University of California Board of Regents

UCLA Special Committee Review: Chair Pérez Statement

On behalf of the Board of Regents for the University of California, I want to thank the independent UCLA Special Committee tasked with conducting a thorough review of UCLA's response to past allegations of sexual misconduct in the clinical setting. Specifically, I want to thank the Honorable Justice Carlos Moreno, former Regents Joanne Corday Kozberg and Dr. Lori Pelliccioni, in addition to UCLA Chancellor Gene Block for their commitment to this serious matter. I also want to recognize Health System leadership at UCLA and throughout the UC system for taking action on these issues before and during the current public health crisis.

Sexual misconduct in any form is unacceptable and will not be tolerated by the University of California. I am confident that the Committee's findings and recommendations will help both UCLA and the UC system ensure the safety and wellbeing of all members of our community.

In light of the importance of this issue and in furtherance of our commitment to transparency with our community, the Board of Regents is making the Committee's report summarizing its findings and recommendations public.

The Board looks forward to working with UCLA and the UC system to address all of the Committee's recommendations.

Sincerely,
John A. Pérez, Chair
University of California Board of Regents

THE UNIVERSITY OF CALIFORNIA
UCLA Special Committee

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May 14, 2020

Chair John Pérez
President Janet Napolitano
University of California Board of Regents
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Dear Chair Pérez and President Napolitano:

On behalf of the UCLA Special Committee reviewing UCLA's response to allegations of sexual misconduct in the clinical setting, please find the enclosed report summarizing our findings and recommendations. These recommendations are designed to provide guidance to UCLA Health, UCLA Student Health, and the UC system to ensure best practices to prevent, identify, and address sexual misconduct. The Committee recognizes that UCLA Health, UCLA Student Health, and UC system leadership have already taken many steps to address these issues, including implementing important policy and organizational changes. The Committee stands ready to be of additional assistance in addressing the recommendations identified in the report.

We are grateful for the cooperation of UCLA and University of California employees throughout our independent review.

Sincerely,

Hon. Carlos Moreno, Chair
for the UCLA Special Committee

Enclosure

UCLA Health and Student Health Special Committee Report

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I. Executive Summary

In March 2019, the Chancellor of the University of California, Los Angeles ("UCLA") called for a Special Committee to conduct an independent investigation on behalf of the University of California Board of Regents ("Regents") to assess the appropriateness of UCLA's response to allegations of sexual harassment and sexual misconduct involving University-employed physicians. The principles of transparency, accountability, fairness, and commitment to the health and safety of UCLA's patients have guided this report and the investigation that led to it.

The Special Committee reviewed complaints against five former physicians alleged to have crossed boundaries in their examinations of patients. The complaints referred to conduct ranging from invasive genital, anal, and breast exams and other inappropriate touching to sexually suggestive questions and commentary. In some instances, the physicians had left UCLA years before the University learned of the allegations. In others, the allegations led to UCLA's separation of those physicians.

In addition to reviewing policies and interviewing employees, the Committee engaged in extensive patient-outreach efforts, including asking UCLA alumni and a broader patient population to share information with the dedicated support hotline that UCLA made available through Praesidium, a third-party resource. The Committee would like to acknowledge the bravery of all individuals who have come forward with information about their experiences, both historically and in response to our outreach. In order to protect patient confidentiality and well-being, this report avoids detailing individual patient complaints of misconduct.

The Committee also sought the input of UCLA Health leadership and other UC and UCLA Health professionals, as well as the opinions of outside health care experts.

The Committee found that, where UCLA was made aware of the allegations, the University's response was at times either delayed or inadequate or both. A number of organizational, cultural, and informational deficiencies played a role, including:

- The absence of clear and consistent standards for immediately suspending physicians accused of sexual misconduct, and unclear authority for imposing such measures;

- The lack of clear and consistent processes for receiving, reviewing, and responding to patient complaints of sexual misconduct, exacerbated by overlapping governing bodies;
- A cultural deference to physicians and fear of retaliation by supervisors, which chilled employees from reporting physician misconduct; and
- Inadequate education about sensitive exams, which left patients without the information and staff chaperones without the training to enforce clinical boundaries.

In short, some of the conduct the Committee examined may have been prevented. Similar conduct may be minimized in the future by implementing the recommendations in this report. Key recommendations include:

- Clarify procedures and authority to suspend a physician while investigating allegations of sexual misconduct;
- Develop a standardized, neutral response to address allegations of sexual misconduct in the clinical setting;
- Enhance standardization, training, and communication about clinical boundaries and expectations during sensitive exams;
- Reduce barriers to both reporting physician misconduct and taking effective action against it; and
- Develop new policies and procedures to place more emphasis on patient advocacy.

Reflecting the urgency of these challenges, UCLA has already begun making many of the Committee's recommended changes. Indeed, important changes were underway before the Committee began its review.

II. About UCLA Health and the UCLA Arthur Ashe Student Health Center

UCLA Health is among the most comprehensive health care systems in the world, dedicated to leading-edge patient care, research, and education. UCLA Health comprises three hospitals: Ronald Reagan UCLA Medical Center; Stewart and Lynda Resnick Neuropsychiatric Hospital at UCLA; and UCLA Medical Center, Santa Monica. The health system also includes a wide-reaching system of more than 170 primary-care and specialty-care clinics throughout Southern California. The UCLA Medical Group is responsible for credentialing physicians in those clinics. UCLA Health serves nearly 600,000 unique patients each year and comprises 20,000 employees, including 2,700 clinical faculty, 1,200 residents and fellows, and 4,000 registered nurses.

The David Geffen School of Medicine at UCLA ("School of Medicine") is the academic home for many of UCLA Health's physicians and researchers. The School of Medicine is internationally recognized as a leader in research, medical education, patient care, and public service. The model curriculum includes courses covering 22 medical fields and interactive teaching. The School of Medicine offers a learning environment with related clinical experiences within UCLA hospitals, as well as UCLA-affiliated hospitals and clinics. Generally, Departments at the School of Medicine or the UCLA Faculty Practice Group oversee hiring of UCLA physicians.

Separate from UCLA Health, which serves the broader Los Angeles community, the Arthur Ashe Student Health and Wellness Center ("Ashe Center" or "Student Health") provides health care and education specifically to UCLA's student population. A part of UCLA's Office of Student Affairs, it offers Primary Care, Women's Health, Immunizations, Travel Medicine, Physical Therapy, Specialty Clinics, Radiology & Laboratory, and Acupuncture. The Ashe Center comprises nearly 40 clinical staff.

III. Special Committee Review Scope and Background

The Committee conducted a review of UCLA's responses to allegations of sexual harassment or misconduct by five physicians. Three of them—James M. Heaps, Mark L. Weissman, and Steven J. Weinstein—were employed by UCLA Health until just a few years ago. UCLA Health's handling of the complaints against them forms the bulk of this report. The other two physicians—Edward Wiesmeier and Dennis A. Kelly—worked for Student Health, but each had left the University more than a decade before any allegations against them came to light.

The Committee's review began in March 2019 after the Regents received a notice of intent to sue from one of Dr. Heaps's former patients in February 2019. It alleged that Dr. Heaps had sexually assaulted her during a physical exam. At the same time, UCLA was also aware that other physicians—whether formerly employed at UCLA or at other institutions around the country—were the subject of allegations of sexual misconduct. To ensure a holistic review of issues pertaining to sexual misconduct in the clinical setting, including analyses of the root causes of these issues and the appropriateness of UCLA's response, UCLA Chancellor Gene Block launched an independent review on behalf of the Regents. In June 2019, UCLA announced the Special Committee review in a letter to the community seeking input from any patients affected by Dr. Heaps. In November 2019, the Special Committee issued an update to the community, again seeking input from those who may have been impacted by similar conduct of any current or former UCLA clinician.

The Special Committee comprises three volunteers who have prior experience with the UC system. It is chaired by the Honorable Carlos Moreno, a former California Supreme Court Justice. Its other members are Joanne Corday Kozberg, a former UC Regent who served as Secretary of California's State and Consumer Services Agency under Governor Pete Wilson, and Dr. Lori S. Pelliccioni, a former UC Regent and former assistant United States attorney with 25 years of experience in the health care industry. Chancellor Block serves as an ex-officio member. O'Melveny & Myers LLP served as independent outside counsel for the Special Committee review.

The Committee's review consisted of several parts, including:

- Reviewing the facts underlying patient and employee complaints;
- Examining whether UCLA's response to the complaints—including its reporting of and communications about the alleged misconduct, both within and outside UCLA—reflected the high standard of patient care expected of the institution;
- Reviewing the policies, procedures, structures, and practices at UCLA Health and Student Health for preventing, identifying, investigating, and addressing alleged sexual harassment or misconduct, particularly in the clinical setting;

- Identifying gaps in these policies, procedures, structures, and practices;
- Engaging in patient-outreach efforts, including notifying and speaking with UCLA patients and alumni who may have been impacted or have information about the alleged misconduct of these or other UCLA-affiliated physicians; and
- Developing recommendations for corrective and preventative actions that UCLA Health, Student Health, and the entire UC system can implement.

The Committee reviewed patient and employee complaints only for the purpose of assessing UCLA Health's and Student Health's responses to those complaints. For that reason, the Committee assumed the truth of the complaints it reviewed and did not review patient medical records or assess whether any alleged conduct constituted a violation of policy or law. UCLA's Title IX Office oversees the investigation and analysis of complaints alleging sexual harassment or sexual violence against any member of the UCLA campus community, and, consistent with its policy and applicable law, is conducting its own review of those patient complaints. Further, the Committee is aware that some of the complaints addressed here have given rise to criminal charges and civil litigation.

The Special Committee provided the Regents with briefings on its progress, findings, and recommendations, and has also solicited and received feedback from them.

IV. Special Committee Review Process

Over the course of the past year, the Committee gathered and analyzed facts from more than 60 witness interviews of current and former employees and patients, collected and searched over 8.4 million documents, and reviewed over 10,500 relevant communications, policies, procedures, and other records.

The Committee also requested to speak with approximately 100 patients who responded to UCLA's patient-outreach efforts, and expanded its patient outreach by asking alumni and a broader patient population to share information with the dedicated support hotline UCLA made available through Praesidium, which helps organizations root out and remedy suspected sexual abuse. O'Melveny and/or the Committee also requested to meet with Drs. Heaps, Weissman, Weinstein, Wiesmeier, and Kelly—none of whom agreed to do so. The Committee has met with UCLA Health and Student Health leadership to engage in fact development, provide updates on key issues, and discuss and implement interim remedial recommendations. The Committee consulted with clinical and administrative subject-matter experts throughout the review process.

Finally, in consultation with UC systemwide leadership, UC and UCLA Health leadership, and subject-matter experts, the Committee has developed a comprehensive set of recommendations designed to promote best practices throughout UCLA and the UC system for addressing sexual violence and sexual harassment in the clinical setting.

V. Key Policies and Procedures

The Committee reviewed more than 50 current, former, and draft policies and procedures applicable to the issues under review. The key policies and procedures include:

- **University of California Sexual Violence and Sexual Harassment ("SVSH") Policy.** This Policy addresses the University's responsibilities and procedures related to sexual violence, sexual harassment, retaliation, and other prohibited behavior under Title IX of the Education Amendments of 1972.

- **Investigation and Adjudication Framework for Senate and Non-Senate Faculty.** This policy sets out the process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is a University faculty member whose conduct is governed by the Faculty Code of Conduct (APM-015).
- **Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel.** This policy sets out the process for investigating and adjudicating alleged violations of the SVSH Policy in instances where the respondent is either a University employee whose conduct is governed by Personnel Policies for Staff Members or a non-faculty academic appointee who is subject to disciplinary procedures under the Academic Personnel Manual.
- **Academic Personnel Manual ("APM").** This manual includes the following policies: Faculty Code of Conduct (APM-015), Faculty Conduct and the Administration of Discipline (APM-016), and Corrective Action and Dismissal of Non-Senate Academic Appointees (APM-150).
- **Personnel Policies for Staff Members ("PPSM").** This manual includes the following policies: Corrective Action – Professional and Support Staff (PPSM 62) and Termination and Job Abandonment (PPSM 64).
- **Ronald Reagan Medical Center Medical Staff Bylaws.** These bylaws set out the rules and regulatory framework for self-governance of the Ronald Reagan Medical Center Medical Staff. The bylaws include provisions for informal and formal corrective action and investigation in response to complaints made against physicians with clinical privileges at Ronald Reagan Medical Center.
- **UCLA Medical Group ("UCLAMG") Bylaws.** These bylaws set out the rights and responsibilities of healthcare professionals affiliated with UCLA, including faculty, non-faculty, Medical Staff, and non-Medical Staff members.
- **UCLA School of Medicine Departmental Bylaws.** The rights, responsibilities, and procedures applicable to faculty members within particular Departments of the School of Medicine (e.g., Department of Obstetrics & Gynecology or Department of Surgery) are set out in these bylaws.
- **UCLA Arthur Ashe Student Health and Wellness Center Policy 101.** This policy sets out the Ashe Center Governing Body oversight procedures.
- **UCLA Arthur Ashe Student Health and Wellness Center Quality Improvement Plan.** This plan sets out the framework, organizational structure, and procedures regarding quality improvement and management of the Ashe Center.
- **Northridge Hospital Medical Center ("Northridge Hospital") Medical Staff Bylaws.** The rules and regulatory framework providing for the organization, functions, and self-governance of the Northridge Hospital Medical Staff are set out in these bylaws.

- **University of California Office of the President Guidance to UC Health Regarding SVSH in the Clinical Setting ("UCOP 2020 Guidance").** Guidance issued on December 9, 2019, and generally effective February 15, 2020, on clinical directives and investigating prohibited conduct occurring in the patient care context.

Because UCLA physicians may hold a number of positions or titles across various University and health system entities, a number of the above policies can apply to a single instance of alleged misconduct. Many UCLA physicians are both Medical School faculty members and members of a Medical Staff at a UCLA Medical Center. Given these dual roles, any investigation of or disciplinary action against such a physician could be governed by the SVSH Policy and Investigation and Adjudication Framework for Senate and Non-Senate Faculty and/or the applicable Medical Staff bylaws, with no clear guidance on what policy should take precedence.

The applicability of multiple policies to a single allegation of misconduct has several consequences. First, it can create confusion about who has the authority to investigate and act on allegations of misconduct. The results of a Title IX investigation into a faculty member would be reported to the Chancellor (or his delegate), who would be responsible for acting on the results of that investigation. By contrast, the results of an investigation into a physician with hospital privileges ordinarily would be reported to the Medical Staff Executive Committee for appropriate resolution. The Committee has learned that, in practice, these overlapping and conflicting policies have sown significant confusion about who has the authority to act when presented with allegations of misconduct, and from what source that authority flows.

Second, because different policies contain different standards for evaluating whether and how to take action against physicians accused of misconduct, decisions about what policy applies to investigations and disciplinary actions can be consequential. On the academic side, for example, investigatory leave can be imposed by the Chancellor when "there is a strong risk that" a faculty member's continued service "will cause immediate or serious harm to the University community or impede the investigation of his or her wrongdoing, or where the faculty member's conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency." The standard applied by the Medical Staff, by contrast, is narrower, permitting summary suspension only where "the failure to take that action may result in an imminent danger to the health or welfare of any individual." In addition, under the SVSH Policy, the Title IX Officer may identify and oversee interim measures after receiving a report of prohibited conduct. Such measures can include exclusion from the campus or workplace. Recognizing the above lack of clarity, the University of California Office of the President issued the UCOP 2020 Guidance across UC Health related to addressing SVSH allegations in the clinical setting. That Guidance is designed to make clear that the Title IX Office has exclusive authority to recommend and oversee interim measures implemented under the SVSH Policy.

Third, the various policies that might apply to an allegation of misconduct carry with them different procedural rights for the accused. Those rights tend to be stronger for physicians in certain positions overseen by self-governing bodies (e.g., members of the Academic Senate in the Medical School and the Medical Staff in the Ronald Reagan Medical Center). The Committee found that UCLA administrators were generally reluctant to impose discipline on physicians who were members of one of the self-governing bodies. That reluctance was the result of both real and perceived barriers to action. Among the real barriers to action were the onerous procedural requirements associated with imposing discipline on these physicians, leaving certain administrators without the authority to take immediate action. Perceived barriers included the fear of being sued and a lack of precedent for imposing discipline on self-governed physicians. As a result, the Committee found material disparities between the University's responses to misconduct by physicians who were members of a self-governing body and those whose employment was governed only by fixed-term contracts.

VI. Factual Findings

a. Dr. James M. Heaps

Dr. Heaps, an OB/GYN, was affiliated with UCLA from 1983 to 2018 in roles ranging from intern, resident, and fellow to Medical School faculty member and consulting physician at UCLA's Ashe Center. From 1990 to January 31, 2014, Dr. Heaps worked in a private practice unaffiliated with UCLA Health. During that period, however, Dr. Heaps had Medical Staff privileges and treated patients at the UCLA Medical Center in Westwood (now the Ronald Reagan Medical Center), and from 1989 to 2018, he was a member of the Medical School faculty. During his internship, residency, and fellowship, and extending until June 2010, Dr. Heaps was a consulting physician for UCLA Student Health. Dr. Heaps was employed by UCLA Health from February 1, 2014 to June 28, 2018.

The Committee examined a number of allegations spanning multiple years against Dr. Heaps. These included a 1999 patient complaint, a 2014 employee complaint, a 2014 patient complaint, a 2015 patient complaint, a 2017 employee complaint, a 2017 patient complaint, a 2019 patient complaint, and 2019 employee complaints. In general, these complaints alleged that Dr. Heaps engaged in the following conduct: a painful vaginal examination technique; unnecessary, unwanted, and/or inappropriate touching of the vagina, breasts, and buttocks during exams; unnecessarily touching a patient's genital piercing; massaging patients' legs during exams while patients were undressed from the waist down; massaging, grabbing, or fondling patients' breasts during breast exams; and making inappropriate sexual comments to patients and employees. The University placed Dr. Heaps on investigatory leave in June 2018, and later that month he retired and surrendered his UCLA Medical Staff privileges.

Student Feedback. Between 1990 and 2011, UCLA received feedback from students and residents whom Dr. Heaps taught in the clinical setting. That feedback included comments that Dr. Heaps sometimes touched students in a familiar way that made them uncomfortable. The students' and residents' feedback included phrases such as "very inappropriate," "very touchy," "extremely unwelcome," and "comments with innuendos." The Committee found no evidence that UCLA personnel contacted these students or Dr. Heaps about this feedback or otherwise addressed it.

In addition, the Committee found evidence of several patient and employee complaints about Dr. Heaps from the late 1990s to his retirement in 2018:

1999 Patient Complaint. In 1999, one patient submitted a written complaint to Dr. Michael Johnson, a colleague of Dr. Heaps who had referred the patient to Dr. Heaps while both doctors were in private practice unaffiliated with UCLA Health. The patient complained about Dr. Heaps's exam technique and his comments which disturbed and embarrassed her. The Committee found no evidence that UCLA Health was made aware of the complaint prior to or during Dr. Heaps's employment.

2014 Employee Complaint. In 2014, an employee complained to Dr. Johnson (then-School of Medicine OB/GYN Department Vice Chair of Clinical Affairs) and the School of Medicine OB/GYN Department's Chief Administrative Officer that Dr. Heaps made inappropriate comments about her physical appearance. Dr. Johnson, however, did not understand the employee's statements as a formal complaint. The Committee did not find any evidence that this allegation was reported to the Title IX Office or UCLA Health leadership at or near the time of the employee's complaint. The Title IX Office investigated this complaint in 2017 and 2018, however, as a result of allegations that arose during a separate Title IX investigation into a 2017 patient complaint, described below. During that investigation, the employee also claimed that Dr. Heaps retaliated against her for reporting the 2014 incident to Dr. Johnson and the Chief Administrative Officer. The results of Title IX's 2018 investigation are described below.

2014 Patient Complaint. Also in 2014, a patient filed a written complaint about Dr. Heaps with the Office of Patient Experience, complaining that during an exam, while a chaperone was not present, Dr. Heaps unnecessarily touched sensitive parts of her body without explanation and made comments that made her feel uncomfortable. The Office of Patient Experience escalated the complaint to Dr. Gautam Chaudhuri (then-Chair of the School of Medicine OB/GYN Department), who asked Dr. Johnson to investigate it. In transmitting the request to investigate to Dr. Johnson, Dr. Chaudhuri also stated to Dr. Johnson that there must have been a "misunderstanding" by the patient. After reviewing the patient's records and complaint, Dr. Johnson drafted his conclusions and previewed the conclusions of his investigation with Dr. Heaps before finalizing them. He did not speak with the patient or chaperone. After receiving feedback from Dr. Heaps, Dr. Johnson changed portions of his conclusions by adding an explanation for the comments allegedly made by Dr. Heaps. Dr. Johnson concluded that he did not find evidence of unprofessional or unethical conduct, and opined that Dr. Heaps's effort to make the patient feel comfortable was misconstrued as inappropriate. The patient's complaint was not escalated further or investigated by anyone else. In 2016, Dr. Johnson wrote a letter of recommendation to the School of Medicine OB/GYN Department Interim Chair supporting faculty advancement for Dr. Heaps. The letter did not reference any prior patient or employee complaints.

2015 Patient Complaint. In 2015, an individual, describing herself as a former UCLA student, posted a review of Dr. Heaps on an online business review site, recounting a past visit when Dr. Heaps was in private practice unaffiliated with UCLA Health. In the review, the individual complained that Dr. Heaps shared her patient information with a third party without her consent and touched a sensitive area of her body without warning or explanation.

University employees do not appear to have become aware of this complaint until they began reviewing a separate patient complaint lodged in 2017, described below. The Committee understands that UCLA's Title IX Office is currently investigating the 2015 patient complaint.

2017 Employee Complaint. In 2017, an employee reported to her supervisor that Dr. Heaps directed her to record on medical charts that he had cared for certain patients, despite her having provided the care. This prompted an investigation by Derek Kang (Chief Compliance Officer, UCLA Health). During that investigation, the Chief Compliance Officer learned from the employee that Dr. Heaps had repeatedly asked if he could perform a pelvic exam on her. The employee later told the Chief Compliance Officer that Dr. Heaps retaliated against her for reporting his behavior. The Chief Compliance Officer referred the employee's allegations to the

Title IX Office about one month after learning of them. The Title IX Office investigated those allegations concurrently with the 2017 patient complaint against Dr. Heaps discussed below. The results of Title IX's investigation are described below. In March 2018, the Compliance Department concluded that Dr. Heaps's billing practices were not compliant with applicable standards and regulations. UCLA Health disclosed its findings to the Department of Health and Human Services Office of the Inspector General in July 2018.

2017 Patient Complaint. In 2017, a patient alleged to her regular OB/GYN that, during an exam, Dr. Heaps unnecessarily and inappropriately touched sensitive areas of her body and asked questions in a manner which she considered to be overly familiar. This complaint was escalated to UCLA Health leadership—including Dr. John Mazziotta (Vice Chancellor, UCLA Health Sciences and CEO of UCLA Health), Johnese Spisso (President of UCLA Health, CEO of UCLA Hospital System, and Associate Vice Chancellor of Health Sciences), and Jane Boubelik (Chief Counsel, UCLA Health)—on the day it was made, and to UCLA's Title IX Office and the UCLA Police Department the next day.[1] UCLA's Chancellor was notified two days after the complaint, and Medical Staff leadership, including Dr. Christopher Tarnay (then-Chief of Staff, Reagan Medical Staff) and Dr. Carlos Lerner (then-Vice Chief of Staff, Reagan Medical Staff), met to discuss UCLA's response. Three days after UCLA received the patient's complaint, the then-Vice Chief of Staff of the Reagan Medical Staff and Dr. Deborah Krakow (School of Medicine OB/GYN Department Chair) met with Dr. Heaps, notified him of the complaint, and asked him to immediately begin a vacation that he had planned for later in the month; Dr. Heaps agreed to do so. The purpose of UCLA's request was to ensure that Dr. Heaps was removed from the clinical setting while the patient's complaint was investigated.

Given Dr. Heaps's dual titles as a Medical School faculty member and as a doctor with Ronald Reagan Medical Center privileges, each entity had oversight responsibilities with respect to Dr. Heaps in his capacity as a faculty member or when he saw patients at the Medical Center. At the time, disciplinary actions against Medical Staff physicians were rare, and disciplinary actions against them for sexual misconduct were virtually unheard of. The Medical Staff Executive Council—a leadership subgroup of the Medical Staff Executive Committee at the Ronald Reagan Medical Center—took the lead role in handling this complaint. The Executive Council convened in early January 2018—while Dr. Heaps was still on vacation—to determine whether Dr. Heaps should be placed on paid leave while the Title IX Office investigated the patient's allegations. When making that determination, the Executive Council was aware of the 2014 patient complaint, 2015 patient complaint, and 2017 employee complaint described above. The Executive Council was also told that Dr. Heaps denied the patient's allegations, and that when interviewed by the Title IX Office, the medical assistant who was in the room during the patient's 2017 exam said that she did not recall the patient and had never seen Dr. Heaps do anything inappropriate.

The Medical Staff Executive Council declined to suspend Dr. Heaps upon concluding that immediate suspension was not necessary to protect patients. This conclusion was based on Dr. Heaps's absence from the clinical setting during his vacation and the medical assistant's statements. Dr. Heaps was then permitted to return to practice after his vacation on January 8, 2018, while the Title IX investigation continued, with a written reminder from the OB/GYN

[1] The UCLA Police Department informed the reporting party from the Department of OB/GYN that it could not take an official report unless the patient herself made a report.

Department Chair that he must adhere to UCLA's chaperone policy, but otherwise without restriction. UCLA Health and Medical School leadership deferred to the Medical Staff Executive Council's decision-making process and, as a result, its decision not to suspend Dr. Heaps.

In April 2018, the Title IX Office issued an investigative report, finding by a preponderance of the evidence that Dr. Heaps had violated the University's SVSH Policy by retaliating against the employee who had reported his repeated offers to perform a pelvic exam on her. That report also concluded that "it is more likely than not that Dr. Heaps engaged in the alleged sexually harassing behavior" described in connection with the 2014 employee complaint above, but that there was not a preponderance of the evidence showing that Dr. Heaps retaliated against that employee. Finally, the report found by a preponderance of the evidence that Dr. Johnson violated the University's sexual harassment policy by failing to appropriately respond to the 2014 employee complaint against Dr. Heaps. In response, the OB/GYN Department Chair verbally counseled Dr. Johnson about his reporting obligations. The next day, the OB/GYN Department Chair informed Dr. Heaps that his academic appointment, which was set to expire in June 2018, would not be renewed. Discussions between the OB/GYN Department Chair, Dr. Jonathan Hiatt (Vice Dean for Faculty, School of Medicine), and others about the non-renewal of Dr. Heaps's academic appointment had been ongoing since mid-March 2018. This use of the non-renewal process as a method of removing a physician from the clinical setting was novel, given that senior leadership within UCLA Health had not previously been involved with a non-renewal and the School of Medicine first used a non-renewal in 2017.

In mid-May 2018, the Title IX Office issued a draft report about the 2017 patient complaint, finding the complaint credible by a preponderance of the evidence but deferring the question of whether Dr. Heaps's conduct violated University policy until after a subject-matter expert had opined on whether his conduct was clinically appropriate. Title IX then forwarded the report to Medical Staff leadership, recommending that they obtain an opinion on the appropriateness of Dr. Heaps's clinical conduct. In early June 2018, UCLA Health leadership—including UCLA Health's Vice Chancellor and CEO, and Dr. Kelsey Martin (Dean of the School of Medicine)—decided to place Dr. Heaps on immediate investigatory leave, and Chancellor Block learned about Dr. Heaps's non-renewal and investigatory leave. Two weeks later, Dr. Heaps retired and UCLA reported him to the Medical Board. The OB/GYN Department reported Dr. Heaps's retirement to his patients in June 2018.

After Dr. Heaps retired, the Medical Staff enlisted an external peer-review body to review the allegations against Dr. Heaps to evaluate whether they were clinically appropriate. The peer-review body concluded that some of Dr. Heaps's conduct was "not professional" and "inappropriate." Medical Staff leadership received the peer-review body's evaluation, but it was not initially provided to the Title IX Office. Title IX later received the evaluation and determined, by a preponderance of the evidence, that Dr. Heaps violated the University's SVSH Policy. The Title IX Office issued its final report in November 2019.

2019 Patient Complaint. In 2019, UCLA received a complaint from a patient alleging that Dr. Heaps sexually assaulted her during a 2018 visit. This visit occurred after Dr. Heaps returned from vacation and while the Title IX Office conducted its investigation into the 2017 patient complaint. UCLA reported the complaint to the Medical Board and to UCLA law enforcement in March 2019.

2019 Employee Complaints. As part of its review of UCLA's handling of sexual misconduct allegations against UCLA Health physicians, the Committee also investigated whether such issues had arisen in the Student Health context. The Committee therefore interviewed current and former employees of the Ashe Center, where Dr. Heaps worked part-time as a consulting physician until June 2010. While chaperoning Dr. Heaps's exams of student patients, certain employees witnessed Dr. Heaps engage in the following behaviors: massaging patients' legs during exams while patients were undressed from the waist down; and "massaging," "grabbing," or "fondling" patients' breasts when conducting breast exams. None of these employees reported Dr. Heaps's conduct at the time. Their explanations for not reporting included that no patients complained about Dr. Heaps's behavior and that they deferred to Dr. Heaps as the physician. Although the Committee did not locate any student-patient complaints about Dr. Heaps, its investigation was limited by the lack of historical records kept at the Ashe Center dating back to Dr. Heaps's tenure.[2]

b. Dr. Mark L. Weissman

Dr. Weissman is a former internist at Toluca Lake Health Center ("Toluca Lake"), a UCLA-owned clinic, and was affiliated with UCLA from 2014 to 2018. He became employed by UCLA when it acquired Toluca Lake in 2014. UCLA employed Dr. Weissman under Management & Senior Professional Staff Physician ("MSP") contracts, not as a Medical School faculty member or a member of the Medical Staff. UCLA placed Dr. Weissman on investigatory leave in May 2018 and declined to renew his contract in June 2018.

The Committee reviewed a series of complaints against Dr. Weissman from his pre-UCLA employment and examined several patient complaints made in 2018 during his UCLA employment. In general, these complaints alleged that Dr. Weissman engaged in the following conduct during sensitive examinations: unnecessary touching of the clitoris; prolonged pelvic exams including repeated movement of his fingers in and out of the vagina; and prolonged breast exams including cupping or groping the patient's breast.

Pre-Acquisition Complaints. The Committee found several employee allegations of misconduct against Dr. Weissman before UCLA's 2014 acquisition of Toluca Lake. Employees reported that Dr. Weissman engaged in what they believed to be inappropriate touching during pelvic and breast exams as early as 2002 or 2003, in 2009, and in 2014. Beginning as early as 2009, employees began to take such actions as diverting female patients as well as all patients needing Pap smears away from Dr. Weissman, and signaling to Dr. Weissman with a handheld exam light when he appeared to cross boundaries or make female patients uncomfortable during sensitive exams. Dr. Weissman's supervisor, the then-Medical Director at Toluca Lake, was made aware of multiple pre-acquisition employee complaints. These complaints were not disclosed or uncovered during the diligence period of UCLA's Toluca Lake acquisition. Post-acquisition, UCLA hired both Dr. Weissman and his supervisor.

The Committee reviewed documentation, including emails and other electronic complaint databases, and interviewed more than 15 witnesses relating to Dr. Weissman and Toluca Lake, but did not find evidence of any pre-acquisition patient complaints.

[2] The Ashe Center maintains documents pursuant to UC Record Retention Guidelines and generally retains student health records for 10 years. In 2004, the Ashe Center transitioned to an electronic medical record system and paper records from before 2004 no longer exist.

Post-Acquisition Complaints. In 2018, a patient reported that Dr. Weissman had placed his hand on her breast and nipple during an exam unrelated to those body parts. That complaint was escalated to the Toluca Lake clinic director on the same day, and to UCLA Health leadership, including Dr. Robert A. Cherry (Chief Medical and Quality Officer, UCLA Health), within five days. Within a week of the initial complaint, the Title IX Office was alerted and the Director of UCLA's Entertainment Industry Medical Group placed Dr. Weissman on investigatory leave. Dr. Weissman did not return to work after being placed on leave. In May 2018, UCLA Health learned about pre-acquisition complaints against Dr. Weissman. UCLA then notified law enforcement and the Medical Board and decided not to renew Dr. Weissman's contract, which expired in June 2018. UCLA also terminated the employment of Dr. Weissman's supervisor, based on his failure to report earlier complaints about Dr. Weissman.

After Dr. Weissman was no longer employed by UCLA, another patient came forward alleging, among other things, that Dr. Weissman had touched her breast without warning during an exam. UCLA contacted the patient that day, apologized, and promised to send her complaint to senior leadership. Records reflect that the patient accepted UCLA's apology, and the Committee found no evidence that UCLA contacted the patient at any point afterward. Approximately two weeks later, the complaint was escalated to UCLA Health's CEO, President, and Chief Medical and Quality Officer, and to Dr. Eve Glazier (UCLA Health Faculty Practice Group President). UCLA reported the patient's complaint to law enforcement and the Medical Board the next day.

The Committee notes that UCLA's Title IX Office did not initially investigate the first 2018 patient report in part because it was the Office's practice not to pursue complaints against respondents who are no longer affiliated with UCLA.[3] The Committee understands, however, that UCLA's Title IX Office is now investigating patient complaints relating to Dr. Weissman.

c. Dr. Steven J. Weinstein

Dr. Weinstein was a surgeon at UCLA's Northridge Clinic. The University employed Dr. Weinstein under MSP contracts with the Department of General Surgery to provide services at the Northridge Clinic from November 1, 2015 through June 6, 2017. Before joining the Northridge Clinic, Dr. Weinstein practiced at a medical center in Woodland Hills.

The Committee reviewed a patient complaint against Dr. Weinstein from before his UCLA employment. It also examined two complaints—a 2016 patient complaint and a 2016 employee complaint—made while Dr. Weinstein was employed by UCLA. In general, these complaints alleged Dr. Weinstein: insisted that pre-operative breast, pelvic, and rectal exams were required; performed unnecessary breast exams; stared at a patient's breasts; and made unwelcome physical contact. UCLA placed Dr. Weinstein on investigatory leave in February 2017. He resigned in June 2017.

Pre-UCLA Patient Complaint. The Committee learned that when Dr. Weinstein practiced with his previous employer, a patient complained that Dr. Weinstein conducted an unnecessary breast exam in connection with a pre-operative exam, and law enforcement became involved. Dr. Weinstein did not disclose this complaint to anyone at UCLA until after the police

[3] On May 6, 2020, the Department of Education ("DOE") released regulations that clarify a school may dismiss a formal Title IX complaint where the respondent is no longer enrolled at or employed by the school. *See* 34 C.F.R. § 106.45(b)(3)(ii) (effective Aug. 14, 2020).

contacted him in connection with the 2016 patient complaint discussed below. UCLA did not learn about this prior patient complaint during its process of hiring Dr. Weinstein.

2016 Patient Complaint. In 2016, a female patient visited Dr. Weinstein at the Northridge Clinic to discuss a surgical procedure. The next day, she canceled her surgery and made verbal complaints regarding Dr. Weinstein's conduct to both Dr. Weinstein and his administrative assistant. The patient later filed written complaints with UCLA Health, alleging that Dr. Weinstein performed sensitive exams that she believed were unnecessary.

The complaint was escalated to UCLA Faculty Practice Group and School of Medicine General Surgery Department leadership the day after the patient's verbal complaints. In response, they required Dr. Weinstein to be accompanied by a female chaperone during any sensitive exam of a female patient. Dr. Weinstein was informed of the chaperone requirement approximately two or three days after the patient's verbal complaints, but later claimed that he implemented the chaperone requirement on his own initiative. UCLA sent the patient a letter about one month after receiving her written complaint, apologizing and informing her that Dr. Weinstein would now be required to have a chaperone present during sensitive exams, that Dr. Weinstein would limit the components of his exams to those specific to the patient's condition, and that his practice would be audited every three months for compliance. UCLA renewed Dr. Weinstein's contract in November 2016. In December 2016, Dr. Weinstein informed the Chair of the School of Medicine General Surgery Department that the patient had filed a complaint with the police, that a detective had contacted him, and that a similar complaint had been filed against him when he worked at his previous employer.

2016 Employee Complaint. In December 2016, a UCLA employee complained to the Chair of the School of Medicine General Surgery Department about Dr. Weinstein, claiming that he touched her abdomen without her consent at an office social event. The Chair immediately reported the employee's complaint to the then-School of Medicine Department of Surgery Executive Administrator, who further escalated it to UCLA Health's Employee Relations Manager. The Employee Relations Manager informed UCLA Health's CEO within a few days of learning about the employee's complaint.

In January 2017, UCLA Faculty Practice Group and School of Medicine General Surgery Department leadership decided to terminate Dr. Weinstein's employment because of the employee's complaint, the pre-UCLA patient complaint that Dr. Weinstein had recently revealed, and the 2016 patient complaint. That decision was delayed, however, pending the report to and investigation of the employee's complaint by the Title IX Office. Ultimately, Dr. Weinstein was placed on investigatory leave on February 9, 2017, at which point the Faculty Practice Group informed Dr. Weinstein that it would report him to the Medical Board because of the restrictions placed on his practice after the 2016 patient complaint. In April 2017, Title IX concluded that, although Dr. Weinstein's touching of the employee was "unwelcome," there was insufficient evidence of an SVSH Policy violation. In June 2017, after several months of investigatory leave, Dr. Weinstein resigned from UCLA. UCLA reported him to the Medical Board in August 2017. The Medical Board later informed UCLA that it could not meet its burden of proof to warrant pursuing an administrative action against Dr. Weinstein's license. Dr. Weinstein has since challenged the University's response to the patient complaint, first by invoking a fair hearing process under the UCLA Medical Group bylaws applicable to staff physicians, and later in a civil lawsuit against the Regents, which is currently pending.

d. Dr. Edward Wiesmeier

Dr. Wiesmeier was an OB/GYN affiliated with UCLA and the Medical Staff from 1974 until his retirement in 2007. He held various academic and administrative titles throughout his career at UCLA, including serving as Assistant Vice Chancellor for Student Health between 1981 and 2006. He last saw patients at the Ashe Center in 2007.

The Committee reviewed several complaints against Dr. Wiesmeier made by Student Health employees years after his 2007 retirement.

The Committee's review did not uncover any patient complaints about Dr. Wiesmeier. The Committee's investigation was limited by the lack of historical records kept at the Ashe Center dating back to Dr. Wiesmeier's tenure.[4]

Several current and former Ashe Center employees who worked with Dr. Wiesmeier informed the Committee that Dr. Wiesmeier engaged in the following conduct during exams: ignoring patients' requests that he not perform certain sensitive exams on a few occasions; appearing to become sexually aroused during exams on a few occasions; and consistently performing non-standard sensitive exams, including unnecessary and repeated touching of the vagina and clitoris.

While at the Ashe Center, Dr. Wiesmeier was the primary investigator in a study evaluating the prevalence of clitoral adhesions in college-aged women, and several current and former Ashe Center employees reported that he spoke with patients about preventing adhesions. In an article he published about the study, Dr. Wiesmeier wrote that he "discussed with each patient" in the study "[d]aily external genital hygiene, including clitoral hood retraction," and that he examined each participant's clitoris "for abnormalities by bilateral retraction of the clitoral hood."[5] In a few of the cases he wrote about, Dr. Wiesmeier performed a release of clitoral hood adhesions.

All of the current and former Ashe Center employees the Committee interviewed stated that they did not report these concerns to UCLA. They offered several explanations for their failures to report, including a lack of patient complaints, deference to Dr. Wiesmeier as a physician and as their supervisor, a lack of training on clinical boundaries and reporting options, and a fear of retaliation.

UCLA's Title IX Office is currently investigating these allegations.

e. Dr. Dennis A. Kelly

Dr. Kelly worked part-time as an associate physician at the Ashe Center from 1980 to 2002, specializing in men's health. In 2002, Dr. Kelly entered into a settlement agreement related to an employment dispute with UCLA, ending his employment with the University. The settlement was not related to allegations of sexual misconduct.

[4] The Ashe Center maintains documents pursuant to UC Record Retention Guidelines and generally retains student health records for 10 years. In 2004, the Ashe Center transitioned to an electronic medical record system and paper records from before 2004 no longer exist.

[5] Wiesmeier, Edward M.D. et. al. (2008). The Prevalence of Examiner-Diagnosed Clitoral Hood Adhesions in a Population of College-Aged Women. *American Society for Colposcopy and Cervical Pathology Journal of Lower Genital Tract Disease, 12*(4), 307-310. http://dx.doi.org/10.1097/LGT.0b013e31817f36e8

The Committee reviewed a number of complaints against Dr. Kelly made by Student Health employees approximately 16 years after his 2003 departure from UCLA.

Several current and former Ashe Center employees informed the Committee that Dr. Kelly engaged in the following conduct with male patients in the clinical setting: having patients on "all fours" during exams without privacy draping; performing prostate exams that would cause patients to "pass out" or to become upset with Dr. Kelly; performing rectal exams on patients who did not engage in anal intercourse or otherwise present symptoms indicating that a rectal exam was appropriate or necessary; locking the exam room door while examining patients; being present in the exam room when patients undressed; and making inappropriate comments about patients to staff. None of the Ashe Center employees reported these concerns at the time of the conduct for a variety of reasons, including a lack of patient complaints, deference to Dr. Kelly as a physician, a lack of training as to clinical boundaries and reporting options, and a fear of retaliation.

In 2019, a former UCLA student alleged that Dr. Kelly performed unnecessary and invasive rectal exams at the Ashe Center in the mid-1990s. Also in 2019, another individual contacted UCLA with a complaint about Dr. Kelly. UCLA's Title IX Office is following its investigation process for these complaints. The Committee has not found evidence of any other patient complaints against Dr. Kelly from his time at UCLA. The Committee's investigation was limited by the lack of historical records kept at the Ashe Center dating back to Dr. Kelly's tenure.[6]

VII. Expert Evaluation

The Committee consulted a physician specializing in obstetrics and gynecology with 30 years of clinical experience, a physician in internal medicine with 38 years of clinical experience, and a surgeon with 26 years of clinical experience about generally accepted norms and standards of care for patient examinations. The Committee assumed the truth of certain facts for purposes of its review and was not provided with and did not review any medical records. For that reason, the Committee's clinical experts did not and could not verify or draw any conclusions or opine on the conduct of any specific physician. With these specific limitations in place, the Committee's clinical experts provided their opinions, discussing general norms of practice within their respective specialties.

The Committee's experts opined that the following conduct generally would be considered inappropriate and below the standard of care:

- Touching a patient during an exam without prior explanation and performing any examination or procedure without patient consent;
- Touching a patient's clothing or being present in the exam room while a patient is undressing or dressing;
- Showing patient health information, such as clinical photographs, to a third party without the patient's consent;

[6] The Ashe Center maintains documents pursuant to UC Record Retention Guidelines and generally retains student health records for 10 years. In 2004, the Ashe Center transitioned to an electronic medical record system and paper records from before 2004 no longer exist.

- Touching or grabbing a patient's breast to indicate the location of the heart;
- "Groping" a patient's breast or buttocks, "grabbing" or "cupping" a patient's breast or breasts, or squeezing the nipple;
- Touching a patient's genital piercing, unless necessary to assess the area for pain;
- Rubbing a patient's thigh;
- Repeated "in and out" motion of the fingers in a patient's vagina during a pelvic or bimanual exam;
- Touching a patient's clitoris, unless the patient has a visible mass;
- Since at least 2000, conducting rectovaginal exams in a college-age patient population, unless there is a specific concern;
- Performing a release of a clitoral hood adhesion solely because an adhesion is present, unless the patient presented a complaint;
- Cupping the breast or touching the nipple during a heart examination;
- Conducting a breast, rectal, or pelvic exam for an appendectomy or gallbladder removal pre-operative physical exam;
- A provider exhibiting sexual arousal during a patient exam;
- Since the 1990s, conducting a prostate or rectal exam by having a male patient on his hands and knees; and
- Conducting rectal exams on college-aged male patients who have not reported sexual intercourse with another male or have not complained of rectal pain, bleeding, or anemia.

Finally, the Committee's experts opined that as of approximately 2016, the standard of care generally requires that a chaperone be offered for any intimate exam of a female patient by a male clinician.

VIII. Thematic Findings and Recommendations

The Special Committee has made seven categorical findings based on the facts discussed in this report and developed recommendations to respond to those findings related to the University. Two guiding principles animate the Committee's recommendations. The first is to ensure patient safety and well-being, which must be the University's highest priority. The second is to ensure due process and fairness to providers, faculty, and staff. The Committee acknowledges that both the UC system and UCLA have begun to address many of the recommendations set out below. Certain remedial actions were initiated before the Committee began its review.

To ensure that the following recommendations result in meaningful change, the Committee recommends that a Compliance Monitor be appointed to oversee their implementation and effectiveness. Because each recommendation involves discrete issues and challenges, UCLA should identify project managers with responsibility for a specific category of recommendations. The Compliance Monitor should then establish concrete steps and a timetable for the completion of each project. Project managers should submit quarterly reports to the Compliance Monitor, who will then submit an annual report to the Regents.

1. Diffuse and Disjointed Responsibility Without Accountability

Many doctors at UCLA have multiple roles on both the academic and clinical sides of the University and its health system. This creates a problem of overlapping and conflicting rights and responsibilities. The complexity of UCLA's overlapping governance structures and procedures has created widespread confusion about who has the authority to act and what the source of that authority is. Some of these barriers to action are derived from actual limitations in bylaws and delegations of authority. Others are better described as perceived barriers, such as the fear of being sued and the lack of precedent. Until the case of Dr. Heaps, for example, UCLA Health leadership was not aware of any faculty physician having been removed.

The Committee also found that UCLA administrators deferred to physicians' own self-governance mechanisms. Similar self-governance mechanisms exist on the faculty side through the Academic Senate, which has broad powers to make recommendations to the Chancellor about faculty physicians' employment status.

Recommendations

Well-Defined Authority to Act. The Committee recommends that UCLA clearly define who has the authority to immediately suspend a physician, articulate how and when that authority may be exercised, and communicate with and educate those who have such authority. Doing so requires that UCLA first define the standard for immediate removal from the clinical setting for sexual misconduct. While taking into account fair process, the standard for immediate removal should not be such a high bar that it is met only in the most extreme circumstances.

Once a universal standard for suspension is established, it must also be clear who has the authority to apply it. On the academic side of governance, there should be a clear delegation of authority to the Vice Chancellor for Health Sciences (or equivalent senior Health enterprise officer) to place a physician faculty member on immediate investigatory leave. And on the clinical side, the Medical Staff bylaws—and all other hospital or medical group-specific bylaws—should be amended to give the governing body full discretion to immediately suspend a physician pending investigation. In connection with this recommendation, the UCOP 2020 Guidance on "Imminent Threat to Patient Safety" clarifies that a Medical Staff Executive Committee should impose summary suspension where allegations are serious, inherently plausible, and particularly (but not exclusively) when other allegations of misconduct have been made previously.

Further, UCLA must work toward a consensus and clarity on when each governing authority, including the Medical Staff and Academic Senate, has the power to terminate employment or decline to renew an employment contract. The source of that power must be transparent. All impacted personnel should be able to access and understand UCLA's process for adverse employment action based on an SVSH violation.

2. Inconsistent and Non-Neutral Processes

The Committee found that UCLA had no standard process to address sexual misconduct allegations in the clinical setting. Rather, UCLA's response to a particular case could depend on such factors as where the conduct occurred (e.g., at a hospital, a clinic, or at the student health center) and whether the physician was also a faculty member.

These inconsistent due process procedures across the University have made investigating and removing physicians with multiple titles exceedingly complicated. There is a lingering potential for a disconnect between the processes relating to physicians' hospital privileges, on the one hand, and academic appointments, on the other. At the same time, because the interpretation of Title IX's coverage expanded between 2014 and 2019, there was an evolving understanding about Title IX's role and responsibility to investigate sexual misconduct, creating further inconsistencies in the University's processes. Finally, when a process involves physicians being reviewed by other physicians—such as when colleagues within the same department are assigned the responsibility for review—the Committee found that physicians often deferred to their colleagues, compromising the neutrality of the process.

While other types of misconduct and patient care issues may appropriately be addressed by the UCLA Medical Group, the Medical Staff, the Academic Senate, or by individual departments or clinic directors, the Committee believes that sexual misconduct is an issue that requires specialized knowledge and an informed, consistent response.

Further, UCLA has limited visibility into patient complaints arising in a physician's private practice, even if that physician is concurrently a member of the Medical Staff and/or faculty.

Recommendations

The Committee believes that UCLA's various processes for investigating and responding to complaints of sexual misconduct should fall within a single response structure under Title IX, rather than be parceled out to traditional academic and clinical self-governing bodies.

Unified, Electronic Reporting System. This single response structure should start with a unified, electronic reporting system that consolidates complaints received across UCLA's academic and medical campuses. Any office that receives a complaint of misconduct in the clinical setting should create an entry in the unified system, recording essential information. This system should be searchable so that any previous complaints against the same individual can be identified. Which administrators have access to this sensitive database should be considered to appropriately ensure confidentiality.

Reporting Requirements for Medical Staff and Faculty in Private Practice. Physicians that are either faculty members or members of the Medical Staff should be required to report within 14 days any patient complaints alleging misconduct in their private practice to the University. The University should ensure there is a process to receive and maintain complaints, and identify individuals accountable for response, as appropriate. The University should require certification of disclosure upon credentialing and recredentialing, but in any event no less frequently than once every three years. The University should consider such patient complaints and associated outcomes, as well as any failure to comply with self-disclosure requirements, in determining whether the physician's affiliation should be impacted.

Incident Response Team. UCLA should utilize an Incident Response Team ("IRT") to evaluate SVSH complaints in the clinical setting received through the unified reporting system. An IRT is a multi-disciplinary team that convenes to vet patient and employee complaints of sexual misconduct occurring in the clinical setting. The core team should include, at minimum, the Chief Medical Officer, Chief Nursing Officer, Title IX, and legal counsel when legal advice is needed. Collectively, this team should ensure a quick, well-informed, and consistent response to allegations, including by informing the appropriate UCLA entities (and law enforcement and the California Medical Board, where necessary) and by applying a single standard for immediate suspension where appropriate.[7] Notably, the UCOP 2020 Guidance already includes a plan for the formation of IRTs led by Title IX and Health Center leadership, a single standard for immediate suspension in particular cases, and required internal and external notification at appropriate times.

Investigation by Title IX. To ensure thoroughness and expertise in the investigation phase, the Committee recommends that Title IX perform all investigations of sexual misconduct at UCLA. If a complaint contains an SVSH allegation—regardless of the location or persons involved—it should proceed to Title IX for evaluation and possible investigation. Complaints involving a patient and implicating the standard of care should additionally involve clinical review. At minimum, this review should consider whether (1) the conduct was clinically indicated and (2) the patient gave informed consent (see UCOP 2020 Guidance Definitions at page 2). In response to this recommendation, UCLA Health has made Title IX responsible for investigations involving health system matters.

Delays in the Title IX investigation process can be an impediment to fair resolution of complaints involving sexual misconduct.[8] Best practices would dictate that no investigation (in the context of SVSH allegations in the clinical setting) should extend beyond 90 business days unless the local Title IX Officer grants an extension for good cause. Considering the expanded role of Title IX described here, the Committee recommends that the University similarly expand its investigatory personnel and resources. UCLA has already hired Title IX investigators for UCLA Health and the School of Medicine.

Streamlined Hearing Process. After an investigation is conducted, UCLA also needs to ensure consistency in the due process provided to physicians when it makes disciplinary determinations. To that end, the Committee recommends a single, streamlined, trauma-informed hearing process for those faculty and Medical Staff members who are currently entitled to such a hearing, replacing the conflicting processes that currently exist. Recognizing the shared governance structure of the University, changes to existing hearing rights and processes will require coordination among the administration, Academic Senate, and Medical Staff.

Align Policies, Procedures, and Structure Between UCLA Health and Student Health. The Committee recommends that all of these process improvement recommendations be extended to the Arthur Ashe Student Health Center. Aligning Student Health within the UCLA Health supervisory structure would ensure that student-patient experiences and institutional responses to complaints are consistent with the entire UCLA health system.

Additional Unprofessional Conduct Policy for Clinical Setting. To give the University maximum flexibility, it should develop an additional policy, not in conflict with the existing SVSH Policy, that grants clinical leadership explicit authority to respond to any form of

[7] Under the Title IX regulations released by the DOE on May 6, 2020, a school may remove a respondent from its education program and activities provided that the school undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety or any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. *See* 34 C.F.R. § 106.44(c) (effective Aug. 14, 2020).

[8] The California State Auditor previously found that UCLA frequently failed to meet requirements governing the duration of the investigative process. *See* California State Auditor Report 2017-125, at 29.

unprofessional conduct. This policy would allow clinical leadership to take action, including interim measures such as summary suspension, on unprofessional conduct, if necessary, before conclusion of a Title IX process, thereby expanding the menu of response options available to them.

UCLAPD and Security Officer Training. To ensure consistency with UCLA Police Department ("UCLAPD") and hospital security procedures, the Committee recommends that UCLA provide training for police and hospital security officers that clarifies their jurisdiction and role in the investigation process as well as their external reporting obligations. All officers should be trauma-informed so that they are equipped to receive complaints of sexual misconduct.

Additional External Reporting in Circumstances of Unsubstantiated Allegations. If the University has provided external notification of a report of an SVSH allegation against a clinician but finds it does not have evidence sufficient to establish a policy violation, it will issue updated external notifications.

3. Unclear Clinical Boundaries and Expectations

The Committee identified a need for greater standardization of the clinical approach to routine sensitive exams. While a doctor must have the flexibility to treat a patient based on clinical judgment, there should be a mutual understanding about what a routine sensitive exam entails. UCLA should solicit expert guidance and consult relevant clinical guidelines, such as the guidance published by the American College of Obstetricians and Gynecologists, to establish these standards.[9]

The Committee also found that chaperones who are present during sensitive exams were not adequately trained to understand when physicians are acting outside the standard of care. The Committee reviewed several complaints where a chaperone was present during the examination.

Finally, the Committee concluded that patients were given inadequate information about what to expect in sensitive exams. Information asymmetry creates a particular degree of vulnerability for patients (especially student patients) in sensitive exams, and it is important to empower patients to know the boundaries, trust their instincts, and ask questions.

Recommendations

The Committee recommends establishing and teaching physician-informed guidelines for sensitive exams. Education on clinical boundaries can take place through many forms, including online videos, pre-visit communication, and pamphlets. These efforts should reinforce the principle that in every sensitive exam, there should be three people in the room who understand what will occur: the physician, the chaperone, and the patient.

Guidelines and Physician and Medical Staff Education. The Committee recommends that UCLA work with clinical experts to establish guidelines for both clinical procedures and communication in sensitive exams. New-hire and periodic trainings should then instruct physicians and other medical staff on these accepted standards.

[9] *See* Committee on Ethics, American College of Obstetricians and Gynecologists. (2020). ACOG Committee Opinion No. 796: Sexual Misconduct. *135*(1), e43-50. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/01/sexual-misconduct

Patient Education. For patients, the Committee recommends providing brochures in every hospital and clinic examination room describing the main components of sensitive exams, and also posting that information on a webpage. Patients should be informed of their right to ask for an explanation of any procedure or to stop the exam. In response to this recommendation, UCLA Health has issued patient education materials explaining the chaperone policy and has begun training employees on the policy.

Medical Student Education. UCLA can also reinforce the principles articulated in these recommendations by providing education for School of Medicine students about clinical boundaries in sensitive exams.

In response to these recommendations, UC Health has begun clinical boundaries training at Student Health and Counseling Centers systemwide and has begun basic chaperone training.

4. Barriers to Reporting and Effective Action

The Committee found evidence of a culture of deference to physicians at UCLA, which chills reporting by medical assistants, nurses, other medical staff, and patients. The Committee also found that employees who would otherwise be in a position to report are wary of retaliation. In one case the Committee reviewed, none of the employees who disclosed information during this investigation had reported the physician's conduct at the time it occurred. Several employees cited a general deference to the physician, uncertainty about whether the conduct was standard, and fear of retaliation to explain the lack of reporting.

The Committee also found that on several occasions, there was a failure to provide an adequate response to complaints of sexual misconduct made by patients and staff. These inadequate responses risk discouraging staff and patients from making similar complaints in the future.

Recommendations

The Committee recommends several proactive measures to encourage and reward reporting and to remove cultural obstacles. Some of these measures, detailed below, have already been implemented.

Speak-Up Campaign. A community-facing Speak-Up Campaign should focus on the themes of accountability and transparency. Through a variety of media, including presentations, posters, and webpages, this campaign should reinforce that UCLA employees are accountable for their actions in the workplace, and that allegations of misconduct will be handled transparently. Focused training of UCLA employees by senior leadership is important, and the Committee recommends introducing the campaign during new employees' onboarding and then reinforcing it through annual training.

The Speak-Up Campaign should be directed towards individuals with direct patient contact, including medical assistants, chaperones, technicians, licensed vocational nurses, nurses, and hospital or clinic administrators. In addition, the SVSH Policy and any patient-specific guidance on preventing sexual misconduct should describe the protections offered to those who report violations and the serious consequences of taking adverse action against a reporter.

UCLA has established new programs under the six-step CICARE communications framework (e.g., "Good Catch" program) and the Office of Patient Experience (expanded feedback system) to improve reporting. It has also centralized the reporting structure for clinics, so that all staff report through the Chief Ambulatory Officer to the CEO.

Patient Education on Reporting Options. Reporting options for patients should be prominently published in all materials distributed to them. For example, contact information for the Title IX Office should be visible in waiting rooms and on the appointment reservation website in multiple languages, with descriptions of each office's services.

Establish Guidelines for Reports to Medical Board. UCLA should clarify policies and procedures for reporting externally to the Medical Board of California. The policy should clearly state UCLA's position that creating a hostile or disruptive work environment through sexual harassment of employees will be deemed detrimental to the delivery of patient care.[10] The UCOP 2020 Guidance provides directions for reporting to the Medical Board.

Improved Assessment of Reports. To ensure that the inadequate escalation of and response to reports of sexual misconduct do not chill future reporting, the Committee recommends establishing more robust assessment tools. In particular, Title IX should provide employees in a position to receive complaints of sexual misconduct in the clinical context with more robust training on how to identify "red flags" in complaints. These employees should be attuned to words like "creepy," "uncomfortable," "pervy," "touchy," and "violating" that may denote more severe conduct. Such training should include several clinical examples. Employees should also be attuned to violations of non-clinical boundaries, such as sexual harassment of employees, billing fraud, privacy breaches, and viewing pornography, which may indicate other risks in the clinical setting.

5. Inadequate Patient Advocacy

The Committee found that the due process procedures followed in both the academic and hospital settings lack the input of a patient representative or advocate focused on patient concerns. Similarly, the bylaws governing physicians and their rights, particularly in the hospital setting, are oriented around physicians' interests rather than patient redress.

Recommendations

To ensure that UCLA's response to allegations of sexual misconduct takes into account the patient's perspective, the Committee makes the following recommendations:

Enhanced Chaperone Policy. UCLA should implement a stronger chaperone policy, requiring that chaperones be present during sensitive exams unless the patient requests otherwise and signs a waiver. To make this practice effective, that chaperone should be (1) an active observer, (2) with unhindered visibility, (3) who rotates to observe different health care providers. As of May 2019, UCLA Health has issued written chaperone procedures and has begun to require the presence of chaperones during sensitive exams, except when the patient requests that only the clinician be present. In such cases, the chaperone must document the patient's request, and the clinician may decline to perform the sensitive exam.

This enhanced chaperone policy should be tested, practiced, and reinforced. At the end of the first two quarters of implementing the chaperone system, and twice a year after that, the

[10] *See* American Medical Association. Code of Medical Ethics Opinion 9.1.3, Sexual Harassment in the Practice of Medicine. https://www.ama-assn.org/delivering-care/ethics/sexual-harassment-practice-medicine

Committee recommends issuing surveys to chaperones. The information received from these surveys should guide adjustments to the program and ensure implementation.

Patient Advocate. Each Medical Staff Executive Committee at UCLA hospitals should designate a Patient Advocate. The Patient Advocate should be involved in any review or revision of Medical Staff bylaws. To the extent the Medical Staff continues to have a role addressing sexual misconduct in the clinical setting, the Patient Advocate also should have a vote in any decision by Medical Staff to suspend or otherwise discipline a member for sexual misconduct.

Protocol for Broader Patient Disclosures. UCLA should consider guidelines for when an SVSH allegation should trigger a broader disclosure to the appropriate patient population in connection with certain events, such as an arrest, criminal charges, or a conviction. Such communications could include patient letters, a website posting, or a news release.

Trauma-Informed Training. The Committee recommends that Title IX provide more robust trauma-informed training to all employees in a position to receive complaints of sexual misconduct in the clinical context. Such training should include several clinical examples.

6. Failures in Due Diligence and Institutional Knowledge

The Committee found that the due diligence process surrounding the acquisition of new clinics was not sufficiently robust to detect risks related to sexual misconduct. For example, in one case the Committee reviewed, the due diligence preceding acquisition of an ambulatory clinic failed to capture information about several previous complaints of sexual misconduct against a physician. Without more thorough vetting, UCLA Health may inherit problem physicians from existing clinics and medical groups.

The Committee also found that the SVSH investigation and employee contract renewal processes were not adequately speaking to each other. In one case, a physician's contract was perfunctorily renewed while his conduct was being reviewed, and shortly before the patient contacted the police. In another, UCLA was going to end its relationship with a doctor, and no Title IX review or investigation had occurred.

Also, several witnesses within UCLA Health leadership described concerns with UCLA's limited ability to properly screen and oversee its voluntary faculty members (i.e., UCLA-affiliated physicians offering clinical expertise without financial remuneration).

Recommendations

Due Diligence Questionnaires and Background Checks. As part of due diligence in acquiring or affiliating with a physician, group practice, or other health service provider, UCLA should collect information and documentation relevant to assessing SVSH risks.[11] UCLA should be attuned not only to individual SVSH claims, but also to any evidence of a pattern of misconduct. The Committee also recommends that UCLA systematically request records from medical boards and other licensing institutions upon hiring a new health provider.

[11] Although the Committee recognizes that privacy laws may prevent UCLA from obtaining all relevant information, it should request, at a minimum, information about any past or pending allegations of sexual misconduct and how they were resolved, and the acquired practice's current SVSH policies, procedures, and training materials.

In connection with this recommendation, the UC system has issued new Guidelines for Acquisition and Affiliation Due Diligence.

Credentialing and Recredentialing Review. The Committee recommends issuing a new credentialing directive for applicants to Medical Staff groups. Questions should be added to the credentialing and recredentialing processes to seek information about any allegations of prior sexual misconduct against the applicant. The information sought should include administrative or disciplinary actions, dismissals, separations, actions by licensing authorities, and work requirements or restrictions based on sexual misconduct.

In connection with this recommendation, the UC system has issued new Guidelines for Supplemental Credentialing Application Questions.

Employment Contract Renewal. UCLA should institute automatic review of an employee's contract when that employee is under investigation. The Committee recommends that the Incident Response Team take responsibility for communicating with the appropriate employment contract administrators and preventing automatic contract renewal pending investigation.

Voluntary Faculty Positions. UCLA should ensure appropriate and consistent screening of all individuals seeking voluntary faculty positions. And it should reevaluate the need for voluntary faculty as well as consider reducing their overall numbers.

7. Inadequate Regulatory Oversight by California Medical Board

The Committee found evidence of overly long delays by the Medical Board in reviewing and responding to reports of potential misconduct. There is a need for more robust and accessible guidance from the Medical Board on reporting potential sexual misconduct. The Committee found that complex and confusing reporting requirements from the Medical Board tend to favor physicians at the expense of legitimate patient complaints.