



**Regulation Matters:
a CLEAR conversation**

Episode 59: Evaluating How Medical Boards Communicate about Physician Sexual Misconduct **November 8, 2022**

Line Dempsey: Welcome back to our podcast, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. I am currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina, and I'm also CLEAR's 2022-2023 President.

As many of you are aware, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is an opportunity for you to hear about important topics in our regulatory community.

Today's episode focuses on a new report, "[Communicating about Physician Sexual Misconduct: How are state medical boards doing?](#)" And that report is focused on transparency and education of the public and physicians about sexual misconduct. So, joining us today are the report authors. I've got Lisa McGiffert with the Patient Safety Action Network and Carol Cronin with the Informed Patient Institute. We're very glad to have you with us today.

Lisa McGiffert: Thank you for having us.

Line: We're very glad to speak with you, and also let me thank our listeners for joining us today. Now, Lisa and Carol, for those listeners who may not be familiar with your organizations, can you please give us an introduction and talk about the PSAN's Medical Board roundtable, maybe starting with Lisa?

Lisa McGiffert: Yes. The Patient Safety Action Network is a national nonprofit coalition of individuals and organizations focused on ending medical harm. We do that by raising public awareness and creating more accountability and more transparency in the health care system. We are patient-led and patient-driven.

Carol Cronin: And the Informed Patient Institute is a nonprofit organization that is also focused on consumers, patients, and families. And we also focus on patient safety and quality, and we're particularly interested in transparency and public reporting about doctors, hospitals, and nursing

homes.

And the Medical Board Roundtable, which I chair, is an initiative of the Patient Safety Action Network, or PSAN. We are about seven years old. It's a collection of patient and family and consumer advocates from around the country who became interested in physician oversight and medical boards. Our mission is to increase awareness of state medical boards, advocate to improve board responsiveness to patients and their families and the public, and improve physician oversight accountability and performance. We have about thirty members in about twenty states.

Line: Great. Well, thank you for that introduction. So today we want to talk to both of you about what you found when doing this research regarding state medical board transparency and education of the public and physicians about sexual misconduct. And we really want to focus on the recommendations you give to the actual state medical boards. So let's start with this. What is some of the data you can point to around incidents of physician sexual misconduct? And I'll just leave that up to whichever you want to.

Lisa: Okay. Ah, this is Lisa. I'll start. First of all, sexual misconduct by doctors is an issue that's been around for a long time, but recent high-profile cases have put it more prominently before the public and, I think, has raised questions in the public's mind about how these doctors were allowed to continue to practice and harm patients for as long as they did. The Federation of State Medical Boards, which is a national organization representing these boards, convened a committee and conducted research on the topic, and subsequently issued a strong call for cultural change among medical boards in their report that was issued in May of 2020.

But the fact is, we really don't know how often physician sexual abuse and misconduct occurs. There have been numerous attempts to come up with estimates. In 2016, the *Atlanta Journal Constitution* reviewed thousands of documents from medical boards and found more than 2,400 doctors whose sexual misconduct cases clearly involved patients, since 1999. They also concluded that many violations never come to the attention of state medical boards because hospitals and clinics and fellow doctors simply don't report them or cases were dealt with privately and confidentially. We also know that patient victims may choose not to report sexual abuse to anyone. And one estimate found only 5-10% of victims of sexual misconduct report it to medical boards.

There was another 2016 study—there were actually two studies—that looked at data from the National Practitioner Data Bank. The first one looked at a ten-year period and found that more than a thousand physicians had one or more sexual misconduct-related reports. Most of them came from medical boards, which indicates that there was some kind of action taken, but the rest came from medical malpractice insurance settlements or hospital reports. And in those latter categories, most of those had no disciplinary action by medical boards. The other group that used this data bank looked at reports from 2000-2019, and they identified more than 1,700 reports. They calculated an annual incidence of sexual misconduct reports at around 11 per 100,000 physician licensees.

So that's basically what we found as far as the research that is looking at how often this happens, when it happens, and that kind of thing.

Line: Great. Thank you for that. So your report focuses on recommendations related to transparency and education of the public and physicians about sexual misconduct. So can you review a little bit about how you conducted the research on this report? And Carol, if you would?

Carol: Sure. This report builds on work that actually we did last year and published earlier this year. And what we did was train twelve of our Medical Board Roundtable volunteers about how to find information on state medical board websites.

So we had those twelve volunteers look at all 64 state medical and osteopathic medical board websites in 2021, and they were looking for a range of topics and information that we thought was important for the public. And they particularly focused on the physician profile, which is available by every state medical board now. And it's the place that captures the most information about an individual doctor.

So we published that report in January of 2022, and that report is called "Looking for Doctor Information Online: A survey and ranking of state medical board and osteopathic boards." So, in that analysis by those twelve volunteers, we also asked them to look for two pieces of information related to sexual misconduct specifically. We asked them to see if there was any information they could find on the state medical board website for the public, for consumers, for patients. And we also asked if they could find anything that was targeted to physicians or other health professionals, but we were mostly focused on physicians. So that was the first kind of information - this information gathered by volunteers looking at the 64 medical and osteopathic medical boards.

Then Lisa and I this year did a deeper dive on that information. So, we looked at all of the sites that had been found by our volunteers, and then we went beyond that and looked for other examples throughout the states of best practices and also of concerning approaches to this information. So it's kind of a combination of volunteer finding information on state medical boards and Lisa and I going deeper on it this year. That's how we did the work.

Line: Great! Well, in the report you focus on some key aspects providing information about physician sexual misconduct, those things like the ability to find information, informative materials on the board website which you just mentioned, the material being understandable and direct, and the use of straightforward language. What did your research find related to these areas?

Lisa: Surprisingly, most sites have no information about sexual misconduct at all, and we thought that was surprising because of recent attention to these issues. In the initial finding from our researchers, only a few had information directed at the public - there were eight. And fifteen had some information

directed at doctors. And, as Carol said, we took a deeper dive, and when we looked closer we found that only a few had actual policy statements or materials that demonstrated to the public that this was a serious issue and that these kind of violations would be handled seriously by the regulators. In fact, we were confounded by the lack of clear policy statements of zero tolerance, for example, and the lack of information about specific actions the boards might take in response to such a complaint. [Those] were missing on most websites.

There were several states that had good coverage of the issue. I don't want to paint a completely bleak picture. And those states I'm going to throw out - Alabama and Oregon, we identified as two states that had a real, you know, stated a seriousness of the issue. Zero tolerance. They've talked about breaking the trusted nature of the doctor-patient relationship, the traumatic impact on patients, and the commitment to take disciplinary action for these serious violations, including bringing in law enforcement. So, numerous states talked about those issues, and those were all issues that were also covered by the Federation of State Medical Board's report. Often the information that was there was buried or difficult to find on the site. And we see that as a critical thing for medical board sites, or any website, is to have clear pathways to information for the public, but also for doctors, and that can often be done through labeling or highlighting something on the homepage, actually using the term "sexual misconduct," where you can click through and go to more information.

Some of the states have search boxes on their site, and putting "sexual misconduct" brought up all information about that issue. I'm not sure if the public thinks about doing that, but it does work.

Ohio had a really good one-page fact sheet for doctors and one for patients, and a video. And North Carolina also had a good brochure and talked about victims' services. That also led to resources for people who had been sexually assaulted.

Some states brought in information about how often this occurs. Like California, in their annual report, they say how many doctors were disciplined for sexual misconduct, but no one really thinks about digging for that, probably. We did, and we found some information. Maryland had a good frequently asked questions page. So, there was a variety of states that did a good job, but most of them didn't have much information or no information at all.

The other thing that we found that, I think, was the most troubling for us was the use of euphemistic language when talking about this issue. The terms we commonly saw were "boundary issues," which tend to confuse the public, and probably doctors too, and tend to soften the nature of the abuse. We also found references to inappropriate terms like "romance" and vague terms like "unprofessional conduct." The Federation of State Medical Boards report recommended to avoid these terms, and they also talked about escalation issues, indicating that sometimes doctors groom patients in behaviors which might seem harmless that later leads to abuse. I think one of the most shocking titles was in an Oklahoma article that was titled, "Looking for love in all the wrong places" - very inappropriate in light of how serious this issue is.

Finally, we felt that the state medical board staff needed more training to be more sensitive to this issue, and that we found that there are many local, state, or national organizations focused on sexual assault and throughout the country, and they could help states to get some training on these issues and how to respond to the patients who are making complaints, as well as responding to the violations. Both Texas and Washington State have had similar kinds of trainings, and we think that that would be a good idea for all medical boards.

The other thing that might be helpful is to educate the public about what to expect from a medical exam. There's not much out there by the general sexual abuse response organizations, but the Rape, Abuse, and Incest National Network, known as RAINN, had a useful article that covered acceptable physician conduct during various types of examinations. And we did find some local - I think it was Ohio - that had a good article about physician sexual misconduct.

Line: It certainly seems like there's some things that are being done appropriately and information getting out there. But also, I think, clearly still a lot of work that needs to be done.

Lisa: And I think Carol is going to talk about the other activities that we identified in our report.

Line: Yeah, please do.

Carol: Yeah. Just a couple of other things kind of beyond the issues of educating the public, but just other things we found that we thought were of interest. One is that there are some states now, specifically California and Washington, that have passed recent legislation that requires physicians to notify patients if they are on probation. And it's not just necessarily depending on the state for sexual misconduct, but that was a new development pushed by patient advocates in those states. It's relatively new. They were both effective in 2019.

Another kind of category of activity that we found around sexual misconduct was duty to report, and there are some states, I'm not sure how many, that require physicians, if they see misconduct of any type by other physicians, it is their duty to report it to the state and if they don't, they are in violation. We saw a couple of examples of this duty to report specifically related to sexual misconduct. For example, Minnesota said that doctors with personal knowledge of sexual misconduct by another physician must report that information, and if they didn't, they could be disciplined by the board.

So this kind of notion that. . . Ohio actually also had a fair number of very high profile cases of physician misconduct that actually ultimately involved the Governor's office. So they're particularly focused, I think, on this topic, and they have a duty to report law that specifically mentions sexual misconduct. And so, one of our recommendations in both of the reports related to the legislation on patient right to know types of law and duty to report are part of our recommendations.

And then the two other things that we found in the report, which are kind of overall concerns again, are related to transparency. But one is that there's within the medical world—and I'm not sure how much this is true in other regulatory agencies—there is something called a physician health program. Physician health programs help physicians who have addiction issues or behavioral issues or mental health to receive help, often under the auspices of the medical board, which is very understandable and needed, I'm sure. But their trade association made a recommendation that physician health programs are really not equipped to deal in the area of sexual misconduct. That's a pretty specific set of issues. However, we found when we actually went and looked at the topic areas of the physician health programs across the states, many of them did list such sexual misconduct as program areas where they did do work. And so that kind of raised a question at least on our minds of like, what is going on with this? Because physician health programs are very confidential, and so we're very concerned that this might be a way to have someone with sexual misconduct issues be allowed to continue to practice under the auspices of this confidentiality issue. So that was one issue that was raised.

And then the last one that we raised in our last report is the issue of complaints. And we have learned through our last work that no state in the country provides information to the public about complaints against their licensees, and we know that in many cases, as the state medical board directors have told us, it's because the law prohibits it. Regulation prohibits it. And so, we understand all that. But as advocates for patients and families, we're just concerned that particularly in the case of sexual misconduct, because it takes so long to address a complaint in terms of the regulatory process, often that physician is allowed to practice in the meantime. So you know, and many of the cases that Lisa cited, and there are many of them - we kind of unfortunately collect these cases - the public wonders like why wasn't action taken sooner? How come there were so many patients that were affected? So you know, we feel pretty strongly that there should be some way to signal to the public certain types of complaints, particularly if there are multiple complaints against a physician and/or a certain type of complaint like sexual misconduct, to kind of be able to signal to the public through their profile that they have a certain number of complaints. So that was the last. So that's one of our recommendations. It was one of our recommendations in our January report, and it remains particularly important in the context of sexual misconduct.

So that's kind of a big overview of everything we found.

Line: Well, you've mentioned recommendations a couple of times when we were talking there. Carol, let's get into the meat of it then for our listeners. You list five specific recommendations for state medical board websites. Can you walk us through those, what those five are?

Lisa: Ah, Yeah, this is Lisa. I'll do that. We've talked about some of these. So, you already have heard about why we think these are important. We want to see a statement of zero tolerance for sexual misconduct clearly on each website. And all these recommendations I'm talking about are website-related recommendations.

So on the website, we want clearly labeled and easily accessible information for the public and for licensees about this subject. For example, in a resources section for consumers and physicians using the specific label “sexual misconduct.” And we want these sites to ensure that the overall site search functions can find sexual misconduct information.

Thirdly, we want clear explanations for doctors and patients regarding sexual misconduct behavior, including what patients should expect from a physical exam, how to file complaints, as well as laws, regulations, or guidelines regarding the type of actions the board may take in response to sexual misconduct behavior.

Fourth, the number and type of complaints that the board has received from the public and others against physicians for sexual misconduct violations should be on each physician's profile. And every board has what they call a physician's profile that gives all kinds of information about the doctor, where they were educated, where they practice, whether they've been disciplined. And we think that would be the place to put the number and type of complaints that the board has received.

And finally, we want the board to use specific terms on the physician profiles when a physician is disciplined for sexual misconduct, instead of general terms like “professional misconduct,” which is frequently used.

Carol: So those are the recommendations that deal primarily with state board websites, and then we do have a number of other ones, and they're kind of under the category of educating and training. And again, several of these were discussed earlier, but we do think, as Lisa mentioned earlier, that there should be staff training on sexual misconduct. And we think, because of the turnover in many of these agencies, that it should probably be at least every two years.

And we recommend—and this is primarily because the FSMB recommended it—that there should be information on trauma-informed care. Many of the people who have been through sexual misconduct are really traumatized to the extent that, as Lisa mentioned, they may not even talk about it to anyone. So you know, having regulatory staff who are sensitized to the impact of trauma on people, I think, is an important area within the training in order to avoid re-traumatizing these folks. We also felt in the training area there should be training on implicit bias, because when you look at the data, African American women are more likely to be the victim of sexual assault. So training is another area.

And we also recommend, as Lisa mentioned in the context of training, there are resources that state medical boards and other regulatory agencies can use, both national and potentially state, to provide the trainers and to develop training materials.

So, in terms of further thoughts on communication beyond just the websites, we feel like the state medical board should do really a complete audit. That's kind of the way we're thinking about it—an

audit of their communication both to verify whether they have anything, which as we found many don't, but even if they do have things, to make sure that they are using the correct terminology, that they actually reflect kind of common, up-to-date, current thinking about the topic and to then, you know, change. Change the information, so that when Lisa and I do these deep dives, we don't find the types of things that we find which are really quite cringeworthy in many states, unfortunately. And I'm guessing they don't even know it's there; they probably haven't looked at it.

And then we also specifically talked about annual reports. Lisa mentioned that annual reports is another area where you can tell the public, give the public data about this. And then, you know, we mentioned before duty to report laws, the right to know laws, making complaints available. So we had a kind of range of other types of recommendations.

Oh, and one which actually we may not have put in this report, but it's definitely on our other report - the advocates and patient advocates and consumer advocates would like to open the National Practitioner Database to the public. In terms of transparency, that would be a big step in the right direction to make that type of information that's available to lots of people inside the system, make it available to the public. So, we'll end with that one.

Line: Excellent! Well, I definitely feel like this gives us a great set of recommendations with dealing with this very important topic. So, I do want to take a moment to thank you, Lisa and Carol, for speaking with us today.

Lisa: Sure, thank you for having us.

Carol: Thanks for your interest.

Line: Absolutely. Well, it's certainly been our pleasure. And we'd like to continue this conversation. Here are some questions to think about, kind of to add some conversation there.

Are the materials about sexual misconduct easy to find on your board's website? And do they reflect current awareness, policies, and terminology? Do you provide educational materials for patients and training for board staff about sexual misconduct? Are you transparent with the public about sexual misconduct complaints?

I also want to thank our listeners for tuning in for this episode. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. If you're new to this CLEAR podcast, please subscribe to us. You can find us on Podbean or any of your favorite podcast services.

If you've enjoyed this podcast episode, please leave a rating or comment in the app. Those reviews help us to improve our ranking and make it easier for new listeners to find us. Feel free also to visit our website at www.clearhq.org for additional resources, as well as a calendar of our upcoming programs

and events.

Finally, I'd like to thank our CLEAR staff, specifically Stephanie Thompson; she is our content coordinator and editor for this program. Once again, I'm Line Dempsey, and I hope to be speaking to you again very soon.

*The audio version of this podcast episode is available at
https://podcast.clearhq.org/e/communicate_sexual_misconduct/.*