



State of New Jersey

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ATTORNEY GENERAL ADMINISTRATIVE EXECUTIVE DIRECTIVE NO. 2021-3

TO: All Executive Directors of Professional Boards
Acting Director, Division of Consumer Affairs

FROM: Gurbir S. Grewal, Attorney General

DATE: April 6, 2021

SUBJECT: Addressing Sexual Misconduct by Licensed Professionals and Applicants

The 51 professional boards and committees (“boards”) supported by the New Jersey Division of Consumer Affairs are responsible for licensing approximately 700,000 professionals—including accountants and acupuncturists, cosmetologists and chiropractors, doctors and dentists, and plumbers and psychologists. Each board is charged with protecting the safety and welfare of New Jersey residents who seek professional services and upholding standards of professionalism. The boards fulfill this responsibility to the public by, among other things, identifying requirements for obtaining and maintaining a license; establishing rules for practicing the profession; and disciplining licensees who violate the law.

As more victims of sexual assault and harassment have found the courage in recent years to report their offenders and share their stories, we have learned more about the pervasiveness of sexual misconduct by professional licensees—including but not limited to sexual harassment, assault, and abuse. And, unfortunately, we have learned that far too many licensed professionals exploit the trust placed in them by members of the public—taking advantage of the privacy of a doctor’s office, a massage room, or a customer’s home to perpetrate sexual misconduct.

The Division and many of its professional boards have been actively addressing the problem of sexual misconduct by licensees, through both enforcement efforts and rulemaking. Several boards have demonstrated their commitment to protecting the public and disciplining licensees who commit sexual misconduct, including by permanently revoking professional licenses when warranted. The Board of Massage and Bodywork Therapy adopted new rules to prevent and detect sexual misconduct in the massage therapy industry. And, in November 2020, the Division instituted a new protocol for boards’ consideration of license reinstatement requests



from individuals whose authority to practice was previously discontinued. This protocol promotes transparency around reinstatement requests and helps to ensure that victims and those charged with advocating on behalf of the public have a voice in the reinstatement process.

But we still can and must do better. To that end, the Office of the Director of the Division of Consumer Affairs undertook a comprehensive review of how the Division and professional boards deal with issues relating to sexual misconduct by licensees and applicants. In February 2020, I called upon every board to cooperate fully with this important undertaking, and I thank the boards for their continued cooperation.

The Acting Director's review remains ongoing, and we will never stop asking what we can do better. But the Acting Director of the Division has now produced a number of recommendations for how the Division and its boards can better prevent sexual misconduct by licensees and better serve victims of sexual misconduct. Having considered these findings and recommendations, and at the Acting Director's request, I am issuing this Administrative Executive Directive. I look forward to working with you on these important initiatives.

Pursuant to the authority granted to me under the New Jersey Constitution and the Law and Public Safety Act of 1948, N.J.S.A. 52:17B-1, et seq., which provides for general responsibility of the Department's operations and the supervision of the organization of the Department, I hereby direct all Division of Consumer Affairs personnel operating under the authorities of the laws of the State of New Jersey to implement and comply with the following directives.

I. Preventing Sexual Misconduct

- A. ***Improve screening of applicants for licensure.*** The forms currently used by professional boards for applications for initial and renewed licensure—which, for purposes of this memorandum, include certification and similar authorizations other than licensure—are intended to require applicants to disclose certain findings or allegations of past criminal behavior or professional discipline. Nevertheless, the Division should work with the boards to refine those questions to more clearly and specifically require disclosure of allegations or discipline related to past sexual misconduct. The Division will consult with the relevant boards and identify revisions to the applications by October 2021.
- B. ***Increase public awareness of chaperone rights.*** In New Jersey, patients are legally entitled to have a “chaperone” present during a doctor's breast, pelvic, genital, or rectal exam, and to receive notice of this entitlement. If a chaperone acceptable to the patient is unavailable, the patient or the licensee may decline to receive or provide further care, respectively. The Division will by December 2021 work with the Board of Medical Examiners to identify steps that can be taken, through rulemaking if necessary, to provide patients, including those with limited English proficiency, with better notice of their chaperone rights.

- C. ***Clarify the role of board-mandated observers.*** When certain healthcare boards resolve complaints of professional misconduct, and in particular sexual misconduct, the board sometimes requires that the licensee be supervised in interactions with some or all patients. When the Board of Medical Examiners does this, it follows its “Uniform Requirements Pertaining to Chaperone Approval and Utilization.” These board-mandated observers are distinct from the chaperones described above, although the two are sometimes confused – in no small part because the term “chaperone” is used in both contexts. By September 2021, the Division will work with the Board of Medical Examiners to identify potential amendments to the “Uniform Requirements Pertaining to Chaperone Approval and Utilization” to clarify the distinction between chaperones and board-mandated observers, including through adoption of distinct terms for each role; to require that board-mandated observers receive suitable training; and to clarify the notice that licensees must give their patients that an observer is required due to a board order. The Division also will make that revised document available on its website in English, Spanish, and multiple other languages commonly spoken in the State of New Jersey, along with any additional information needed to explain observer requirements to patients.
- D. ***Educate licensees and patients on informed consent and how to obtain it.*** New Jersey’s health care boards have encountered several recent cases involving inappropriate conduct by licensees during physical examinations. The Division believes that better education of practitioners and patients about applicable informed consent requirements may reduce the number of violations and improve reporting by, among other things, ensuring that licensees understand how to obtain informed consent for all aspects of physical examinations and that patients understand in advance the nature of certain medical services. Accordingly, by December 2021, the Division will work with the relevant boards to prepare for their consideration information and guidance on explaining and obtaining informed consent to certain medical services involving breast, full-body, genital, and rectal exams or other intimate procedures.
- E. ***Facilitate sexual misconduct training at professional schools.*** Professionals should not wait until they are in practice to learn about sexual misconduct in professional settings and related concepts like bystander intervention. Training on these topics should be part of professional education from the outset, and it already is in many professional education programs. Beginning immediately, the Division will initiate outreach to professional schools and training programs in New Jersey to offer assistance and coordination in further developing training on these topics.
- F. ***Improve post-licensure continuing education to prevent sexual misconduct.*** It is important that licensees maintain an up-to-date understanding of the rules and best practices relating to sexual misconduct. By June 2021, the Division will work with the Board of Medical Examiners to prepare for the board’s consideration a potential proposed rule to include, as a component of mandatory continuing education, a minimum of one hour of training on sexual misconduct prevention, bystander intervention, and human

trafficking prevention. That proposal will then be followed, where authorized and as appropriate, by related proposals for other boards.

II. Promoting Licensee Accountability for Sexual Misconduct

- A. ***Promote licensees' reporting of misconduct by other licensees.*** Health care professionals are required by state law (N.J.S.A. 45:1-37) to report other health care professionals to the Division if they possess information that reasonably indicates that the other health care professional has demonstrated unprofessional conduct, including sexual misconduct, which makes the other health care professional imminently dangerous to an individual patient or the public. To promote this kind of third-party reporting of sexual misconduct, the Division will begin offering new trainings to better educate health care professionals about this requirement.
- B. ***Strengthen enforcement for failure to report.*** In addition to improved training on the requirement that health care professionals report misconduct by other licensees, effective immediately, every sexual misconduct investigation conducted by the Division should include an assessment of whether any other health care professional knew of the misconduct and failed to report it.
- C. ***Develop proposals for expanded self-reporting of sexual misconduct allegations.*** Rules of certain boards already require licensees to self-report to the board certain disciplinary, civil or criminal actions taken against them. For example, the Board of Medical Examiners currently requires licensees to self-report within 10 days any arrest or conviction for any criminal or quasi-criminal offense; pending or final actions by criminal authorities for violations of law or regulation; and certain non-criminal actions against them. By December 2021, the Division will work with the boards to identify opportunities to enhance their current self-reporting requirements, some of which are less comprehensive than the Board of Medical Examiners' requirements.
- D. ***Prepare recommendations for legislation to protect complainants' privacy.*** Victims of sexual misconduct may refrain from filing complaints against their perpetrators, or may limit the amount of information that they provide to investigators, due to concerns that their private information will become public. The boards already take many steps to protect confidentiality, including by using only the complainant's initials in filings in disciplinary cases. However, legislation to better protect complainants' privacy would address one reason some victims may not report sexual misconduct to the boards. No later than June 2021, the Division will prepare recommendations for legislation to amend the Open Public Records Act and/or N.J.S.A. 45:1-36, which mandates confidentiality of complaints against health care professionals that are pending or that establish no basis for disciplinary action. The recommendations will identify how best to prevent disclosure of information generated by or on behalf of a victim of sexual misconduct.

III. Ensuring Victims Receive the Support They Deserve

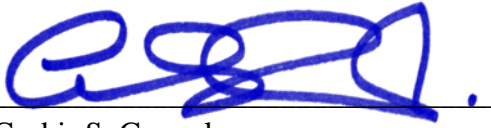
- A. ***Educate patients and consumers about how to recognize and report sexual misconduct in health care and other professional settings.*** Underreporting of sexual misconduct is a persistent problem both in New Jersey and across the nation. To address this issue, the Division will offer educational resources—for example, webinars and public presentations posted to the Division website—on how to recognize, prevent, and report sexual misconduct. These resources will describe the behavior that should be expected of health care and other professionals as well as behaviors that may constitute sexual misconduct. They will also outline what an individual can do if a health care or other professional behaves in a sexually inappropriate way.
- B. ***Educate victims about the disciplinary process.*** Individuals who are considering filing a complaint with a professional board should have a clear understanding of the boards' disciplinary process. The Division has prepared an overview for victims on what happens after they file a complaint, which the Division will make available online and provide to potential complainants. This document will be available in English, Spanish, and multiple other languages commonly spoken in the State of New Jersey.
- C. ***Support victims' ability to cooperate with enforcement actions.*** The Division will take steps to facilitate victims' cooperation with enforcement actions, including by providing connections to support services that are tailored to particularly vulnerable populations. For example, the Division will ensure that throughout the investigation and hearing process, the boards' staff take appropriate steps to facilitate victims' meaningful participation, including by ensuring translation or other accommodations are readily available, and by connecting victims with organizations that may be able to assist them with their needs.
- D. ***Expand use of patient and consumer navigators.*** Patient or consumer navigators can guide victims through the investigative and disciplinary process, act as liaisons between victims and the boards, and ensure boards are attuned to the interests of victims. The Board of Medical Examiners already has a staff member performing this role. The Division will hire an additional consumer navigator to work with other boards, as well. These navigators will be trained on best practices for supporting victims, such as providing victims with a clear explanation of their rights and remaining in contact with them throughout the investigative and disciplinary process.
- E. ***Offer additional training to investigators and others involved in the disciplinary process.*** The Division has developed a plan for additional training for individuals involved in the professional disciplinary process to address post-assault trauma, prevention of sexual misconduct, human trafficking, and implicit bias. The training for investigators who conduct sexual misconduct investigations will occur by September 2021, if feasible, and will be followed by training for other employees and stakeholders, including board members; executive directors, who run board proceedings; and Deputy

Attorneys General, some of whom provide advice to the boards and some of whom prosecute professional misconduct cases.

- F. ***Develop a referral network for victim services.*** The Division will cultivate a network of partner organizations, including victim support organizations and non-profit organizations that support victims, and offer to connect victims to these partners to receive free counseling and other services. The Division will educate staff and volunteers at these partner organizations about the professional disciplinary process so they are equipped to help victims understand that process and, in cases where the victim consents to a referral, refer cases of sexual misconduct by licensees to the Division for investigation.

IV. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General’s authority to supervise operations of the Department of Law and Public Safety. This Directive imposes limitations that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the First Assistant Attorney General, or the First Assistant’s designee.
- D. ***Effective date.*** This Directive shall take effect immediately and remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Andrew Bruck
First Assistant Attorney General

DATED: April 6, 2021

CC: Members of Professional Boards:

New Jersey State Board of Accountancy
Acupuncture Examining Board
Alcohol and Drug Counselor Committee
State Board of Applied Behavior Analyst Examiners
New Jersey State Board of Architects
Athletic Training Advisory Committee
Audiology and Speech-Language Pathology Advisory Committee
New Jersey Cemetery Board
State Board of Chiropractic Examiners
New Jersey State Board of Cosmetology and Hairstyling
State Board of Court Reporting
State Board of Creative Arts
New Jersey State Board of Dentistry
State Board of Dietetics and Nutrition
Board of Examiners of Electrical Contractors
Electrologists Advisory Committee
Elevator, Escalator, and Moving Walkway Mechanics Licensing Board
Fire Alarm, Burglar Alarm and Locksmith Advisory Committee
Genetic Counseling Advisory Committee
Hearing Aid Dispensers Examining Committee
State Board of Examiners of HVAC & Refrigeration Contractors
Home Inspection Advisory Committee
Interior Design Examination and Evaluation Committee
Joint Committee of Architects and Engineers
Licensed Master Hearth Specialist Advisory Committee
State Board of Marriage and Family Therapy Examiners
New Jersey Board of Massage and Bodywork Therapy
State Board of Examiners of Master Plumbers
State Board of Medical Examiners
Medical Practitioner Review Panel
State Board of Mortuary Science of New Jersey
New Jersey Board of Nursing
Occupational Therapy Advisory Council
State Board of Examiners of Ophthalmic Dispensers & Ophthalmic Technicians
New Jersey State Board of Optometrists
Orthotics and Prosthetics Board of Examiners
Perfusionists Advisory Committee
Board of Pharmacy
State Board of Physical Therapy Examiners
Physician Assistant Advisory Committee
State Board of Polysomnography
Pool and Spa Contractors and Pool and Spa Builders and Installers Advisory Committee
Professional Counselor Examiners Committee
State Board of Professional Engineers and Land Surveyors
State Board of Professional Planners

Certified Psychoanalysts Advisory Committee
State Board of Psychological Examiners
State Real Estate Appraiser Board
State Board of Respiratory Care
State Board of Social Work Examiners
State Board of Veterinary Medical Examiners