

Working Group's Recommendation	Percent Complete
1.A. The Board should review investigations relating to Strauss (96-1534A, 96-1534B, and 96-0999A) and the OSU report to identify current license holders who failed to report Strauss to the Medical Board in order to determine whether to initiate an investigation into that failure to report. The same course of action may be warranted in relation to other sexual impropriety, or illegal activity, cases in which the Board finds that historically it pursued an action against the offending physician's license but did not investigate those who failed to report that behavior.	100%
1.B. On July 10, 2019, the Working Group sent a letter to the University asking that it provide an unredacted copy of its report to the Medical Board, and that it identify by name the numerous medical professionals identified in its report by title or description, only, who may have had information regarding Strauss' activity violating the rules governing Ohio physician licensees. In response, the University provided the unredacted report to the Medical Board for the first time, but did not directly identify those described in its report.	100%
1.C. The Medical Board should develop an internal, mandatory reporting requirement for its staff – particularly, but not exclusively, investigators – to ensure that when any employee of the Board uncovers information suggesting that a licensee failed to report information sufficient to support a belief of sexual impropriety the employee must submit a report promptly to the his or her supervisor outlining the newly discovered information and recommending an investigation unless the failure to report is already the subject of or incorporated within an open investigation.	100%
1.D. The Medical Board maintains an anonymous hotline for reporting physician misconduct, including sexual impropriety. The Board should take prompt action to increase both public and licensee awareness of the hotline, prominently use its website to facilitate anonymous complaints, and should clarify that non-physicians can provide tips on potential misconduct, including criminal activity, of licensees.	100%
1.E. The Medical Board should require that physician continuing education requirements toward maintaining a medical license include training on the duty to report pursuant to Ohio Revised Code § 4731.224, including, as necessary, revising the Medical Board's rules contained in Ohio Administrative Code Ch. 4731-10, "Licensing; Continuing Education."	40%
1.F. The Medical Board should review North Carolina H.B. 228, Section 8, page 221, which created an affirmative duty for licensees to report suspected sexual misconduct, within 30 days. ¹¹ These would include incidents of sexual impropriety that a licensee reasonably believes to have occurred with a patient. In North Carolina, as of October 1, 2019, licensees who fail to report such conduct would be subject to discipline, and individuals who made reports in good faith would be immune from civil liability for such reporting. The Medical Board shall review and consider appropriate Ohio-specific revisions to such duty that would bolster Ohio's sexual impropriety patient protection.	100%
1.G. The Medical Board should consider amendments to the application for a license or renewal of the license to include: (i) a checkbox by which the applicants signify that they acknowledge and understand the licensee's duty to report; and (ii) a checkbox for the applicants to disclose whether they have engaged in conduct prohibited by the Medical Board's rules regarding Sexual Misconduct and Impropriety (Ohio Admin. Code §§ 4731-26-01 to -03). This will reinforce the duty to report and effectively require periodic self-reporting.	100%
1.H. Review of 25 years of closed sexual misconduct cases to identify any cases that should be reopened and investigated.	Prep 50% Review 1%
2.A. The Working Group recommends that the Medical Board's plan include a plan to establish meaningful ties to local law enforcement in areas of the state having the highest incidence of sexual impropriety investigations, including with established victim advocacy programs in those agencies and Sexual Assault Response Teams (SARTs)	40%

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2.B. The Working Group recommends that the Medical Board's plan include instruction to contact law enforcement upon the opening of a sexual impropriety investigation to determine whether law enforcement has received or is investigating allegations against the subject of the Medical Board's investigation	75%
2.C. The Working Group recommends that the Medical Board's plan include guidance on when to involve law enforcement or the prosecutor's office so that the dual purposes of law enforcement conducting a criminal investigation and the Medical Board conducting an administrative investigation are best served.	100%
2.D. The Working Group recommends that the Medical Board's plan include Medical Board staff training in recognizing criminal sexual abuse, which is not a substitute for consulting law enforcement or local prosecutors.	75%
2.E. Early involvement of law enforcement is critical where potential criminal conduct is detected, both to gather information for the Medical Board investigation as well as to aide law enforcement to identify and investigate criminal activity. As a result, depending upon the nature of the conduct, victims, and specific circumstances of each case, the Medical Board's protocol must allow for its employees to exercise sound investigative judgment on when to diverge from that protocol and contact law enforcement immediately and directly, without risking internal or disciplinary reprimand.	100%
2.F. The Medical Board expressed interest in amending the sexual battery statute(s) in Revised Code Chapter 29 so that a violation in the context of certain physician-patient relationships constitutes criminal conduct by the nature of that relationship. The Working Group recommends that the Medical Board pursue this and other initiatives to better define and allow effective prosecution of criminal sexual conduct by physicians, including, for example, extending statutes of limitation and defining physician criminal conduct. Additionally, the Medical Board should review recent changes to North Carolina law enacted August 1, 2019 from House Bill 228, Part VI, beginning on page 20, which created a new criminal offense, punishable as a felony for sexual contact or penetration under pretext of medical treatment. A similar statute in Ohio would serve to deter physicians from this type of felonious conduct in the future.	50%
2.G. While the Working Group focused on the Strauss investigation and the above recommendations focus on investigating criminal sexual conduct, the Medical Board is encouraged to apply the lessons learned and techniques developed to include law enforcement in any case in which illegal activity is suspected or uncovered.	25%
3.A. The Medical Board should access available resources by entering into a consulting agreement with the Office of Internal Audit in the Office of Budget and Management to ensure its internal controls are model policies and to suggest process improvements where necessary. Further, the Medical Board should engage the Auditor of State to perform a compliance and/or performance audit of the Medical Board's adherence to its own standards regarding investigation of sexual impropriety allegations.	25%
3.B. The Medical Board should develop a practice to regularly review the decisions, or a meaningful percentage thereof, made by the Secretary and Supervising Member to close a sexual impropriety case without investigation or to close a case after investigation and without referral for law enforcement. That review should include legal staff, investigative staff, and an internal or outside victim advocate.	100%
3.C. The Medical Board should consider a review of the manner in which investigative reports are delivered to enforcement attorneys, and whether and how to deliver them to Board Members other than the Secretary and Supervising Member involved in approving them for enforcement, so that the Board, as a whole, is informed at least of the basis for closing sexual impropriety cases even if not informed of the identity of the subject of the allegation.	25%

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3.D. The Medical Board should continue its practice of reviewing aging cases and reviewing the time taken to complete investigations, not to the detriment of the quality of those investigations, but to ensure that a case is investigated and any citation issued promptly, and never again permitted to languish inactive.	100%
3.E. The Medical Board should review the practices of comparable state medical boards, to assess the use of a similar two-member team to oversee investigations, and to identify feasible quality assurance methods.	25%
4.A. Effective in 1999, the General Assembly amended § 4731.22(F)(5) to permit sharing the investigation with law enforcement and other regulatory agencies. The Working Group supports the Medical Board's proposal to amend it further to replace "governmental agencies" with "governmental entity" to help alleviate unnecessary definitional restrictions on the Board's permission to share investigative information.	50%
4.B. In the Strauss case, the enforcement and internal tracking records that may have existed would have provided accountability for the Board's inaction. The Working Group recommends that the Medical Board make public its internal materials that do not themselves constitute a "report required to be submitted to the board under this chapter, a complaint, or information received by the board pursuant to an investigation or pursuant to an inspection " under § 4731.22(F)(5) when closing a case without formal action.	100%
4.C. The Working Group recommends a statutory change to allow the President of the Board, or designated Member(s), to authorize the release of an investigation, subject to appropriate redaction, when in his or her professional judgment, disclosure of such information would avert or minimize a threat to public health or safety.	50%
4.D. The Working Group recommends a statutory change that would permit the Board, or designated Member(s), to authorize the release of investigative information, subject to appropriate redaction, for good cause, specifically including upon request of a law enforcement agency.	50%
<p>4.E. The Board should document and disclose the reason for closing a case after investigation when the decision is made not to pursue formal action, and publicly disclose the existence of and status of pending cases.</p> <p>4.E.1 Pursuant to Ohio Revised Code § 4731.22(F)(6), the Board reports quarterly on case disposition. For closed cases, the report requires: (a) case number; (b) type of license or certificate; (c) a description of the allegations contained in the complaint; and, (d) the disposition. The Working Group recommends adding sub-part "e" to this list, requiring disclosure of the reason for closure for any case investigated and closed without formal action.</p> <p>4.E.2 In addition, under § 4731.22(F)(6), the Medical board is required to quarterly report how many cases are still pending. The Working Group recommends adding additional descriptors about the pending cases, including the date the complaint was received or opened, the case number assigned, the type of license or certificate to practice, if any, held by the individual against whom the complaint is directed, a brief categorical description of the type of complaint as alleged and a requirement that it include ". . . for any investigations that remain pending after one year, the reasons the investigations remain pending."</p> <p>4.E.3 While the Board should pursue statutory changes to this effect, the current statute should not prohibit the Board from taking these steps immediately.</p>	75%

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4.F. The Working Group recommends a time-limit on confidentiality under § 4731.22(F)(5), or, at least, the confidentiality reserved to the Board's investigation materials, with continued protection of patient and other information that is confidential regardless of its inclusion in an investigation. Such limitations may include a provision to make the report of investigation available, subject to appropriate redaction, once formal action is taken against a physician licensee.	50%
4.G. As part of its October 1, 2019 report, the Medical Board shall make any additional recommendations to the Working Group which would allow for more transparency in its investigations and the closure of complaints when no action is taken by the board, including changes to § 4731.22(F)(5) and the viability of a sunset to investigative confidentiality.	100%
5.A. The Medical Board should review and compare the Board's number, structure and processes to other appropriately sized state medical boards, using available national membership resources as examples where appropriate, in order to determine whether there are recommendations for changes to the Medical Board of Ohio's size, membership, structure or member-involved processes. This review and recommendation should include a review of the existing roles of the Supervising Member and Secretary. The review should also inform <u>whether other medical boards include member(s) from law enforcement.</u>	0% - waiting for FSMB audit
5.B. The Working Group acknowledges pronounced conflict between the Medical Board's investigative staff and both its Members and its enforcement staff. The Medical Board should evaluate the conflict(s) between its investigative and enforcement staff, as well as investigative staff and management, and provide suggested resolution(s) that would encourage all staff to work collaboratively, as the Board cannot achieve its best work for protecting the public when tensions between these factions inhibit meaningful <u>collaboration toward their shared goal.</u>	25%
6.A. The Working Group recommends, and the Medical Board indicated that it has begun, developing victim advocacy expertise internally, and identifying the victim advocacy network(s) available in law enforcement and prosecutors' offices, including investigators becoming involved in area Sexual Assault Response Teams (SARTs) where they exist.	25%
6.B. The Medical Board should build upon the training its staff received in May 2019 on this subject, and by the end of calendar year 2019: 6.B. 1 Develop annual training goals for investigative and enforcement staff on survivor-centered and trauma-informed investigative techniques 6.B.2 In consultation with a victim advocate, finalize the proposed "Sexual Misconduct Complaint Protocol" presented to the Working Group 6.B.3 In consultation with victim advocates and investigative professionals, update the investigation manual accordingly, allowing for modern investigative practices that take into account the survivor's needs and preferences, such as: 6.B.3a eliminating administrative closure of sexual impropriety cases when a survivor fails to come forward initially, 6.B.3b allowing multiple interviews and conducting the interviews at the times of the survivor's or witnesses' choosing (including outside of regular business hours or the regular workweek), 6.B.3c removing the requirement that meetings with complainants and witnesses in sexual impropriety investigations must be conducted in a neutral location, and 6.B.3d eliminating the provision that finds a survivor's refusal to meet at a neutral location or provide <u>information via remote means "adequate grounds for closure."</u>	100%
6.C. The Medical Board should consider establishing specialized team(s) for sexual impropriety cases, and such team(s) should consult with the Ohio Attorney General's Office to develop the approach to both administrative matters and criminal referrals.	15%

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<p>7.A.1 Consider the impact of amending Ohio Revised Code § 2921.22, "Failure to report a crime or knowledge of a death or burn injury," specifically to include a duty to report certain criminal acts by physicians practicing in Ohio regardless of whether they rise to the level of a felony; alternatively, whether an Ohio criminal law should be created or existing law amended to raise certain criminal acts by physicians to the felony level, thus subjecting them to mandatory reporting under the current version of §2921.22.</p> <p>7.A.2 Regardless of the conclusion above, consider the impact of replacing the "knowing" standard in § 2921.22 with one similar to Ohio Revised Code § 2151.42 which requires "anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect that" a reportable offense by the physician has occurred.</p> <p>7.A.3 Consider the impact of the Medical Board reporting allegations of a physician-licensee's sexual impropriety to other state medical boards (such as through the National Practitioner Data Bank or other body, subject to timing and other reporting criteria) even if the Medical Board has not taken any enforcement action against a licensee, and consider the constitutional and legal protections surrounding such action.</p>	25%
8.A. Consider amending Ohio Revised Code § 4731.22 to permit the Board to proceed to citation against a physician's license based solely on an indictment;	50%
8.B. Consider amending Ohio Revised Code § 4731.22(O) to allow the Board the ability to fine licensees who are required to complete non-disciplinary remedial education but fail to do so;	50%
8.(C) (formerly 8.(D)). Consider amending Ohio Revised Code Chapter 23 in order to provide the Medical Board access to peer review information.	50%