** None

2. **Periodic or other:** None

ii. **If yes, who, what person/entity has conducted your training. Please provide any training materials you can share.**

No. NOTE: To enhance current staff skills, DEMS investigators are scheduled for a Trauma 101 class with Montgomery County ADAMH in December 2019, and we are looking into a Trauma-Informed course with the Ohio Attorney General's Office-OPOTA in 2020.

10. **Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.**

All cases are closed by the Board or Executive Director at their respective meetings. For your reference, the EMFTS Board addresses all EMS cases, and the Executive Director with advice & counsel of the Firefighter & Fire Safety Inspector Training Committee has authority over Fire cases. A Case Review Team (CRTM) consisting of board members, DPS Legal, and the DEMS Executive Director & Deputy Director meet in-person every two (2) months to review case investigation details and to make recommendations on cases for the Board and/or the FFSI's consideration at the regularly scheduled public meetings. These case recommendations may involve issuing a Notice of Opportunity for Hearing, accepting a consent agreement, closing the matter, or sending the case back for further investigation. It should be noted that there are two separate case review meetings: one for EMS matters and one for Fire matters. The Executive Director does not take part in the Fire case reviews due to his authority over Fire matters. At these meetings, all DEMS investigative personnel are in attendance to present their cases to the CRTM. If CRTM agrees with the case recommendation, the case is presented to the Board and/or the Executive Director and the Firefighter & Fire Safety Inspector Training Committee for a final determination. There are frequent case types, based on past precedence and/or past rulings by the Board, Executive Director, and/or Legal that may be recommended for closure as a "non-violation." These cases typically involve OVIs and low level misdemeanor convictions where no physical harm was involved. These cases are still presented to the Board and/or the Executive Director for ruling at their respective meetings; however, these cases are presented as a list during the DEMS Investigation presentation at the corresponding meeting to expedite the proceedings. These cases are reviewed by DEMS Investigations management prior to being recommended as a "non-violation."

11. **Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?**

All cases are investigated. The majority of cases are presented in summary fashion before Case Review Team and to the Board and/or the Executive Director. Those

determined to be “non-violation” are documented in the case management system.

NOTE: DEMS Investigations management reviews these cases prior to Case Review.

12. Do/how does the board/committee ensure that complaints are closed for good cause

a. **Do you conduct review to ensure good cause?** Yes. See answer to question # 10.

i. **If yes, is it required by statute/rule/policy?** No.

Citation if applicable.

There is no specific statute but rule 4765-10-02 of the Ohio Administrative Code addresses investigations of EMS matters conducted on behalf of the Board. Ohio Revised Code 4766.11 addresses investigations of medical transportation services and these matters are presented to the Board for adjudication. Ohio Administrative Code 4765-23-01 addresses investigations conducted on behalf of the FFSI.

13. Are your committee/board investigative files public?

Yes. After a case investigation is closed, the case file is a public record. NOTE: Patient information and other exclusions under Ohio Revised code 149.43 may apply to records requested.

a. **Cite to relevant confidentiality provisions:** Ohio Revised Code 4765.102(B)

b. **Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?** N/A

c. **Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;** N/A

14. Generally, how do you receive complainants? Mail.

Please list all options for complaints (i.e.: online, telephone, in person, etc.)

Mail, Email, Telephone, Fax, In-Person Walk-ins, internally generated from staff of other sections (for example, continuing education referrals come from the DEMS Education section), and Media (for example, news stories detailing criminal convictions or other misconduct not reported to the Division of EMS.)

15. Can complainant(s) check on status of complaints they've made? No

a. **If yes, how?** N/A

16. How does a complainant find out the disposition of a complaint made?

Complainant (if known) and the subject receives a closing letter after the board meeting has ruled on their case.

17. Records retention

a. **What are your retention requirements for investigative records?**

Closed cases are retained for six (6) years. Cases resulting in an indefinite suspension, revocation, or permanent revocation are maintained permanently.

b. **What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?** N/A

c. **Do you have any other retention schedules that relate to the preservation of investigative records?** No

If so, please list record type and retention period. N/A



November 13, 2019

The Honorable Mike DeWine
Governor of Ohio
Riffe Center, 30th Floor
77 South High Street
Columbus, Ohio 43215

Dear Governor DeWine,

The State of Ohio Board of Pharmacy respectfully submits the following questionnaire to the Governor's Working Group on Reviewing the Medical Board's Handling of the Investigation Involving Richard Strauss.

In addition to the questionnaire provided, the Board also conducted a comprehensive review of all cases where sexual misconduct was potentially related to the allegations from July 1, 2014 to June 30, 2019. The review confirmed that all cases involving sexual misconduct were investigated, or are currently under investigation, and properly referred to law enforcement.

On behalf of the members of the State of Ohio Board of Pharmacy, we stand ready to work with you and the Workgroup to continue our shared mission of protecting the citizens of Ohio.

Sincerely,

A handwritten signature in black ink that reads "Steven W. Schierholt".

Steven W. Schierholt
Executive Director
State of Ohio Board of Pharmacy



1. How many complaints does your board/committee receive annually (provide most recent five years)?

The following table provides the number of complaints received by state fiscal year:

Fiscal Year	Number of Complaints
2015 (July 1, 2014 – June 30, 2015)	1,087
2016 (July 1, 2015 – June 30, 2016)	1,543
2017 (July 1, 2016 – June 30, 2017)	1,530
2018 (July 1, 2017 – June 30, 2018)	2,318
2019 (July 1, 2018 – June 30, 2019)	1,856
Total	8,334

a. How many of these result in citation or some enforcement?

Fiscal Year	Administrative Actions*
2015 (July 1, 2014 – June 30, 2015)	236
2016 (July 1, 2015 – June 30, 2016)	220
2017 (July 1, 2016 – June 30, 2017)	207
2018 (July 1, 2017 – June 30, 2018)	515**
2019 (July 1, 2018 – June 30, 2019)	274
Total	1,452

*Includes citations issued, proposals to deny licensure, settlement agreements, summary license suspensions, revocations and probationary actions. This does not include outcomes (i.e. convictions, plea agreements, etc.) of criminal investigations conducted by the Board.

**Includes 322 medical marijuana dispensary proposals to deny licensure for applicants that were not selected as part of competitive scoring process.

b. How many are unfounded?

Fiscal Year	Unfounded Complaints*
2015 (July 1, 2014 – June 30, 2015)	132
2016 (July 1, 2015 – June 30, 2016)	133
2017 (July 1, 2016 – June 30, 2017)	138
2018 (July 1, 2017 – June 30, 2018)	91
2019 (July 1, 2018 – June 30, 2019)	83
Total	577

*Unfounded complaints include those where the Board has no jurisdiction (i.e. insurance reimbursement, physician would not prescribe, etc.).

c. If known, how many of these complaints allege sexual misconduct?

Fiscal Year	Complaints Alleging Sexual Misconduct* +
2015 (July 1, 2014 – June 30, 2015)	8
2016 (July 1, 2015 – June 30, 2016)	4
2017 (July 1, 2016 – June 30, 2017)	11
2018 (July 1, 2017 – June 30, 2018)	6
2019 (July 1, 2018 – June 30, 2019)	5
Total	34

**Complaints were identified in the Board’s case management system using the following search terms: sexual motivation, sexual battery, sexual nature, sexual disorder, sexual comments, sexual proposition, sexual rape, sexual manner, sexual escapades, sexual misconduct, sexual advances, sexual acts, sexual favors, sexual encounter, sexual imposition, sexual harassment, sexual intercourse, sexual relations, sexual activity, sexual contact, sexual assault, sexual abuse, and sex for drugs.*

+A majority of the cases listed refer to sexual misconduct in the context of past transgressions (i.e. as part of a background investigation, meaning an applicant for licensure had a sexual offense listed on their criminal history report) and not the result of direct complaints to the Board of Pharmacy.

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

Yes. A new set of rules will require pharmacists, pharmacy interns, and pharmacy technicians to report suspected sexual misconduct and other criminal and administrative violations to the Board of Pharmacy. The new rules will go into effect on December 1, 2019.

More information about the Board’s reporting requirements can be accessed here:

For pharmacists: www.pharmacy.ohio.gov/PharmReport

For interns: www.pharmacy.ohio.gov/InternReport

For pharmacy technicians: www.pharmacy.ohio.gov/TechReport

3. Are your licensees required to self-report violations?

Yes. A new set of rules (effective December 1, 2019) will require pharmacists, pharmacy interns, and pharmacy technicians to self-report any of the following to the Board of Pharmacy:

- Any criminal conviction within ten days after the date of conviction, except for minor traffic violations such as parking violations, speeding tickets and violations such as failure to obey a red light, failure to use a turn signal or expired registration.
- The licensee/registrant is convicted of, plead guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state under section 2951.041 of the Revised Code or the equivalent thereof in another jurisdiction within ten days after the individual is deemed eligible.

- The licensee/registrant is granted entry into a diversion program, deferred prosecution program, or the equivalent thereof within ten days after the individual is granted entry into a program.
- Any arrest for a felony within ten days after the arrest. (NOTE: Most sexual offenses are felony offenses and thus would be reportable within 10 days of arrest).
- A licensee/registrant shall notify the board of any disciplinary licensing or registration action taken by another state against the licensee within ten days of the notice action. This includes, but is not limited to, a disciplinary action that is stayed pending appeal.

a. If yes, provide citation statute/rule/policy

- Pharmacists – OAC [4729:1-4-02](#)
- Pharmacy interns – OAC [4729:2-4-02](#)
- Pharmacy technicians – OAC [4729:3-4-02](#)

b. If yes, how do you track?

A licensee/registrant will be required to submit a [Self-Report Form](#) electronically. Self-reports will initiate an investigation, when warranted and within the Board’s jurisdiction, that will be tracked using the Board’s case management system.

4. Are your licensees required to report violations of fellow licensees?

Yes. A new set of rules will require pharmacists, pharmacy interns, and pharmacy technicians to report violations of fellow licensees/registrants to the Board of Pharmacy. The new rules will go into effect on December 1, 2019.

a. If yes, citation:

- Pharmacists – OAC [4729:1-4-02](#)
- Pharmacy interns – OAC [4729:2-4-02](#)
- Pharmacy technicians – OAC [4729:3-4-02](#)

b. If yes, how is it tracked?

Reports will be logged in the Board’s case management system and, when warranted and within the Board’s jurisdiction, will initiate an investigation that will be tracked using the Board’s case management system.

5. Does your board/commission encourage/promote regulation of self/fellow licensees?

a. If yes, how?

i. Self

Yes. A new set of rules will require pharmacists, pharmacy interns, and pharmacy technicians to self-report criminal convictions, felony arrests, and disciplinary actions. The new rules will go into effect on December 1, 2019.

The following guidance documents for each licensee/registrant type are posted to the Board's website:

For pharmacists: www.pharmacy.ohio.gov/PharmReport

For interns: www.pharmacy.ohio.gov/InternReport

For pharmacy technicians: www.pharmacy.ohio.gov/TechReport

The Board of Pharmacy is in the process of issuing several communications on the new reporting rules to all licensees/registrants leading up to the December 1, 2019 effective date.

ii. Fellow licensees

Yes. A new set of rules will require pharmacists, pharmacy interns, and pharmacy technicians to report criminal and administrative violations of fellow licensees/registrants to the Board of Pharmacy. The new rules will go into effect on December 1, 2019.

The following guidance documents for each licensee/registrant type are posted to the Board's website:

For pharmacists: www.pharmacy.ohio.gov/PharmReport

For interns: www.pharmacy.ohio.gov/InternReport

For pharmacy technicians: www.pharmacy.ohio.gov/TechReport

The Board of Pharmacy is in the process of issuing several communications on the new reporting rules to all licensees/registrants leading up to the December 1, 2019 effective date.

6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable

a. Licensing matters:

When a case is received by the Board's Legal Department for administrative review, typically the appropriate law enforcement agency has already been contacted and/or involved in the investigation. If law enforcement has not been contacted and legal staff identifies a need for a referral, contact is made with the Compliance & Enforcement Department requesting outreach. When there are no Compliance & Enforcement contacts in a particular jurisdiction (which is rare), Legal Department staff will reach out to the local prosecutor/city attorney as appropriate.

If administrative discipline has been imposed, the Board will notify any law enforcement agency involved so that the disposition may be taken into consideration on the criminal case, should one exist.

No statutes/rules/policies exist detailing this process.

b. Criminal matters:

The Board's Compliance & Enforcement Department regularly works with local, state and federal law enforcement agencies. Pursuant to ORC Section 3719.18, the Board is charged with the enforcement of ORC 2925, Drug Offenses, and ORC 3719, the Controlled Substances Act. This includes conducting criminal investigations of physicians, nurses, dentists and other individuals whose professions are not directly licensed by the Board. For example, non-pharmacy healthcare professionals comprised 24 percent of the Board's FY 2019 cases.

All investigations conducted by the Board's field staff are overseen by a Regional Agent in Charge. Once the Board's investigative staff are assigned an investigation it cannot be closed until there is a final disposition approved by a supervisor.

The Board routinely receives complaints involving theft of drugs, drug trafficking, illegal processing of drug documents, and deception to obtain dangerous drugs. Investigations involving the theft of drugs from Board of Pharmacy licensed facilities are most often investigated by Board Agents. These types of cases have both criminal and administrative ramifications. Criminal cases investigated by Board staff are submitted to the local county prosecutor or the U.S. Attorney. Ultimately, the prosecutor determines if the investigation is to be presented to a grand jury.

If the subject of the criminal investigation is licensed by the Board and is determined to be impaired or their continued practice is a danger to the public, the investigation is submitted to the Board's Legal Department for summary suspension, which immediately removes the licensee from practice.

If there is no immediate threat of danger or the subject shows no sign of impairment, the investigation is submitted for Legal Review (see answer to item #11 for additional information on process). If the subject of the investigation is determined to be a healthcare professional licensed by another regulatory board, then a referral is also made to the appropriate agency.

The Board works in conjunction with the U.S. Drug Enforcement Administration, U.S. Department of Health and Human Services Office of the Inspector General, Federal Bureau of Investigation, Ohio Attorney General's Medicaid Fraud Control Unit, Ohio Bureau of Worker's Compensation Special Investigations, DEA Tactical Diversion Units, local drug task forces, sheriffs, and police departments to investigate larger and more complex drug trafficking investigations. These investigations are then prosecuted by local prosecutors or the U.S. Attorney.

If the Board receives a complaint that alleges criminal misconduct that is outside the scope and authority of the Board, it is referred to the appropriate law enforcement agency. However, Board investigators will still stay involved in the investigation if the activities alleged would violate its administrative rules. In many instances, the Board defers to the preferences of the criminal investigators prior to proceeding with

administrative action, unless there is an immediate threat to public safety and a license must be summarily suspended.

7. Does your committee/board’s investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes. Criminal complaints not within the scope and authority of Board are referred to local, state or federal law enforcement agencies.

Additionally, the Board will also make referrals for administrative and other complaints not within its scope and authority. Examples of such referrals include complaints against another regulatory body’s licensee (i.e. physician, nurse, chiropractor, etc. – unless related to theft of drugs), complaints regarding cost of medication, pharmacy benefits, and insurance coverage.

8. If yes, and if documented, provide number of referrals for the most recent five years

Fiscal Year	Referrals*
2015 (July 1, 2014 – June 30, 2015)	137
2016 (July 1, 2015 – June 30, 2016)	590
2017 (July 1, 2016 – June 30, 2017)	396
2018 (July 1, 2017 – June 30, 2018)	390
2019 (July 1, 2018 – June 30, 2019)	161
Total	1,674

**Includes referrals to law enforcement and other regulatory agencies. Referrals include both criminal and administrative complaints.*

9. Investigative process:

The Board receives numerous complaints involving its licensees. These complaints are triaged weekly and reviewed by two supervisors during the Board’s Intake Review Process. If a complaint alleges impairment, theft, or an immediate threat to public, it is immediately assigned to the Board’s investigative field staff.

During the intake review process, it is determined whether the Board of Pharmacy has the scope and authority to investigate. Possible outcomes of the Intake Review Process include:

- Assigned for further investigation (for matters alleging an administrative violation of ORC/OAC 3715, 3796, 3719, 4729, or 4752 or a criminal violation of ORC 2925);
- Referred to the appropriate agency to investigate; or
- Closed following administrative review.

Complainants are notified at the conclusion of the Intake Review Process as to the course of action.

Investigative staff are required (as part of internal processes) to contact the complainant within 3 business days. The Board’s investigative staff will then collect evidence, conduct interviews, and document findings as it pertains to the investigation. A single complaint

could result in both an administrative and criminal investigation depending on the nature of the allegations.

At the conclusion of the investigation, field staff will submit findings to a supervisor for review. Upon approval of the investigative reports, the investigation may be referred for criminal or administrative action or both. Additional information on next steps in the Board's processes are outlined in response to item #11.

If the investigation is for criminal prosecution, an investigation file is provided to the local county prosecutor or the U.S. Attorney for consideration.

10.

a. Does your board incorporate trauma-informed investigative techniques?

Yes. The Board recently worked with the Ohio Department of Health's Sexual Assault and Domestic Violence Program to develop and implement a policy to require trauma-informed sexual violence training for all staff.

i. If yes and required by your statute/rule/policy please cite

The Board's policy is included with this document as Attachment #1.

b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct?

i. If yes, what sexual assault training is required of your committee/board investigators?

Yes. All Board of Pharmacy Agents are required to obtain and maintain Ohio Peace Officer Training Academy (OPOTA) certification. The Board's sexual violence training policy requires all Agents to complete the four-part Responding to Sexual Assault training program from the eOPOTA Learning Management System.

For non-OPOTA certified staff (i.e. inspectors, pharmacists, and office staff), the Board's sexual violence training policy requires the completion of the following training programs provided by The Office for Victims of Crime Training and Technical Assistance Center (Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice):

- Basic Communications Skills (1 hour) - Provides the essential skills you need to communicate clearly with victims.
- Sexual Assault (45 minutes) - Includes information related to sexual assault and sexual violence. It includes definitions of the terms sexual violence and sexual assault; information about the victim service provider's role in relation to others working as part of a Sexual Assault

Response Team (SART), including differentiating the roles of victim service providers, SART, and other members of the SART; methods to assess the physical and psychological impact of sexual assault; information about the potential impact of sexual assault on various populations; and strategies to respond appropriately to victims of sexual assault.

- Trauma-Informed Care (30 minutes) - Covers the impact of trauma on crime victims.

ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share

For OPOTA certified staff: The training is conducted electronically using the [eOPOTA Learning Management System](#).

For non-OPOTA certified staff: The training is conducted electronically using courses provided by [The Office for Victims of Crime Training and Technical Assistance Center](#).

11. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

There is a three-step process for case review that starts with internal Board staff.

- 1) **Supervisor Review:** When a case investigation and its report are completed, the report requesting a citation is routed to the investigative staff's supervisor for review.

In some instances, the investigation reveals no violation of criminal or administrative codes over which the Board has jurisdiction, or not enough evidence to proceed. In those cases, a report documenting the staff person's findings is generated for supervisory review and case closeout.

Acceptable reasons for closure at this stage include the following: case is not warranted ("unfounded"), no violation of Board regulations occurred, violations occurred but were minor as to warrant either no action or a warning/corrective action plan by the assigned agent/specialist (ORC 4729.25, 3796.15, and 3719.18 authorize a warning for minor violations if the Board determines the public interest is adequately served by a notice or warning rather than enforcement action).

However, when there is jurisdiction and enough information/evidence on which to proceed, the agent will send a "Request for Cite" to the supervisor for review. The supervisor will review and approve the report and then send the case to the next step in the review process.

- 2) **Legal Review:** When a case warrants possible Board action, the case is reviewed by an internal team consisting of Director of Compliance and Enforcement and/or Chief of Investigations, the five Regional Agents in Charge and/or their Agent Supervisors, and

the Legal Department. Case facts and related evidence are reviewed to ensure all necessary evidence has been gathered. Possible outcomes include any of the following:

- a. The case is sent back to field staff for follow-up. If the group determines additional information/evidence is necessary, the case is sent back for further investigation/evidence gathering.
 - b. Sent to Legal Department to prepare for Citation Review. If the case is deemed to have enough evidence, it is sent to the Legal Department for presentation at the final step, Citation Review.
 - c. Case Closed no further action needed. In the event the team concludes there is not enough evidence to proceed (and no additional evidence would change the outcome), a warning is sufficient, or no further action is necessary, the case is closed at the Legal Review stage.
- 3) **Citation Review:** This final review stage before an administrative citation is issued consists of the following voting members: Board President, Executive Director, and assigned Assistant Attorney General, the Legal Department in its entirety who presents the case facts/evidence, and a senior representative from Compliance and Enforcement (typically the Director or Chief of Investigations).

The three voting members hear the facts of the case and determine whether there is probable cause for a citation to be issued. If there is not a consensus among the voting members, the case is to be taken before the full Board (in executive session) for consideration of charges at a subsequent meeting of the Board. The Citation Review process is memorialized in a Board Policy (included as Attachment #2). Possible outcomes include the following:

- a. Administrative Citation Issued – Notice of Opportunity for Hearing issued in accordance with requirements of Chapter 119 of the ORC.

In some cases, the voting members of Citation Review agree to issue an advance settlement option to the respondent along with the citation to resolve the matter without a hearing (for example, a continuing education violation).

- b. No Citation Issued/Warning Letter Sent – Voting members determine probable cause exists but allegations do not rise to level requiring formal Board action.
- c. No Citation Issued – Voting members determine probable cause exists but the allegations do not rise to the level requiring Board action (no discipline necessary), or voting members determine there is not enough evidence for probable cause/preponderance of evidence necessary to support an administrative hearing.

12. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

All stages of process described in answer to question 11 are memorialized, depending on the stage either in the Board's case management system (Matrix) or in Legal Department records (Citation Review).

13. Do/how does the board/committee ensure that complaints are closed for good cause?

a. Do you conduct review to ensure good cause?

Yes, please see answer to question 11.

i. If yes, is it required by statute/rule/policy?

There are no applicable statutes or rules that apply. However, the Board does have a policy documenting its Citation Review process (included as Attachment #2).

14. Are your committee/board investigative files public? No.

a. Cite to relevant confidentiality provisions.

ORC [4729.23](#) provides that information received by the Board pursuant to an investigation is confidential, is not a public record, and is not subject to discovery in any civil action. It does contain a provision that states, "The board may, for good cause shown, disclose or authorize disclosure of information gathered pursuant to an investigation." However, the board has been advised by the Attorney General's Office, in writing, not to rely on the "for good cause shown" provision as a "best practice standard."

b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?

The Board posts all administrative actions online and ensures they are publicly available on [eLicense](#), both the notice of hearing and subsequent Board Order related to discipline. In addition, exhibits that are used during the public hearing are available upon request (subject to redactions/sealing for personal and/or medical information).

c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed

Board investigations contain sensitive patient information as well as material required by law to be confidential (i.e. OARRS/drug database reports, see ORC

4729.80, 4729.86). Additionally, due to the nature of our enforcement authority, our Board is unique in that it also is tasked with the requirement of conducting criminal investigations of certain types (drug trafficking and other criminal investigations related to controlled substances, see ORC 3719.18(A)). Making criminal case investigations public is left to the discretion of the local prosecuting authority. In many instances, case files become public by virtue of open discovery in the criminal arena. However, as a general rule, the Board protects its confidential case techniques, which may include the use of covert cameras, confidential informants, and undercover operatives.

15. Generally, how do you receive complainants? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

1. Online complaint form (www.pharmacy.ohio.gov/complaint)
2. Telephone
3. Fax
4. In person
5. Generated by staff in the field
6. Generated internally from the Licensing or OARRS Departments
7. Referrals from other agencies

16. Can complainant(s) check on status of complaints they've made?

a. If yes, how?

Yes. Investigative staff are required to contact the complainant within 3 business days of receiving the complaint. Staff provide their contact information to the complainant so they can contact investigative staff directly for a status update.

17. How does a complainant find out the disposition of a complaint made?

Most often the complainant is informed of the administrative and/or criminal process by Board investigative staff as it progresses, or the complainant can contact investigative staff to check the status of their case (see item #16a). When formal action is taken administratively or criminally, those documents are a matter of public record.

18. Records retention

a. What are your retention requirements for investigative records?

Online investigative files are maintained for 20 years (although the Board's current case management system has only been in use since 2012). Hard copy case files are maintained onsite for 10 years. If Board action or a criminal case occurred, hard copy files are retained off site indefinitely. For investigative cases that do not have Board/criminal action, case files are properly discarded after 10 years.

b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?

Evidence destruction occurs at the conclusion of all cases (criminal and/or administrative), once appeals have been exhausted.

c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.

N/A



**Ohio Vision
Professionals Board**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Marlene Anielski, Executive Director

November 8, 2019

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

RE: Vision Professionals Boards – Governor’s Working Group Questionnaire

Dear Ms. Rose:

The fourteen (14) page attachment includes answers to the Governor’s Working Group questionnaire of seventeen (17) questions and training materials documentation. For background information, the Vision Professionals Board was created in January of 2018, as a result of the merger of the Board of Optometry and the Optical Dispensers Board from House Bill 49 in the 132nd General Assembly. Therefore, some answers will have several responses to reflect information from all three boards.

If you should have any other questions, please feel free to contact me directly. Thank you.

Respectfully,

Marlene Anielski
Executive Director



Ohio Vision Professionals Board

Mike DeWine, Governor
Jon Husted, Lt. Governor

Marlene Anielski, Executive Director

1. How many complaints does your board/committee receive annually (provide most recent five years)?

	<u>Board of Optometry</u>	<u>Optical Dispensers Board</u>	<u>Vision Professionals Board</u>
2015	49	39	
2016	59	45	
2017	95	49	
2018			117
2019 (YTD)			53

a. How many of these result in citation or some enforcement?

	<u>Board of Optometry</u>			<u>Optical Dispensers Board</u>			<u>Vision Professionals Board</u>		
	<u>C</u>	<u>R</u>	<u>S</u>	<u>C</u>	<u>R</u>	<u>S</u>	<u>C</u>	<u>R</u>	<u>S</u>
2015		1	1	9					
2016	2		1	19					
2017	1			25		1			
2018							2		1

2019 (YTD)

NOTE: C = Consent Agreements, R = Revocation of License, S = Suspensions
 Highlights indicate open cases, two (2) consent agreements (one (1) from 2016 and one (1) from 2018) and one suspension.

b. How many are unfounded?

	<u>Board of Optometry</u>	<u>Optical Dispensers Board</u>	<u>Vision Professionals Board</u>
2015	33	17	
2016	25	19	
2017	66	15	
2018			65
2019 (YTD)			15

c. If known, how many of these complaints allege sexual misconduct?

There was one (1) complaint in 2011 where an optometrist was criminally charged and sentenced in 2011 to a felony of the fourth degree of gross sexual imposition. The charge

was vacated in 2013 by the third district appellate court and the optometrist was resentenced to sexual imposition to a misdemeanor of the third degree and sentenced to sixty (60) days in jail. In 2014, the Ohio Supreme Court affirmed the ruling of the appellate court. In 2014, the Board of Optometry did a summary suspension. In 2015, the board revoked the license.

There was one (1) complaint in 2016 that was investigated by the Board of Optometry's Investigator and local police with the county prosecutor's office. The county prosecutor's office determined not to file criminal charges. The licensee signed a three (3) year consent agreement with the Board of Optometry.

2. Are your licensees required to report a licensee (or other person) to law enforcement if the person is suspected to have engaged in sexual misconduct?

No, the licensee is required to report to the board. If the VPB Investigator is notified, the investigator reports to law enforcement.

- a. If yes, provide citation to statute/rule/policy

<http://codes.ohio.gov/orc/4725.21>

3. Are your licensees required to self-report violations?

Yes

- a. If yes, provide citation statute/rule/policy

ORC 4725.22 indicates the licensee must notify the VPB within thirty (30) days after the final disposition of a claim for damages. In addition, first time applicants must submit to a background check with the Bureau of Criminal Investigation and the Federal Bureau of Investigation. Annually, licensees must complete a questionnaire when renewing a license. The questionnaire requests answers aimed at giving the licensee the opportunity to self-report violations.

- b. If yes how do you track?

If a licensee answers a question in the annual renewal showing a violation, the eLicense web system used by the VPB, will trigger a complaint to the Investigator.

4. Are your licensees required to report violations of fellow licensees?

Yes

a. If yes, citation:

<http://codes.ohio.gov/orc/4725.21>

b. If yes, how is it tracked?

If a licensee reports a violation of a fellow licensee, the VPB Investigator enters it into the web-based system eLicense as a complaint and will investigate the violation.

5. Does your board/commission encourage/promote regulation of self/ fellow licensees?

Yes

a. If yes, how?

i. Self

The VPB has an agreement with the Ohio Physicians Health Program (PHP), called the One Bite Program. The confidential resource program allows a healthcare professional licensee, impaired due to substance use disorder, to avoid formal disciplinary action by utilizing established monitoring and treatment in a compassionate, supportive and safe environment to improve the licensee's health and well-being.

ii. Fellow licensees

Licensees are required to follow ORC 4725.21 The Duty to Report Unprofessional Conduct or Addiction – Complaints.

6. If and how does your board/commission engage with law enforcement? Citations to statute/rule/policy if applicable

a. Licensing matters:

If criminal behavior is discovered during board licensing matters, the VPB contacts the appropriate law enforcement agency to report the behavior.

b. Criminal matters:

All criminal matters discovered in complaints, during inspections, or any other means, are reported to the appropriate law enforcement agency.

7. Does your committee/board's investigators or other staff refer allegations of criminal conduct to law enforcement?

Yes, if the VPB suspects a criminal violation, a referral will be made to law enforcement. If it is a serious criminal violation, e.g. sex offense, or assault, a report will be made to the appropriate law enforcement agency immediately.

8. If yes, and if documented, provide number of referrals for the most recent five years.

One complaint in 2016 was investigated by the VPB Investigator and local police. No criminal charges were filed. Licensee signed a consent agreement with the Board of Optometry.

9. Investigative process:

a. Does your board incorporate trauma-informed investigative techniques?

Yes, and during prior employment as a State of Ohio employee, the current VPB Investigator has taken the following courses in Ohio's Enterprise Learning Management System:

- Trauma Informed Investigations

i. If yes and required by your statute/rule/policy, please cite

The VPB Board Committees (2019-14), and VPB Investigations Coordinator policies (2019-19) are followed for all investigations, as needed. The VPB investigator will review and enroll as needed to any relevant training opportunities for trauma-informed investigative techniques.

b. Does your committee/board conduct investigations that involve sexual misconduct or work with other boards/commissions on investigations that involve sexual misconduct?

Yes, the VPB conducts investigations that involve sexual misconduct. The VPB assists any other agency that requires assistance.

i. If yes, what sexual assault training is required of your committee/board investigators?

The VPB ensures the board investigator is trained in specific knowledge of sexual assault complaints and given the proper training tools to handle such complaints.

1. Upon hire:

The VPB Investigator completed the following:

- Ohio State Highway Patrol's Overview of Human Trafficking training
- Ohio Administrative Knowledge System (OAKS) in Enterprise Learning Management System (ELM)
 - Human Trafficking
 - Sexual Harassment

2. Periodic or other:

The VPB Investigator does complete periodic trainings.

ii. If yes, who, what person/entity has conducted your training. Please provide any training materials you can share.

The VPB Investigator has attended the following trainings:

- Council on License Enforcement and Regulation (CLEAR) – National Certified Investigator and Inspector Training - Basic Certification (training materials attached).
- Education Network (EDUNET) – Child Sexual/Physical Abuse Investigations in Today's Law enforcement (training materials attached).

During prior employment as a State of Ohio employee, the current VPB Investigator has taken the following courses in Ohio's Enterprise Learning Management System (ELM):

- Sex Offender Awareness and Supervision
- Cognitive Mindset of High-Risk Sex Offenders
- Sex Offender Policy and Procedures
- Pursuing Online Child Predators
- Non-Stranger Sexual Assault Response and Investigation

10. Explain whether complaints received can be closed without being presented to the entire board/commission (i.e.: subgroup/staff can close without going to entire board/commission) and cite to any relevant statute/rule/policy.

A complaint can be closed by the investigator after reviewing the complaint with the designated board member that supervises investigations, the Executive Director, the Assistant Attorney General, and/or the VPB Investigative Committee. The relevant VPB policies include the Board Committees Policy (2019-14) and the Investigations Coordinator Policy (2019-19).

11. Do/how does the board/committee ensure that complaints closures with/without investigation or citation are adequately documented?

All complaints, after receiving original and requested documentation and conducting interviews, are investigated as to compliance to the Ohio Revised Code and the Ohio Administrative Code. All complaints are entered into the web-based eLicense system since 2018. Previous complaint documentation is typically in a paper file, not electronic. Periodic Investigative Committee meetings are held to review status and closures.

12. Do/how does the board/committee ensure that complaints are closed for good cause?

Periodic Investigative Committee meetings are held to review status and closures.

- a. Do you conduct review to ensure good cause?

Yes, reviews are conducted with the Investigative Committee.

- i. If yes, is it required by statute/rule/policy? Citation if applicable

The relevant VPB policies include the Board Committees Policy (2019-14) and the Investigations Coordinator Policy (2019-19).

13. Are your committee/board investigative files public?

No, the investigative files are not public. The information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

- a. Cite to relevant confidentiality provisions.

Ohio Revised Code (ORC) 4725.23, 1347.12, 1347.15, and 149.43
VPB Confidential Personal Information Policy (2019-02)
VPB Board Committees Policy (2019-14)

- b. Balancing test: if your investigative files are not public, how does the committee/board balance this confidentiality with the investigative staff remaining accountable to the board and the board remaining accountable to the public?

The board will share investigative information with other appropriate boards, agencies, and/or law enforcement that are investigating or prosecuting alleged offenses. The VPB will protect the confidentiality of patients and persons who file complaints with the board. The board will not make public the names or any identifying information about patients or complainants unless proper written consent is given.

- c. Provide citation and rationale for allowing or not allowing disclosure or public inspection of investigative files once closed;

Ohio Revised Code 4725.23. The board will make all efforts to protect the confidentiality of patients or complainants. The board will ensure the confidentiality when sharing information with other agencies or law enforcement who are investigating or prosecuting licensees.

14. Generally, how do you receive complaints? Please list all options for complaints (i.e.: online, telephone, in person, etc.)

Complaints are received via online, email, telephone, written, anonymous, in person, or any other means from the public.

15. Can complainant(s) check on status of complaints they've made?

Yes, the VPB allows an open dialog with the complainant to check on the status of their complaint anytime during the investigation.

- a. If yes, how?

The complainant can inquire via any method complainant chooses to check the status of their complaint.

16. How does a complainant find out the disposition of a complaint made?

The complainant may receive an email and/or letter from the VPB Investigator describing the final disposition of the complaint.

17. Records Retention

- a. What are your retention requirements for investigative records?

Pursuant to ORC 149.43(B)(2), the VPB's Record Retention Policy (2019-21) allows for the record retention schedule of keeping investigative paperwork records for five (5) years.

- b. What are your retention requirements for evidence collected in your investigations (if different from investigative records retention)?

Pursuant to ORC 149.43(B)(2), the VPB's Record Retention Policy (2019-21) allows for the record retention schedule of keeping paperwork evidence collected during an investigation for five (5) years. Paperwork is uploaded into the eLicense system, therefore retention is as long as the State of Ohio maintains the memory.

- c. Do you have any other retention schedules that relate to the preservation of investigative records? If so, please list record type and retention period.

Pursuant to the VPB's Record Retention Policy (2019-21), the following investigative paperwork records and retention periods are scheduled:

- Public hearing transcripts – five (5) years
- Complaint Roster – five (5) years
- Investigative files – five (5) years

All other files follow the DAS retention schedule GAR-LL-04.



Department of
Public Safety

Mike DeWine, Governor
Jon Husted, Lt. Governor

Thomas J. Stickrath, Director

February 20, 2020

Dear Healthcare Board Directors,

I would like to reiterate my thanks to each of you for the thorough input you provided in response to the Strauss Working Group's request for information. Thank you, as well, for your thoughtful participation that helped make the Working Group's January 16, 2020 meeting so productive. Building upon that meeting, the Working Group would like to capture for the Governor the improvements to policies and practices by your board/committee that are in response to the findings and recommendations in the Working Group's August 30, 2019 Report to the Governor, the September 13, 2019 request for information to healthcare boards/committees, or otherwise prompted by the revelations brought to light by the investigations into Richard Strauss. The Working Group asks that by Wednesday, April 8, 2020 you please describe each such specific changes the board/committee has made or plans to make to help avoid, investigate, and combat sexual misconduct by its licensees.

In addition, the Working Group has several follow-up questions to help refine the data you provided, mindful that the analysis is not intended to compare the experience of healthcare boards to one another, but to look at the extent to which each has taken steps to respond to allegations of sexual misconduct by its licensees. In that vein, and continuing the numbering used in the original September 13, 2019 request, the Working Group asks that by April 8th your board/committee also answer the following questions:

- ...
- 1(d). How many licensees does your board/committee manage annually (provide most recent five years)?
 - 1(e). Understanding that the number of sexual misconduct complaints is not a direct measure of the number of licensees who were the subject of such complaints (for example, a single licensee may have multiple complaints, or a single complaint may have identified multiple licensees), if known, how many licensees were the subject of sexual misconduct complaints annually (provide most recent five years)?
 - *Alternatively, what percentage of licensees in each year were the subject of a sexual misconduct complaint?*
 - 1(f). To the extent not readily determinable from the data provided to date, in each of the most recent five years, how many of the complaints that resulted in citation or some enforcement were sexual misconduct complaints?
 - *Alternatively, what percentage of the complaints that resulted in citation or some enforcement in each year were for sexual misconduct?*
 - 1(g). To the extent not readily determinable from the data provided to date, in each of the most recent five years, how many of the complaints that were unfounded were sexual misconduct complaints?
 - *Alternatively, what percentage of unfounded complaints in each year were for sexual misconduct?*

1(h). How does your board define sexual misconduct or sexual impropriety for purposes of investigating licensees? Please provide citations to any Ohio Revised Code or Ohio Administrative Code sections containing the definitions, and please attach any materials, such as manuals, resolutions, policies, or guidance to licenses or investigators, which contain the definition(s).

...

18. Please identify relevant scope of practice considerations, if any, that impacts regulation of your licensees for alleged sexual misconduct. For example, some boards/committees include licensees or classes of licensees that have prescriptive authority, use anesthesia, or encounter patients in various states of undress. Such considerations may color the overall approach to sexual impropriety cases, have different approaches, or may account for one group of licensees constituting the majority of such complaints.

The Working Group, and I as its Chair, remain committed to helping to facilitate training for or among your respective communities to advance the investigative recommendations of the Working Group. To that end, I welcome your feedback on what such training may entail. Please contact Robin McGuire Rose or Jim Hogan in the Department of Public Safety Office of Legal Services with your input.

Thank you once again for the work you do and for your responses to the Working Group's questions.

Sincerely,



Thomas Stickrath
Director



April 14, 2020

Via Email Delivery: rlmcguirerose@dps.ohio.gov

Robin L. McGuire Rose, Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street Columbus, Ohio 43223

Re: February 20, 2020 Request for Additional Information

Dear Chief Legal Counsel McGuire Rose:

The following are responses (in **bold**) to the questions sent to the Ohio Board of Nursing (Board) on February 21, 2020. These responses supplement the information provided to you by the Board on November 4, 2019 (November 4, 2019 Report).

1(d) How many licensees does your board/committee manage annually (provide most recent five years)? **See Attachment A.**

1(e) . . . how many licensees were the subject of sexual misconduct complaints annually (provide most recent five years)? **See November 4, 2019 Report Item 1.c.**

1(e) *Alternatively, what percentage of licensees in each year¹ were the subject of a sexual misconduct complaint?*

Calendar Year	2014	2015	2016	2017	2018
% Licensees Subject of Alleged Sexual Misconduct	.00074%	.0014%	.0014%	.0024%	.00034%

1(f) To the extent not readily determinable from the date provided to date, in each of the most recent five years, how many of the complaints that resulted in citation or some enforcement action were sexual misconduct complaints? *Alternatively, what percentage of the complaints that resulted in some citation or some enforcement in each year were for sexual misconduct?*

¹ License data is per fiscal year and complaint data is per calendar year, so there will be discrepancy in the reporting periods.

Calendar Year	2014	2015	2016	2017	2018
Enforcement Actions – Based on Sexual Misconduct	2	3	2	3	0
% of Enforcement Actions Based on Sexual Misconduct	.15%	.21%	.17%	.26%	0

1(g) To the extent not readily determinable from the data provided to date, in each of the most recent five years, how many of the complaints that were unfounded² were sexual misconduct complaints? Alternatively, what percentage of unfounded complaints in each year were for sexual misconduct?

Calendar Year	2014	2015	2016	2017	2018
Closed Without Action – Alleged Sexual Misconduct	0	1	2	4	1
% of All Closed Cases - Alleged Sexual Misconduct	0	.014%	.028%	.066%	.017%

1(h) How does your board define sexual misconduct or sexual impropriety for purposes of investigating licensees? Please provide citations to the Ohio Revised Code or Ohio Administrative

² The wording of the question does not consider complaints that involve individuals not licensed by the Board of Nursing (e.g., Nurse Aides). A complaint involving an individual not licensed by the Board would be closed/referred to another agency (e.g., ODH). While beyond the Board’s jurisdiction to investigate, that does not mean the complaint is “unfounded.”

Code sections containing the definitions, and please attach any materials, such as manuals, resolutions, policies, or guidance to licenses [sic] or investigators, which contain the definition(s).

The Nurse Practice Act (Chapter 4723., ORC) and administrative rules adopted under the Act do not use the terms “sexual misconduct” or “sexual impropriety”. The Board is required to investigate all information that alleges a violation of the Nurse Practice Act or rules adopted under the Act (Section 4723.28(H), ORC). Complaints alleging sexually inappropriate behavior would be investigated based on statutory or rule citations including the following:

ORC 4723.28

(B)(31): Failure to establish and maintain professional boundaries with a patient, as specified in rules adopted under section 4723.07 of the Revised Code;

(B)(32) Regardless of whether the contact or verbal behavior is consensual, engaging with a patient other than the spouse of the registered nurse, licensed practical nurse, or dialysis technician in any of the following:

- (a) Sexual contact, as defined in section 2907.01 of the Revised Code;
- (b) Verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning.

OAC 4723-4-06

(I) A licensed nurse shall delineate, establish, and maintain professional boundaries with each patient.

(M) A licensed nurse shall not:

- (1) Engage in sexual conduct with a patient;
- (2) Engage in conduct in the course of practice that may reasonably be interpreted as sexual;
- (3) Engage in any verbal behavior that is seductive or sexually demeaning to a patient; or
- (4) Engage in verbal behavior that may reasonably be interpreted as seductive, or sexually demeaning to a patient.

Reference Materials/Professional Boundaries:

The Board has regularly published articles in its quarterly periodical, *Momentum*, on the topic of maintaining professional boundaries, including case examples/scenarios compiled from real cases. This periodical is available to investigators and licensees at no cost via email, hardcopy and website posts (<https://nursing.ohio.gov/forms-publications/momentum-magazine>). The National Council of State Boards of Nursing has provided courses and materials on its website on this topic available to licensees, and historically included on the Board’s website under the Practice Resources link (see e.g., “A Nurse’s Guide to Professional Boundaries”, <https://www.ncsbn.org/3757.htm>). Board staff have published articles and provided presentations to nursing employers, associations, and health care systems related to professional boundaries violations. See, e.g., “Professional Boundaries Violations: Case Studies from a Regulatory Perspective,” Fischer, Holly R. JD; Houchen, Betsy J. MSN, JD, RN; Ferguson-Ramos, Lisa JD,

Additional Citations:

ORC 4723.281 Summary suspensions without a hearing – danger of immediate and serious harm to public

(B) When there is **clear and convincing evidence that continued practice by an individual licensed under this chapter presents a danger of immediate and serious harm to the public**, as determined on consideration of the evidence by the president and the executive director of the board of nursing, the president and director shall impose on the individual a summary suspension without a hearing. An individual serving as president or executive director in the absence of the president or executive director may take any action that this section requires or authorizes the president or executive director to take. Immediately following the decision to impose a summary suspension, the board shall issue a written order of suspension and cause it to be delivered by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during the pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the suspension requests an adjudication, the date set for the adjudication shall be within fifteen days but not earlier than seven days after the individual makes the request, unless another date is agreed to by both the individual and the board. The summary suspension shall remain in effect, unless reversed by the board, until a final adjudication order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudication order within ninety days after completion of the adjudication. If the board does not issue a final order within the ninety-day period, the summary suspension shall be void, but any final adjudication order issued subsequent to the ninety-day period shall not be affected.

Citations for Investigations – Based on Crimes

ORC 4723.28

(B) The board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or

similar program or for intervention in lieu of conviction for, any felony or of any crime involving gross immorality or moral turpitude;

(6) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

(7) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio;

OAC 4723-26-11

(B) By the vote of a quorum, the board may impose one or more of the following sanctions on an individual who applies for or holds, a community health worker certificate: deny, revoke, suspend, or place restrictions on a community health worker certificate, or reprimand or otherwise discipline a holder of a community health worker certificate. The sanctions may be imposed for any of the following:

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, of a misdemeanor committed in the course of performing care as a certified community health worker;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, any felony or any crime involving gross immorality or moral turpitude;

OAC 4723-27-09

(B) The board, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any medication aide certificate issued by the board; reprimand or otherwise discipline a holder of a medication aide certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

(3) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, of a misdemeanor committed in the course of practice;

(4) Conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, any felony or of any crime involving gross immorality or moral turpitude;

ORC 4723.281 Summary suspension without a hearing -

(A) As used in this section, with regard to offenses committed in Ohio, "aggravated murder," "murder," "voluntary manslaughter," "felonious assault," "kidnapping," "**rape,**" "**sexual battery,**" "**gross sexual imposition,**" "aggravated arson," "aggravated robbery," and "aggravated burglary" mean such offenses as defined in Title XXIX [29] of the Revised Code; with regard to offenses committed in other jurisdictions, the terms mean offenses comparable to offenses defined in Title XXIX [29] of the Revised Code.

(C) The license or certificate issued to an individual under this chapter is automatically suspended on that individual's conviction of, plea of guilty to, or judicial finding with regard to any of the following: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, **rape, sexual battery, gross sexual imposition,** aggravated arson, aggravated robbery, or aggravated burglary. The suspension shall remain in effect from the date of the conviction, plea, or finding until an adjudication is held under Chapter 119. of the Revised Code. If the board has knowledge that an automatic suspension has occurred, it shall notify the individual subject to the suspension. If the individual is notified and either fails to request an adjudication within the time periods established by Chapter 119. of the Revised Code or fails to participate in the adjudication, the board shall enter a final order permanently revoking the person's license or certificate.

18. Please identify the relevant scope of practice considerations, if any, that impacts regulations of your licensees for alleged sexual misconduct. For example, some boards/committees include licensees or classes of licensees that have prescriptive authority, use anesthesia, or encounter patients in various stages of undress. Such considerations may color the overall approach to sexual impropriety cases, have different approaches, or may account for one group of licensees constituting the majority of such complaints.

All Board licensees may engage in direct patient care, and as part of that care, the licensee may encounter patients in stages of undress. APRN-CRNAs may administer anesthesia drugs. APRN CNPs, CNSs and CNMs may prescribe drugs. RNs, LPNs, APRNs and DTs may provide care to patient in a home setting.

Board investigators receive training specific to conducting investigations alleging sexual misconduct (see November 4, 2019 Report, Item 9). In sexual misconduct cases, in addition to interviewing the patient/victim and evaluating credibility, eyewitness interviews, medical records/nursing notes, and electronic surveillance equipment may be critical in order to substantiate the misconduct. The setting and circumstances in which the alleged misconduct occurred are more significant than "scope of practice." For example, long-term care settings home-care settings, and post-anesthesia settings, where the patient may be cognitively impaired, are a more significant variable than scope of practice, because patients in these circumstances are extremely vulnerable and few/no witnesses may be present.

Another factor more significant than scope of practice is licensee gender. Male gender appears to be associated with a higher number of sexual misconduct complaints relative to

licensee population.³ Within the licensee groups regulated by the Board, males comprise a small minority. For example, the Board “2019 RN WorkForce Data Summary Report,” p.4, indicates 9% of all RNs are male. For Board WorkForce Data Reports, go to: <https://nursing.ohio.gov/forms-publications/workforce-data/>.

We appreciate the opportunity to provide this information, and please email me should you have any follow-up questions.

Respectfully submitted,



Holly R. Fischer

Chief Legal Counsel
Ohio Board of Nursing
hfischer@nursing.ohio.gov

Attached: Attachment A

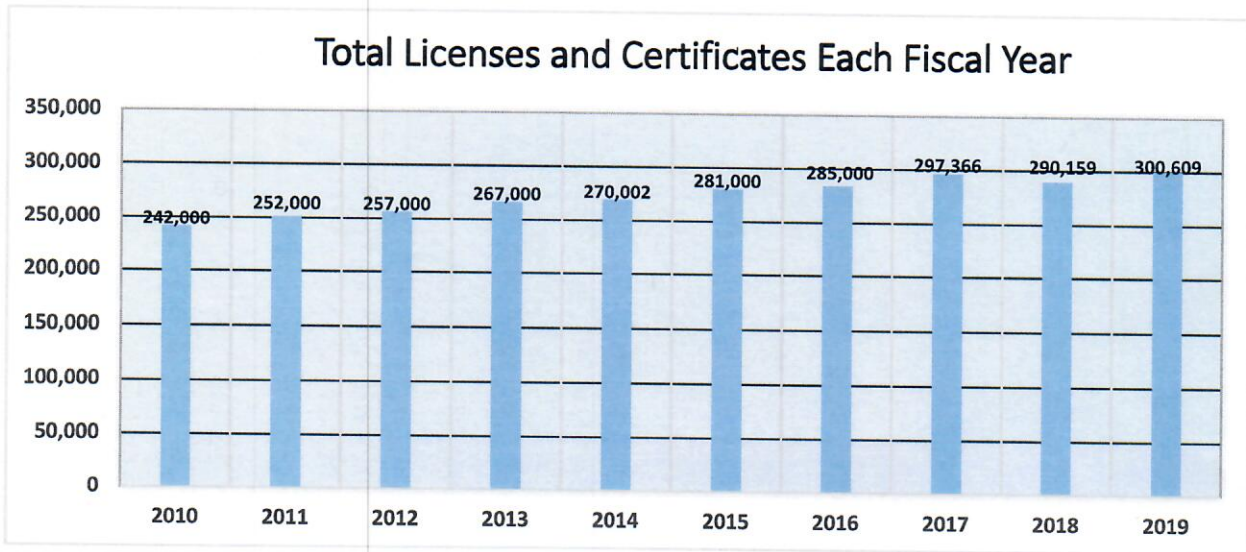
³ The percentage of sexual misconduct complaints involving males for the five years covered in the Board’s report, plus 2019, are: 2014 (50%); 2015 (33%); 2016 (100%); 2017 (57%); 2018 (100%); 2019 (83%).

Program Area Highlights and Statistics

Licensure and Certification

Strategic Initiative: Assure licensees and certificate holders meet statutory and regulatory requirements to be licensed or certified to practice in Ohio and are appropriately credentialed to practice, while maintaining an efficient and effective system to license or certify applicants as quickly as possible to enter or remain in the workforce.

- Regulated 300,609 licenses and certificates¹
- Licensed 1,439 service members, veterans, and spouses
- Issued 20,568 new licenses and certificates



¹ HB 216 (132nd GA) eliminated Certificates of Authority (COA) and Certificates to Prescribe (CTP) as of December 31, 2017, and replaced both certificates with one license for APRNs that designates them as CRNAs, CNPs, CNSs, or CNMs and authorizes certain APRNs to prescribe.



Ohio

Chemical Dependency
Professionals Board

April 8, 2020

Improvements to policies and practices in response to the findings and recommendations of the Working Group's 8/30/19 Report:

Added to our Ethics Log a way to distinguish grievances as they come in that identify as possible sexual misconduct for data collection. Summary suspensions have been loosely discussed with our Board as a possibility; however, it would require a statute change and the ability of our Board to conduct.

We now have a full-time investigator which will improve our response time to grievances. At this time, the investigator is scheduled to take C.L.E.A.R. Investigator training here in Ohio, August 2020.

The CDP Board would also benefit from the list of requested support and resources requested from the Health Care Boards.

Requested Board Support/Resources:

- State victims' advocate on state term contract
- Standardized survivor-centered and trauma informed investigative training
- Recommendations related to criminal codes and appropriate language for rules
- Updates on criminal sexual misconduct definitions and statutes limitations
- Confidentiality statutes for applicable Boards, particularly with regard to investigations
- Maintaining confidentiality of victims during disciplinary process/hearing
- Records retention recommendations

Jill Smock
Executive Director
Ohio Chemical Dependency Professionals Board
77 S. High Street, 16th Floor
Columbus, OH 43215
Tel: (614)387-1114 Fax (614)387-1109
Jill.Smock@ocdp.state.oh.us



Ohio Counselor, Social Worker & Marriage and Family Therapist Board

77 South High Street, 24th Floor, Room 2468

Columbus, Ohio 43215-6171

614-466-0912 & Fax 614-728-7790

<http://cswmft.ohio.gov> & cswmft.info@cswb.ohio.gov

To: Director Tom Stickrath, Ohio Department of Public Safety
C: Members of the Strauss Working Group
From: Brian Carnahan, Executive Director
Re: Proposed Next Steps

The CSWMFT Board is committed to ensuring that persons who are the victims of a sex-related ethics violation or crime receive prompt and fair treatment, and that such crimes are reported to and investigated by the appropriate authority. During its March 2020 Board meeting, the Board reviewed a sexual offense policy that outlines how investigators address sex-related complaints when there are concerns a crime has occurred. The policy helps to clarify when the Board should be investing a complaint and when the Board should defer to the appropriate law enforcement agency. The Board anticipates approving the policy during its May 2020 Board meeting.

In addition to establishing a policy outlining how investigators should proceed when they determine a sex-related crime may have occurred, the Board will be requiring additional training for investigators, including trauma informed care training. Other staff, for example the Board's receptionist, who may talk with persons submitting a complaint regarding a licensee of the Board will be required to take training to build skills in how to appropriate communicate with persons reporting a sexual offense.



Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

Governor
Mike DeWine
Executive Director
Missy Anthony

April 6, 2020

Director Tom Stickrath
Strauss Working Group
1980 West Broad Street
P.O. Box 182081
Columbus, OH 432180-2081

Dear Director Stickrath and members of the Governor's Strauss Working Group:

I appreciate the opportunity to provide supplemental information about the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board's efforts to improve operations in response to the concerns identified by the working group, as follows:

1. Two of the Board's investigators attended CLEAR's workshop called "Allegations of Sexual Misconduct"
2. One investigator is scheduled to attend a training called "Trauma's Impact on Boundary Violation Investigations"
3. The Board has incorporated "Duty to Report" training in all presentations to license holders and students.
4. The Board has incorporated specific questions related to duty to report in jurisprudence modules offered for continuing education and required for licensure by the Board.
5. The Physical Therapy Section of the Board has revised its Code of Ethics rule to be clearer that conversations with patients must not be sexual in nature unless clinically indicated. Other professions within the OTPTAT Board will be similarly reviewing their own codes of ethics.
6. The Board is seeking to add an attestation question in its renewal application in which the license holder acknowledges that they have a duty to report.
7. Enforcement staff reviewed with each Board section the limited circumstances under which the Board staff will close a case without Board review. This will be reviewed annually.

The Board continues to seek ways to improve our processes. A few resources which may be helpful:

1. A customizable online tool that can be offered through the Board for further education on duty to report.
2. Access to a victims advocate on state term contract.
3. Recommended schedule for records retention as it relates to investigatory and enforcement documents.
4. Recommended wording for rules/Ohio Revised Code related to sexual violations.

I am available at your convenience for further discussions on this important issue.

Sincerely,

Missy Anthony
Executive Director

April 3, 2020

The following is additional information addressing policies and practices in response to the findings and recommendations of the Working Group's 8/30/19 Report.

Policies and practices:

The Board has had long-standing policies and practices for the investigation of complaints ensuring transparency, fairness, due process, and appropriate actions. As indicated in the Board's response to the Workgroup Questionnaire, the Board has an Investigative Review Group that oversees its investigative process. The Board will continue to adhere to its investigative processes.

Specific Changes:

The Board plans to address training and resources focused on trauma informed investigative techniques. In August 2019, the Board adopted a Code of Ethics for hearing aid dealers and fitters, and also amended its Code of Ethics for audiologists and speech-language pathologists which defined sexual abuse/misconduct, exploitation, dual relationship, etc. as violations and grounds for disciplinary action.

Feedback on Training:

Our investigator has completed the following training:

- 9/26/19 - Child Sexual/Physical Abuse Investigations in Today's Law Enforcement Climate (90-minute webinar)
- 10/10/19 - Medical Evaluation of Child Sexual Abuse: Why Can't We Be More Like CSI? (90-minute webinar)

In addition, the Board would like to have access to training resources focused on trauma informed investigative techniques.

If there are any questions, please feel to contact me.

Sincerely,



Gregg B. Thornton, Esq.
Executive Director

E-mail: Gregg.thornton@shp.ohio.gov

Direct: (614) 644-9046.

77 S. High Street, Suite 1659

Columbus, OH 43215



State of Ohio
Ohio State Chiropractic Board

April 8, 2020

Thomas Stickrath, Director
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

Dear Director Stickrath:

In response to your correspondence of February 20, 2020, the Board has thoroughly reviewed the Working Group's input and recommendations made to the State Medical Board regarding the Strauss Investigation. Many improvements to the Board's practices have been made as a result of the Report, most notably, status updates are provided upon request to complainants and licensees, and closure letters are now sent advising of the disposition of each case.

The Board has also enhanced its online Jurisprudence exam and online laws and rules CE to include duty to report requirements. (Sexual misconduct is already addressed in both). Additionally, two recent Newsletters (August 2019 and January 2020) included information on an excellent profession-specific resource for professional boundaries education. The Board also prints excerpts from the publication, with permission, to address specific areas of sexual misconduct and plans to continue to do so in future Newsletters.

From reviewing the full text of the Board's Sexual Misconduct Rule (4734-9-06) included with this submission, you will see that the Board's definition of sexual misconduct is much broader than the criminal definition of sexual misconduct. The Board continues to work with law enforcement to determine those cases that rise to the level of criminal misconduct as early as possible in the investigative process in order to determine if the entity has received or is investigating the allegations, or whether to work those investigations jointly. Individuals identified in these criminal cases are availed of victim advocacy resources.

Our Investigator continues to utilize sexual misconduct and trauma informed investigative techniques, but more education on these specific topics is desired. Any assistance DPS can provide to facilitate this type of training would be greatly appreciated. The Board would be happy to help with this endeavor in any way possible.

Thank you for the opportunity to provide additional information. If I may provide anything further, please let me know.

Sincerely,

Kelly Caudill

Kelly Caudill
Executive Director

April 8, 2020

Improvements to policies and practices in response to the findings and recommendations of the Working Group's 8/30/19 Report:

Currently, the ODPS Division of EMS Chief of Investigations, in consultation with assigned ODPS legal counsel, continue reviewing and updating associated rules for further enforcement avenues involving suspected misconduct by any of our certificate holders. Draft language to cover sexual misconduct and physical assault as related to OAC 4765-9, 4765-10, 4765-22, and 4765-23, and the ability to adopt discipline from other boards and states is currently under review. Included in these efforts are alignment of similar rules as they apply to our firefighter and EMS provider certificate holders.

Robert Wagoner

Interim Executive Director

Ohio Division of EMS

1970 West Broad Street

Columbus, OH 43223

800-233-0785

614-387-0454

rlwagoner@dps.ohio.gov

From: [Dehner, Nicole](#)
To: [Caudill, Kelly](#); [Fischer, Holly](#)
Cc: [Houchen, Betsy](#); [Smock, Jill](#); [Carnahan, Brian](#); [Anthony, Melissa](#); [Schierholt, Steven](#); [Ross, Ronald](#); [Rolf, Margaret](#); [Kamdar, Harry](#); [Thornton, Gregg](#); [Anielski, Marlene](#); [Wagoner, Robert](#); [McNamee, Cameron](#); [Mcquire Rose, Robin](#)
Subject: RE: Working Group Sexual Misconduct Citations
Date: Tuesday, March 10, 2020 4:49:19 PM

Kelly,

Pharmacy relies on the summary suspension statutes many other boards do for suspension of those that are addicted, abusing, or found guilty of a drug offense or entered into ILC, 3719.121(A) and (C). We also use 3719.121(B) for permissive summary suspension of those licensees who pose a danger to the public, similar to the language Holly provided from the Nursing Board statute:

(B) If the board under which a person has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the person's professional practice or method of administering, prescribing, preparing, distributing, dispensing, or personally furnishing controlled substances or other dangerous drugs presents a danger of immediate and serious harm to others, the board may suspend the person's license, certificate, or registration without a hearing. Except as otherwise provided in sections [4715.30](#), [4723.281](#), [4729.16](#), [4730.25](#), [4731.22](#), and [4734.36](#) of the Revised Code, the board shall follow the procedure for suspension without a prior hearing in section [119.07](#) of the Revised Code. The suspension shall remain in effect, unless removed by the board, until the board's final adjudication order becomes effective, except that if the board does not issue its final adjudication order within ninety days after the hearing, the suspension shall be void on the ninety-first day after the hearing.

Pharmacy also has language allowing it in limited circumstances to suspend a company license. A Terminal Distributor of Dangerous Drugs license can be suspended if a licensee or prescriber at the practice is causing danger to the public. This could be a physician who is using his drug stock for the abuse of patients for example.

4729.571(A) The state board of pharmacy may suspend without a hearing the license of a terminal distributor of dangerous drugs if the board determines that there is clear and convincing evidence of a danger of immediate and serious harm to others due to either of the following:

- (1) The method used by the terminal distributor to possess or distribute dangerous drugs;
- (2) The method of prescribing dangerous drugs used by a licensed health professional authorized to prescribe drugs who holds a terminal distributor license or practices in the employ of or under contract with a terminal distributor.

In the case of a Pain Management Clinic or Office-Based Opioid Treatment Center, Pharmacy must first consult with the Medical Board prior to suspension.

Our company summary ability is not quite the same as that for individuals, so I understand if you'd like to keep it to just a person (non-corporation) suspension statutes. Let us know if you'd like anything additional.

Thanks!

Nicole



STATE OF OHIO
BOARD OF PHARMACY

Nicole Dehner

Chief Legal Counsel

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From: Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>

Sent: Tuesday, March 10, 2020 2:48 PM

To: Fischer, Holly <HFischer@nursing.ohio.gov>

Cc: Houchen, Betsy <BHouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian <Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>; Wagoner, Robert <rlwagone@dps.ohio.gov>; McNamee, Cameron <Cameron.McNamee@pharmacy.ohio.gov>; Dehner, Nicole <Nicole.Dehner@pharmacy.ohio.gov>; Mcquire Rose, Robin <rlmquirerose@dps.ohio.gov>

Subject: Working Group Sexual Misconduct Citations

Thank you Holly. Yes, what I sent you is different from what was reported, and I corrected the incorrect code sections cited. And while I did request each Board's ORC and OAC citations to actions that constitute sexual misconduct, some Boards replied by also including reference to statutes that authorize discipline based upon criminal convictions, which clearly do not constitute sexual misconduct in and of themselves.

So as not to create confusion between those Boards that included reference to the ability to discipline based upon a conviction and those that didn't, I created a separate section for each Board with their citations relating to discipline for criminal conduct to show that if a licensee is convicted of a sexual related crime, a Board can propose discipline simply based upon that conviction. You bring up a good point about summary suspension and it would be great if those Boards that have summary suspension authority would send the citation.

I think it would be helpful to the Working Group that we all report the same information, but obviously each Board decides what is reported and can delete or add what they wish. For now I will add in the additional information you sent on behalf of the Nursing Board.

Thank you!

Kelly Caudill
Executive Director
Ohio State Chiropractic Board
www.chirobd.ohio.gov

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From: Fischer, Holly <HFischer@nursing.ohio.gov>
Sent: Tuesday, March 10, 2020 1:52 PM
To: Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>
Cc: Houchen, Betsy <BHouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian <Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>; Wagoner, Robert <rlwagoner@dps.ohio.gov>; Mcnamee, Cameron <Cameron.McNamee@pharmacy.ohio.gov>; Dehner, Nicole <Nicole.Dehner@pharmacy.ohio.gov>; Mcguire Rose, Robin <rlm McGuire Rose@dps.ohio.gov>
Subject: Re: Working Group Sexual Misconduct Citations

Hi Kelly,

A few issues:

- 1) The list of citations that the Board emailed to you on February 7, 2020 is attached. As stated in your original request, you asked for "Each Board's ORC and OAC citations to actions that constitute sexual misconduct".
- 2)
Your list for the Nursing Board is different than what we sent you - looks like you added statutes that authorize the Board of Nursing to impose discipline based on action by criminal courts. Those statutes do not in and of themselves "constitute sexual misconduct" - they relate to generally to misdemeanors and felonies.
- 3) If the goal is to include any ORC/OAC statutes that authorize Board action based on misdemeanors, felonies, or other categories (e.g., summary suspensions based on public safety risk), then there are some ORC/OAC citations that missing from your summary:

ORC 4723.281 Summary suspension without a hearing - automatic suspensions.

(A) As used in this section, with regard to offenses committed in Ohio, "aggravated murder," "murder," "voluntary manslaughter," "felonious assault," "kidnapping," "rape," "sexual battery," "gross sexual imposition," "aggravated arson," "aggravated robbery," and "aggravated burglary" mean such offenses as defined in Title XXIX [29] of the Revised Code; with regard to offenses committed in other jurisdictions, the terms mean offenses comparable to offenses defined in Title XXIX [29] of the Revised Code.

(B) When there is clear and convincing evidence that continued practice by an individual licensed under this chapter presents a danger of immediate and serious harm to the public, as determined on consideration of the evidence by the president and the executive director of the board of nursing, the president and director shall impose on the individual a summary suspension without a hearing. An individual serving as president or executive director in the absence of the president or executive director may take any action that this section requires or authorizes the president or executive director to take. Immediately following the decision to impose a summary suspension, the board shall issue a written order of suspension and cause it to be delivered by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during the pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the suspension requests an adjudication, the date set for the adjudication shall be within fifteen days but not earlier than seven days after the individual makes the request, unless another date is agreed to by both the individual and the board. The summary suspension shall remain in effect, unless reversed by the board, until a final adjudication order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudication order within ninety days after completion of the adjudication. If the board does not issue a final order within the ninety-day period, the summary suspension shall be void, but any final adjudication order issued subsequent to the ninety-day period shall not be affected.

(C) The license or certificate issued to an individual under this chapter is automatically suspended on that individual's conviction of, plea of guilty to, or judicial finding with regard to any of the following: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. The suspension shall remain in effect from the date of the conviction, plea, or finding until an adjudication is held under Chapter 119. of the Revised Code. If the board has knowledge that an automatic suspension has occurred, it shall notify the individual subject to the suspension. If the individual is notified and either fails to request an adjudication within the time periods established by Chapter 119. of the Revised Code or fails to participate in the adjudication, the board shall enter a final order permanently revoking the person's license or certificate.

Also: See OAC 4723-26-11 (Community Health Workers); OAC 4723-27-09 (Medication Aides).

Holly R. Fischer, J.D.
Chief Legal Counsel
Ohio Board of Nursing
17 S. High Street, Suite 660
Columbus, Ohio 43215
Direct: (614) 995-4934

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From: "Houchen, Betsy" <BHouchen@nursing.ohio.gov>
Subject: Re: 2/7/2020 Meeting Re: Working Group Follow Up
Date: February 6, 2020 at 12:54:15 PM EST
To: "Caudill, Kelly" <Kelly.Caudill@chr.state.oh.us>, "Mcguire Rose, Robin" <rlmguirerose@dps.ohio.gov>
Cc: "Smock, Jill" <Jill@ocdp.ohio.gov>, "Carnahan, Brian" <Brian.Carnahan@cswb.ohio.gov>, "Anthony, Melissa" <missy.anthony@otptat.ohio.gov>, "Schierholt, Steven" <Steven.Schierholt@pharmacy.ohio.gov>, "Ross, Ronald" <Ronald.Ross@psy.ohio.gov>, "Rolf, Margaret" <Margaret.Rolf@cos.ohio.gov>, "Kamdar, Harry" <Harry.Kamdar@den.ohio.gov>, "Thornton, Gregg" <gregg.thornton@shp.ohio.gov>, "Anielski, Marlene" <Marlene.Anielski@vision.ohio.gov>, "Wagoner, Robert" <rlwagoner@dps.ohio.gov>

Hello,
Sending the attached information if needed. Due to conflicts with Board staff schedules, we are unable to attend on Friday. Thank you.

On Mar 10, 2020, at 11:35 AM, Caudill, Kelly <Kelly.Caudill@chr.state.oh.us> wrote:

Good Morning,

Attached is a document citing the full text of each Board's statutes and rules that define sexual misconduct.

Below those citations I included the laws I could find that allows each Board to discipline for criminal sexual misconduct violations.

Please review and let me know of any changes, corrections or additions. Thank you.

Kelly Caudill
Executive Director
Ohio State Chiropractic Board
www.chirobd.ohio.gov

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From: Caudill, Kelly
Sent: Monday, February 24, 2020 7:53 AM
To: Betsy Houchen (bhouchen@nursing.ohio.gov) <bhouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian <Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>; Wagoner, Robert <rlwagoner@dps.ohio.gov>; McNamee, Cameron <Cameron.McNamee@pharmacy.ohio.gov>; Dehner, Nicole <Nicole.Dehner@pharmacy.ohio.gov>; Fischer, Holly <HFischer@nursing.ohio.gov>
Subject: Working Group Additional Data Points

Good Morning,

I communicated with Robin last Friday and she said it would be great if we added the new data points into their existing Excel spreadsheet for submission, which I have done. Attached are the new data points with the responses I received from each Board. Please review for accuracy and make any changes you'd like, as well as add in the data for questions 1e, 1f, 1g. Please send me your updated responses by March 20th. Once I have all of the responses, I'll include everything in the official spreadsheet and return to everyone for final review.

You'll see I only cited the laws and rules applicable to defining sexual misconduct for each Board in the spreadsheet. I am working on a

separate document that includes the full text of the citations to attach to the spreadsheet. We've also been asked to submit improvements to policies and practices and specific changes each Board has made, or plans to make, to avoid, investigate, and combat licensee sexual misconduct, as well as submit any manuals, resolutions, policies or guidance to licensees or investigators, which contain the definitions. I'd be happy to put all of this together for our submission if you'd like.

I will also prepare a document for support, resources, training, etc. each Board identified.

Since our new deadline is April 8, no meeting necessary this week.

Kelly Caudill
Executive Director
Ohio State Chiropractic Board
www.chirobd.ohio.gov

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<Laws and rules citations to sexual misconduct.docx>

From: [Caudill, Kelly](#)
To: [Mcquire Rose, Robin](#); [Maines, Cari](#)
Cc: [Carnahan, Brian](#); [Thornton, Gregg](#); [Smock, Jill](#); [Wagoner, Robert](#); [Kamdar, Harry](#); [Anielski, Marlene](#); [Ross, Ronald](#); [Rolf, Margaret](#); [Anthony, Melissa](#); [Schierholt, Steven](#); [Mcnamee, Cameron](#); [Dehner, Nicole](#)
Subject: Working Group Data
Date: Wednesday, April 8, 2020 9:53:23 AM
Attachments: [Laws and rules citations to sexual misconduct.docx](#)
[CSW Response to Strauss Working Group 4-6-2020.pdf](#)
[CHR Ltr.pdf](#)
[SHP Supplemental Response.pdf](#)
[CDP Additional Information HC Boards Working Group.pdf](#)
[DPS Additional Information.pdf](#)
[Healthcare Board Analysis with New Data Points.xlsx](#)

Good Morning,

Attached please find the Working Group's spreadsheet with the additional data requested from the healthcare Boards. All Board responses are included, with the exception of the Nursing Board who is submitting their data separately. Also attached is supplemental information provided by the Counselor, Social Worker and Marriage and Family Therapist Board, Chiropractic Board, Speech and Hearing Professionals Board, Chemical Dependency Board and Emergency Medical Services. The Dental, Vision Professionals, Psychology, Pharmacy, Cosmetology and Barber, and Occupational, Physical Therapy and Athletic Trainers Boards will provide their supplemental information individually.

Please let me know if you have any questions.

Thank you, have a great day.

Kelly Caudill
Executive Director
Ohio State Chiropractic Board
www.chirobd.ohio.gov

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Question 1d	How many licensees does your board/committee manage annually (provide most recent five years)?
Nursing Board	
Chemical Dependency Professionals	10,894 Average
Counselor, Social Worker and Marriage and Family Therapist Board	38,000 Average
Occupational Therapy, Physical Therapy, and Athletic Trainers Board	Current: 34,268 Average: 31,462
Emergency Medical Services	53,740 Average FY19: 53,292 FY18: 53,275 FY17: 53,768 FY16: 54,153 FY15: 54,213)
Pharmacy Board	FY19: 60,212 FY18: 50,801 FY17: 25,852 FY16: 24,588 FY15: 23,931 (Numbers only include individuals, not site licenses such as pharmacies, wholesalers, and medical marijuana dispensaries.)(The Board began licensing medical marijuana employees in 2018 and pharmacy technicians in 2017.)
Psychology Board	4,360 Current 4,100 Average
Chiropractic Board	2,500 Average
Cosmetology and Barber Board	130,000 Average
Dental Board	35,588 Average
Speech and Hearing Professionals Board	10,703
Vision Professionals Board	7,400 Average FY19: 7,268 FY18: 7,403 FY17: 7,313 FY16: 7,479 FY15: 7,611

Question 1e	Understanding that the number of sexual misconduct complaints is not a direct measure of the number of licensees who were the subject of such complaints (for example, a single licensee may have multiple complaints, or a single complaint may have identified multiple licensees), if known, how many licensees were the subject of sexual misconduct complaints annually (provide most recent five years)? → <i>Alternatively, what percentage of licensees in each year were the subject of a sexual misconduct complaint?</i>
Nursing Board	
Chemical Dependency Professionals	Approximately 15- 20 per year
Counselor, Social Worker and Marriage and Family Therapist Board	FY19: 20 FY18: 26 FY17: 29 FY16: 17 FY15: 17
Occupational Therapy, Physical Therapy, and Athletic Trainers Board	FY19: 7 FY18: 4 FY17: 3 FY16: 1 FY15: 1
Emergency Medical Services	13 (Sexual misconduct cases only tracked since fall of 2018)
Pharmacy Board	24
Psychology Board	FY19: 2 FY18: 2 FY17: 1 FY16: 1 FY15: 2
Chiropractic Board	FY19: 13 FY18: 5 FY17: 6 FY16: 3 FY15: 5
Cosmetology and Barber Board	Not tracked. 1 known complaint in 2019
Dental Board	Less than 1 over the 5-year period.
Speech and Hearing Professionals Board	FY19: 1 FY18: 0 FY17: 0 FY16: 1 FY15: 1
Vision Professionals Board	4

Question 1f	To the extent not readily determinable from the data provided to date, in each of the most recent five years, how many of the complaints that resulted in citation or some enforcement were sexual misconduct complaints? → Alternatively, what percentage of the complaints that results in citation or some enforcement in each year were for sexual misconduct?
Nursing Board	
Chemical Dependency Professionals	16 (From 2016 to date)
Counselor, Social Worker and Marriage and Family Therapist Board	FY19: 5 FY18: 5 FY17:7 FY16: 2 FY15: 8
Occupational Therapy, Physical Therapy, and Athletic Trainers Board	FY19: 2 FY18: 2 FY17: 1 FY16: 0 FY15: 0
Emergency Medical Services	13 (Sexual misconduct cases only tracked since fall of 2018)
Pharmacy Board	7 (4 additional cases are still under investigation)
Psychology Board	FY19: 0 FY18: 1 FY17: 1 FY 16: 1 FY 15: 2
Chiropractic Board	FY19: 5 FY18: 1 FY17: 0 FY16: 0 FY15: 1
Cosmetology and Barber Board	1 Complaint was referred to law enforcement
Dental Board	1
Speech and Hearing Professionals Board	FY19: 1 FY18: 0 FY17: 1 FY16: 1 FY15: 0
Vision Professionals Board	4

Question 1g	To the extent not readily determinable from the date provided to date, in each of the most recent five years, how many of the complaints that were unfounded were sexual misconduct complaints? → <i>Alternatively, what percentage of unfounded complaints in each year were for sexual misconduct?</i>
Nursing Board	
Chemical Dependency Professionals	This historical information is not available for sexual misconduct specifically
Counselor, Social Worker and Marriage and Family Therapist Board	FY19: 14 FY18: 18 FY17: 21 FY16: 13 FY15: 11 Caveats: "Unfounded" cases include cases where the Board found that licensees did not follow best practice, but formal discipline was not warranted (caution letters were issued in such events). This also includes cases where the Board determined we did not have jurisdiction over the matter, and also includes cases which were unsubstantiated (these include cases where the Board could have found actionable evidence but the client or victim was unwilling to participate).
Occupational Therapy, Physical Therapy, and Athletic Trainers Board	FY19: 2 FY18: 2 FY17: 2 FY16: 1 FY15: 1
Emergency Medical Services Pharmacy Board	0 13
Psychology Board	FY19: 2 FY18: 1 FY17: 0 FY16: 0 FY15: 0
Chiropractic Board	FY19: 9 FY18: 4 FY17: 6 FY16: 3 FY15: 4
Cosmetology and Barber Board	0 Only known complaint referred to law enforcement
Dental Board	0
Speech and Hearing Professionals Board	0
Vision Professionals Board	0

<p style="text-align: center;">Question 1h</p>	<p>How does your board define sexual misconduct or sexual impropriety for purposes of investigating licensees? Please provide citations to any Ohio Revised Code or Ohio Administrative Code sections containing the definitions, and please attach any materials, such as manuals, resolutions, policies, or guidance to licenses or investigators, which contain the definition(s).</p>
<p style="text-align: center;">Nursing Board</p>	
<p style="text-align: center;">Chemical Dependency Professionals</p>	<p>ORC 4758.23(B); OAC 4758-8-01 (B)(2)(a), (B)(1)(j), (6)(a)-(c) and (B)(7)(a)-(d)</p>
<p style="text-align: center;">Counselor, Social Worker and Marriage and Family Therapist Board</p>	<p>ORC 4757.11, OAC 4757-5-02 (F) and (H) OAC 4757-5-03 and 4757-5-04</p>
<p style="text-align: center;">Occupational Therapy, Physical Therapy, and Athletic Trainers Board</p>	<p><u>Occupational Therapists:</u> OAC 4755-7-08 (C)(9)-(12) <u>Physical Therapists:</u> ORC 4755.47 (A)(25) and 4755-27-05 (B)(7)(8) <u>Athletic Trainers:</u> OAC 4755-41-01 (E)(4)(5)</p>
<p style="text-align: center;">Emergency Medical Services</p>	<p>Draft language to cover sexual misconduct and physical assault as related to OAC 4765-9, 4765-10, 4765-22, and 4765-23, and the ability to adopt discipline from other boards and states is currently under review. Included in these efforts are alignment of similar rules as they apply to our firefighter and EMS provider certificate holders.</p>
<p style="text-align: center;">Pharmacy Board</p>	<p><u>Pharmacists and Pharmacy Interns:</u> ORC 4729.16 and OAC 4729:1-4-01 and 4727:2-4-01. <u>Pharmacy Technicians:</u> ORC 4729.96 and OAC 4729:3-4-01. <u>Medical Marijuana Employees:</u> OAC 3796:6-4-03.</p>
<p style="text-align: center;">Psychology Board</p>	<p>Psychologists and School Psychologists: OAC 4732-17-01(B) and OAC 4732-17-01 (C). COBA: OAC 4783-7-01 (E)</p>
<p style="text-align: center;">Chiropractic Board</p>	<p>ORC 4734.31(C)(18) and OAC 4734-9-06</p>
<p style="text-align: center;">Cosmetology and Barber Board</p>	<p>n/a</p>
<p style="text-align: center;">Dental Board</p>	<p>ORC 4715.30(A)(7)</p>
<p style="text-align: center;">Speech and Hearing Professionals Board</p>	<p>ORC 4744.50, OAC 4747-1-23, OAC 4753-9-01 (A)(3)</p>
<p style="text-align: center;">Vision Professionals Board</p>	<p>ORC 4725.66</p>

<p style="text-align: center;">Question 18</p>	<p>Please identify relevant scope of practice considerations, if any, that impacts regulation of your licensees for alleged sexual misconduct. For example, some boards/committees include licensees or classes of licensees that have prescriptive authority, use anesthesia, or encounter patients in various states of undress. Such considerations may color the overall approach to sexual impropriety cases, have different approaches, or may account for one group of licensees constituting the majority of such complaints.</p>
<p style="text-align: center;">Nursing Board</p>	
<p style="text-align: center;">Chemical Dependency Professionals</p>	<p>Credential holders are not physically engaged with their clients, but often serve a vulnerable population that may have been previous victims of sexual assault and emotional trauma. Those in recovery that seek to work in the field and hold our credential, often too have come from a background that may have included sexual traumatization. This vulnerable population on both sides may attribute to higher incidences of sexual misconduct in our field. It <i>may</i> be why the Board has a higher number of sexual misconduct violations than other boards with the same number of licensees/certificate holders.</p>
<p style="text-align: center;">Counselor, Social Worker and Marriage and Family Therapist Board</p>	<p>The scopes of practice for all CSWMFT professions do not allow licensees to touch clients beyond customary business contact such as a handshake. Clinicians should not be present during physical exams of patients that require the removal of clothing, etc.</p>
<p style="text-align: center;">Occupational Therapy, Physical Therapy, and Athletic Trainers Board</p>	<p>May involve physical contact and examination of a patient, includes manual therapy (such as massage). The licensee should constantly be getting informed consent throughout evaluation and treatment to guard against crossing lines that the patient may have, but often it comes down to proper communication.</p>
<p style="text-align: center;">Emergency Medical Services</p>	<p>In accordance with OAC 4765.41, the medical director of each emergency medical service organization shall establish written protocols to be followed by EMS providers in performing emergency medical services. The medical director for an EMS organization may limit, but not exceed, the EMS scope of practice as established by the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) for EMS providers who provide emergency medical services under the auspices of the physician's certificate to practice medicine and surgery, or osteopathic medicine and surgery, issued under Chapter 4731 of the Ohio Revised Code. In addition, the protocols shall be consistent with applicable trauma triage protocols adopted under division (A) or approved under division (B)(2) of section 4765.40 of the Ohio Revised Code.</p>
<p style="text-align: center;">Pharmacy Board</p>	<p><u>Pharmacists</u>: Disrobing (only necessary for administration of certain immunizations and other injectable drugs); Prescriptive authority (only pursuant to a consult agreement per ORC 4729.39); Access to all dangerous drugs, including anesthesia drugs. <u>Pharmacy Interns</u>: Disrobing (only necessary for administration of certain immunizations); Access to all dangerous drugs, including anesthesia drugs. <u>Pharmacy Technicians</u>: Access to all dangerous drugs, including anesthesia drugs. <u>Medical Marijuana</u>: N/A</p>
<p style="text-align: center;">Psychology Board</p>	<p>Not within the scope of psychologists, school psychologists, or certified behavior analysts to have patients disrobe, permission to conduct physical examinations, etc.</p>
<p style="text-align: center;">Chiropractic Board</p>	<p>Licensees perform examinations and treatment for which the patient may be gowned.</p>
<p style="text-align: center;">Cosmetology and Barber Board</p>	<p>ORC 4709.01 and 4713.01. No prescriptive authority, use of anesthesia, etc. Disrobing and/or touching possible with relaxation massage, waxing and tanning but no ORC/OAC citations relating to disrobing and/or touching of individual being serviced.</p>
<p style="text-align: center;">Dental Board</p>	<p>Dentists: ORC 4715.01 and OAC 4715-5 Dental Hygiene: ORC 4715.22-.29 and OAC 4715-9 Dental X-Ray Machine Operators: 4715.51-.57 and OAC 4715-12 Expanded Function Dental Auxiliaries: ORC 4715.64-.66 and OAC 4715-11 See "Consolidated Auxiliary Duties (CAD) Matrix" document available under Licensure dropdown menu on website.</p>
<p style="text-align: center;">Speech and Hearing Professionals Board</p>	<p>Communications disorders related to speech and hearing. Body area involves the face, e.g., mouth and ears. Audiologists, hearing aid fitters, and speech-language pathologists do not have authority to prescribe medications under their scope of practice. Since the area impacted is the mouth and ears, patients are not required to disrobe during an examination, evaluation, or testing procedures. Nearly half of the 7,707 licensed speech-language pathologists work in a school setting and must also hold a pupil service license from the Ohio Department of Education (ODE). The majority of licensed speech-language pathologists are female: 90% female and 10% male. The majority of licensed audiologists are female: 87% female and 14% male.</p>
<p style="text-align: center;">Vision Professionals Board</p>	<p>Minimal number of optometrists have prescriptive authority. Not within the scope of practice for opticians and optometrists to have patients disrobe or permission to conduct full body physical examinations.</p>

From: [Fischer, Holly](#)
To: [Mcquire Rose, Robin](#)
Cc: [Houchen, Betsy](#); [Ferguson-Ramos, Lisa](#)
Subject: Ohio Board of Nursing - Request for Updated Information
Date: Monday, November 30, 2020 11:02:55 AM
Attachments: [Nursing Board 4.14.20 Report.pdf](#)
[Attachment A.pdf](#)

Robin,

Regarding your November 25, 2020 email, I've included responses to the information updates you requested (**red font**). In addition, I've attached the Board of Nursing's Report submitted to you on April 14, 2020.

Holly

Holly R. Fischer, J.D.
Chief Legal Counsel
Ohio Board of Nursing
17 S. High Street, Suite 660
Columbus, Ohio 43215

From: "Mcquire Rose, Robin" <rlmcguirerose@dps.ohio.gov>
Date: November 25, 2020 at 5:34:27 PM EST
To: "Houchen, Betsy" <BHouchen@nursing.ohio.gov>, "Smock, Jill" <Jill@ocdp.ohio.gov>, "Carnahan, Brian" <Brian.Carnahan@cswb.ohio.gov>, "Anthony, Melissa" <missy.anthony@otptat.ohio.gov>, "Wagoner, Robert" <rlwagoner@dps.ohio.gov>, "Schierholt, Steven" <Steven.Schierholt@pharmacy.ohio.gov>, "Ross, Ronald" <Ronald.Ross@psy.ohio.gov>, "Caudill, Kelly" <Kelly.Caudill@chr.state.oh.us>, "Rolf, Margaret" <Margaret.Rolf@cos.ohio.gov>, "Kamdar, Harry" <Harry.Kamdar@den.ohio.gov>, "Thornton, Gregg" <gregg.thornton@shp.ohio.gov>, "Anielski, Marlene" <Marlene.Anielski@vision.ohio.gov>
Subject: Request for information: Governor's Strauss Working Group

Good afternoon and Happy Thanksgiving,

I am writing to convey a request for information from Director Stickrath as Chair of the Governor's Strauss Working Group. First, he asked that share appreciation to you again on behalf of the Strauss Working Group for the information and insight you provided in response to the request from earlier this year. He also commended the thoughtfulness and determination that the State Medical Board and your board/commission have brought to addressing the serious issues flagged by the Governor's Working Group.

To build on that, the Working Group has one more information request of you, which we hope will give you the opportunity to demonstrate the strides your organization has made regarding the goal we all share of eradicating sexual impropriety in your practice areas:

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees; and,

Board of Nursing Investigators participated in two trainings this year:

(A) The first was a 30 minute pre-recorded online presentation during the February 12, 2020 Agent Retreat:

NCSBN Presentation: "Sexual Abuse: Achieving Zero Tolerance"
-Melanie de Leon, JD, MPA
Executive Director, Washington Medical Commission

All 14 Board Investigators and their Attorney Supervisor participated.

(B) The second was a live 90-minute presentation on July 15, 2020 via Microsoft Teams:

"Sexual Assault Investigations"
Michelle Stratton, BSN, RN, SANE-A
President, International Association of Forensic Nurses, Ohio Chapter
Forensic Nursing Program Director, Blanchard Valley Health System

The presentation discussed:

1. What a forensic nurse is, what they do, and how they investigate sexual assault
2. Assessment forms used during investigations, and the information that is collected
3. Victim-centered approach to investigations
 - a. Combating stereotypes
4. Sexual Trauma- and the physical health consequences of trauma
 - a. Neurobiology of Trauma
 - b. Tonic Immobility
5. Questions/Answers regarding the information

12 investigators were in attendance, plus the Attorney Supervisor and the Compliance Unit Manager. The presentation was recorded and is available for other staff members/new employees for future training events.

2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the

August 30, 2019 Working Group report?

The Board is conducting a rule hearing today at 1:00 pm to amend Rule 4723-14-03(J), OAC, to clarify that continuing legal education related to "victims of sexual assault" specifically qualifies for the continuing education required for license renewal. This revision was approved by the Advisory Committee on Advanced Registered Nursing Practice at its meeting July 6, 2020, and was approved by the Board at its meeting on July 22-23, 2020. If approved by JCARR the rule will be effective by February 1, 2021.

Please submit your response, even if to indicate that there is no additional information, by December 4, 2020. Of course, please also use this as an opportunity to update any other aspect of the responses and information you previously submitted to the Working Group. The information you provide will be shared with the Working Group Members and may be included in the Working Group's final report to the Governor.

If you have any questions, please don't hesitate to contact me.

Robin

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety

In order to help contain the spread of the coronavirus (COVID-19), the Ohio Board of Nursing has closed its offices to the general public and Board staff will be working remotely until further notice. Please be advised that it may take longer than usual to receive a response. If you need to contact the Board for any reason, please use the Contact Us at www.nursing.ohio.gov. A member of our staff will reply to your email as soon as possible. Thank you for your patience and understanding during this public health event. For updated information about COVID-19, visit www.coronavirus.ohio.gov or call 1-833-4-ASK-ODH.

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Ohio Board of Psychology

To: Governor's Working Group on the Medical Board/Richard Strauss

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety

Date: December 1, 2020

Re: Reply to Request

I am submitting this statement in response to your email dated November 25, 2020. This supplements Psychology Board communications to the Working Group in October 2019 and March 2020.

The Psychology Board has not implemented any additional measures since May 2020.

On behalf of the Ohio Board of Psychology, thank you for your work and your interest in our processes. Please do not hesitate to reach out if there are questions. I can be reached at (614) 466-1085.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald R. Ross".

Ronald R. Ross, Ph.D., CPM
Executive Director



Ohio Board of Psychology

To: Governor's Working Group on the Medical Board/Richard Strauss

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety

Date: January 25, 2021

Re: Follow-up Memorandum

I am submitting this statement in response to your email dated November 25, 2020 and your follow-up call today. This supplements Psychology Board communications to the Working Group dated October 22, 2019 and December 1, 2020.

The State Board of Psychology emphasizes trauma-informed complainant interviewing in its in-house investigator training, enforcement meetings, and performance reviews. It will also be publishing an annual practice alert about compliance with a board rule requiring reporting other license holders known or suspected to have committed violations of the laws or rules of the board, and staff will be asking the board to consider a potential rule change to require self-reporting of violations of the rules of professional conduct. It has recently reorganized its Prohibited Multiple Relationships rule to make it easier to identify and apply.

On behalf of the Ohio Board of Psychology, thank you for your work and your interest in our processes. Please do not hesitate to reach out if there are questions. I can be reached at (614) 466-1085.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald R. Ross".

Ronald R. Ross, Ph.D., CPM
Executive Director



Ohio

Chemical Dependency Professionals Board

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees; and,

The Chemical Dependency Professionals Board (OCDPB) hired a full time Investigator in 1/2020 in order to process the number of grievances received by our board, beyond what the previous part time contract investigator was able to complete. She joined the Ohio Investigator Association and has attended meetings and two of their virtual trainings thus far, “Open Source Intelligence Training” and “Virtual Hearing Prep and Witness Testimony.” This month she will be attending the 2 -week virtual Council on Licensure, Enforcement and Regulation (C.L.E.A.R.) National Certified Investigator Training (NCIT) and have submitted in our FY22/23 budget to continue providing specialized investigative training to our Investigator .

OCDPB has included in our FY2223 Budget proposal for a position that would include an Investigative Assistant to help complete many of the administrative tasks. This will allow our Investigator to focus more time on investigations and completing the larger volume of ethical cases.

OCDPB updated its Education Definitions for those applying for a license, renewal, or educational providers and added under the” Legal and Ethical Issues pertaining to Chemical Dependency Professionals” Content Area a bullet point that emphasizes “ **Roles and responsibilities of addictions professionals when aware of or engaging** with the OCDP Board’s investigations regarding potential ethical violations.”

The Executive Director plans on including in the next newsletter a reminder to all licensees that they have an ethical obligation to report any violations, especially sexual misconduct, according to their ethical code of conduct.

2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

The OCDPB Board’s AAG found a provision that allows our Board to utilize a Board member as a Hearing Officer to conduct hearings to process ethical violation cases allowing us to complete more hearings, including sexual misconduct hearings, than

were completed in the last two previous years combined. The OCDPB requested funding in FY22/23 budget to contract a Hearing officer for more serious cases involving sexual or fraud violations.

We have updated our “ethics log” to include sexual and fraud case specific data collection to analyze trends and number of these cases more efficiently.

Our Continuum of Sanctions with guidelines for ethics violation discipline has been updated . We have added Aggravating and Mitigating factors to our ethical review form and share those factors with the Board members when presenting cases to help guide the sanctioning process. We have provided more education to our Board Members on the process conducted by the Investigator, Executive Director and Ethics Committee before a case is brought to the Board for greater understanding of what has been covered and to guide any questioning of cases and sanctions.

Our board has also cooperatively worked with other boards’ Investigators on conducting interviews and investigations, especially sexual cases , when the respondent is dually licensed.

Respectfully submitted by:

A handwritten signature in black ink that reads "Jill Smock". The signature is written in a cursive, flowing style.

Jill Smock
Executive Director
OCDP Board

12.4.2020

Mcguire Rose, Robin

From: Carnahan, Brian
Sent: Friday, November 27, 2020 9:26 AM
To: Mcguire Rose, Robin
Subject: RE: Request for information: Governor's Strauss Working Group
Attachments: CSW Sexual Offense Policy May 2020.pdf

Hi Robin – I have attached the sexual offense policy the CSWMFT Board passed in May 2020 (response to #1 below). In addition to adopting this policy, the investigators, Deputy Director, and I have completed the training highlighted in the policy. This policy codifies and improves upon the approach the Board has operated under during my tenure with the Board as well as in preceding years. While the overwhelming majority of sex related complaints we receive involve unethical but consensual behavior, we have always been attuned to the need to identify any conduct that could be considered criminal and work with local law enforcement as necessary.

At present (response to #2), the Board is not anticipating any other significant changes to policies and procedures regarding sex related offenses. During investigation staff meetings, investigators have been intentional in discussing any sex related cases to ensure no issues are missed. We will continue to take advantage of appropriate training opportunities as well as review our policy on a regular basis.

Thanks,

Brian



Brian Carnahan, Executive Director
Counselor, Social Worker, and Marriage and Family Therapist Board
77 South High Street, 24th Floor, Room 2468
Columbus, Ohio 43215-6171
614.752.5161
614.728.7790 (Fax)
<http://cswmft.ohio.gov>

From: Mcguire Rose, Robin <rlmguirerose@dps.ohio.gov>
Sent: Wednesday, November 25, 2020 5:34 PM
To: Houchen, Betsy <BHouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian <Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Wagoner, Robert <rlwagoner@dps.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>
Subject: Request for information: Governor's Strauss Working Group

Good afternoon and Happy Thanksgiving,

I am writing to convey a request for information from Director Stickrath as Chair of the Governor's Strauss Working Group. First, he asked that share appreciation to you again on behalf of the Strauss Working Group for the information and insight you provided in response to the request from earlier this year. He also commended the thoughtfulness and determination that the State Medical Board and your board/commission have brought to addressing the serious issues flagged by the Governor's Working Group.

To build on that, the Working Group has one more information request of you, which we hope will give you the opportunity to demonstrate the strides your organization has made regarding the goal we all share of eradicating sexual impropriety in your practice areas:

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees; and,
2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

Please submit your response, even if to indicate that there is no additional information, by December 4, 2020. Of course, please also use this as an opportunity to update any other aspect of the responses and information you previously submitted to the Working Group. The information you provide will be shared with the Working Group Members and may be included in the Working Group's final report to the Governor.

If you have any questions, please don't hesitate to contact me.

Robin

Robin L. McGuire Rose

Chief Legal Counsel

Ohio Department of Public Safety

[1970 W. Broad Street, Columbus, OH 43223](https://www.ohio.gov/department-of-public-safety)

Office: [\(614\) 466-7014](tel:6144667014)

Direct: [\(614\) 752-0442](tel:6147520442)



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Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board

77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

Governor
Mike DeWine
Executive Director
Missy Anthony

November 27, 2020

Director Tom Stickrath
Chair, Governor's Strauss Working Group
1980 West Broad Street
P.O. Box 182081
Columbus, OH 432180-2081

Dear Director Stickrath:

Thank you for your inquiry about the steps the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers (OTPTAT) Board has taken to work toward the eradication of sexual impropriety in the professions regulated by the Board.

First, please know that this is an area of utmost importance to the Board. The regulated professions frequently work with vulnerable populations, such as the elderly and children in school settings. Every time the Board handles a case involving boundary violations and impropriety, it is a matter of grave concern. From the Board's perspective, even one of these disciplinary cases is too many. Most of the regulated professions require physical contact with a patient/client, and the Board recognizes the need to proactively educate license holders about issues related to professionalism to help avoid impropriety. To that end, the Board has identified the following areas of educational focus:

1. Duty to Report – All license holders should have a duty to report any unprofessional or illegal conduct to the Board by a fellow license holder. This is an issue that was identified by the Strauss Working Group.
2. Self-Report – All license holders have a duty to inform the Board of certain self-violations within thirty days.
3. Informed Consent – All license holders must obtain informed consent from their patients or from the parents of a minor patient for treatment. But informed consent requires that the patient have a full knowledge of the treatment and what it entails. This may require obtaining continuous consent and constantly communicating with a patient as treatment progresses to ensure their comfort level, especially if treatment involves sensitive areas of the body.

In response to your questions:

1. The Board has made the following specific changes since May 20, 2019 to help avoid, investigate, and combat sexual misconduct:
 - a. The Board reviewed The Ohio State University's report in the Strauss case for any possible violations of license holders.
 - b. Two of the Board's investigators attended CLEAR's workshop called "Allegations of Sexual Misconduct."
 - c. The Board has incorporated training on all three topics listed above in all presentations to license holders and students. The Board is taking steps to increase the number of presentations conducted on these topics in the future.
 - d. The Board has incorporated specific questions related to duty to report in jurisprudence modules offered for continuing education and required for licensure by the Board.
 - e. Enforcement staff reviewed with each Board section the limited circumstances under which the Board staff will close a case without Board review. This will be reviewed annually.
 - f. The Board has identified the need to make use of a victim advocate, should the need arise.

2. The Board has undertaken the following changes to policy or practice in response to matters raised by Executive Order 2019-16D or the August 30, 2019 Working Group report:
 - a. During the license renewal application process, all license holders are required to attest that they are “aware that according to your profession’s practice act, you have a personal duty to report to the OTPTAT Board when you believe that any individual licensed by the Board has violated its laws or rules.”
 - b. The Physical Therapy Section of the Board has revised its Code of Ethics rule to be clearer that conversations with patients must not be sexual in nature unless clinically indicated. Other professions within the OTPTAT Board will be similarly reviewing their own codes of ethics.
 - c. Board enforcement staff routinely discuss referrals to law enforcement with enforcement review panel Board members. Effort is being made to make earlier referral and work investigations cooperatively with law enforcement if they choose to get involved.
 - d. As a part of the state budget development process for FY 22-23, the Board has submitted the following language to enhance the Board’s tools to enforce against matters of sexual impropriety:
 - i. Permanent revocation of licenses. Currently, a license holder whose license has been revoked may apply for reinstatement after one year.
 - ii. Improvements to the disciplinary statutes in Chapters 4755 and 4779 and the references to sexual conduct. The Board has found current statute to be limiting. The Board is aware that the Medical Board is pursuing potential statutory changes in this area and would be interested in applying these changes as well.

The OTPTAT Board continues to seek ways to improve our processes. A few resources where guidance from the Working Group may be helpful:

1. Recommended schedule for records retention as it relates to investigatory and enforcement documents.
2. Recommended wording for rules/Ohio Revised Code related to sexual violations.
3. A customizable online educational tool that can be offered through the Board for further education on duty to report.
4. Access to a victim advocate on state term contract.

Thank you again for the opportunity to give input. The Board appreciates any additional advice or direction you can provide as we work together to eliminate sexual impropriety and protect Ohioans. I am available at your convenience for further discussions on this important issue.

Sincerely,



Missy Anthony
Executive Director



December 4, 2020

Robin L. McGuire Rose, Esq.
Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

Dear Chief Counsel McGuire:

I am following up to your e-mail received on November 25, 2020 requesting supplemental information for the Governor's Strauss Working Group. Below, please find information responsive to Director Stickrath's request.

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees;

The Board has reviewed its existing policies and practices for the investigation of complaints. The Board's policies ensure transparency, fairness, due process, and appropriate actions. The Board has an Investigative Review Group (IRG) that oversees its investigative process. The IRG is comprised of the Board's Executive Director, Investigator, Assistant Attorney General, and one board member who chairs the IRG. The IRG works in unison to ensure complaints are appropriately investigated and recommendations are presented to the Board for appropriate disciplinary action. Additionally, The Board's investigator completed training focused on trauma-informed investigative techniques. This important training will continue to be maintained as part of the investigator's ongoing professional development.

2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

In August of 2019, the Board adopted a new Code of Ethics for hearing aid dealers and hearing aid fitters. We also updated the existing Code of Ethics for audiologists, speech-language pathologists and all other licensees the Board has jurisdiction over. In accordance with Ohio Revised Code section 4744.50, the Board defined unprofessional conduct in its rules and included the following areas: dual relationship with a client or former client, committing an act of sexual abuse, misconduct, or exploitation of a client or former client, and except as permitted by law, violating client confidentiality. The Board may take disciplinary action against an applicant or license holder for violating any code of ethical practice. The Board also incorporates these areas of the code of ethics in its training and presentations to licensees. The Board requires licensees to complete two hours of continuing education related to ethics every

two years. The Board also instituted other new provisions under its duty to report. For instance, the Board now requires licensees to self-report a misdemeanor or felony conviction or adverse actions taken against them by another professional association, professional licensing authority or board, within thirty days of the conviction or adverse action. Licensees are now required to report to an appropriate authority when they have knowledge that a colleague is unable to provide professional services with reasonable skill and safety. The Board requires all licensees to report to the Board any violation of its rules or any breach of the code of ethics that the licensee is aware of pursuant to its rules under the code of ethics.

The Board is committed to fulfilling our mission of consumer protection. We appreciate this opportunity to provide additional information to demonstrate the strides we have taken and continue to make towards the goal of eradicating sexual impropriety in our practice areas.

If there are any questions, please feel to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Thornton". The signature is fluid and cursive, with the first name "Gregg" being more prominent and the last name "Thornton" following in a similar style.

Gregg B. Thornton, Esq.
Executive Director

E-mail: Gregg.thornton@shp.ohio.gov

Direct: (614) 644-9046.

77 S. High Street, Suite 1659

Columbus, OH 43215



State of Ohio
Ohio State Chiropractic Board

December 4, 2020

Robin L. McGuire Rose
Chief Legal Counsel
Ohio Department of Public Safety
1970 West Broad Street
Columbus, OH 43223

Dear Ms. McGuire Rose:

This correspondence is in response to your email of November 25, 2020. Specifically, you requested on behalf of Director Stickrath the specific changes the Board has made, or plans to make, since May 20, 2019 to help avoid, investigate, and combat sexual misconduct by our licensees and any other changes to policy/practice the Board has undertaken as a result of, or in response to, matters raised by the Governor's Executive Order 2019-16D or the August 30, 2019 Working Group report. In response, I provide the following:

Since May 2019 the Board has conducted, or plans to conduct, educational outreach:

Two Newsletters have been issued to the profession in which excerpts were published (with permission) from a document titled ["Professional Boundaries, Defining the Limits of Personal Responsibility"](#) by the National Chiropractic Mutual Insurance Company. The excerpts addressed social and electronic communications; why doctors are held to a higher standard; and the licensee's duty to report suspected violations. A link to the full publication was included and all licensees and their staff were encouraged read it in its entirety. (A Newsletter is currently being drafted to be issued later this month that will include an article about sexual misconduct and duty to report.)

The Board maintains an online continuing education opportunity for licensees. Questions regarding sexual misconduct were enhanced and information regarding duty to report suspected violations was added. Additionally, the Board will consider mandating CE on the topic of professional boundaries when it reviews license renewal requirements in the upcoming year.

All applicants for licensure must take and pass the Board's online Jurisprudence examination. Questions regarding sexual misconduct were enhanced and information regarding duty to report suspected violations was added.

Licensees accused of sexual misconduct, regardless of the outcome of the investigation, are advised to download and read *Professional Boundaries, Defining the Limits of Personal Responsibility*" by the National Chiropractic Mutual Insurance Company.

Since May 2019 the Board has enhanced, or plans to enhance, its sexual misconduct investigations:

Updates and closure letters are now issued to complainants. Interviews and contact with victims is at the victim's convenience in regard to location, date and time (to include evenings and weekends). Victims may contact the investigator at any time with questions or concerns.

Allegations that may rise to the level of possible criminal misconduct are brought to law enforcement's attention and inquiries about criminal complaint history is obtained when investigating allegations of sexual misconduct.

While the Board employs a full time investigator, the Board currently has an investigator on contract to assist with any emergent, priority allegations, particularly sexual misconduct allegations. This allows the Board to promptly address sexual misconduct allegations.

Although the Board's Investigator has earned training on sexual misconduct investigations previously, there has not been any new learning opportunities that we've been able to identify. However, our Investigator is very self-motivated and has listened to podcasts, searched out articles and publications and has consulted with other experienced investigators to increase her knowledge and understanding of sexual misconduct investigations.

Lastly, the Board plans to closely review its administrative rule governing sexual misconduct when conducting rules review within the next three months to determine if the rule needs updated or enhanced.

As you can see, the Board is committed to avoiding and combating sexual misconduct, as well as investigating allegations promptly. The Working Groups' recommendations have been informative, insightful and extremely helpful.

Thank you on behalf of the Board for the opportunity to provide additional information to the Working Group. The Board is open and interested in feedback and further training opportunities.

Sincerely,

Kelly Caudill

Kelly Caudill
Executive Director

From: Rolf, Margaret
Sent: Wednesday, December 2, 2020 12:23 PM
To: Mcguire Rose, Robin
Subject: RE: Request for information: Governor's Strauss Working Group

Dear Robin,

In response to your request for information, my responses are in red.

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees; and, **The Ohio State Cosmetology and Barber Board does not have the authority to investigate sexual misconduct by licensees. If we become aware of any potential misconduct, we notify the local police jurisdiction.**
2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report? **The Ohio State Cosmetology and Barber Board has not changed any policies or practices as a result of EO 2019-16D.**

Please let me know if you need anything else or wish to discuss.

Best regards,
Margie

Margaret V. Rolf
Executive Director
Ohio State Cosmetology & Barber Board
614-644-6139 (direct)
614-561-8661 (mobile)

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From: Mcguire Rose, Robin <rlmccguirerose@dps.ohio.gov>
Sent: Wednesday, November 25, 2020 5:34 PM
To: Houchen, Betsy <BHouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian

<Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Wagoner, Robert <rlwagoner@dps.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>

Subject: Request for information: Governor's Strauss Working Group

Good afternoon and Happy Thanksgiving,

I am writing to convey a request for information from Director Stickrath as Chair of the Governor's Strauss Working Group. First, he asked that share appreciation to you again on behalf of the Strauss Working Group for the information and insight you provided in response to the request from earlier this year. He also commended the thoughtfulness and determination that the State Medical Board and your board/commission have brought to addressing the serious issues flagged by the Governor's Working Group.

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2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

Please submit your response, even if to indicate that there is no additional information, by December 4, 2020. Of course, please also use this as an opportunity to update any other aspect of the responses and information you previously submitted to the Working Group. The information you provide will be shared with the Working Group Members and may be included in the Working Group's final report to the Governor.

If you have any questions, please don't hesitate to contact me.

Robin

Robin L. McGuire Rose

Chief Legal Counsel

Ohio Department of Public Safety

[1970 W. Broad Street, Columbus, OH 43223](https://www.ohio.gov/department-of-public-safety)

Office: [\(614\) 466-7014](tel:6144667014)

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Robin:

Thank you for your email. In response to the Working Group's request, this is a summary of action taken since our last meeting.

1. We have implemented a culture change within our Board whereby any cases related to sexual misconduct are treated with extreme caution and that victims are handled with compassion and empathy. This culture change is from top to bottom so that even our receptionist is aware when fielding phone calls from complainants.
2. As per ORC 4715.032, our Supervisory Investigative Panel (S.I.P.) consisting of two dentist board members reviews all cases and makes a recommendation for appropriate action to the rest of the board. The SIP has the ability to request additional information when reviewing investigations or make referrals to law enforcement. In this regard, their awareness of sexual misconduct complaints and impact on victims has been significantly elevated.
3. Investigators have completed the National Certified Investigator & Inspector Training (NCIT) training offered by the Council on Licensure, Enforcement & Regulation (CLEAR).
4. Investigators have joined the Ohio Investigators Association (OIA) which allows them access to resources and trainings offered by OIA. It also affords them the ability to meet and interact with investigators from other agencies around the state to create best practices and keep updated with any changes.
5. Looking to the future, it would be beneficial to consider creating a uniform and standardized training for occupational licensing board members and staff on the topic of sexual impropriety and victim awareness. This would allow for greater consistency across the state enterprise.

We will be glad to meet with you or answer any questions that you may have. Feel free to reach out to me or Zach Russell.

Wishing you well over the holiday season!

Sincerely,
Harry



Harry Kamdar, MBA

Executive Director,
Ohio State Dental Board
77 South High Street, 17th Floor,
Columbus, OH 43215
Tele: (614) 466-2580
E-mail: harry.kamdar@den.ohio.gov
Website: www.dental.ohio.gov

From: Wise, Michael <mawise@dps.ohio.gov>
Sent: Friday, December 4, 2020 11:51 AM
To: McGuire Rose, Robin <rlmcguirerose@dps.ohio.gov>
Cc: Wagoner, Robert <rlwagoner@dps.ohio.gov>; Demory, Joel <JBDemory@dps.ohio.gov>
Subject: RFI: Governor's Strauss Working Group

Robin:

I am responding on behalf of the EMFTS Board. During the timeframe specified in your email, the Board has taken the following actions:

1. Investigator Training—A recently hired investigator received trauma related training for issues related to victims of abuse or other wrongdoing. All other investigators already received this training.
2. Sexual Misconduct Investigation Priority—These cases have always received priority in the EMS Investigations Section. The investigation tracking software was updated to contain a new report tracker for sexual misconduct cases. Again, these cases have already received priority, but the report tracker will make it easier to track their status.
3. Background Checks—The Board proposed legislation that would require a criminal background check w/RapBack for all Division of EMS licensees. Funding for these checks, especially for volunteers & large paid departments who would cover the cost for all of their employees, creates significant push-back from our stakeholders, especially during this pandemic. Unfortunately, the proposed legislation was not enacted by the General Assembly last year.

Please let me know if you have any questions or concerns.

Michael Wise
Associate Legal Counsel
Ohio Department of Public Safety
614-466-3275





STATE OF
OHIO
BOARD OF PHARMACY

12/1/2020

Mr. Thomas Stickrath
Director
Ohio Department of Public Safety
1970 W. Broad Street
Columbus, OH 43223
Sent via email: rlmcguirerose@dps.ohio.gov

RE: Governor's Strauss Working Group

Director Stickrath,

The State of Ohio Board of Pharmacy (Board) commends the Governor's Strauss Working Group and all the work you and your staff have done to address sexual misconduct among healthcare providers. In response to the Working Group's request dated November 25, 2020, the Board respectfully submits the following:

Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees.

In October 2019, the Board worked with the Ohio Department of Health's Sexual Assault and Domestic Violence Program to develop and implement an agency-wide policy to require trauma-informed sexual violence training for all staff (a copy of the policy is included as an attachment). For Board Agents (who are OPOTA certified), training consists of the four-part Responding to Sexual Assault training program from the eOPOTA Learning Management System.

For non-OPOTA certified staff (i.e. inspectors, pharmacists, and office staff), the Board's sexual violence training policy requires the completion of the following training programs provided by The Office for Victims of Crime Training and Technical Assistance Center (Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice):

- Basic Communications Skills (1 hour) - Provides the essential skills you need to communicate clearly with victims.
- Sexual Assault (45 minutes) - Includes information related to sexual assault and sexual violence. It includes definitions of the terms sexual violence and sexual

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assault; information about the victim service provider's role in relation to others working as part of a Sexual Assault Response Team (SART), including differentiating the roles of victim service providers, SART, and other members of the SART; methods to assess the physical and psychological impact of sexual assault; information about the potential impact of sexual assault on various populations; and strategies to respond appropriately to victims of sexual assault.

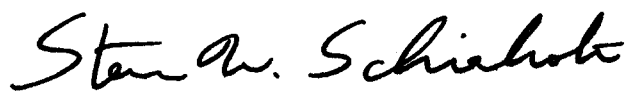
- Trauma-Informed Care (30 minutes) - Covers the impact of trauma on crime victims.

In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

- **5-Year Case Review:** The Board conducted a comprehensive review of all cases where sexual misconduct was potentially related to the allegations from July 1, 2014 to June 30, 2019. The review confirmed that all cases involving sexual misconduct were investigated, or are currently under investigation, and properly referred to law enforcement.
- **Duty to Report:** In December 2019, the Board implemented a new set of rules requiring pharmacists, pharmacy interns, and pharmacy technicians to report suspected sexual misconduct and other criminal and administrative violations to the Board of Pharmacy. More information about the Board's reporting requirements can be accessed here:
 - For pharmacists: www.pharmacy.ohio.gov/PharmReport
 - For interns: www.pharmacy.ohio.gov/InternReport
 - For pharmacy technicians: www.pharmacy.ohio.gov/TechReport

On behalf of the members of the State of Ohio Board of Pharmacy, thank you for the opportunity to assist the Working Group in safeguarding the citizens of Ohio. Should you have any questions or need additional information, please do not hesitate to contact the Board's Director of Policy and Communications, Cameron McNamee, at 614-466-7322 or via email: Cameron.McNamee@pharmacy.ohio.gov.

Sincerely,



Steven W. Schierholt
Executive Director
State of Ohio Board of Pharmacy

From: Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>
Sent: Wednesday, December 9, 2020 8:44 AM
To: McGuire Rose, Robin <rlmcguirerose@dps.ohio.gov>
Subject: RE: Request for information: Governor's Strauss Working Group

Robin,

The board changed rule 4725-5-05 Code of Ethics to combat sexual misconduct. The rule was approved by the Joint Committee of Agency Rule Review (JCARR) on Monday, December 7, 2020. It will go into effect in January of 2021. I have attached a copy of the rule for your perusal.

If you should have any other questions, please let me know

Warm personal regards,

MARLENE ANIELSKI, SHRM-CP

EXECUTIVE DIRECTOR
OHIO VISION PROFESSIONALS BOARD
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<https://eLicense.Ohio.gov>

Check for the latest updates on the COVID-19
at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/> or for additional
information call the Department of Health hotline at 1-833-4-ASK-ODH.

Have you received outstanding customer service from the Ohio Vision Professionals Board? If so, click [Customer Feedback](#) to tell us about it. Thank you.



From: McGuire Rose, Robin <rlmcguirerose@dps.ohio.gov>
Sent: Wednesday, November 25, 2020 5:34 PM
To: Houchen, Betsy <BHouchen@nursing.ohio.gov>; Smock, Jill <Jill@ocdp.ohio.gov>; Carnahan, Brian

<Brian.Carnahan@cswb.ohio.gov>; Anthony, Melissa <missy.anthony@otptat.ohio.gov>; Wagoner, Robert <rlwagoner@dps.ohio.gov>; Schierholt, Steven <Steven.Schierholt@pharmacy.ohio.gov>; Ross, Ronald <Ronald.Ross@psy.ohio.gov>; Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>; Rolf, Margaret <Margaret.Rolf@cos.ohio.gov>; Kamdar, Harry <Harry.Kamdar@den.ohio.gov>; Thornton, Gregg <gregg.thornton@shp.ohio.gov>; Anielski, Marlene <Marlene.Anielski@vision.ohio.gov>

Subject: Request for information: Governor's Strauss Working Group

Good afternoon and Happy Thanksgiving,

I am writing to convey a request for information from Director Stickrath as Chair of the Governor's Strauss Working Group. First, he asked that share appreciation to you again on behalf of the Strauss Working Group for the information and insight you provided in response to the request from earlier this year. He also commended the thoughtfulness and determination that the State Medical Board and your board/commission have brought to addressing the serious issues flagged by the Governor's Working Group.

To build on that, the Working Group has one more information request of you, which we hope will give you the opportunity to demonstrate the strides your organization has made regarding the goal we all share of eradicating sexual impropriety in your practice areas:

1. Please describe the specific changes your board/committee has made since May 20, 2019, or has adopted plans to make, to help avoid, investigate, and combat sexual misconduct by its licensees; and,
2. In addition to advances addressing sexual misconduct, what other changes to policy and practice has your board/committee undertaken as a result of, or in response to matters raised by, Executive Order 2019-16D, or the August 30, 2019 Working Group report?

Please submit your response, even if to indicate that there is no additional information, by December 4, 2020. Of course, please also use this as an opportunity to update any other aspect of the responses and information you previously submitted to the Working Group. The information you provide will be shared with the Working Group Members and may be included in the Working Group's final report to the Governor.

If you have any questions, please don't hesitate to contact me.

Robin

Robin L. McGuire Rose

Chief Legal Counsel

Ohio Department of Public Safety

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Office: [\(614\) 466-7014](tel:6144667014)

Direct: [\(614\) 752-0442](tel:6147520442)



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Other Healthcare Board Trainings

<p>Council on Licensure, Enforcement & Regulation (known as 'CLEAR') Professional association, host 3 day conferences, some workshops are web-based</p>	<ul style="list-style-type: none"> -Investigating Allegations of Sexual Misconduct workshop (1/2 day) -Trauma's Impact on Boundary Violation Investigations -National Certified Investigator and Inspector Training (basic and specialized programs, 3 days, Raleigh, NC March 2021, Austin, Tx April 2021) -Trauma's Impact on Boundary Violation Investigations -CLEAR3 Training: National Certified Investigation & Inspector Training NCIT Basic
<p>Ohio Peace Officers Training Academy, (OPOTA Certified personnel)</p>	<ul style="list-style-type: none"> - Responding to Sexual Assault training program (four-part program: Realities, Myths and Misconceptions, Initial Response and Understanding Trauma, Report Writing, Evidence Collection)
<p>The Office for Victims of Crime (OVC) Training and Technical Assistance Center, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice</p>	<p>Provides victim assistance training online as well as instructor materials for presenters to provide trainings</p> <ul style="list-style-type: none"> -Basic Communications Skills (1 hour) - Provides the essential skills needed to communicate clearly with victims. -Sexual Assault (45 minutes) - Includes information related to sexual assault and sexual violence. It includes definitions of the terms sexual violence and sexual assault; information about the victim service, -Trauma-Informed Care (30 minutes) - Covers the impact of trauma on crime victims.
<p>Ohio Attorney General's office</p>	<ul style="list-style-type: none"> -Investigating Sexual Abuse -Child Sexual/Physical Abuse Investigations in Today's Law Enforcement Climate -Finding Words
<p>Midwest Regional Children's Advocacy Center</p>	<ul style="list-style-type: none"> -Child sexual/ physical abuse investigations in today's law Enforcement Climate (90-minute webinar) - Medical Evaluation of Child Sexual Abuse: Why Can't We Be More Like CSI? (90-minute webinar)
<p>Ohio Dept. of Mental Health and Addiction Services</p>	<ul style="list-style-type: none"> -Trauma-Informed Care resources to supplement training
<p>Ohio Department of Health</p>	<ul style="list-style-type: none"> -Sexual Assault and Domestic Violence resources used to develop trainings
<p>Associations specific to a board (ie: International Assn' Forensic Nurses, National Council of State Boards of Nursing)</p>	<p>Sexual Assault Training; Adopting a victim Centered Approach and a Trauma Informed Response, Sexual Abuse: Achieving Zero Tolerance</p>
<p>Ohio Victim Witness Association</p>	<p>½ day victim advocate training to investigators, legal, enforcement sections</p>

STANDARD ON TRAINING AND POLICY FOR OHIO HEALTH CARE BOARDS’ INVESTIGATION OF ALLEGATIONS OF SEXUAL IMPROPRIETY

PURPOSE

The report of the Governor’s Working Group reviewing the Medical Board’s handling of the investigation involving Richard Strauss recommended, among other things, that Ohio health care boards review how they require licensees to report violations, engage law enforcement in sexual impropriety cases, and incorporate survivor-centered and trauma-informed investigative techniques. Training, particularly regular training of investigators and enforcement staff, is necessary to make and sustain advances in these areas.

POLICY RECOMMENDATION

Ohio health care boards should adopt a written policy detailing the expectations of investigators and enforcement staff relating to investigations of licensee sexual impropriety. The written policy should reinforce the importance in each sexual impropriety investigation of (i) utilizing trauma-informed approaches throughout the investigation (ii) examining whether any licensee failed to report the alleged misconduct (this may identify additional violations when there is a duty to report, and even in the absence of a duty to report may be relevant to the underlying investigation or highlight the need to develop an enforceable duty to report), and (iii) involving law enforcement and victim advocacy when investigating credible complaints of sexual impropriety. Newly hired investigators and enforcement staff, including those with significant prior experience, should review the written policy at the time of hire.

Investigators and enforcement staff should be trained in the written policy expectations as well as survivor-centered and trauma-informed investigative techniques for sexual impropriety cases. Initial training for investigators and enforcement staff may be most effectively accomplished over several sessions, allowing for discussion and understanding the “real-world” applicability of the techniques. Follow-up training and policy acknowledgement/attestation should be conducted at least annually to reinforce core concepts and to cover emerging or advanced information. Newly hired investigators and enforcement staff, including those with significant prior experience, should receive the initial training.

At a minimum, the policy and training should include the following substantive elements:

- Trauma-informed interview techniques that demonstrate respect for the person alleging misconduct and the trauma that he/she may have experienced, while maximizing information collection and documentation of the victim/interviewee’s experience in an accurate and fair manner;
- The importance of detailed, accurate report writing and proper documentation to include audio and/or video recording of interviews (when the alleged victim provides consent for this) maintained as part of the investigative file;
- A clear process whereby investigators collaborate with local law enforcement and prosecutors’ offices (when applicable) for suspected criminal matters;
- The value of developing relationships with advocacy groups and local helping resources; and,

- Training for enforcement attorneys in the pursuit of sexual impropriety complaints (i.e. educating your trier of fact on delayed reporting and trauma, along with strategies in proving a case based largely on testimony of one witness).

Boards should educate licensees, as well. The extent and manner of this training will differ depending upon the resources, rules, and opportunities to train licensees, but should include the following substantive elements:

- The duty to report licensees or, if the board has no duty to report, then the duty to maintain practice standards for patient safety and importance to the ethics and integrity of the practice of reporting potential violations;
- Recognizing grooming behavior (*i.e.* isolating victims and undue interest in specific patients) and other indicators of potential sexual impropriety in order to promote early intervention;
- Bystander intervention techniques; and,
- Criminal and civil liability for failure to report certain offenses (*i.e.* R.C. 2151.421 and R.C. 2921.22), and, regardless of a statutory duty to report, encouraging reporting potential crimes to law enforcement.

If boards are unable to incorporate these elements into training, boards should at least provide the relevant information to licensees, preferably in a way that both promotes and tracks actual review of the materials, such as, for example, building an acknowledgement or attestation into its licensing practices as part of the initial licensing process and license renewals.

Boards should also reinforce public education of those served by licensees. Licensees should be educated on what is expected in a professional health care setting – patient relationship, and what is not appropriate. At a minimum, boards should empower patients and customers to ask questions, and inform them on how and where to report if they feel an impropriety has occurred.

COMMENTARY

Collaboration; Cost mitigation. The marketplace offers many training opportunities, but the Working Group recognizes that some bodies will find commercial options difficult due, for example, to budgetary constraints, small investigative staffs, and restrictions related to the COVID-19 pandemic. The Working Group recommends that Ohio’s health care boards collaborate: (i) to explore and share cost effective third-party training, ideally still allowing for agency customization, including working together on requests for proposals, vendor selection, cost sharing; and, (ii) to develop in-house training that can be offered to state employees without additional cost to the health care boards, and that they consider training staffs from multiple agencies together. Training investigators from multiple agencies will allow for broader experience to be shared through the training, promote consistency, and open cross-agency relationships. While there can be no one-size-fits-all training for all health care boards, the generally applicable principles and techniques can be offered to multiple agencies, who may, of course, tailor additional or follow-up training to their respective needs and practice areas. Training that is comprised of a self-study component followed by targeted small group discussion and virtual live training can be accomplished remotely.

Procedural Elements of Training. There are myriad resources and schools of thought on how and why to train, and each agency's needs will vary. Generally, though, training should be part of a broader approach that demonstrates and reinforces the agency's (and agency leadership's) commitment to the success of those trained and the aspects of the mission the training serves. To that end, training should:

- *Be grounded in and build upon written policies and procedures* – the training should focus not just on the techniques and skills, but look to the agency policies for the relevance, importance, and necessary commitment to the training;
- *Establish minimum knowledge and awareness of the expectations for investigators and enforcement staff* – this includes the spectrum from acknowledging receipt and reading of the policies, to tracking attendance at training and review of materials to ensure that each staff member participates;
- *Document proficiency in the core substantive components of the training* – this could include knowledge quizzing at the training, at subsequent gatherings, and through follow-up individual or small group sessions that allow not only for testing of proficiency but for feedback on real-life application of the training; this could also be completed through annual review by enforcement supervisors or contemporaries in observed compliance and successes/failures; and,
- *Promote compliance with training goals among investigators and enforcement staff* – this will include continuity of message (i.e. annual training, follow-up messaging) but also requires monitoring by agency leadership and holding accountable those who do not comply with the training.

Sample Resources.

The Federation of State Medical Boards conducted a review of the State Medical Board of Ohio, which included valuable insight that other health care boards may find useful. That report is on the Medical Board's website, under the Transparency tab, via [this link](#).

The United States Department of Justice issued National Training Standards for Sexual Assault, which it updated in August 2018. That document is available via [this link](#).

Michigan developed a model policy for forensic interviewing for sexual assault cases, which states in the preface: "The State of Michigan Sexual Assault Model Policy Working Group was created by the Michigan Domestic and Sexual Violence Prevention and Treatment Board to draft a resource for law enforcement agencies that represents best practices for the effective response to, and investigation of, the sexual assault of adults and young adults." The Michigan model policy is available via [this link](#).

The Texas Attorney General Sexual Assault Training Program Certification provides additional content for consideration, in particular the certification guide available via [this link](#).

Midwest Regional Children's Advocacy Center has multiple, different training opportunities, both online and in-person. The Center's "Learning" tab is available via [this link](#).

PreventConnect provides web conferences and other resources "to advance the primary prevention of sexual assault and relationship violence by building a community of practice among people who are engaged in such efforts. PreventConnect also builds the capacity of local, state, territorial, national and tribal agencies and organizations to develop, implement and evaluate effective prevention initiatives." The website is available via [this link](#).

VAWnet, a project of the National Resource Center on Domestic Violence, gathers a broad range of educational media, available via [this link](#).

The Justice Clearing House also collects a broad array of online education opportunities, with a variety of speakers from across the country, available via [this link](#).