



# **BOARD MEETING MINUTES**

**March 16 - 18, 2022**

**3127 Smoketree Court  
Raleigh, North Carolina**

General Session Minutes of the North Carolina Medical Board (NCMB) Meeting held March 16 – 18, 2022.

The March 16 - 18, 2022 meeting of the North Carolina Medical Board was held at 3127 Smoketree Court, Raleigh, NC 27604. John W. Rusher, MD, JD; President, called the meeting to order. Board members in attendance were: Michaux R. Kilpatrick, MD; President-Elect; Christine M. Khandelwal, DO; Secretary/Treasurer; Shawn P. Parker, JD; W. Howard Hall, MD; Joshua D. Malcolm, JD; Damian F. McHugh, MD; Devdutta G. Sangvai, MD, Mr. William M. Brawley; Anuradha Rao-Patel, MD; Sharona Y. Johnson, PhD, FNP-BC; Miguel A. Pineiro, PA-C; and Melinda H. Privette, MD, JD

### **PRESIDENTIAL REMARKS**

Dr. John W. Rusher reminded the Board members of their duty to avoid conflicts of interest with respect to any matters coming before the Board as required by the State Government Ethics Act. Reported conflicts were included within individual committee reports.

### **ANNOUNCEMENTS and UPDATES**

Management introduced new NCMB staff.

### **PRESENTATIONS**

Board member training was provided by staff, Mr. Thom Mansfield.

### **NORTH CAROLINA PHYSICIAN HEALTH PROGRAM REPORTS (NCPHP)**

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

Dr. Jordan gave the PHP Compliance Committee report. The specifics of this report are not included because the information contained in the report is confidential and non-public.

A motion passed to return to open session.

Mr. Shawn Parker presented the NCPHP Board of Directors report.

### **NCMB ATTORNEY'S REPORT**

Mr. Brian L. Blankenship, Deputy General Counsel and Mr. Thomas W. Mansfield, Chief Legal Officer, gave the Attorney's Report on Friday, March 18th, 2022.

Mr. Blankenship and Mr. Mansfield updated the Board on the schedule of upcoming hearings, hearing assignments and rule activity of the Board.

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A motion passed to close the session pursuant to N.C. Gen Stat. §143-318.11(a) to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, 90-21.22 of the North Carolina General Statutes and not considered public records within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney/client privilege.

Information regarding outside litigation matters and statistical information regarding work performed by the Board's Legal Department since the last Attorney's Report was presented.

A motion was passed to return to open session.

That concluded the Attorney's Report.

### **Legislative Update**

On Thursday, March 17th, 2022, the Board's Legislative Liaison, Mr. Thomas W. Mansfield, and Board Attorney Elizabeth Meredith provided a legislative update to the Board.

The Board accepted the report as information.

### **NCMB COMMITTEE REPORTS**

#### **Executive Committee Report**

Members present via video/teleconference were: John W. Rusher, MD, JD Chairperson; Michaux R. Kilpatrick, MD, PhD; Christine M. Khandelwal, DO; W. Howard Hall, MD; and Devdutta G. Sangvai, MD, MBA

#### Financial Update

##### a. Year-To-Date Financials

The Committee reviewed the following financial reports through January 31, 2021: Balance Sheet, Profit & Loss versus Budget, and the Profit & Loss Comparison.

Committee Recommendation: Accept the financial information as reported.

**Board Action:** Accept Committee recommendation. Accept the financial information as reported.

##### b. Investment Account Update

The Committee reviewed the investment statements for January and February 2022.

Committee Recommendation: Accept the investment statements as reported.

**Board Action:** Accept Committee recommendation. Accept the investment statements as reported.

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c. FY2021 Budget to Actuals Report

The Committee reviewed the Budget to Actuals Report which compares actual income and expenses to budgeted income and expenses for the fiscal year ending October 31, 2021.

Committee Recommendation: Accept the Budget to Actuals Report as reported.

Board Action: Accept Committee recommendation. Accept the Budget to Actuals Report as reported.

Old Business:

a. Board Retreat Update

Staff provided an update regarding 2022 Board Retreat which will be held August 12 - 14 at the Renaissance Hotel in Asheville, NC.

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

New Business:

a. Data Strategy Plan

The Board hired Blaze Advisors to help with the following 2021 Board Strategy: "Build a foundation for a data analytics program to support data-informed regulation and focused licensee education." During the past several months, Blaze worked closely with NCMB staff to learn more about our data and our database management system. That work culminated in a draft NCMB data strategy plan.

Representatives from Blaze Advisors met with the Executive Committee to explain the plan's findings and recommendations. The next phase will be to implement the data strategy plan.

Committee Recommendation: Approve the NCMB Data Strategy Plan. Commence implementation of the plan.

Board Action: Accept Committee recommendation. Approve the NCMB Data Strategy Plan and commence implementation of the plan.

b. Request for Additional Personnel

Two permanent, full-time positions are needed prior to the next budget cycle:

- Credentialing Coordinator. This position is needed to process license applications more quickly, reduce the high workload of the Licensing Section, decrease email and voicemail response time, and to respond to an upgraded paperless process.
- Medical Records Specialist. This position will be responsible for ensuring medical records are complete and organized, obtaining and organizing medical records, reviewing medical records and other health information for accuracy, accurately entering information into a proprietary online platform, assisting in the identification of medical records needed for investigation or review by in-house staff, and contacting medical expert reviewers.

Committee Recommendation: Approve the proposed positions.

Board Action: Accept Committee recommendation. Approve the proposed positions

c. Rule Making Petition

N.C. Gen. Stat. Section 150B-20(a) states: “Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.”

Staff submitted proposed rule 21 NCAC 432A.0115 “Petition for Rule-Making” which will satisfy this requirement. (Appendix A)

Committee Recommendation: Adopt proposed rule 21 NCAC 432A.0115 “Petition for Rule-Making.”

Board Action: Accept Committee recommendation. Adopt proposed rule 21 NCAC 432A.0115 “Petition for Rule-Making.”

### **Policy Committee Report**

Members present were: Mr. William M. Brawley; Chairperson; Michaux R. Kilpatrick, MD, PhD; Joshua Malcolm, JD; Miguel A. Pineiro, PA-C and Melinda H. Privette, MD, JD

Old Business:

a. 2.2.1: Sexual Exploitation of Patients (Appendix B)

The Committee reviewed the most recent, proposed revisions to the position statement. The revisions were viewed favorably and were noted to add clarification and guidance within the position statement.

Committee Recommendation: Accept and incorporate the most recent, proposed changes and publish the revised version to the website and compendium.

Board Action: Accept Committee recommendation. Accept and incorporate the most recent, proposed changes and publish the revised version to the website and compendium.

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b. 7.1.1: Child Maltreatment

After the January 2022 meeting, staff solicited feedback from Board Members and additional staff. The Committee did not receive any proposed changes or additional information. The Committee determined that the position statement does not require revision at this time.

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

New Business:

a. How position statements are communicated to new current licensees and the public.

Staff explained to the Committee that this matter has been discussed with other Board staff and Outreach Committee is prepared to take the lead.

Committee Recommendation: Refer matter to Outreach Committee.

Board Action: Accept Committee recommendation. Refer matter to Outreach Committee.

b. Addressing the Board's position on practice ownership by Anderson Practice Providers.

Staff directed the Committee to the FAQs on the Board's website that address practice ownership by Advance Practice Providers. The Committee discussed if there was a way to make this information more readily accessible to Advanced Practice Providers. The Committee asked staff to confer with the Communication Department to discuss additional ways that the information could be disseminated to Advanced Practice Providers.

Committee recommendation: Staff to confer with the Communication Department to discuss additional ways that information regarding practice ownership by Advance Practice Providers could be disseminated to Advanced Practice Providers. Bring back for discussion at a later meeting.

Board Action: Accept Committee recommendation. Staff to confer with the Communication Department to discuss additional ways that information regarding practice ownership by Advance Practice Providers could be disseminated to Advanced Practice Providers. Bring back for discussion at a later meeting.

c. Responsibility within Medical Practices

The Committee discussed analyzing who ultimately bears responsibility when issues arise within a medical practice, recognizing that there are many different types of medical practices. The Committee tasked staff with determining whether there are options available to the Board or if this may be a systems issues that would have to be addressed by entities outside the Board.

Committee recommendation: Staff to analyze whether the Board can address who within a medical practice is ultimately responsible for issues that arise within that practice, and if so, is Policy Committee the appropriate forum to provide guidance on this issue? Bring back for discussion at a later meeting.

Board Action: Accept Committee recommendation. Staff to analyze whether the Board can address who within a medical practice is ultimately responsible for issues that arise within that practice, and if so, is Policy Committee the appropriate forum to provide guidance on this issue? Bring back for discussion at a later meeting.

### **Licensing Committee Report**

Members present were: Anuradha Rao-Patel, MD, Chairperson, Joshua Malcolm, JD, Damian McHugh, MD, Shawn Parker, JD, Miguel Pineiro, PA-C

#### New Business

- a. Request to stop Issuing Limited Emergency Licenses and Dissolve March 31, 2020, and April 10, 2020, Orders that Extended Limited Emergency License Expiration Dates

Committee Recommendation: Stop Issuing Limited Emergency Licenses and Dissolve March 31, 2020, and April 10, 2020, Orders that Extended Limited Emergency License Expiration Dates

Board Action: Accept Committee recommendation. Stop Issuing Limited Emergency Licenses and Dissolve March 31, 2020, and April 10, 2020, Orders that Extended Limited Emergency License Expiration Dates

- b. The Board voted in March a 2021 to amend rules 21 NCAC 32B.1402, 21 NCAC 32B.1350, 21 NCAC 32B.1303 to eliminate USMLE Step 2 and COMLEX Level 2 PE. The Board will have a public hearing to receive comments on March 3<sup>rd</sup>. Staff does not anticipate receiving any comments but will report at the Committee meeting if any are received.

Committee Recommendation: Submit to the Rules review Commission for final approval.

Board Action: Accept Committee recommendation. Submit to the Rules review Commission for final approval.

- c. Licensing statistics

Information will be forthcoming

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The License Committee reviewed three cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public.

A motion passed to return to open session.

### **License Interview Report**

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

One licensure interviews were conducted. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

### **Advanced Practice Providers and Allied Health Committee Report**

Members present were: Christine M. Khandelwal, DO, Chairperson; Sharona Y. Johnson, PhD, FNP-BC; Shawn P. Parker, JD; Miguel A. Pineiro, PA-C,

Old Business:

- a. Final approval of proposed rule change 21 NCAC 32S .0213 - Supervision of physician assistants in a post-graduate training program. Marcus Jimison, Sr. Board Attorney

Committee Recommendation: Approve proposed rules as submitted.

Board Action: Accept Committee recommendation. Approve proposed rules as submitted.

- b. Proposed rule adoption regarding physician supervision of certified nurse midwives. 21 NCAC 32B .1003. M. Jimison

Committee Recommendation: Task staff to consult with the Joint Midwifery committee for further review and discussion.

Board Action: Accept Committee recommendation. Task staff to consult with the Joint Midwifery committee for further review and discussion.

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New Business:

- a. North Carolina office of Emergency Medical Services Advisory Council Update – Pascal O. Udekwu, MD, Council Member

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

- b. Dissolution of emergency Covid-19 orders related to physician assistants. – M. Jimison

Committee Recommendation: Accept recommendation to dissolve emergency Covid-19 orders related to physician assistants.

Board Action: Defer recommendation from committee and align with emergency Covid-19 orders related to nurse practitioners.

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Information regarding JSC Final Recommendation Grid, November 2021 and January 2022 was discussed.

A motion was passed to return to open session.

**Disciplinary (Malpractice) Committee Report**

Members present were: Devdutta G. Sangvai, Chairperson; W. Howard Hall, MD; (Vice-Chair) Sharona Y. Johnson, FNP-BC; Christine M. Khandelwal, DO; Joshua D. Malcolm, JD; Melinda H. Privette, MD, JD and Anuradha Rao-Patel, MD

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Malpractice) Committee reviewed 52 cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

### **Disciplinary (Investigative) Committee Report**

Members present were: Devdutta G. Sangvai, Chairperson; W. Howard Hall, MD; (Vice-Chair) Sharona Y. Johnson, FNP-BC; Christine M. Khandelwal, DO; Joshua D. Malcolm, JD; Melinda H. Privette, MD, JD and Anuradha Rao-Patel, MD

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Investigative) Committee reviewed 40 investigative cases. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

### **Disciplinary (Complaints) Committee Report**

Members present were: Devdutta G. Sangvai, Chairperson; W. Howard Hall, MD; (Vice-Chair) Sharona Y. Johnson, FNP-BC; Christine M. Khandelwal, DO; Joshua D. Malcolm, JD; Melinda H. Privette, MD, JD and Anuradha Rao-Patel, MD

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Complaints) Committee reviewed 36 complaint cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public.

A motion passed to return to open session.

### **Disciplinary (Compliance) Committee Report**

Members present were: Devdutta G. Sangvai, Chairperson; W. Howard Hall, MD; (Vice-Chair) Sharona Y. Johnson, FNP-BC; Christine M. Khandelwal, DO; Joshua D. Malcolm, JD; Melinda H. Privette, MD, JD and Anuradha Rao-Patel, MD

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Compliance) Committee reviewed four investigative cases. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

### **Investigative Interview Report**

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

Thirteen interviews were conducted. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

### **Outreach Committee Report**

Members present were: Damian F. McHugh, MD, Chairperson; William M. Brawley; W. Howard, MD; Sharona Y. Johnson, PhD, FNP-BC; Anuradha Rao-Patel, MD

Old Business:

- a. Update on presentations
  - i. Public and professional presentations
  - ii. Regulatory Immersion Series events

The Communications Director gave a brief overview of professional and public outreach activities. The volume of requests for presentations is relatively slow as organizations transition carefully back to in-person events while continuing to monitor the pandemic and its impact on gathering safely for meetings and conferences.

Committee recommendation: Accept as information.

Board action: Accept Committee recommendation; Accept as information.

New Business:

- a. Wellness and Burnout presentation

The Committee welcomed Dr. Samantha Meltzer-Brody, Chair of the Department of Psychiatry at UNC Chapel Hill and a noted expert in clinician wellness, to present on the UNC Health Care system's enterprise-wide efforts to address issues with wellness in its clinicians. Dr. Meltzer-

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Brody emphasized that it is critical to evolve the language we use when speaking about what has been traditionally referred to as clinician burnout to reflect terms that medical professionals believe more accurately describes their experiences. She indicated that terms such as moral injury, trauma and even post-traumatic stress disorder (PTSD) are preferred terms because they convey the seriousness of the problem while avoiding any suggestion that the clinician experiencing issues is lacking or deficient in any way. Dr. Meltzer-Brody

outlined UNC Health Care's approach, which focuses on addressing stigma, normalizing seeking help, providing access to resources and direct care, including therapy, and ensuring that services are affordable. The Committee discussed whether NCMB could play a role in convening a statewide meeting where health systems and other stakeholders could share best practices and strategies to address systemic drivers that increase stresses on clinicians.

Committee recommendation: Accept as information.

Board action: Accept Committee recommendation; Accept as information.

b. Development of educational materials from anonymized private actions

The Committee Chair asked Committee Members to recall non-public disciplinary cases that involve issues and questions that can be anonymized and turned into education for the general licensee population and send them either to him or to the Communications Director. The Communications Director is interested in receiving as many suggestions for possible lessons as possible so that NCMB can begin developing case-based learning materials. As the Forum newsletter is the best way to reach large numbers of licensees, it is likely NCMB will begin by featuring case- study based material via that platform. Other opportunities include developing additional case-study based slides into NCMB presentations on avoiding regulatory problems, creating recorded modules that focus on specific topics and possibly even certifying a case-study based module or webinar for CME credit.

Committee recommendation: Accept as information.

Board action: Accept Committee recommendation; Accept as information.

ADJOURNMENT

The Medical Board adjourned at 2:00 p.m. on Friday, March 18, 2022

The next meeting of the Medical Board is scheduled for May 18 – 20, 2022.



Christine M. Khandelwal, DO, Secretary/Treasure

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**21 NCAC 32A .0115 PETITION FOR RULE-MAKING**

(a) Any person submitting a petition to adopt, amend, or repeal a rule by the Board shall address a petition to the Board's Rule Making Coordinator at the office address in 21 NCAC 32A .0101.

(1) The petition shall contain the following:

- (a) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;
- (b) a statement of the effect of the requested rule change; and
- (c) the name and address of the petitioner.

(2) The petition may contain the following:

- (a) the reason for the proposal;
- (b) the effect of the new rule on existing rules; or
- (c) any data supporting the rule proposal.

(b) Within 120 days of submission of the petition, the Board shall render a final decision. If the decision is to grant the petition, the Board shall initiate a rule-making proceeding by issuing a notice as provided for in G.S. 150B-20(c). If the decision is to deny the petition, the Board shall send the petitioner written notice of the decision. The notice shall state the reasons for denying the petition and refer to the appeal rights set forth in G.S. 150B-20(d)

*History Note: Authority G.S. 150B-20;*

### 2.2.1: Sexual Misconduct Involving Patients

The privileges statutorily granted to all licensees by the Board puts them in a position of power in relation to the patient. The patient enters the therapeutic relationship from a position of vulnerability due to illness, suffering, the need to divulge deeply personal information, and to subject themselves to intimate physical examination. This vulnerability is further heightened in light of the patient's trust in the licensee, who has demonstrated the training, knowledge, and character to be granted the privilege and the power to deliver medical care. Due to the nature of their intimate involvement with patients, surrogates<sup>1</sup> are hereinafter included in the term "patient" for the purpose of this policy. It is the position of the Board that sexual misconduct involving a patient or a surrogate by a licensee is unprofessional conduct and undermines the public trust in the medical profession and harms patients both individually and collectively. This Position Statement is based, in part, upon the Federation of State Medical Board's guidelines regarding Physician Sexual Misconduct ("FSMB Guidelines").

For the purposes of this policy, licensee sexual misconduct is understood as behavior that exploits the licensee-patient relationship in a sexual way. Sexual misconduct between a licensee and a patient is never diagnostic or therapeutic. Sexual misconduct may be verbal or physical, can occur in person or virtually, and may include expressions of thoughts and feelings or gestures that are of a sexual nature or that reasonably may be construed by the patient as sexual.

Sexual misconduct occurs along a continuum of escalating severity. This continuum comprises a variety of behaviors, sometimes beginning with "grooming" behaviors which may not seem to constitute sexual misconduct on their own, but are precursors to other, more severe violations such as sexual misconduct involving language, gestures, or physical touching. Grooming behaviors may include gift-giving, special treatment, sharing of personal information, or other acts or expressions that are meant to gain a patient's trust and acquiescence to subsequent abuse. When the patient is a child, adolescent, or teenager, the patient's parents may also be groomed to gauge whether an opportunity for sexual abuse exists. All types of sexual misconduct could constitute a basis for disciplinary action by the Board.

More severe forms of sexual misconduct include sexually inappropriate or improper gestures or language that are seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient. These may not necessarily involve physical contact, but can have the effect of embarrassing, shaming, humiliating, or demeaning the patient. Instances of such sexual misconduct can take place in person, online, by mail, by phone, and through texting. Examples may include, but are not limited to:

1. Neglecting to employ disrobing or draping practices respecting the patient's privacy, or deliberately watching a patient dress or undress;
2. Subjecting a patient to an intimate examination in the presence of students or other parties without the patient's informed consent or in the event such informed consent has been withdrawn;

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<sup>1</sup>For the purposes of this policy "surrogate" is defined as spouses or partners, parents, guardians, or others involved in the care of and/or decision-making for the patient.

3. Examination or touching of genitals/genital mucosal areas without the use of gloves;
4. Inappropriate comments about or to the patient, including but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance during an examination;
5. Using the licensee-patient relationship to solicit a date or romantic relationship;
6. Initiation by the licensee of conversation regarding the sexual problems, preferences, or fantasies of the licensee;
7. Performing an intimate examination or consultation without clinical justification;
8. Performing an intimate examination or consultation without explaining to the patient the need for such examination or consultation even when the examination or consultation is pertinent to the issue of sexual function or dysfunction; and
9. Requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of examination or consultation.

The severity of sexual misconduct increases when physical contact takes place between a licensee and patient and is explicitly sexual or may be reasonably interpreted as sexual, even if initiated by a patient. Examples of physical sexual misconduct between a licensee and a patient includes, but is not limited to the following:

1. Sexual intercourse, genital to genital contact;
2. Oral to genital contact;
3. Oral to anal contact and genital to anal contact;
4. Kissing in a romantic or sexual manner;
5. Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
6. Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present (including in person, online, by phone, or through texting); and
7. Offering to provide practice-related services, such as drugs, in exchange for sexual favors.

Sexual misconduct may still occur following the termination of a licensee-patient relationship, especially in relationships that involve a high degree of emotional dependence and vulnerability. Termination of a licensee-patient relationship solely for the purpose of allowing sexual contact to occur is unacceptable and would still constitute sexual misconduct.

Licensees have the legal and ethical duty to report instances of sexual misconduct, instances of potential grooming behaviors, and other serious patient safety issues and events. Early reporting of sexual misconduct will prevent a licensee's sexual misconduct from impacting more patients.

The Board also refers licensees to the Board's Position Statement entitled "[Guidelines for Avoiding Misunderstandings During Patient Encounters and Physical Examinations.](#)"

(Adopted: May 1991) (Amended: April 2012; March 2016; January 2021; March 2022)

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