



# Oregon

Kate Brown, Governor

## Medical Board

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Approved by the Board on July 1, 2021.

## OREGON MEDICAL BOARD

Meeting of the Workgroup on Sexual Misconduct • March 11, 2021

The Oregon Medical Board (“OMB” or “Board”) held a special meeting of the Workgroup on Sexual Misconduct meeting on Thursday, March 11, 2021 via teleconference.

Chair Patti Louie, PhD, called the meeting to order at 2:00<sub>PM</sub>.

A quorum was present, consisting of the following members:

Erin Cramer, PA-C, Stayton	Jill Shaw, DO, Portland
Ali Mageehon, PhD, Public Member, Coos Bay	Patti Louie, PhD, Public Member, Portland
Chere Pereira, Public Member, Corvallis	David Farris, MD, Oregon Medical Board Medical Director

Staff, consultants, and legal counsel present:

Nicole Krishnaswami, JD, Executive Director	Gretchen Kingham, Executive Assistant
Elizabeth Ross, JD, Legislative & Policy Analyst	Christopher Sears, Legal Extern

**PUBLIC SESSION**

**Welcome and Introductions**

**LOUIE**

Dr. Louie, PhD, called roll, discussed ground rules for the meeting, provided an overview of the agenda, and invited members of the public to participate by providing comment during agenda item discussion and during the public comment period.

**Sexual Misconduct Workgroup Meeting Minutes**

**LOUIE**

Dr. Louie, PhD, reviewed the February 8, 2021, minutes. The Workgroup recommended the minutes be approved at the April 2021 Board meeting.

**OAR 847-010-0130: Medical Chaperones**

**PEREIRA**

The proposed rule would adopt the American College of Obstetricians and Gynecologists (ACOG) recommendation for a chaperone to be present for all breast, genital, and rectal examinations. The requirement for a chaperone would apply to examinations performed in the outpatient and inpatient settings, including labor and delivery, as well as during diagnostic studies such as transvaginal ultrasonography and urodynamic testing. Ms. Krishnaswami noted that a licensee practicing under a Board order could be held to higher requirements as a term of the order.

Mr. Cramer questioned the requirement that the chaperone may not have any other clinical or administrative responsibilities while licensee is in the room. Dr. Farris recommended revising the language to indicate that the chaperone cannot perform any functions that would limit the chaperone's ability to observe. A certified medical assistant could be a chaperone.

Dr. Mageehon asked if the gender of the chaperone should be discussed in the rule but noted that perhaps it could be addressed in educational materials.

Ms. Pereira would like all persons acting as a chaperone to be required to take chaperone training. Mr. Cramer noted that certified medical assistants likely received training during their course work and also noted potential concerns about training costs for medical systems. Mr. Cramer asked if the Board could create a list of approved trainings and if certified medical assistants need the training.

layesha Smith, member of the public, asked if acupuncturists would be excluded and if breast, genital, or rectum exams would be defined. Ms. Krishnaswami noted that these exams are likely outside of the scope of practice for acupuncturists, but that the Board will look further into this question.

The Workgroup recommended revising the rule, as discussed, and reviewing it again at the April Sexual Misconduct Workgroup meeting, with the intent of publishing the rule by October 2021 and expected compliance by January 2022.

**National Practitioner Data Bank (NPDB) Continuous Query**

**CRAMER**

The National Practitioner Data Bank (NPDB) is the federal government-sponsored central repository for recording malpractice payments, state disciplinary actions, restrictions from health plans or hospitals, and other limits on any healthcare professional. The U.S. Congress created the NPDB in 1986 to improve healthcare quality and reduce fraud and abuse. The NPDB's Continuous Query provides continuous monitoring and alerts when a new report is received or an existing report is revised, corrected, or voided. The annual charge is \$2 for each enrolled practitioner.

The Workgroup reviewed a draft rule that would require the Board to enroll licensees alleged (but not proven) to have engaged in sexual misconduct in the NPDB's Continuous Query for two years from the date of the last allegation. Dr. Shaw asked about the 2-year suggestion. Ms. Krishnaswami noted that it was a starting point and only for licensees alleged to have been involved in sexual misconduct. Dr. Farris stated that licensees with proven history of sexual misconduct can be career length. Ms. Krishnaswami also specified that all applicants and licensees under investigation are enrolled in the continuous query.

Mr. Cramer recommended that the Board enroll licensees with sexual misconduct disciplinary orders in career-length continuous query, but it would be reasonable to enroll licensees for a two-year period if the allegation did not result in a finding of sexual misconduct.

The Workgroup recommended the draft rule amendment move to the Administrative Affairs Committee for first review.

<b>Zero-Tolerance Culture</b>	<b>MAGEEHON</b>
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Dr. Mageehon, PhD, discussed the Board's zero-tolerance culture.

Ms. Ross updated the Workgroup on staff's plan to discuss with other Health Professional Regulatory Boards, next week, what they have done in the area of licensee sexual misconduct (e.g. policies, working with law enforcement, etc.). Staff will also ask the other boards to consider a letter from all healthcare boards, to law enforcement agencies, notifying them that they can alert a licensing board if a licensee engaged in criminal conduct.

Mr. Cramer questioned the process for beginning to use "sexual misconduct" in official Board Orders. Ms. Krishnaswami stated that the Board has already begun to include the term in a Complaint and Notices. Understanding the Workgroup's position on this will assist Board staff and legal counsel during settlement negotiations for Board Orders.

The Workgroup recommended the Board direct staff to specify "sexual misconduct" within Complaint & Notices and confer with other health regulatory boards and law enforcement on the handling of "sexual misconduct" cases.

<b>Educational Outreach and Publications</b>	<b>SHAW</b>
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Educational Outreach and Publications were tabled until the April Sexual Misconduct Workgroup meeting.

<b>Planning for Future Discussion Topics and Next Meeting Date</b>	<b>LOUIE</b>
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Dr. Louie, PhD, announced that the next meeting of the Sexual Misconduct Workgroup will be Thursday, April 8th at 4:00pm.

<b>Public Comment</b>	<b>LOUIE</b>
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The Board took comments from the public.

Iayesha Smith, Matasaru Law, Senior Associate, had no additional comments.

Meeting adjourned at 2:56PM