



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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February 27, 2020

VIA ELECTRONIC MAIL

Dr. Carol Folt
President
University of Southern California
ADM-110, MC0012
Los Angeles, California 90089

RE: OCR Docket No. 09-18-6901
University of Southern California

Dear President Folt:

On May 24, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), opened a directed investigation of University of Southern California's (the University's) Title IX compliance regarding the employment and conduct of Dr. George Tyndall (Employee 1). Specifically, for the time period from 1989 to the present, OCR investigated:

1. Whether the University received notice of allegations of sex-based harassment by an individual, Employee 1, employed as a gynecologist at the University since 1989, and whether the University failed to respond promptly and effectively to notice of the harassment.
2. If the University failed to respond promptly and effectively to notice of the sexual harassment allegations, whether the University's failure allowed any female student to be subjected to continuing sex discrimination.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

Under the regulation implementing Title VI, at 34 C.F.R. § 100.7(c), which is incorporated by reference in the regulation implementing Title IX, at 34 C.F.R. § 106.71, OCR may conduct a directed investigation in appropriate circumstances, including when a report or other

information indicates a possible failure to comply with the regulations and laws enforced by OCR and the matter warrants immediate attention.

SUMMARY OF FINDINGS

Since at least 2000, the University had notice of possible sex discrimination in the form of sexual harassment by Employee 1 of patients and systemically failed at multiple points in time and at multiple levels of responsibility to respond promptly and effectively to notice of the alleged misconduct during gynecological examinations; its failure may have allowed female students to be subjected to such discrimination for more than a decade. The complaints were made not only by students but also by medical chaperones, and should have alerted the University of potential Title IX implications, including that Employee 1 was using a privacy curtain to exclude chaperones from observing examinations, that he was photographing patients' genitals and conducting full body skin checks during examinations, that he was making potentially sexually harassing comments while conducting the examinations, and that his manner of conducting pelvic examinations was different from other practitioners. The University lacked a centralized recordkeeping system or an infrastructure to keep track of repeated or multiple complaints against the same employee and failed to institute a system for ensuring accountability for reporting and responding to Title IX complaints. And on three occasions—in 2010, 2013, and 2016—when the complaints against Employee 1 were brought to the attention of the University office that is responsible for overseeing Title IX (called the Office of Equity and Diversity [OED]), OED failed to conduct an investigation that complied with Title IX.

Based on the findings detailed below, OCR determines that the University violated the Title IX regulation at 34 C.F.R. §§ 106.8(b) and 106.31 because the University failed to promptly and effectively respond to notice of potential sexual harassment by Employee 1 and this failure may have allowed female students to be subjected to continuing sex discrimination.

Specifically, OCR has determined that:

- The University had notice of possible sexual harassment by Employee 1 of five patients (Patients 1 – 5) from 2000 to 2009 and failed to investigate, assess whether interim measures were needed, determine whether the five patients were subjected to sex discrimination, or ensure that steps were taken to prevent recurrence of the conduct and correct its effects for patients who complained and/or other patients. Additionally, with regard to Patients 1, 2, and 5 who submitted written complaints, the University failed to provide a notice of outcome regarding their complaints. The University's failure to respond promptly and effectively to notice of possible sexual harassment may have allowed Patients 1 – 5 to be subjected to continuing sex discrimination.
- With regard to another four patients (Patients 6 – 9), even though the Title IX Office had notice of possible sexual harassment of these patients by Employee 1, the University failed to respond effectively. Additionally, with regard to Patient 7 who submitted a written complaint, and Patient 8 who informed the University's Title IX investigator about

alleged harassing conduct by Employee 1, the University did not provide a notice of outcome regarding their reports. The University's failure to respond promptly and effectively to notice of possible sexual harassment may have allowed Patients 6 – 9 to be subjected to continuing sex discrimination.

- In 2016, OED failed to investigate as possible sexual harassment Patient 9's complaint that Employee 1 had digitally penetrated her with two fingers, despite telling him not to do it.
- In 2016, OED failed to investigate as possible sexual harassment complaints raised by chaperones and the Nurse Supervisor regarding Employee 1's digital penetration of patients during examinations and the full body skin checks.
- When in 2016 the University discovered over 200 photographs in Employee 1's office providing physical evidence that he was photographing patients' genitals, it failed to investigate the photographing of patients and the possession of the photographs as potential sex discrimination in the form of sexual harassment; it failed to take reasonable steps to locate the remaining photographs that Employee 1 stated he had taken from 1989 to 2010; and permitted Employee 1 to continue seeing patients for a day and a half after the discovery of the photographs.
- The University failed to maintain a recordkeeping system to identify and monitor incidents of possible sexual harassment by its employees.
- The University failed to provide a timely response to Employee 1's appeal of the University's 2016 determination regarding Employee 1's alleged sexual misconduct.

In addition, OCR has compliance concerns in two areas. First, the University did not complete an investigation of whether Student Health Center (SHC) employees who worked with Employee 1 were subjected to sex discrimination, assess whether any interim measures were needed by SHC employees, or identify remedies for SHC employees to address the sex discrimination, if found. Second, OCR has a compliance concern that, in the context of the 2016 Title IX investigation of Employee 1's sexual misconduct, the Office of General Counsel may have exceeded its advisory role to the point of undermining the autonomy and independence of the Title IX Coordinator and OED which may have impacted the scope of the investigation as well as fidelity to OED's policies and procedures.

BACKGROUND AND PROCEDURAL HISTORY

- **The 2018 Agreement**

On January 29, 2018, the University entered into a resolution agreement with OCR (the 2018 Agreement), signed by the then-Senior Vice President for Administration Todd R. Dickey (SVP of

Administration)¹, to resolve two Title IX complaints filed with OCR against the University, OCR Docket Numbers 09-13-2294 and 09-16-2128 (the first OCR case). In the first OCR case, OCR investigated the University's compliance with Title IX with respect to its adoption and dissemination of its policies and procedures for the 2010-2011 through 2015-2016 academic years for complaints² of sexual harassment and sexual violence made by students. OCR also investigated the University's response to complaints alleging sexual harassment and sexual violence made by five individual complainants, and more generally, reviewed the University's investigative findings issued from August 2010 through May 12, 2015 in response to complaints of sexual harassment and sexual violence made by students.

In the course of the investigation, OCR requested "all student complaints or reports of sexual harassment whether written or verbal," including complaints against staff and faculty from the 2010-2011 through 2012-2013 academic years, and later requested additional data regarding "all sexual harassment reports and complaints submitted on-line" to the University and "all complaints from students, staff, or faculty about the University's climate with respect to sexual assaults/violence for the 2013-2014 school year." OCR reviewed and used the information provided by the University in making its findings and finalizing the 2018 Agreement.

OCR is currently monitoring the University's compliance with the terms of the 2018 Agreement to remedy the violations and compliance concerns identified in the first OCR case.

- **The Directed Investigation**

While the monitoring of the 2018 Agreement was ongoing, information contained in May 2018 media articles and the University's own publicly available documents referenced complaints of sexually inappropriate behavior by Employee 1 against female patients that were made to the University during the period of time covered by OCR's specific data requests to the University. For example, on May 16, 2018, the *Los Angeles Times* wrote that multiple complaints were made against Employee 1 dating back to the 1990s, including complaints that Employee 1 was photographing female students' genitals, engaging in inappropriate touching, and making sexual remarks toward female students; the article referenced eight complaints regarding Employee 1 that were found in his personnel file from 2000-2014 and concerns raised by chaperones to their supervisor in the spring of 2013, as well as an internal investigation of Employee 1 in 2016 and a finding by the University that Employee 1 had violated the University's policy against sexual harassment.³ In advance of the *Los Angeles Times* article and immediately thereafter, the University issued six letters and messages to the community about Employee 1, including letters

¹ Todd Dickey retired as the Senior Vice President for Administration on June 30, 2018. From 1999 to 2008, he served as the University's General Counsel.

² For the purposes of this letter, OCR refers to any oral or written communication to a University employee or administrator which alleges behavior or misconduct that may constitute sexual harassment as a "complaint."

³ <https://www.latimes.com/local/california/la-me-usc-doctor-misconduct-complaints-20180515-story.html>

from the then-University President C.L. Max Nikias (President 2)⁴ on May 15 and May 18, 2018, referencing internal investigations of Employee 1 conducted in 2013 and 2016, and acknowledging that there had been complaints about Employee 1 in “prior years”⁵ and that “[Employee 1] should have been removed and referred to the authorities years ago.”⁶

OCR opened the instant directed investigation in part because of its concern that the University may have denied OCR access to documents and information regarding the complaints filed against Employee 1, including the University’s response to those complaints. In the first OCR case, the University failed to provide OCR with any information or documentation regarding any complaints regarding Employee 1, even though the media articles and the University’s statements indicate that the University was aware of such information. Based on the University’s failure to disclose these matters to OCR during the first OCR case, OCR identified new compliance issues that had not been investigated by OCR in the aforementioned case and/or addressed in the corresponding 2018 Agreement. Accordingly, on May 24, 2018, OCR notified the University that it was opening this directed investigation.

The University has acknowledged to OCR that the complaints about sexual harassment by Employee 1 that were reviewed by the University in 2013 were not provided to OCR during its investigation of the first OCR case. The University told OCR that complaints had been erroneously categorized in its case management database and therefore were not readily identified as responsive to OCR’s data request. OCR notes, however, that from October 30, 2017 until January 8, 2018, OCR was in active negotiations with the University and its Office of General Counsel regarding the resolution of the first OCR case. During this negotiating period, by at least the first week of December 2017, the University’s then-General Counsel Carol Mauch Amir⁷ had been informed that the *Los Angeles Times* was investigating the Employee 1 matter. Also, as of the first week of March 2018 – i.e., prior to the March 12th issuance of OCR’s findings in the first OCR case – President 2 had identified the Employee 1 matter to be of such significance that he directed the General Counsel to brief the University’s Board of Trustees. Despite this, the University did not cure its omission during negotiations with OCR nor prior to OCR’s issuance of its findings in the first OCR case.

Given the scope and seriousness of the allegations known to the University, the University’s failure to provide OCR with notice of Employee 1’s matter in 2017 or prior to issuance of the resolution letter by OCR on March 12, 2018, raised serious concerns about the University’s compliance with 34 C.F.R. § 100.6(c).

⁴ According to public reports, Dr. Nikias resigned as president of the University on August 7, 2018. He holds the title President Emeritus and Life Trustee, and is a professor at the University. Nikias was succeeded by interim president Wanda M. Austin until June 30, 2019, who was in turn succeeded by the current president, Carol L. Folt. Dr. Folt was inaugurated as the 12th University president on September 20, 2019.

⁵ <https://studenthealthresources.usc.edu/message-from-president-nikias-may-15-2018/>.

⁶ <https://pressroom.usc.edu/letter-from-president-nikias-to-the-usc-community-may-18-2018/>.

⁷ In a letter to the University community on April 2, 2019, the University announced that Amir would resign from her position effective June 30, 2019.

- **Methodology**

In conducting this directed investigation, OCR reviewed over 20,000 pages of documents provided by the University and witnesses and interviewed 52 current and former University staff members and 43 former student patients of Employee 1. OCR conducted onsite visits on June 19-20, 2018, August 6-9 and 14-16, 2018, and October 9-11, 2018. The June 19-20 and October 9-11, 2018 visits included office hours with students, alumni and staff. On October 10, 2018, OCR held a community meeting where 25 individuals affiliated with the University were in attendance in which OCR described the focus of the directed investigation and explained how potential witnesses could contact OCR investigators regarding their experiences with Employee 1.

OCR notes that the University did not provide all of the documents requested by OCR in this directed investigation.⁸ To date, the University has identified to OCR that it has withheld in their entirety 3,638 identified emails and other documents related to its investigation and handling of Employee 1's matter, asserting they are privileged attorney client communications and/or attorney work products. OCR requested that, for every document with sections redacted or withheld entirely, the University provide a privilege log identifying the author(s) and their position(s), the date(s) it was generated, and the specific privilege or protection invoked and grounds for the privilege/protection for each section of the document. OCR also requested that for documents that were redacted, the University provide the full document with the privileged portion redacted and the privilege assertion reflected in the privilege log. As of February 27, 2020, the University has not provided a privilege log for all of the redactions. In addition, the University did not follow through with its original offer that the law firm conducting an independent investigation of Employee 1's matter would provide to OCR the documents gathered and reviewed by the law firm and its findings in its investigation.

- **The University and the Student Health Center**

The University is located in Los Angeles, California and enrolls approximately 47,500 graduate and undergraduate students. The University has owned and operated a student health center (SHC) since at least 1989. All students are required to pay an annual student health center fee, which is currently approximately \$700, regardless of whether they have private health insurance, which is used to fund the SHC and its staff and services.

The SHC was distinct from the University's Keck School of Medicine and Health System until fall 2017. For most of the time period covered in this investigation, the SHC was part of the Division of Student Affairs and was led by a physician Executive Director who reported to the Vice

⁸ Pursuant to Section 503(b) of OCR's *Case Processing Manual*, should new compliance issues be identified that were not discovered by OCR due to the University's withholding of documents, OCR may address the compliance issues through technical assistance, opening a compliance review, or opening another directed investigation.

President for Student Affairs.⁹ The Vice President for Student Affairs reported to the Provost,¹⁰ who reported to the President.

At all times relevant to this directed investigation, there were several systems in place intended to identify concerns and complaints by patients. Patients could submit letters or emails to the SHC, submit comments or concerns in locked boxes stationed throughout SHC, or use the online complaint system. In addition, the SHC employed a Quality Manager whose responsibilities included, among other duties, assessing overall risk and safety issues through periodic surveys of students about clinic services, collecting and reviewing written comments, and organizing an internal committee to review issues of concern regarding the clinic and as appropriate, make quality improvements. The internal committee with this function had several different titles; the title since approximately 2001 was the Committee on Quality Improvement (CQI). The CQI met monthly during the academic year, and among other responsibilities, considered patient care complaints. The CQI operated from at least 1999 to 2017, and membership included the SHC Executive Director, the Clinic Administrator, the Nursing Director, and clinicians who rotated onto the CQI by appointment.

It was the SHC's practice to require the presence of a female chaperone during sensitive physical examinations, including pelvic and breast examinations, by male physicians of female patients. Patients and clinicians could also request the presence of a chaperone, regardless of the sex of the patient and clinician. Chaperones were medical assistants, registered nurses, and licensed vocational nurses, and chaperoning—i.e., assisting clinicians and being present in examinations—was one of their employee responsibilities at the SHC. They were not assigned to any specific physician; chaperones were therefore familiar with different clinicians' practices and interactions with patients.

- **University Offices Responsible for Addressing Employee Issues**

Human resources functions and the management of SHC employee problems and discipline involved multiple University components, and documents were distributed among different managers and locations on campus. As such, many employees and offices of the University played roles in the investigation, resolution, and recordkeeping of complaints of misconduct by Employee 1:

- OED is responsible for investigating complaints of discrimination filed against faculty and staff based on protected characteristics and related retaliation. The Executive Director of OED also serves as the University's Title IX Coordinator (hereinafter, the

⁹ Michael Jackson was the Vice President for Student Affairs from 1997 through 2013. He was succeeded by Ainsley Carry, who resigned to take a position at a different University in April 2019. The current Vice President for Student Affairs is Winston Crisp.

¹⁰ From 1981-1993, Cornelius Pings was University Provost. Lloyd Armstrong held the position from 1993-2005. In 2005, C.L. Max Nikias served as Provost and Executive Vice President until he was named President in 2010. Elizabeth Garrett was Provost from 2010 through 2015. In 2015, Michael Quick was named Provost; he resigned from that position and returned to his University faculty position in summer 2019. The current Provost is Charles Zukoski.

Executive Director of OED will be referred to as the Title IX Coordinator). During the time period reviewed in this directed investigation, OED was supervised by the Associate Senior Vice President (ASVP) of Human Resources, Janis McEldowney.¹¹ The ASVP of Human Resources reported to the Senior Vice President (SVP) of Administration, who reported to the President.

- The Office of Compliance was created in 1999 and manages the implementation of compliance programs regarding healthcare, research, data privacy, conflict of interest, the Affordable Care Act, and regulations related to export controls and international collaborations. In addition, where a matter can lead to litigation, the Office of General Counsel can direct that the Compliance Office conduct investigations within its area of expertise under privilege. The Associate Senior Vice President (ASVP) of Compliance, Laura LaCorte¹², also reported to the SVP of Administration during the time period reviewed in this directed investigation.
- Human Resources functions (HR) for the SHC have been distributed at different times among a local HR department at the SHC, an HR department for all divisions under the Provost, and central HR. In addition, until 2016, an HR component called Employee Relations was involved in the investigation of alleged misconduct and unfair practices involving staff and faculty at the University. The Executive Director (ED) of Human Resources, who is located in central HR, must approve all requests to involuntarily terminate a staff member. The ED of Human Resources reports to the ASVP of Human Resources, who reports to the SVP of Administration.
- The Office of General Counsel is the University's in-house counsel. According to attorneys from the Office of General Counsel interviewed by OCR, any time there is a potential lawsuit against the University, the matter is referred to the Office of General Counsel, and it will evaluate whether there is a legal basis and advise the University on the litigation risks associated with defending against a potential lawsuit.

During the time period of OCR's investigation, personnel records were kept in multiple places and not centralized, which impeded the University from recognizing repeat respondents and patterns of misconduct. When complaints of alleged misconduct were forwarded to OED, OED sometimes entered the complaints inaccurately in its database, which impacted the Title IX Coordinator's ability to monitor for any patterns and respond to complaints of potential sexual harassment.

¹¹ McEldowney was named Associate Senior Vice President for Human Resources in 2002 and continued in that position until January 2020.

¹² LaCorte no longer works at the University.

FINDINGS OF FACT

Employee 1

Employee 1 was hired as the SHC's sole full-time gynecologist on August 16, 1989. Throughout his employment, the SHC employed other gynecologists and clinicians who also performed women's health services, but Employee 1 was the primary full-time gynecologist until he was placed on leave on June 20, 2016. Employee 1 solely treated University students.

The information provided to OCR from the University shows Employee 1 was supervised by nine different clinicians in 27 years:

- Acting Executive Director (1989-1990)
- Executive Director 1 (1991)
- Associate Medical Director¹³ (1992-1997)
- Executive Director 2 (October 1995-December 2014)
- Lead Physician 1 (July 1997-October 25, 2011; April 30 or July 1¹⁴, 2013-October 25, 2013; and March 4, 2016-June 30, 2017¹⁵)
- Lead Physician 2 (October 26, 2011-April 30 or July 1, 2013¹⁶)
- Medical Director¹⁷ (October 26, 2013-February 29, 2016)
- Vice President for Student Affairs 2 (March 1-3, 2016)
- Interim Co-Medical Director (March 4, 2016-June 30, 2017)

Lead Physician 1 and Executive Director 2 supervised Employee 1 during the majority of Employee 1's career at the SHC. Lead Physician 1, who supervised Employee 1 for more than 15 years, told OCR that his duties as lead physician were mostly administrative, including setting clinicians' work schedules, but his official job description shows that he was directly responsible for supervising primary care clinicians and "handling complaints from students in coordination with the medical director, director of [CQI], associate director of administration, and nursing director." Executive Director 2 was an upper level supervisor for Employee 1 for more than 19 years.¹⁸

As described in **Section V** on June 6, 2016, while Employee 1 was on vacation, the University discovered photographs and slides of female genitals in Employee 1's office and also received information from Nurse Supervisor alleging that Employee 1 was sexually harassing patients. Employee 1 was allowed to see 18 patients for appointments when he returned from vacation

¹³ This position was also referred to as Interim Medical Director.

¹⁴ The University's records show both dates.

¹⁵ Lead Physician 1 was acting Co-Medical Director during this time period and supervised Employee 1 jointly with the Interim Co-Medical Director.

¹⁶ The University did not provide an end date for Lead Physician 2, but OCR inferred this date based on University records showing that Lead Physician 1 again began supervising Employee 1 on April 30 or July 1, 2013.

¹⁷ This position was also referred to as Acting Executive Director.

¹⁸ Executive Director 2 passed away in 2016 following an extended illness, before this directed investigation was initiated. OCR reviewed his contemporaneous records and notes relevant to this investigation.

on June 15 and June 16, 2016; the University did not place him on administrative leave until June 20, 2016. Employee 1 remained on paid administrative leave through June 23, 2017, followed by a week of unpaid administrative leave, at which point the University entered into a settlement with him and his employment was terminated effective June 30, 2017.

I. Employee 1's Alleged Misconduct

Since May 15, 2018, when the *Los Angeles Times* published its first story regarding Employee 1, hundreds of current and former University students have alleged that Employee 1 sexually harassed them as patients at the SHC. OCR has been made aware of these allegations through its interviews with current and former University students and SHC staff, documents provided to OCR in this investigation, complaints filed directly with the University since May 15, 2018, and civil litigation complaints filed against the University since May 15, 2018 in state and federal courts. This section provides a summary of the allegations made against Employee 1 from these sources.

A. Pelvic examinations

Current and former SHC staff members and patients have described that the manner in which Employee 1 conducted pelvic examinations was not what they had observed with other gynecologists and was, to many patients, distressing. Employee 1 would begin pelvic examinations by digitally penetrating patients' vaginas, moving his fingers in and out repeatedly and/or feeling along the inside walls for an extended amount of time, before inserting a speculum. He often commented on patients' vaginas during these motions, and asked the patients personal questions, including questions about their sexual histories. His comments typically included statements along the lines of remarking on the "tightness" of their vaginas, making statements such as "this feels good," asking patients if they were runners, observing whether or not their hymens were intact, stating or insinuating that their boyfriends or husbands would enjoy having sex with them, making comparisons to his wife's body, and observing that their vaginas were "beautiful," "well-groomed," or attractive. Patients alleged that Employee 1 conducted pelvic examinations without gloves. In addition, patients told OCR that Employee 1 digitally penetrated their anuses and they did not believe there was medical justification for those actions.

A patient described to OCR that while Employee 1 repeatedly penetrated her with his ungloved fingers during a pelvic examination, he was rubbing his pelvis against the side of the table, his face was flushed, and he made a sexually inappropriate comment. Another described that while she was on the examination table, he made sexually inappropriate comments and she observed that Employee 1 was masturbating.

B. Breast examinations

Current and former SHC staff members and patients described to OCR that breast examinations by Employee 1 were different from what they had observed or experienced with other

gynecologists and that he engaged in inappropriate comments about the appearance of patients' breasts. This conduct included him rubbing the breasts repeatedly with his open hand, pinching them, and squeezing them very hard. During the examination, he regularly complimented the appearance and tone of their breasts, and commonly described their breasts as "perky." Other examples of comments included remarking on the size of the breasts, relating the appearance of the breasts to the women's ethnicity/race, and comparing the patients' breasts to his wife's breasts.

C. Photographing patients during examinations

Patients described that Employee 1 took photographs of their genitals and other parts of their bodies during examinations and made specific remarks to them about his perception of the beauty and attractiveness of their genitals. Some patients and a former staff member described to OCR that Employee 1 used a Polaroid camera or standard non-clinical camera when taking photographs of patients during examinations. Several patients described that Employee 1 showed them Polaroid and standard photographs of other women's genitals. Other patients alleged that he took photographs with a camera while moving around the examination room or from a distance away from the women's genitals which made them suspect he was photographing more of their bodies than he said. Patients who alleged they were photographed asserted that Employee 1 told them the photographs were needed because he thought they had cancer or another medical condition (which they later learned they did not have), for "medical" purposes, for "research he was conducting", or to use for the "education of medical students."

D. Full body skin checks

Current and former SHC staff members observed Employee 1 conducting full body skin checks during his gynecological examinations. They described that Employee 1 told patients that he was looking for moles and would check the back and the front of the patient, including examining between the buttocks, in the rectum and vagina, and at times requiring the patient to get on her hands and knees. They did not recall Employee 1 charting the skin examinations, but they could not be certain whether he was doing so after the examinations. They stated that no other doctor at the SHC conducted full body skin checks during a gynecological examination. Current and former SHC staff members and patients described Employee 1 complimenting their appearance during examinations, for example by stating they had "creamy" and "flawless" skin, commenting about tattoos or piercings, telling them they were "pretty," that they and their mothers should be models, and commenting that they were beautiful because of their ethnicity.

E. Employee 1's presence while patients undress

A former SHC staff member and patients described to OCR that Employee 1 would remain in the examination room while patients undressed or redressed, sometimes directly watching the patients, and that he would begin or complete gynecological examinations without a chaperone present.

F. Privacy curtain and door locking

Sometime prior to 2000, privacy curtains were installed in examination rooms for patients to use for undressing and redressing. After the privacy curtain was installed in Employee 1's examination room, according to current and former SHC staff members, Employee 1 would close the curtain so that the chaperones were on the opposite side of the curtain, unable to observe the patient's examination. In addition, according to current and former SHC staff members, for a time, Employee 1 locked the door when he was alone with patients.

The patients experienced the foregoing alleged conduct both in the presence of a female chaperone and in the absence of a female chaperone. Patients stated that the presence of a chaperone led them to give Employee 1 the benefit of the doubt, and to believe at the time that the conduct that was distressing to them was appropriate and legitimate medical care. Some patients stated that the gynecological examinations by Employee 1 were the first gynecological exam they had ever had, or the first time they had a gynecological exam without the presence of a family member or friend.

II. Complaints to SHC Staff and Administrators Regarding Employee 1's Alleged Conduct

Evidence reviewed by OCR showed that patients and SHC staff members complained to SHC supervisors about allegedly inappropriate sexual conduct by Employee 1 from the early 1990s to 2016 as follows:¹⁹

- Beginning in the early 1990s and continuing to 2004, chaperones complained that Employee 1 was closing the privacy curtain around the examination area to exclude them, such that they could not see what was happening in the examination area where Employee 1 was with the patient. Chaperone A told OCR that she complained to her supervisors in the early 1990s that Employee 1 was photographing patients with chaperones excluded from the examination area by the privacy curtain. Chaperone A said that the issue was resolved around that time. However, based on emails provided to OCR, in late 2003 and 2004, SHC staff again complained to supervisors that Employee 1 was excluding chaperones from observing the examinations using the privacy curtain. In September 2003, Nursing Director 1 emailed Lead Physician 1 and Executive Director 2 that Employee 1 was "doing [gynecological] exams with the [Medical Assistant] standing behind the curtain," when they were required to stand "with him while he does his exam, not behind the curtain." Executive Director 2's notes show that on September 10, 2003, complaints were communicated to him about Employee 1 excluding chaperones from the exam areas using the privacy curtain and that Lead Physician 1 would document the complaint and talk to Employee 1 "once again." In February 2004, Nursing Director 1 emailed Lead Physician 1 again, stating that she needed to speak with him and Executive

¹⁹ In addition to the patient complaints identified in this section, there were at least three written anonymous patient complaints alleging possible sexual harassment by an SHC clinician, but the complaints did not specifically identify Employee 1 as the clinician.

Director 2 regarding “[Employee 1] and pelvic exam chaperones” because the problem had not been resolved. Despite these emails and notes, when OCR asked Lead Physician 1 about the complaints regarding the privacy curtains, he stated that he had never heard that Employee 1 was using the privacy curtain to exclude the chaperones until June 2016 when he reviewed the files in Executive Director 2’s office. He told OCR that had he known, it would have been grounds for suspension because there was no medical justification for this practice.

- In April 2000, Patient 1 wrote a complaint letter to Employee 1 with a copy to Executive Director 2 about Employee 1’s conduct during an appointment earlier that month. In her complaint letter, she wrote that during the appointment, Employee 1 told her a sexually graphic and offensive anecdote about [redacted content]. Patient 1 told OCR that Employee 1 told the anecdote during the pelvic examination. She wrote in her April 2000 letter that the anecdote “was disgusting and inappropriate” and she found it both “degrading and humiliating” to listen to the story. She wrote that she would never return for care to Employee 1. A note that appears to be from Executive Director 2 stated that on May 1, 2000, he spoke with Patient 1 who was “feeling better,” would “be making an appointment with another clinician in the future,” and that she “appreciated both the letter from [Employee 1] and my phone call.” Executive Director 2 advised her that she could change physicians. Another undated note included an apparent redraft of Employee 1’s letter to Patient 1 by Executive Director 2 in which he apologized for the “misunderstanding.” Patient 1 told OCR that she recalled a female administrator from the SHC contacting her and stating that Employee 1 was “quirky” and “cool.”
- On November 20, 2003, the SHC received a written complaint from Patient 2 requesting to withdraw from treatment at the SHC due to Employee 1. In a follow-up email on November 27, 2003, Patient 2 explained that the pelvic examination by Employee 1 had been “extremely painful” and lasted longer than pelvic examinations by other clinicians. She stated she was very upset and felt disrespected by Employee 1. Executive Director 2 spoke with her and wrote in his notes that she “mentioned that [the Medical Assistant] was moved behind [the] curtain.” Executive Director 2 also wrote in his notes that he discussed the patient complaint with Employee 1 and “explained that [the] curtain needs to be open enough that there is no perception by [the] student or [the Medical Assistant] that it [is] closed. He understood.” The CQI reviewed the complaint on December 3, 2003 and documented that Executive Director 2 spoke with Employee 1 and contacted the patient.
- In January 2004, an anonymous patient (Patient 3) submitted an SHC questionnaire stating that Employee 1 was “unprofessional about gynecological procedures. Made me feel uncomfortable and violated!” At that time, the questionnaire was copied to Executive Director 2 and Lead Physician 1.
- Another patient (Patient 4) told OCR that in 2008, she submitted a comment card with a complaint about Employee 1 in the SHC comment box. She told OCR that in the 2008

comment card, she described Employee 1's demeanor and remarks, including inappropriate comments about her sexual history. She said that no one from the University contacted her.

- In an October 14, 2009 letter to Executive Director 2, Patient 5 described that Employee 1 had remarked approvingly on the appearance of her pubic area during a pelvic examination, asking whether she used laser hair removal. According to his notes, Executive Director 2 spoke with Employee 1 on November 11, 2009, and "recommended [to Employee 1] that if he was going to talk about pubic hair and find out was the student not having hair from medical issue or laser or other method to do this when students [sic] was dressed. And if he found someone who might have a good procedure that could be recommended to other students, he would phrase it this way. He understood."
- On April 30, 2010, Patient 6, who attended the University in [redacted content], submitted a written comment through the SHC website complaining about Employee 1. She wrote that during an appointment with Employee 1, he explained exercises to strengthen the pelvic walls, and then told her to lie down so he could show her how to do them. Patient 6 wrote in her complaint that no chaperone was present, and Employee 1 was not wearing gloves when he digitally penetrated her and told her to "squeeze." Executive Director 2 spoke with Patient 6 on May 4, 2010, after reviewing her medical record. According to his notes, Executive Director 2 told Patient 6 that Employee 1 had documented his approach "to teach her Kegel exercises and what he was doing" in the medical chart, and that he would discuss her concerns with Employee 1 without identifying her. Executive Director 2 met with Employee 1 on May 4, 2010 about the complaint. Employee 1 denied that he would ever have done such an action without a chaperone or gloves. Executive Director 2 noted that he also consulted with Lead Physician 2 (who was not Employee 1's supervisor at that time), and at that point, Executive Director 2 "felt that this particular event was closed but would be documented in case there were any further instances." Lead Physician 2 told OCR that Executive Director 2 requested her advice generally about an examination done without gloves; she said she told him that she did not think that conducting an examination without a glove was consistent with the medical standard of care. Executive Director 2 also informed an attorney from the Office of General Counsel (Counsel 1) and Title IX Coordinator 1 about Patient 6's written comment, which is described in **Section III**.
- According to Clinical Administrator 1, at some point between 1997-2012 at a meeting with Executive Director 2 and Lead Physician 1 present, they were interrupted by someone entering and complaining that Employee 1 had a camera in his examination room. Clinic Administrator 1 told OCR that Executive Director 2 left the meeting and returned with one camera, which he placed on his credenza.
- Chaperone B also told OCR that between 1992-2000, she witnessed Employee 1 taking photographs of patients during examinations with a Polaroid camera and another

personal camera, which she stated was not a colposcopy camera. Chaperone B stated that when he took photographs, he would take multiple photographs.

- On or about April 26, 2013, Patient 7 filed a complaint regarding an appointment with Employee 1 during the prior year. In a meeting regarding her complaint, Patient 7 told the Nursing/Clinical Director that Employee 1 wanted to do another pap smear, even though she told him she had one recently, and that he told her not to leave; Employee 1 then told her about his “beautiful wife” and how he found “women so attractive.” Patient 7 said that these statements and the way he was looking at her gave her the “sceevies” and that she “never want[ed] to see him again.” As discussed further in **Section III**, this complaint eventually led to Executive Director 2’s interviews of the chaperones and his June 2013 complaint of Employee 1’s conduct to OED, which in turn resulted in OED interviewing Patient 7 as part of its inquiry.
- On or about May 20, 2016, Patient 8 complained to the Nurse Supervisor that, although unsolicited, Employee 1 explained how to “fake” being a virgin (and after she had told him that she had never been sexually active). He told her that if she were not a virgin when she got married, she could fill a small bag with blood and pop it on the bed on her wedding night. Patient 8 reported being “shocked.” As described in **Section V**, Patient 8 spoke with OED as part of the 2016 investigation.
- On or about May 23, 2016, Patient 9 complained to the Nurse Supervisor that Employee 1 made her upset and uncomfortable during two appointments. At the first examination, he digitally penetrated her with two fingers even though she asked him to use one. He was “creepy about how he did it” and did not “seem to listen” to her. He asked her to return for a second visit because the examination was “abnormal” and then told her nothing was abnormal in the second examination. She expressed that she was glad Chaperone C was with her during the examination to see what happened and to be comforting. As described in **Section V**, the Nurse Supervisor provided OED with Patient 9’s report during the 2016 investigation, but Patient 9 was not interviewed.

III. University’s Responses to Complaints in 2010 and 2013

A. University’s Response to Patient 6’s Complaint in 2010

Executive Director 2’s log entries indicate that on April 30, 2010, the same day that he received Patient 6’s written complaint (discussed above in **Section II**), he spoke with Counsel 1 and Title IX Coordinator 1. Executive Director 2’s contemporaneous notes indicate that when he informed them about the patient’s complaint, they separately conveyed the same opinion that the complaint would not likely “go anywhere” given that the conduct occurred 6-7 years earlier, there were no other similar complaints, and no witnesses. His handwritten notes state in part, “1. No witnesses. (2) No glove ... [Employee 1’s initials] not discipline. Not good idea.”

In an interview with Counsel 1, OCR read Executive Director 2's contemporaneous notes to Counsel 1. Counsel 1 stated that he did not recall the conversation, and that he "didn't" and "wouldn't" say what was attributed to him in Executive Director 2's notes. Title IX Coordinator 1 told OCR when interviewed that she had "zero recollection" of speaking with Executive Director 2 about Patient 6's complaint. Lead Physician 1 told OCR that he recalled Executive Director 2 telling him that with respect to Patient 6, he had spoken with OED, and OED said, "that wasn't enough to do anything."

B. University's Response to Patient 7's Complaint and Executive Director 2's Complaints in 2013

Following the receipt of Patient 7's complaint about Employee 1 wanting to do another pap smear and his comments about women (discussed above in **Section II**), on June 12, 2013, Executive Director 2 and the Nursing/Clinical Director met individually with eleven SHC staff who chaperoned for Employee 1. Executive Director 2's typed notes show that staff told him that three patients had told them that they did not want to see Employee 1 again because of his "strangeness" or "creepiness"; four patients told staff that they did not want to see Employee 1 again but no reason is provided in the notes; a staff member observed that Employee 1 "always" locks the office door when he is alone with a patient; staff believed that Employee 1 "wants to be too familiar" and "asks personal questions" of patients; staff observed that two patients were uncomfortable about being asked by Employee 1 "how would you feel if I [told you] today [that] you looked nice; would you think that is sexual harassment?"; a staff member said she would never refer her daughter to Employee 1 and noted that Employee 1 is "not [as] sensitive" as other male gynecologists; and another staff member observed that one patient was particularly uncomfortable during an examination, some patients seem in pain, and Employee 1 uses a "different technique" than other doctors.

On June 20, 2013, Executive Director 2 contacted OED's Senior Investigator 1; an internal email from Senior Investigator 1 to OED administrative assistants documented that Executive Director 2 had called her about "[s]exual harassment and national origin harassment" involving Employee 1.²⁰ Senior Investigator 1's handwritten notes of her conversation with Executive Director 2 show that the HR Administrator had referred him to her; it is followed by a phrase, "Been going on for 11-12 years" but there is no indication of what that is referring to. The handwritten notes also show that Executive Director 2 described to Senior Investigator 1 the patient complaints regarding Employee 1's comments about a patient's pubic hair and laser hair removal, demonstration of "Kegels" and conducting an examination with "[an] ungloved hand," and Employee 1's comments to a patient about his "beautiful Filipina wife" and other behavior that gave the patient the "[s]keevies"; that Employee 1 asked a patient how she would feel if he said she "looked nice" and whether that felt like "sexual harassment;" that he asks too many questions and that patients are uncomfortable; several patients have said he is "strange/creepy;"

²⁰ There were allegations that Employee 1 also made racially harassing comments, including that "Mexicans are taking over" and that there was going to be a "Reconquista." Allegations of race discrimination are outside the scope of this investigation and no findings are being made with respect to these allegations.

that he locks the door with patients; and that, in the past, he kept the chaperones on the other side of the curtain during pelvic examinations until “[w]e laid down [the] gauntlet.”

In her confidential memorandum to file, dated October 9, 2013, Senior Investigator 1 summarized Executive Director 2’s complaint to her as follows:

[Executive Director 2] reported that a number of staff members and a student had recently alleged that Health Center Gynecologist [Employee 1] had made inappropriate comments or had otherwise made them or others feel uncomfortable. [Executive Director 2] reported that [Employee 1] had worked in the department for approximately 18 years, and that the department had had several difficulties with him over the years, including how in 2002, he was not permitting Medical Assistants (MAs) behind the curtain with him when doing pelvic exams on students; how in 2009, he complimented a student on her pubic hair; and how in 2010, a student came forward and complained that in 2003, he performed a pelvic exam on her without wearing gloves.

On June 21, 2013, OED created a tracking record in its case management system, classifying Executive Director 2’s complaint as alleging sexual harassment and national origin discrimination. Executive Director 2 was identified as the complainant and Employee 1 was identified as the respondent in the record.

In June and July 2013, Senior Investigator 1 interviewed eight individuals, including chaperones for Employee 1. OCR reviewed her handwritten interview notes as well as her interview summaries in the confidential memorandum to file. Relevant to this directed investigation are the following:

- The Nursing/Clinical Director reported that Employee 1 takes patients into his office without a chaperone present and “locks the door,” and also recounted what Patient 7 had reported to her.
- Patient 7 confirmed what she had told the Nursing/Clinical Director, and stated that, among other things, Employee 1 told her that he “likes beautiful women,” and asked, “[T]here’s nothing wrong with that, right?” Patient 7 told Senior Investigator 1 that she had felt very uncomfortable, felt that she could not leave, and that “alarm bells [were] going off.” She said she subsequently complained to another clinician that Employee 1 gave her “a creepy feeling,” and “I wouldn’t keep using [University] services if [I] had to see him.” Patient 7 also told Senior Investigator 1 that when she called back for a follow-up appointment and told the individual making the appointment that she “did not want to see [Employee 1] again,” the person said that “she was not the first young woman to complain about him.”
- The Nurse Supervisor recounted that two or three years ago, two patients did not want to be referred to Employee 1 because he was “creepy.” The Nurse Supervisor also

described that Employee 1 seemed a little “rough” in his examinations and that he locked the office door when speaking with patients, which she said would “creep [her] out” if she were a patient and bothered her as a professional.

- A clinician at the SHC stated that [redacted content] was once seen by Employee 1 and commented afterward that she “never wanted to see that creepy gynecologist again.” The clinician told Senior Investigator 1 that a number of other patients had made similar statements over the years, but she had not followed up for details and did not know if she had reported them. She stated that she had also heard somewhere that he told a patient that she was pretty enough to be a model and that the words “odd” and “creepy” have been repeated about him over the years, as in “I’m not going to see that creepy guy again.”
- Chaperone D recalled Employee 1 “asking two students—while he was performing an examination—how they would feel if a man complimented them on their legs or how they were dressed.” She said she saw the patients’ faces when he asked these questions, and they appeared “puzzled” and “perhaps uncomfortable.”

Senior Investigator 1 did not interview the following individuals: Employee 1; Chaperone E who had complained to Executive Director 2 that Employee 1 was too familiar and asked too many personal questions and that three patients declined to see Employee 1 again; the staff member who had told Patient 7 that she was not the first young woman to complain about him; or any other patients who had complained, whom Executive Director 2 had told her about. She also did not request or review Executive Director 2’s file on Employee 1; any complaints against Employee 1 in the form of comment cards, patient surveys, emails, or letters; notes of the interviews conducted by Executive Director 2 and the Nursing/Clinical Director in June 2013; or patient files. She also did not consult with independent medical experts regarding the alleged verbal and physical conduct in light of the sensitive examinations to determine if they demonstrated sexually harassing conduct outside the medical standard of care.

Executive Director 2 and Lead Physician 1 met with Employee 1 on June 27, 2013 and July 17, 2013. Executive Director 2’s meeting notes indicate that they reviewed with Employee 1 the comments and complaints that were brought up by the SHC staff; indicated to him “that he should avoid all comments that could sound racist or sexist or potentially harassing”; and informed him that OED would be reviewing the “equity and diversity” issues. A few days after the first meeting, on July 1, 2013, Employee 1 submitted a written rebuttal to Executive Director 2, alleging that he was experiencing a “hostile work environment” for being a male doctor in gynecology. At the second meeting, Employee 1 agreed to stop locking the door when he was with a patient.

Throughout this period, Executive Director 2 conferred with and provided updates to Senior Investigator 1. For example, on June 28, 2013, Senior Investigator 1’s handwritten notes show that Executive Director 2 called and told her about the June 27 meeting with Employee 1, and stated “[it] may be that he just doesn’t get it;” he also expressed that Employee 1’s personnel file

was “4-5 inch” thick. Similarly, after he received Employee 1’s written rebuttal, Executive Director 2 informed Senior Investigator 1 on July 2, 2013 that he did not think Employee 1’s response was “normal.”

On July 26, 2013, and without requesting Employee 1’s personnel file and/or inquiring into the other patient complaints referenced by Executive Director 2, OED closed the Employee 1 matter in its case management system with the notation, “E-mail will be sent to [Executive Director 2], referred back to dept.” The OED file does not include an email. In her confidential memorandum to file, Senior Investigator 1 concluded that the interviews did not yield “actionable evidence of any policy violation,” that there was “insufficient evidence of any University policy violation to justify continuing an investigation,” and that she was not making any findings about “whether or not any of the statement[s] about him were true or false.” On September 19, 2013, Senior Investigator 1 “[c]onferred with [the Executive Director]” by phone about the Employee 1 matter. In her notes to file, she wrote there is “no ‘there’ there.”²¹

When OCR interviewed Senior Investigator 1 about Executive Director 2’s complaint, she described OED’s response to the complaint variously as an “investigation,” “an investigation but not a formal investigation” and a “pre-investigation.” She could not recall another case where she had conducted interviews but had not opened the matter for investigation.

With regard to statements by SHC staff that Employee 1 was doing the examinations differently from other doctors and that students had complained of pain during examinations, Senior Investigator 1 told OCR that she likely thought it was a “practice” concern because the examination can be painful or uncomfortable, but she did not consult with any medical practitioner to obtain an expert opinion.

When asked why she did not open the complaint for investigation, Senior Investigator 1 told OCR that her sense was that people were saying that Employee 1 was “creepy” and “creepy is not good,” but this was an issue for his boss and health care providers to deal with, because they would “know what creepy is.” She made no attempt to speak to patients who SHC staff told her had described Employee 1 as a “creepy gynecologist,” and/or to find out specifically what Employee 1 did that patients found disturbing. Senior Investigator 1 acknowledged to OCR that if she were to do the investigation now, she would conduct the investigation “more broad and deep,” would consult with outside experts on the medical practice issue, and would not look at the issues as narrowly as she did in 2013.

IV. Human Resources Responses to Complaints in 2013-2014

After Senior Investigator 1’s referral of the Employee 1 matter back to SHC in 2013, Executive Director 2 sought assistance from others in the University. The HR Administrator recalled

²¹ [redacted content]²² Senior Investigator 2 was also assigned to investigate allegations of racial harassment based on information provided by the Nurse Supervisor and the student complaints. That component of the OED investigation is outside of the scope of this directed investigation.

receiving a call from Executive Director 2 “in 2013 or 2014” based on a referral from the ED of Human Resources. Executive Director 2 explained to the HR Administrator that Employee 1 was difficult, and he wanted a consultation to see if there was enough for termination. The HR Administrator stated to OCR that Executive Director 2 expressed his frustration that OED did not make findings regarding Employee 1. After hearing in detail from Executive Director 2 about his concerns throughout Employee 1’s tenure and the files he had brought with him, the HR Administrator told OCR, she believed that Employee 1 had engaged in a “long-standing pattern of behavior [that was] totally unacceptable.” The HR Administrator stated to OCR that Executive Director 2 described reports of Employee 1 making patients uncomfortable by telling them about his attractive wife, reports of him excluding chaperones from the exam area using the privacy curtain, commenting about patients’ “tightness,” and conducting exams without gloves. She told OCR that she then spoke with the ED of Human Resources to see if she would consider terminating Employee 1’s employment if the HR Administrator helped Executive Director 2 assemble the paperwork to support the termination. According to the HR Administrator, the ED of Human Resources said that, given his long tenure, Employee 1 could not be terminated without documentation of progressive discipline prior to termination.

When interviewed by OCR, the ED of Human Resources confirmed that she is the only person in the University with authority to approve an involuntary termination. In approving involuntary terminations for unsatisfactory job performance, she looks for documentation that three written warnings and notice of possible termination were provided to the employee. She recalled that Executive Director 2 would call her to complain about Employee 1 every 2 to 3 years, but she characterized his complaints as “just venting.” She did not keep a working file of his complaints but recalled that they were about Employee 1’s vacation schedules and compensatory time; she told OCR that Executive Director 2 never mentioned OED or brought any other concerns to her attention.

Lead Physician 1 told OCR that Executive Director 2 routinely sought support from others above him in the chain of command, including the VP for Student Affairs 1 or the ED of Human Resources, when he had problems with staff. Clinic Administrator 1 told OCR that Executive Director 2 constantly called the Office of the General Counsel, spoke regularly with the ED of Human Resources regarding difficult employees, and on a weekly basis spoke with the VP for Student Affairs 1. Lead Physician 1 and Clinic Administrator 1 did not provide specifics about conversations that Executive Director 2 had with those individuals.

V. University’s Responses to Complaints in 2016

From February to early June 2016, a number of events occurred that led to or contributed to the University opening multiple investigations of Employee 1.

OCR interviewed the SHC Quality Manager who held this position from July 2013 through January 2018 and reported to the SHC Executive Director. The Quality Manager told OCR that, in March or April 2016, the Nurse Supervisor informed her that Employee 1 was, in the words of the Quality Manager, “taking advantage, in a sexual way, of the students.” The Quality Manager told OCR

that over the next couple of months, she had at least three conversations with someone in OED about what the Nurse Supervisor told her, but she felt that she was not being heard and the OED response was that the complaints did not meet some kind of threshold. The Quality Manager advised the Nurse Supervisor to speak with the Executive Director of the University's rape crisis center, called the Relationship and Sexual Violence Prevention and Services (RSVP), to help "give us the vocabulary to use" that would prompt OED to take action.

The Nurse Supervisor met with the RSVP Executive Director on June 2, 2016 about Employee 1's conduct; the Nurse Supervisor told OCR that the RSVP Executive Director agreed Employee 1's behavior was inappropriate and told her that she would assist by contacting Title IX Coordinator 2. The RSVP Executive Director contacted Title IX Coordinator 2 on the same day and provided to her the Nurse Supervisor's contact information and general information about the matter. On June 3, 2016, Senior Investigator 2 called the Nurse Supervisor to review her concerns and they scheduled to meet on June 6, 2016.

From February to April 2016, OED was informed of four race-based complaints against Employee 1, which were assigned to OED Senior Investigator 2. Documentary and testimonial evidence show that she did not intend to open an investigation based on these student complaints, but instead scheduled a meeting with Employee 1 for June 17, 2016 to advise Employee 1 to "course correct" on those issues. However, that meeting did not proceed, because on June 6, 2016, two events occurred related to Employee 1:

- First, Senior Investigator 2 met with the Nurse Supervisor. Her interview notes document that the Nurse Supervisor reported to her that when she was a [redacted content] nurse, patients declined to see Employee 1, saying he was "creepy"; he commented about patients' breasts being "perky" while conducting breast examinations; and he commented about patients' vaginal tone and asked whether they were runners in the course of performing vaginal examinations; and he conducted "full body exams" on patients and did not document or chart them. She told Senior Investigator 2 that when she complained to the SHC, including the Nursing/Clinical Director and the Nursing Manager, "nothing gets done." She also provided Patient 8's and Patient 9's complaints to Senior Investigator 2 (*discussed below*). In two internal investigative memoranda, the Nurse Supervisor is identified as filing a "complaint" on June 6, 2016 against Employee 1, alleging racial and sexual harassment.
- Second, the Nurse Supervisor and the Interim Co-Medical Director discovered a box or boxes containing hundreds of photographs and slides of female genitals in a locked cabinet in Employee 1's office. Employee 1 was on vacation at the time.

On June 7, 2016, the Nurse Supervisor sent an email to the Interim Co-Medical Director and the Nursing Manager wherein she reiterated her earlier request for a meeting about Employee 1. The Nurse Supervisor told OCR that when she met with the Interim Co-Medical Director, she relayed the same information she had relayed to the RSVP Executive Director, and the Interim Co-Medical Director said that she would make sure that OED knew about the concerns.

Employee 1 returned to the SHC on June 15, 2016 and saw a full day of 13 patients. On June 16, 2016, he saw five patients. According to the Nurse Supervisor's notes, when the Quality Manager returned from vacation on June 16, 2016, the Quality Manager spoke with Clinic Administrator 2 because Employee 1 was being allowed to see patients despite recent events. Employee 1 was placed on paid administrative leave and his access to the SHC was suspended effective June 20, 2016.

After the events of June 6, 2016, the University launched several investigations of Employee 1, including an investigation by the Office of Compliance into potential medical records privacy violations associated with the photographs and an investigation by OED into potential sexual and racial harassment by Employee 1, as discussed below. Evidence shows that these investigations were coordinated by the Office of the General Counsel. Title IX Coordinator 2 told OCR that everything was "out of the ordinary" because Employee 1's matter was "multi-disciplinary" and her office was "in active communication" regarding the investigations of Employee 1 with the Office of the General Counsel, the Office of Compliance, and Human Resources beginning in June 2016.

A. Office of Compliance's Investigation of the Photographs

In a memorandum dated June 24, 2016, the Associate General Counsel directed the ASVP of Compliance to "investigate certain privacy issues" regarding the photographs and slides found in Employee 1's office. The ASVP of Compliance completed her 12-page report on November 11, 2016, which was sent to three attorneys in the Office of the General Counsel: the Deputy General Counsel, Counsel 2, and Associate General Counsel. The copy of the report produced to OCR was heavily redacted, and no interview notes or other investigation notes were provided to OCR. In addition, the University did not provide the photographs to OCR to review.

The ASVP of Compliance's report documented that there were 207 slides, photographs, and Polaroids of patients' cervixes and/or exterior genital areas, with 38 of those photographs including "identifiable information ... specifically names, medical record number and dates ranging from approximately 1990-1991."

Based on the information viewable by OCR, it appears that the ASVP of Compliance interviewed three SHC staff (Interim Co-Medical Director, Clinic Administrator 2, and Employee 1) viewed the photographs, and reviewed photograph processing receipts that were found with the photographs. There is no evidence that the ASVP of Compliance interviewed any patients whose identifying information was connected to any of the photographs.

The ASVP of Compliance's report also shows that Employee 1 said that while the photographs located in his office were from 1990 to 1991, he had, in fact, photographed his patients from 1989 until sometime before 2013 which, the report noted, "appears to be at least twenty years." Employee 1 denied that he ever removed the photographs from his office or shared them with anyone other than the individual patient. Employee 1 said he switched from Polaroids to slides

and photographs for better resolution. He confirmed to the ASVP of Compliance that the receipts located in his office were receipts for photographs he took during patient examinations, which he sent to a commercial film processor on the East Coast, and then the processed photographs were delivered to his personal post office box, not to the SHC.

With regard to the photographs Employee 1 reported taking before and after the period from 1990 through 1991, which were not discovered in Employee 1's office on June 6, 2016, the evidence provided to OCR shows that the ASVP of Compliance inspected Employee 1's office and asked an administrator at SHC whether she had located any other photographs or slides beyond the those provided to the ASVP of Compliance. The administrator stated that she had not. There is no record in the documents viewable by OCR that the ASVP of Compliance asked Employee 1 directly about what happened to the other photographs, why the photographs were sent to an out-of-state processor, or why they were delivered to his personal mailbox. The University provided no evidence to OCR to show that the ASVP of Compliance or anyone else checked the medical records for Employee 1's patients to determine whether any photographs had been placed in the medical record, asked SHC staff who worked with him about knowledge of him photographing patients, or asked patients about when and if he had taken photographs.

In her interview with OCR, the ASVP of Compliance told OCR that she did not explore whether taking or keeping the photographs was medically necessary or whether the photographs may have had Title IX implications. She told OCR that she visually assessed the photographs and determined that they were "clinical" and did not appear to be sexual. She acknowledged to OCR that whether the photographs might raise Title IX concerns was not within the scope of her investigation.

B. OED's Investigation of Sexual Harassment

Senior Investigator 2 was assigned to OED's investigation of whether Employee 1 had violated the University's policies against sexual harassment.²²

On June 10, 2016, Senior Investigator 2 requested a copy of the SHC's personnel file on Employee 1, which she received on June 13, 2016. The personnel file included a copy of Executive Director 2's internal file on Employee 1, which included patient complaints that alleged potential sexual harassment going back to April 2000 (Patient 1); his handwritten notes related to his 2010 conversation with Counsel 1 and Title IX Coordinator 1; and his 2013 notes of interviews with medical assistants and nurses. Title IX Coordinator 2 gave a copy of Employee 1's personnel file to the Deputy General Counsel and the Associate General Counsel.

On June 15, 2016, Senior Investigator 2 interviewed seven chaperones. After completing the first four interviews, she reported to Title IX Coordinator 2 and Senior Investigator 1 that the

²² Senior Investigator 2 was also assigned to investigate allegations of racial harassment based on information provided by the Nurse Supervisor and the student complaints. That component of the OED investigation is outside of the scope of this directed investigation.

chaperones were reporting the same concerns and provided the notes of her interview with Chaperone A to give them a sense of the concerns that were being reported. The interview notes that were attached show, among other things, that “during every exam, with every single OB patient,” Employee 1 places a finger in the patient’s vagina prior to placing a speculum; that based on her observations of other clinicians, she believed that this procedure was unnecessary; that while the speculum is inserted, Employee 1 tells the patient that she has a tight pubococcygeus muscle (“Kegel muscle”) and asks, “are you a runner” or “do you do some sort of exercise.” Chaperone A also reported that Employee 1 conducts a “full body check on every female patient but does not document” the body check, which consists of examining the patient’s breast and lower area, before asking the patient to turn around so he can examine the patient’s buttock, and that during the full body skin check, he comments, “oh, you have flawless skin”; Chaperone A stated that Employee 1 again engaged in this conduct “every patient visit.”

The interview notes of the remaining six chaperones were consistent in describing Employee 1’s behavior with respect to conducting pelvic examinations, full body skin checks, and making verbal comments during those examinations, and the chaperones’ observation that his behavior was inconsistent with other clinicians’ conduct in gynecological examinations:

- Chaperone E reported that Employee 1 first inserts one finger, and then another, while making comments such as “my your [sic] toned,” or “do you work out;” that this occurs in “90% of the patients that she assists him with;” and that she believes Employee 1 is “feeling the girls up.” She also reported that Employee 1 conducts full body skin checks, which he does not chart (except for tattoos), while commenting on the patient’s “beautiful skin,” “flawless skin,” or in one instance, commenting about the patient’s perky breasts and that they “look straight up.” She reported that he also raises the examination table to his height and puts his face “two inches from their crotch,” and instead of using a goose neck light to examine them, he makes the chaperone hold a “little flash light,” which made her uncomfortable. She reported that within the last year, a dozen patients looked tearful after an examination by Employee 1.
- Chaperone C reported that instead of using a speculum to find the cervix, Employee 1 inserts two fingers into a patient’s vagina for “every OB visit,” which she believed “could hurt the patients,” that he did this even when a patient told him she did not want to be examined with two fingers, that she witnessed two patients cry because of the pain of him inserting his two fingers, and that she has never seen the other SHC male clinician inserting his fingers in lieu of a speculum during a pelvic examination, and that Employee 1 makes comments, such as “open wide” and asks them “if they are a runner.”
- Chaperone F reported that Employee 1 inserted two fingers in the vagina prior to inserting the speculum on “every visit, [on] mostly younger patients” and that he conducts full body skin checks on “all OB patients,” while making comments similar to those described by Chaperone A.

- Chaperone G reported that Employee 1 inserts his fingers into the patients to see if they can tolerate the speculum, but she does not feel that this is necessary, and that he conducts “head to toe” full body skin checks, including the breast, legs, arms, and the rectal area and that he does not chart the full body skin checks.
- Chaperone H reported that Employee 1 inserts one or two fingers during a pelvic examination of “every patient,” which she does not believe is appropriate, while commenting on tightness or asking if they are runners or if they exercised. She reported that she witnessed a patient looking like she wanted to cry, and that she tries to avoid Employee 1 as much as possible.
- Chaperone I reported that Employee 1 conducts full body skin checks, including turning the patients around and “looks in their butt cheeks.”

On June 23, 2016, Senior Investigator 2 emailed Senior Investigator 1 and Title IX Coordinator 2 to report that she had met with the ASVP of Compliance and Clinic Administrator 2 and reviewed the photographs found in Employee 1’s office. Senior Investigator 2 in her email described the photographs as “just pictures of abnormalities” and wrote that her first inclination was that they would not apply to the OED investigation. Title IX Coordinator 2 told OCR that at that time, the Office of Compliance had determined that the photographs were clinical, and she also reviewed the photographs and agreed with the ASVP of Compliance’s assessment.

On June 27, 2016, Senior Investigator 2 interviewed Patient 8 regarding her [redacted content], 2015 appointment with Employee 1. Patient 8 recounted that, when she stated that she was not sexually active, Employee 1 asked her whether she was not sexually active because of her family’s views or her religion, and shared his personal story that his wife had to wait for marriage to have sex because she comes from an Asian family, and that he did not mind waiting. He told Patient 8 that if she were not a virgin when she got married, she could fill a small bag with blood and pop it on the bed on her wedding night. Patient 8 reported being “shocked.”

Senior Investigator 2 did not interview Patient 9 even though she had been provided with information about Patient 9’s complaint by the Nurse Supervisor (discussed above in **Section II**).

In mid-July 2016, in coordination with OED, the Quality Manager sent a patient satisfaction survey to 500 of Employee 1’s patients seen between March 1-31, 2016. Only 25 students responded; of those who responded, the Quality Manager completed phone interviews with 22 students. According to email exchanges between the Quality Manager and Senior Investigator 2, the Quality Manager concluded that none of the phone calls “qualif[ied] for an additional OED interview” because they did not raise a potential issue for an OED follow-up, except for one student who was very apprehensive about getting involved.

In August 2016, Senior Investigator 2 interviewed Employee 1 three times. Her typed interview questions show that she focused on the reports of inappropriate comments from patients and nurses. OCR found no evidence that Senior Investigator 2 assessed the allegations that Employee

1's physical contact with patients and photographing of patients during examinations were not medically appropriate and constituted sexually harassment (i.e., inserting one or more fingers prior to placing the speculum, conducting full body skin checks including the rectal area, and photographing patients' genitals and storing those photographs in his office). OCR reviewed Senior Investigator 2's working document that summarized the allegations in Employee 1's matter; the document distinguishes allegations that she deemed were within "OED Purview" from those that were "Non-OED Purview." Allegations of digital penetration and full body skin checks were listed under the latter category, while the photographs were not mentioned at all.

On August 26, 2016, Senior Investigator 2 interviewed Lead Physician 1, who confirmed that he and Executive Director 2 had met with Employee 1 in 2013 at Executive Director 2's initiative. Senior Investigator 2's investigative memo states that Lead Physician 1 did not provide other relevant information.

C. Review by Outside Medical Consultants

Title IX Coordinator 2 told OCR that since the allegations against Employee 1 touched upon patient care issues, she contacted the Office of the General Counsel and it was either the Deputy General Counsel or Counsel 2, who assisted in hiring an outside medical consultancy firm (Medical Consultants) to constitute an ad hoc subcommittee to advise on the medical standard of care issues.²³ According to Counsel 2, the Provost's office, most likely the Vice Provost of Operations, signed the contract with Medical Consultants.²⁴

Senior Investigator 2 wrote a memorandum to Medical Consultants dated October 17, 2016, providing information from interviews with chaperones, a summary of Employee 1's responses, and the scope of the referral to the ad hoc subcommittee. The memorandum focused almost exclusively on the alleged harassing comments, and not on the primary concerns expressed by the chaperones that Employee 1 was inserting one or more fingers in the patient's vagina prior to inserting the speculum and conducting full body skin checks, including the rectal area and buttocks. There is no mention of the digital penetration in the individual summaries of the chaperones' interviews, even though six out of the seven chaperones raised it as a concern to Senior Investigator 2, and similarly, no mention of the full body skin checks, except in passing, to state that Employee 1 made comments about "flawless skin" after conducting "full body checks." The memorandum concludes with the description of the matter that was being referred to Medical Consultants. It was limited to an assessment of whether Employee 1's medical rationales fall within the "spectrum of appropriate patient care," specifically; an evaluation of Employee 1's responses to the alleged harassing comments; and guidance on the standard for basing the presence of a chaperone during pelvic examinations on the sex of the clinician (in relation to

²³In addition to the Medical Consultants, the Deputy General Counsel and Counsel 2 sought the advice of two criminal lawyers to determine whether Employee 1's conduct should be reported to law enforcement; the University has asserted attorney-client privilege with respect to these conversations.

²⁴The VP of Operations is a senior administrator in the Provost's office.
<https://www.provost.usc.edu/about/previous-provosts/>.

Employee 1's assertion that requiring male clinicians to have chaperones during pelvic examinations is sex discrimination).

On November 15-16, 2016, Medical Consultants conducted a site visit at the SHC, interviewed 17 staff members, including Employee 1, reviewed 28 medical records, and other information related to the slides and photographs found in Employee 1's office, and Employee 1's written responses to Senior Investigator 2's interview questions. Medical Consultants were not provided the actual slides or photographs to review. On November 30, 2016, Medical Consultants issued its report and made the following findings relevant to the directed investigation:

- Personnel and patients were frequently upset after their encounters with [Employee 1]..."[S]everal nursing staff said they had reached a point that they preferred not to go into a patient exam room with [Employee 1] because the way he dealt with the patients made them uncomfortable. This included seeing patients who were in tears, upset, or obviously offended by [Employee 1's] conduct, all of which [Employee 1] would be oblivious to, or he would make condescending comments to the patients about their discomfort."
- Inappropriate pelvic examination technique: Employee 1 was "described uniformly as always beginning his pelvic exam by asking the patient's permission to insert one gloved lubricated finger, regardless of the purposes of the exam, his prior experience examining the patient, or her sexual experience or history of traumatic exam. He would then remove it and ask the patient's permission to insert two fingers." During this portion of the examination, he would typically comment on the tone and tightness of the vagina muscles and "frequently seeming to palpate this tight area while he talked with the patient." At times, "the patient would be uncomfortable and ask him to stop, which some personnel reported he did not always do, and that if the patient did complain of pain, he would make a condescending comment that she should not be feeling any discomfort." Medical Consultants found that "routinely exploring the vagina before the speculum exam to determine if the patient might have discomfort is not standard of care or appropriate."
- Several staff expressed frustration with the SHC administration that "prior complaints were either ignored or resulted in only limited and/or temporary improvement in [Employee 1's] behavior. Personnel indicated they felt it was necessary to take their complaints outside the [SHC] to be taken seriously and/or result in permanent improvement in a situation they felt put patients at risk and made them very uncomfortable professionally. Several were concerned that the current investigation would again be fruitless."
- Medical Consultants also commented upon the standard of care relevant to the photographs found in Employee 1's office; the University did not give Medical Consultants access to the photographs but provided a general description of what was found. Medical Consultants' report stated that, of the more than 200 images found in Employee 1's office, more than 162 images were unlabeled and only 38 had patient identifying information

(22 of which were slides of cervixes). Employee 1 had asserted that the photographs were all taken using a camera during colposcopy. Medical Consultants noted that particularly in “the late 1980s and early 1990s’ some clinicians would use “a specialized camera with a close-up lens ... as an adjunct to the Pap smear,” but that practice “does not sound consistent with what Employee 1 described as a camera attached to a colposcope.” Employee 1 asserted to Medical Consultants that he “retained an extra copy of the [photographs of] patients’ cervixes as a defense in the event the patient later developed cervical cancer.” However, Medical Consultants noted that “since less than 15% of the images contained any patient identifying information, that justification fails to explain the possession of more than 85% of the images” and that Employee 1’s explanations for possessing the photographs “were dubious, at best.” The report concluded that, without seeing the images, it could not advise on the standard of care related to taking the photographs, however Employee 1’s “ongoing possession of the unidentified images was not standard of care unless they were of notable pathology, which is contrary to [Employee 1]’s statement.”

In sum, Medical Consultants’ report identified “significant concerns” that raised “serious questions about patient physical and psychological safety” if Employee 1 were to return to practice, including “[u]sing physical exam techniques that vary from standard accepted practices and could be, and likely were (based on patient feedback), considered to represent inappropriate physical contact with patients that would likely be considered serious boundary violations by a professional conduct, licensing, or credentialing committee.” It concluded that many of Employee 1’s practices, including his technique for a pelvic examination, were not within medical standard of care and “could be considered a violation of [a patient’s] body.” His comments made during such examinations were “inappropriate and not within standard of care” and some were “demeaning to a woman and highly unprofessional.” The report stated that “the [Medical Consultants] was very concerned that the bulk of the patients whom [Employee 1] sees are unusually vulnerable” because of their young age, lack of familiarity with what is the “normal conduct of a female exam,” and “[l]anguage and cultural barriers.” Medical Consultants wrote, “The patient, not recognizing that she has undergone an inappropriate exam or that an inappropriate/unprofessional comment has been made would make no complaint regarding the behavior.”

D. Notice of Outcome Regarding OED Investigation

In a meeting on January 31, 2017, Senior Investigator 2 provided a written notice of outcome to Employee 1, after attorneys from the Office of General Counsel had reviewed it and the internal investigative memoranda upon which the notice of outcome was based. The notice of outcome addressed both racial and sexual harassment investigations. With respect to sexual harassment, the notice of outcome addressed allegations that Employee 1 (1) used his hands to probe and palpate the vagina and did so while commenting on the patient’s vaginal tone or hymen; (2) commented to a student patient “my, you have perky breasts;” (3) inappropriately advised Patient 8 on how to “fake her virginity” and discussed his wife’s decisions regarding premarital

sex; and (4) made other comments about and asked questions of patients which they found inappropriate.

Regarding the first allegation, the notice of outcome stated that Medical Consultants determined that the “justifications [presented by Employee 1] for probing and palpating the vagina and then commenting on the patient’s vaginal tone or hymen do not constitute standard of care” and were “not medically credible.” The notice of outcome concluded that Employee 1 had violated the University’s “sexual harassment policy when [he] made comments regarding patients’ vaginal tone or hymen.”

Regarding the second allegation, the notice of outcome noted that Employee 1 denied making the comment, but the investigation concluded that it was more likely than not that Employee 1 did tell a patient that her “breasts were perky” or made a similar comment and that the comment was “part of a pattern of unwarranted inappropriate comments” that are “sexual and unwelcome.” Accordingly, the investigation concluded that “in totality with [Employee 1’s] other comments and behavior, [Employee 1’s] comment about the student’s breasts” violates the University’s policy against sexual harassment.

Regarding the third allegation, the investigation found that Employee 1’s comments were unwelcome and unprofessional and were “part of a pattern of behavior of sexual or sexually related comments towards patients that in the aggregate violate [the University’s] sexual harassment policy.

Regarding the last allegation, the notice of outcome addressed complaints raised about other comments made to patients, including asking patients if they were “runners” or “if they exercise”, commenting that they have “flawless skin”, telling a patient before a pelvic examination to “open wide”, requesting to “read a patient’s tattoo near the patient’s vagina,” and “asking a patient if she was not sexually active because of her family or religion.” The investigation concluded that these comments did not violate the University’s policy against sexual harassment but would be referred to Lead Physician 1 (who was acting Interim Co-Medical Director at the time) for further handling.

OED’s investigation did not address whether Employee 1’s photographing of patients in exams and retaining those photographs constituted sexual harassment. When OCR asked about this, Title IX Coordinator 2 stated that the photographs “were concerning in totality” but given the information they had at the time, they did not have sufficient information to investigate them as possible sexual harassment. The records produced to OCR do not indicate any analysis by OED regarding the photographs following Medical Consultants’ conclusion that Employee 1’s justifications for possessing the photographs were not plausible, nor any steps taken by OED to obtain additional information from patients or staff about the photographs.

The University did not provide notice of the outcome of the investigation to any complaining staff, including the Nurse Supervisor—even though she was identified as the complainant—or any patient who reported Employee 1’s conduct, including Patient 8 and Patient 9. The

University's Title IX grievance procedure in effect at that time required that both the complainant and respondent receive notice of the outcome. When asked by OCR why OED did not follow its policies and procedures, Title IX Coordinator 2 stated at times, "I don't know" or "I was not involved in the decision." Title IX Coordinator 2 stated to OCR that she understood that SHC staff were subjected to sexual harassment due to witnessing Employee 1's conduct over the years. She also stated that not providing the complainant, Employee 1, or impacted parties with notice of outcome was a "huge hole."

E. Employee 1's Settlement

The University's procedure in effect at the time provided for an appeal process.

In early February 2017, Employee 1 wrote to the University that he was filing an appeal and needed additional documents to perfect his appeal. For four months, OED made no substantive determination with respect to his appeal request. While Employee 1's appeal was pending with OED, the VP for Student Affairs 2 told OCR that, in early May 2017, he received a phone call from the Office of General Counsel. The Office of General Counsel told him that Employee 1 would not be successful in appeal and solicited the VP for Student Affairs 2's help in bringing Employee 1 into mediation. On June 20 and 23, 2017, mediation sessions were held with Employee 1, the VP for Student Affairs 2, and attorneys from the Office of General Counsel; the Deputy General Counsel was at the first session and Counsel 3 was at the second session.

On June 23, 2017, the Provost executed a "Confidential Settlement Agreement and General Release" for Employee 1's signature, [redacted content]. In an interview with OCR the Provost stated that he did not know that this settlement was for Employee 1 until much later when the University General Counsel briefed the cabinet about this matter, at which point he indicated that the settlement authority he had granted was for Employee 1. He also stated that his impression was that the case involved someone who had verbally harassed someone and that "general counsel's view" was that settlement was the most expedient way to address the matter.

On July 14, 2017, Employee 1 signed the settlement agreement, which ended the employment relationship, effective June 30, 2017. The University never made a determination regarding Employee 1's appeal.

VI. University Actions and Other Developments After Employee 1's Settlement with the University

The ASVP of Compliance stated to OCR that at the Office of General Counsel's direction, she delivered the photographs that had been found in Employee 1's office to outside legal counsel for the University.

On March 9, 2018, the University filed a consumer report with the Medical Board of California regarding Employee 1. Although the form included "sexual misconduct" as an option to categorize the complaint, the form indicates the report was in regard to "unprofessional conduct

(e.g., breach of confidence, record alteration, fraud, misleading advertising, arrest or conviction).” The details provided stated, in relevant part, that the University had “feedback and information from staff that [Employee 1] did not meet professional standards and was engaged in inappropriate behavior” and that the University believed “he could not be rehabilitated.”

On May 15, 2018, President 2 issued a letter with an accompanying Statement of Facts to the University community. Both these documents were reviewed by the Office of General Counsel prior to issuance. In President 2’s letter and the Statement of Facts, the University stated among other things that the complaint about Employee 1 in 2016 was about “sexually inappropriate comments made to patients in front of medical assistants”; that OED had received a prior complaint about Employee 1 in 2013 that alleged racially inappropriate comments; and that with regard to the 2016 medical assistant concerns regarding Employee 1’s practice during pelvic exams, a gynecological expert determined that the pelvic exam technique could be considered acceptable, Medical Consultants concluded the practice was outdated and not standard of care, and criminal attorneys concluded there was no criminal activity to report. President 2 also indicated that Executive Director 2 failed to elevate concerns about Employee 1. In an interview with OCR, President 2 stated that he first learned of the Employee 1 matter from the University General Counsel and that the case was presented to him as one involving “harassment in words and outdated medical practices.”

On May 16, 2018, the *Los Angeles Times* published an article describing that multiple complaints were made against Employee 1 dating back to the 1990s, including complaints that Employee 1 was photographing female patients’ genitals, engaging in inappropriate touching of patients, and making sexual remarks to patients and that the University found in 2016 that Employee 1 had violated the University’s policy against sexual harassment.²⁵

On May 17, 2018, the SVP for Administration placed Lead Physician 1 on administrative leave²⁶ and terminated the Nursing/Clinical Director’s employment.

On May 21, 2018 the Provost issued a letter to the University community. This document was reviewed by the Office of General Counsel prior to issuance. Amongst other things, the Provost’s letter stated that University leadership had not previously known about Employee 1’s conduct and that at the time the University reached a settlement with Employee 1, University leadership was only aware of Employee 1 being “verbally inappropriate” and that had Employee 1’s conduct surfaced earlier, the University could have taken action sooner.

On May 22, 2018, the University announced that it was reorganizing its reporting structure in response to the allegations regarding Employee 1. Among other changes, the University moved OED and other investigation offices under the supervision of the newly created Office of Professionalism and Ethics. The Office of Professionalism and Ethics reports directly to the Office of General Counsel, and secondarily reports to the President and the Audit and Compliance

²⁵ <https://www.latimes.com/local/california/la-me-usc-doctor-misconduct-complaints-20180515-story.html>

²⁶ Lead Physician 1 is no longer an employee at the University.

Committee of the Board of Trustees. The University has since informed OCR that the OED reporting structure had been changed again and that the Title IX Office will now report directly to the Senior Vice President for Human Resources. In this new structure, the University has represented to OCR that neither the Title IX Office nor the Senior Vice President for Human Resources will report either directly or indirectly to the Office of General Counsel.

On May 23, 2018, the Executive Committee of the Board of Trustees announced that it was forming a special committee to hire outside counsel to conduct an independent investigation into the “misconduct and reporting failures” that occurred at the SHC.²⁷

In July 2018, President 2 resigned, and the Board appointed the former Chair of the Audit and Compliance Committee to serve as Interim President.

On September 26, 2018, the Medical Board of California filed a petition to revoke Employee 1’s medical license. The petition charged him with unprofessional conduct, sexual misconduct, and gross negligence in providing medical services to five patients. Employee 1’s medical license was suspended on August 27, 2018 on an interim basis pending the final decision of the Medical Board.

On December 11, 2018, the *Los Angeles Times* reported that the LAPD had found Employee 1’s off-site storage unit, which contained hundreds of pictures of unclothed women, including photographs that appeared to be taken in a medical examination room.²⁸ The LAPD confirmed to OCR that the information reported in the December 11, 2018 *Los Angeles Times* article was accurate.

On June 13, 2019, a federal district court granted preliminary approval to a \$215 million class-action lawsuit settlement filed by former SHC patients against the University and Employee 1 who allege that they were sexually abused by Employee 1. The settlement provides for financial awards to claimants, administrative changes, and other provisions.

On June 26, 2019, the Los Angeles County district attorney criminally charged Employee 1 with 29 felony counts of sexual assault, including 18 counts of sexual penetration of an unconscious person and 11 counts of sexual battery by fraud. The charges involve 16 patients ranging from 17 to 29 years of age who visited the SHC between 2009 and 2016.²⁹ Employee 1 was taken into custody that same day. On August 23, 2019, Employee 1 posted bail and was released from jail.³⁰

²⁷ <https://studenthealthresources.usc.edu/message-from-the-executive-committee-of-the-board-of-trustees/>. As of October 3, 2019, the University has not provided any such report to OCR.

²⁸ <https://www.latimes.com/local/lanow/la-me-ln-usc-gynecologist-storage-unit-20181211-story.html>

²⁹ <https://www.latimes.com/local/lanow/la-me-george-tyndall-arrest-usc-sexual-abuse-20190626-story.html>; and <https://www.usatoday.com/story/news/nation/2019/06/26/george-tyndall-ex-usc-gynecologist-charged-16-sexual-assaults/1580104001/>

³⁰ <https://www.latimes.com/california/story/2019-08-24/usc-gynecologist-charged-with-assaulting-patients-posts-bail-released-from-jail>

On September 5, 2019, pursuant to a Stipulated Surrender of License and Order, Employee 1 surrendered his license to the Medical Board. The stipulation and order constitute discipline against Employee 1 and remain part of his licensing history; it removes all rights and privileges as a physician and surgeon in the State.³¹

On October 1, 2019, the University released its 2019 Annual Security and Fire Report, which is mandated by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. The report includes 68 Clery-reportable incidents regarding Employee 1's conduct during his employment. Sixty-four of the incidents were categorized as rape committed by Employee 1 under the Clery definition for rape, and four were classified as fondling.³²

On January 6, 2020, the judge stated that he would give final approval to the settlement reached between the University and plaintiffs in the federal class action.³³

VII. Impact on Students

OCR reviewed approximately 300 student patient complaints received by the University after May 15, 2018 and interviewed 43 patients of Employee 1 whose allegations against him spanned from the early 1990s to 2016. The patients interviewed by OCR described experiencing a range of medical, emotional, academic, and financial harms as a result of Employee 1's actions. Of the 43 patients interviewed by OCR:

- More than a dozen patients said they refused to return to the SHC for gynecological and other types of medical care after appointments with Employee 1. In some instances, this resulted in the patients delaying necessary medical treatment. For example, one patient told OCR that she was so fearful of going to the doctor after her examination by Employee 1 that she let a painful bladder infection go untreated. Six former patients told OCR that after their experiences with Employee 1, they refused to obtain medical care from male physicians, refused to let their daughters receive care from male physicians, or brought a family member with them during a medical examination by a male physician. One former patient said she had always wondered if it was appropriate for Employee 1 to photograph her genitals, and that when she read in the *Los Angeles Times* about the discovery of such photographs in his office, she had an immediate physical reaction that required emergency transportation to the hospital. Three former patients described they had concerns about the legitimacy or whereabouts of the photographs that Employee 1 had taken of them.
- Sixteen patients reported that their experience with Employee 1 negatively affected their overall mental health; eight patients stated that they sought therapy to address the

³¹ See Medical Board of California, Case No. 800-2018-041209.

³² The 2019 report is available at <https://dps.usc.edu/alerts/annual-report/>.

³³ <https://www.latimes.com/california/story/2020-01-06/judge-says-he-will-sign-off-on-215-million-settlement-with-ex-patients-of-campus-gynecologist>

impact of his actions. Thirteen patients described to OCR the emotional damage wrought by Employee 1's actions as "scarring," "traumatizing," or otherwise life-altering. Ten patients told OCR that Employee 1's actions significantly harmed their dating relationships or marriages.

- As a result of Employee 1's actions, patients suffered academic harm such as difficulty concentrating, missed classes, failed courses, transferring to a different college, and dropping out of school. One patient described that she [redacted content] in order to transfer to another college because she no longer felt safe at the University. According to at least two former patients, they dropped out and never graduated, in part because of the impact of Employee 1's actions; another failed a class and had to repeat it over the summer.
- Six former patients reported that they incurred financial expenses seeing outside medical providers because they refused to see Employee 1 again.

APPLICABLE LEGAL AND REGULATORY STANDARDS

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX, 34 C.F.R. § 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

In determining whether sexual harassment based on sex exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in

which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish sex discrimination under the statutes enforced by OCR.

Sex-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of discrimination to which a school must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program. In cases of such harassment, a school has an obligation to respond promptly and equitably. In accessing all related circumstances to determine whether sex discrimination exists, incidents of sex-based harassment combined with incidents of sexual harassment constitute sex discrimination, even if neither the sex-based harassment alone nor the sexual harassment alone would be sufficient to do so.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

A school has a duty to respond to harassment about which it knows or reasonably should have known. A school has notice of sexual harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

In cases where an employee is engaged in sexual harassment of a student, a school may be held responsible under Title IX regardless of whether it knew or should have known about the harassment. Specifically, if an employee, in the context of carrying out his or her day-to-day job

responsibilities for providing aid, benefits or services to students, engages in harassment that denies or limits a student's ability to participate in or benefit from the school's program, the school is responsible for discrimination, whether or not it knew or should have known about it. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. The school is therefore also responsible for equitably remedying any effects of the harassment on the students, as well as for ending the harassment and preventing its recurrence. As noted above, this is true whether or not the recipient has notice of the harassment.

What constitutes a recipient university's program or activity for purposes of Title IX broadly includes "all of the operations of ... [a] college, university, or other postsecondary institution, or a public system of higher education." 34 C.F.R. § 106.2(h)(2)(i).

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

The Title IX regulation also prohibits discrimination based on sex in employment. See Subpart E, 34 C.F.R. §§ 106.51 – 106.61. When an employer receives a complaint or otherwise learns of alleged sex discrimination in the form of sexual harassment in the workplace, the employer should investigate promptly and effectively. The employer should take immediate and appropriate corrective action to end the discrimination, remedy the misconduct, and prevent the misconduct from recurring.

ANALYSIS AND CONCLUSIONS OF LAW

OCR found that the University had notice of Employee 1's alleged sexual harassment of patients, and systemically failed at multiple points in time and at multiple levels of responsibility to respond effectively. OCR also found that the University repeatedly failed to take appropriate steps to investigate or otherwise determine what occurred in response to that notice. The

allegations of sexual harassment by a medical professional in a medical setting required an initial determination of whether or not the alleged conduct was medically appropriate, and in each instance where the conduct was not medically appropriate, the University should have then investigated whether or not the conduct constituted sexual harassment. The University further failed to consider the totality of the circumstances, including that the alleged conduct occurred in the context of women's health examinations of students, many of whom were being examined by a gynecologist for the first time, by an authority figure. The University also failed to take steps to effectively prevent recurrence of misconduct, or to provide remedial measures to protect and restore complaining students' equal access to University programs. The University's failure to respond promptly and effectively to notice of the sexual harassment allegations, may have allowed female students to be subjected to continuing sex discrimination.

The University's Response to Complaints Regarding Employee 1

Reports from Chaperones

In interviews with OCR, some chaperones stated they complained to SHC supervisors in the 1990s to the early 2000s about Employee 1 excluding chaperones from the examination area using the privacy curtain, in contravention of SHC practice. OCR reviewed documents that supported the chaperones' statements, including emails from the chaperones' supervisor to Executive Director 2 and Lead Physician 1 in the early 2000s regarding Employee 1's exclusion of chaperones using the privacy curtain. The response to these complaints consisted of Executive Director 2 and Lead Physician 1 "reminding" Employee 1 that the chaperones needed to be on the inside of the privacy curtain.

While the chaperones' reports regarding Employee 1's use of the privacy curtain did not, on their face, raise a Title IX matter, the University should have recognized that Employee 1 was behaving in a manner that undermined practices that were put in place to ensure patient safety. The chaperones' concerns that were reported to SHC supervisors were an important piece of information that the University had within its possession and that the University should have considered in its investigation and response to the patient complaints that are described below.

Response to Complaints from Patients 1, 2, 3, 4, and 5 (2000 through 2009)

In addition to chaperones' reports to SHC administrators that Employee 1 was excluding chaperones from being inside the privacy curtain (early 1990s to 2004), the SHC received written complaints from patients. In the almost ten years before the SHC consulted with the University's Title IX Coordinator or Office of General Counsel in 2010, the SHC received written comment cards, a questionnaire, and letters containing complaints from patients about Employee 1 in 2000 (Patient 1), 2003 (Patient 2), 2004 (Patient 3), 2008 (Patient 4), and 2009 (Patient 5). The written complaints described conduct by Employee 1 that suggested potential sexual harassment, and in each instance of notice, the University failed to meet the requirements of Title IX. This failure may have allowed Patients 1 – 5 to be subjected to continuing sex discrimination.

With respect to Patient 1, (who complained about Employee 1's comments about the sexual practices of [redacted content] in her appointment), Executive Director 2 and Lead Physician 1 failed to recognize that Employee 1's comments were made in the context of a sensitive women's health examination in which the patient would be undressed and physically contacted by the doctor, an individual in a position of authority relative to the patient. All of these factors should have been considered in determining whether or not the reported comments by Employee 1 constituted sexual harassment. The "apology letter" by Employee 1 to Patient 1 and Executive Director 2's advice that she could change physicians did not remedy the potentially harassing nature of Employee 1's statements.

With respect to Patient 2 (who complained about the pelvic examination by Employee 1), Executive Director 2 spoke with Patient 2, but there is no evidence that Executive Director 2 asked questions about her written complaint, including why the examination was so physically painful to her or why she felt "disrespected" by Employee 1. Further, Executive Director 2's follow-up with Employee 1 regarding Patient 2's complaint was limited to telling Employee 1 that chaperones could not be excluded from the examination area by the privacy curtain.

With respect to Patient 3 (who complained in January 2004 that her appointment with Employee 1 made her feel "uncomfortable and violated") and Patient 4 (who submitted a comment card after her 2008 appointment with Employee 1 complaining about his demeanor and sexual remarks), there is no evidence that anyone took responsive action to the written complaints.

With Patient 5's complaint (a 2009 letter describing Employee 1 remarking approvingly on the appearance of her pubic area during a pelvic examination), the evidence is lacking that Executive Director 2 took any action, other than advising Employee 1 that, in the future, he should not ask a patient about the grooming of her pubic hair during a pelvic examination.

In each of these responses, Executive Director 2 failed to examine whether Employee 1's conduct was potentially sexually harassing and if so, failed to respond promptly and effectively. For example, Executive Director 2 did not take steps to determine whether the conduct was within the standard of care, and if not, whether it constituted sexual harassment. If the conduct was not within the standard of medical care, Executive Director 2 should have recognized the seriousness of Employee 1's conduct, that prior responses had been ineffective in correcting his conduct, should have made a determination regarding whether the alleged conduct constituted sexual harassment and should have considered whether Patients 1, 2, 3, 4, or 5 required interim measures, and should have assessed whether, particularly in light of the pattern of complaints regarding Employee 1, there was an ongoing risk to patients that necessitated interim restrictions or monitoring of Employee 1's conduct during the pendency of any investigations.

In each instance, these complaints of potential sexual harassment should have been referred to OED.

Response to Patient 6's Complaint in 2010

Executive Director 2 recognized upon receipt of Patient 6's written complaint (about digital penetration by Employee 1 without wearing gloves) in April 2010 that it described potential sexual harassment, and he contacted OED and the Office of General Counsel. Counsel 1 and Title IX Coordinator 1 told OCR that they could not recall their conversations with Executive Director 2 about this matter, and Counsel 1 further stated that he would not have stated what Executive Director 2 documented in his contemporaneous notes. OCR finds credible that they were informed about the complaint based on Executive Director 2's contemporaneous notes of his communication and his report of this communication to Lead Physician 1, who recalled hearing from Executive Director 2 about his conversation with Title IX Coordinator 1.

OCR found that OED's response to Patient 6's written complaint in 2010 was not appropriate because it did not investigate or take other reasonable actions in response to the alleged misconduct. Although the complaint, on its face, raised the possibility of sexual harassment or sexual assault in the form of inappropriate digital penetration with an ungloved hand, Title IX Coordinator 1 and Counsel 1 decided not to pursue the complaint, without conducting any fact finding to ascertain what occurred, and without assessing whether or not the alleged conduct was medically appropriate. They failed to take reasonable steps which may have included talking to the patient, to Employee 1, or to another physician to assess credibility or evaluate whether digital penetration without a glove was considered appropriate or within the medical standard of care. They failed to inquire why there was no chaperone present during the examination, which was contrary to the SHC's policy and practice.

In reaching their conclusion that the complaint would not "go anywhere," they appeared to have given primary consideration to the age of the alleged misconduct (that it occurred 6-7 years ago) and did not consider the larger context in which the alleged misconduct took place—here, the alleged misconduct involved physical conduct during a gynecological examination when the patient was undressed; and it took place in a private examination room with no other individual present. Also, OED appeared to have not considered that Employee 1 was seeing patients in a potentially vulnerable context; many patients were young, lacking familiarity with what to expect of the medical examination, and some of whom had language and cultural barriers. All these factors should have been weighed in favor of opening an investigation.

In addition, OCR found that Counsel 1 and Title IX Coordinator 1 looked at Patient 6's complaint in isolation and failed to assess whether it was part of an overall pattern of conduct indicating sexual harassment before responding to Executive Director 2. While it's true that there was no prior complaint against Employee 1 specifically alleging digital penetration with an ungloved hand, by this point in time, there were complaints from prior patients showing a pattern of potentially sexually inappropriate comments, including from Patients 1, 4, and 5, and complaints about the pelvic examination, including from Patients 2 and 3.

In light of the foregoing, OCR concluded that OED's failure to investigate the alleged misconduct in Patient 6's complaint violated Title IX and this failure may have allowed Patient 6 to be subjected to continuing discrimination.

Response to Patient 7's Complaint in 2013

On April 26, 2013, Patient 7 filed a written complaint alleging that Employee 1 had made inappropriate comments in talking about his "beautiful wife" and how he found "women so attractive" during a gynecological examination. On June 12, 2013, Executive Director 2 and the Nursing/Clinical Director conducted an inquiry by meeting individually with eleven SHC staff, and on June 20, 2013, reported allegations of sexual and national origin harassment by Employee 1 to OED. As an initial matter, OCR found that Executive Director 2's delay of approximately two months to report Patient 7's complaint to OED was inconsistent with University policies and Title IX.

OCR found that the information provided to OED, including evidence revealed during Executive Director 2's meetings with staff, was sufficient to require an investigation into the full scope of allegations in order to determine what occurred. Senior Investigator 1, who handled the OED matter, provided inconsistent testimony to OCR as to whether she investigated the full scope of allegations. OCR concluded that her investigation was not adequate for Title IX purposes; specifically, she did not interview relevant witnesses, review then-available relevant evidence, or respond to all Title IX allegations raised by witnesses, including Executive Director 2, who notified her of several student complaints that raised the possibility of sexual harassment and indicated that issues with Employee 1 went back to 2001-2002.

Senior Investigator 1 did not interview key witnesses, including the staff person who had told Patient 7 that she was not the first young woman to complain, or Chaperone E, who had told Executive Director 2 that patients were uncomfortable with Employee 1 and that he was "too familiar." She also did not interview any other patients who had complained about Employee 1, even though Executive Director 2 had told her about at least two patient complaints. Additionally, Senior Investigator 1 did not interview Employee 1.

Senior Investigator 1 also did not request or review relevant documentary evidence, including Executive Director 2's extensive file on Employee 1, notes of the interviews conducted by Executive Director 2 and the Nursing/Clinical Director, and prior patient complaints against Employee 1.

Lastly, Senior Investigator 1 did not address all of the Title IX issues raised directly to her by Executive Director 2 and SHC staff members, such as that Employee 1 had digitally penetrated patients without gloves; that Employee 1 locked his office door when meeting with patients; and that, at least in the 1990s and 2003-2004, he excluded chaperones from inside the privacy curtain during pelvic examinations. She also did not address the statements made by nursing staff that several patients described Employee 1 as "creepy" and said they did not want to see him again, nor did she attempt to identify and interview these patients to clarify the basis for their opinion.

In addition, instead of obtaining expert advice about whether medical techniques that patients found offensive were appropriate under medical standards of care, Senior Investigator 1 summarily concluded that the conduct could not constitute sexual harassment.

In summary, Senior Investigator 1 had information at the time that a gynecologist, whom patients repeatedly described as “creepy” and “strange,” was locking the door when with patients, restricting chaperones from observing pelvic examinations, and making sexual comments during the examination. These allegations of inappropriate conduct with patients should have been sufficient to open and conduct a full investigation. But, as in 2010, OED again decided that the complaint would not be opened for investigation. Its failure to investigate violated Title IX and this failure may have allowed Patient 7 to be subjected to continuing sex discrimination.

Response to Complaints in 2016

After the events of June 6, 2016, when the Nurse Supervisor reported her concerns about Employee 1 to Senior Investigator 2 and the University discovered more than 200 photographs and slides of female genitals in Employee 1’s office, OED opened an investigation of sexual harassment into Employee 1. The investigation included multiple interviews with SHC witnesses and Employee 1, a request for and a review of Executive Director 2’s file and documents from Employee 1, and a separate onsite review by outside experts.

OCR found that OED’s response was inadequate and violated Title IX because OED failed to investigate and address the allegations that Employee 1 had been photographing female patients’ genitals, engaging in digital penetration prior to inserting the speculum, and conducting full body skin checks; failed to consider some of the alleged verbal comments as sexual harassment; failed to assess whether any interim measures were needed by patients who complained about Employee 1’s sexually harassing conduct; permitted Employee 1 to continue to examine patients for a day and a half before finalizing his administrative leave status during the pendency of the investigation; failed to provide remedies to patients where OED concluded they experienced sex discrimination by Employee 1’s conduct which may have allowed them to be subjected to continuing sex discrimination; and failed to provide Employee 1 with a prompt appeal process consistent with its policies and procedures; and failed to provide notice of outcome to complainants.

SHC staff who worked with Employee 1 made statements to Medical Consultants in 2016 that indicated that Employee 1’s sexual harassment of patients made them uncomfortable. However, the University’s investigations did not seek to obtain additional details from SHC staff members who expressed discomfort about how their work environment at the University was impacted by witnessing Employee 1’s actions. Title IX Coordinator 2 told OCR that SHC staff were also subjected to sexual harassment due to witnessing Employee 1’s conduct over the years, but that the University did not identify them as complainants or provide them notice of the outcome of any investigation, which she acknowledged as a “huge hole.” The University’s failure to address the possible sexual harassment experienced by SHC staff due to Employee 1’s conduct raises a compliance concern that the University may have violated Title IX with regard to SHC staff;

specifically, the University failed to investigate whether SHC staff were subjected to sexual harassment in witnessing Employee 1's conduct, did not assess whether interim measures were necessary for those staff, failed to provide remedies to SHC staff if they concluded that they experienced sex discrimination by Employee 1's conduct, and did not provide notice to the SHC staff identified as complainants or impacted parties .

Response to Complaints Regarding Pelvic Examinations and Full Body Skin Checks

A review of OED's investigation shows that it failed to fully investigate and address the complaints involving pelvic examinations and full body skin checks. Senior Investigator 2 identified the alleged sexually harassing comments as an issue within OED's purview, while the alleged physical misconduct, such as the digital penetration, "feeling the girls up," and full body skin checks, were identified as outside of OED's purview. As a result, OED did not interview Patient 9 who had complained that Employee 1 had digitally penetrated her with two fingers and took no other actions in response to her complaint. This failure may have allowed Patient 9 to be subjected to continuing sex discrimination.

The University had contracted with Medical Consultants as experts to assist OED in its investigation, and Medical Consultants' report explicitly described that certain elements of Employee 1's stated justifications for his conduct were not medically credible. With respect to the pelvic examinations, in addition to concluding that Employee 1's pelvic exam technique was not standard of care, the report referred to it as "inappropriate physical contact" that could be considered "serious boundary violations" by a licensing committee; it described conduct in a manner that should have alerted OED to the possibility of sexual assault when it stated that Employee 1 engaged in conduct that "could be considered a violation of her [a patient's] body." It also concluded that the verbal comments made during the examination regarding being toned, the appearance of patients' breasts, and the status of patients' hymens were inappropriate and not within standard of care. The report did not advise as to whether conducting full body skin checks on almost every patient in the way it was done by Employee 1 was appropriate or within the standard of care in the context of a gynecological examination.³⁴

OED's January 31, 2017 notice of outcome to Employee 1 limited the determinations of sexual harassment to verbal harassment and made no determination as to whether the alleged physical misconduct—that is, pelvic examinations involving digital penetration prior to inserting the speculum and the full body skin checks during gynecological exams—constituted sexual harassment. In fact, the notice of outcome contains no reference at all to the full body skin checks and gives no indication that chaperones and the Nurse Supervisor had raised it as a complaint. There is also no explicit reference to the complaints about digital penetration prior to inserting the speculum during pelvic examinations. On one page, the notice of outcome refers to Employee 1's procedure for "probing and palpating the vagina," but does not indicate that Employee 1 used his fingers to probe and palpate the vagina. The reference is there to provide

³⁴ The report discussed the full body skin checks only as they related to issues of infection control (i.e., he did not follow the standard process to move from "clean to dirty" in the course of the examination).

context for when the sexually harassing comments occurred, and there is no analysis of whether or not the physical conduct itself was sexual harassment.

The University determined that Employee 1's pelvic examination techniques and full body skin checks involve standard of care issues which were not within OED's jurisdiction. Yet the University contracted with Medical Consultants to assist OED in assessing those standard of care issues. Medical Consultant's expert opinion was that certain elements of Employee 1's conduct—including both verbal comments and physical contact with patients in pelvic examinations—did not meet the medical standard of care. Despite the clear conclusions of the expert report, OED failed to investigate or reach a conclusion as to whether Employee 1's physical contact with patients in examinations constituted sexual harassment of a physical nature.³⁵

In summary, the University failed to respond appropriately to notice of physical sexual misconduct; specifically it failed to investigate whether Employee 1's digital penetration prior to inserting the speculum during pelvic examinations and fully body skin checks constituted sexual harassment under Title IX, and if so, to take immediate and effective action to end the harassment, prevent its recurrence, and remedy its effects.

Response to Discovery of Photographs of Patients' Genitals

While the University conducted an investigation into the medical records privacy issues raised by the discovery of the photographs, it failed to conduct an investigation of whether Employee 1's taking and retaining photographs of women's genitals constituted sexual harassment under Title IX.

The Medical Consultants discussed the photographs in their report. The University did not provide the photographs to them, and without seeing the images, they stated that they could not advise on whether taking the photographs was within the medical standard of care. However, even using the limited information provided by the University and Employee 1, Medical Consultants were able to conclude that Employee 1's defenses for possessing the photographs were "dubious, at best," and the ongoing possession of the unidentified images was likely not standard of care. Although Employee 1 stated that he retained copies as a defense if a patient later asserted that he had missed cervical cancer, the fact that 85% of the photographs contained no identifying patient information undermined that proffered explanation.

After obtaining the professional opinion of Medical Consultants that questioned the legitimacy of Employee 1's reasons for possessing the photographs, the University failed to investigate whether or not taking and retaining the photographs was sexual harassment under Title IX. In interviews with OCR, Title IX Coordinator 2 stated that the ASVP of Compliance evaluated that

³⁵ As described earlier, the University has since identified sixty-eight incidents of Clery-reportable incidents regarding Employee 1's conduct – sixty-four of which were classified as "rape" by Employee 1 and four which were classified as "fondling". The 2019 report is available at <https://dps.usc.edu/alerts/annual-report/>.

the photographs were clinical and not sexual in nature, and that she also saw the photographs and did not find any information that was contrary to the ASVP of Compliance's evaluation. OCR does not find Title IX Coordinator 2's evaluation of the photographs credible for a number of reasons. She is not a medical professional with the expertise or qualification to determine whether the photographs were clinical in nature, and neither was the ASVP of Compliance who made the evaluation with which Title IX Coordinator 2 agreed; in fact, the ASVP of Compliance told OCR that whether or not the photographs were sexual in nature was outside of the scope of her investigation. There is also no evidence that Title IX Coordinator 2 conducted any investigation in making her evaluation that the photographs did not raise Title IX concerns, such as contacting or interviewing current or former patients regarding the photographing or asking SHC staff about their knowledge of Employee 1 photographing patients. Had she done so, she may have uncovered information similar to what OCR obtained in this investigation through interviews with patients and former staff; specifically, allegations that Employee 1 used a Polaroid camera and a personal camera in addition to a colposcope; that he took multiple photographs; and that he showed photographs of other patients' genitals to his patients. All of these allegations raise serious questions as to whether or not the taking and retention of photographs of patients' genitals constituted sexual harassment, yet the University failed to take reasonable steps to investigate.

Based on the information the University had at the time, its failure to investigate the taking and retaining of the photographs as possible sexual harassment violated Title IX.

Response to Complaints of Sexually Harassing Comments

OED concluded in the notice of outcome issued to Employee 1 that the following comments and questions directed to patients made during sensitive examinations did not violate the University's policy against sexual harassment: asking if they were runners or exercised, telling a patient to "open wide" at the beginning of the examination, requesting to read a patient's tattoo near the patient's vagina, commenting on patients' "flawless skin," and asking a patient if she was not sexually active because of her family or religion.

OCR found that OED's analysis of the foregoing comments and questions did not consider the totality of the circumstances, including the vulnerable position patients were in when those comments and questions were made and OED's conclusions about other aspects of Employee 1's behavior. Employee 1's questions about whether or not they were runners or exercised were made while digitally penetrating a patient's vagina and in conjunction with the statements about the "tightness" of the vagina, statements which Medical Consultants concluded were not standard of care or medically credible. Similarly, the comment "open wide" was made while the patient was undressed and preparing for Employee 1 to begin the pelvic examination, and the request to read a tattoo occurred while Employee 1 was viewing the patient's bare pelvic area. The evidence provided to OCR did not demonstrate how OED reached the conclusions that these comments were not sexually harassing in light of these circumstances.

With respect to the “flawless skin” comments, OED’s internal investigative memorandum shows that it relied on Medical Consultants’ report that the statement seemed to be “a poor choice of words” and should be avoided, and that referring to a patient’s “flawless skin” was not the way that it would typically be described from a medical standpoint. Medical Consultants did not reach a conclusion as to whether the comment was within standard of care, and OED failed to meet its obligation of analyzing, within the context of a sensitive women’s health examination, whether the comments could constitute sexual harassment under Title IX.

Lastly, Employee 1’s questions about why Patient 8 was not sexually active also should have been considered in light of the circumstances, including OED’s determination that other behaviors and comments of Employee 1 were sexually harassing, as well as how the questions impacted Patient 8. Instead, OED summarily concluded that while such questions were “inappropriate or unprofessional,” they were not sexually harassing. This failure may have allowed Patient 8 to be subjected to continuing sex discrimination.

Training

The systemic failure at multiple levels of responsibility from SHC to OED to recognize complaints as notice of possible sexual harassment, and the failure to respond effectively to those complaints demonstrate a lack of and need for training with regard to what constitutes sexual harassment, the University policies regarding harassment, how to respond effectively to notice of harassment, the University’s duty to not retaliate, how to address issues that can arise in the context of a medical provider/patient relationship, and how to address medical standard of care when such issues arise in the context of a possible Title IX matter. The lack of training about how to address complaints of sexual harassment arising in a clinical setting contributed to the University’s failure to respond promptly and effectively to notice of harassment with regard to the complaints about Employee 1.

The University’s Title IX Policies and Procedures

OCR’s investigation revealed that the University’s implementation of its Title IX policies and procedures failed to comply with Title IX in the following ways.

Interim Measures

OCR found that the University failed to assess whether any interim measures were needed by Patient 8 and Patient 9. Interim measures should be individualized as appropriate based on the information gathered by the Title IX Coordinator, making efforts to avoid depriving any student of his or her education.

With respect to Patient 8, there is no record of Senior Investigator 2, Title IX Coordinator 2, or any other University personnel assessing what, if any, interim remedies should be offered or were needed pending the investigation of her complaint.

With respect to Patient 9, the University took no action on her complaint, including assessing whether she needed interim measures while Employee 1 was under investigation.

With respect to SHC staff, although Title IX Coordinator 2 stated to OCR that employees at the SHC were subjected to sexual harassment in witnessing Employee 1's conduct, there is no evidence that the University took any action to assess whether any interim measures were needed by SHC staff.

Timeliness of the Appeal Process

A school must ensure the prompt resolution of complaints alleging Title IX violations. While the investigation findings of the 2016 complaint were provided to Employee 1 within a reasonable time of seven months (June 2016 to January 2017), OCR has identified a violation regarding the timeliness of the University's response to Employee 1's appeal. Employee 1 expressed his intention and desire to file an appeal in early February 2017, but the University made no determination on his request for five months; his appeal became moot only when he executed a settlement agreement in July 2017.

Notice of Outcome

The University's Title IX grievance procedure applicable to staff misconduct stated that notice of outcome will be provided to both complainants and respondents. In this case, only Employee 1 was provided a notice of outcome; the University failed to provide notice of outcome to the Nurse Supervisor, who was clearly identified as the complainant in the 2016 OED matter, or to Patients 8 and 9 either as impacted parties or as complainants of their own complaints about Employee 1, which were made to the Nurse Supervisor and then shared with OED. In interviews with OCR, Title IX Coordinator 2 acknowledged that the University "should have" provided a notice of outcome to the students and that the University's failure to do so was an oversight. The failure to provide notice of outcome to Patients 8 and 9 violated the University's obligations under Title IX. Similarly, the University failed to provide notice of outcome to SHC staff who may have been subjected to sexual harassment in witnessing Employee 1's conduct.

Recordkeeping

The University's failure to implement an effective system of reporting and recordkeeping to identify and monitor all incidents of potential sexual harassment by its employees also contributed to this systemic failure. A Title IX coordinator's primary responsibility is to coordinate the recipient's compliance with Title IX, and as such, should be informed of all complaints and reports raising Title IX issues. OCR's review of documentation in this directed investigation showed that there were significant problems with the University's recordkeeping that made it very challenging for Title IX Coordinators 1 and 2 to accomplish this goal.

First, complaints alleging possible sexual harassment by Employee 1 came through multiple channels, but there was no established procedure within the SHC to ensure that they were

promptly forwarded to the Title IX Coordinator or that they were recorded in a database that was accessible for review by the Title IX Coordinator. For instance, verbal complaints by chaperones regarding Employee 1's conduct were not documented or inputted into any system; patient written complaints were kept in Executive Director 2's hard copy files in his office; and complaints that were reviewed by CQI which may have raised potential Title IX concerns were not entered into any database.

Second, even though OED utilized a case management system, it was ineffective because not all reports and complaints that OED received were inputted. For example, Executive Director 2's 2010 report to OED was not inputted into the system even for tracking purposes. Furthermore, when complaints were inputted, they were entered incorrectly. The University acknowledged to OCR that the 2013 report to OED was miscoded in identifying the complainant category as faculty instead of student.

The University's Title IX Structure

OCR identified the following compliance concern with regard to the University's structure.

Office of General Counsel's Involvement in OED process

OCR has a compliance concern that, in the context of the 2016 Title IX investigation of Employee 1's sexual misconduct, the Office of General Counsel may have exceeded its advisory role to the point of undermining the autonomy and independence of Title IX Coordinator 2 and OED.

Evidence shows that starting in June 2016, the University had, within its possession, allegations against Employee 1 of physical sexual misconduct. Specifically, the interview with Nurse Supervisor and the box of photographs discovered in Employee 1's office on June 6, 2016, as well as interviews with the seven Chaperones on June 15, 2016, provided notice to the University of allegations of physical sexual misconduct in the form of inappropriate digital penetration during pelvic examinations, full body skin checks, and photographing of patients' genitals. Medical Consultants' report, dated November 30, 2016, provided further notice to the University that the alleged misconduct was not only verbal in nature but also physical. The report stated that by "routinely exploring the vagina before the speculum exam," Employee 1 had engaged in inappropriate physical conduct with patients that were outside of standard of care. It cast doubt on Employee 1's reasons for possessing the photographs and raised "significant concerns" about patient physical safety, including that Employee 1's conduct could be considered a "violation" of the patient's body.

The Office of General Counsel, which coordinated the University's multi-faceted investigations of Employee 1, received information from other departments of the University about Employee 1's matter, including from OED, and would have been aware of the allegations of physical sexual misconduct described above. The Office of General Counsel was in communication with Title IX Coordinator 2 throughout the duration of the Title IX matter; reviewed OED's underlying evidence as well as its investigative report and notice of outcome prior to issuance; secured

Medical Consultants used in OED's investigation; and directed the University's handling of the photographs, including assigning ASVP of Compliance to investigate the privacy issues around the photographs and then later directing her to deliver the photographs to outside legal counsel in anticipation of litigation.

Based on a review of documents provided by the University and OCR's interviews with Title IX Coordinator 2 regarding OED's 2016 investigation of Employee 1 and based on a review of documents provided by the University, OED's investigation deviated from its policies and procedures and Title IX requirements in a number of ways including, for example, its failure to investigate all areas of possible sexual harassment regarding Employee 1's alleged conduct (specifically, the digital penetration prior to inserting the speculum, the full body skin checks, and taking and retaining photographs of female genitalia); and its failure to provide the Nurse Supervisor (who was clearly identified as the complainant in the 2016 OED matter), Patients 8 and 9 (whose complaints were given to OED), and SHC staff (who were subjected to sexual harassment in witnessing Employee 1's conduct) a notice of whether OED was opening or not opening an investigation and a notice of outcome of the investigation in Employee 1's matter. In interviews with OCR, Title IX Coordinator 2 provided no credible explanation for OED's failure to follow its own policies and procedures and the basic requirements of Title IX in OED's handling of Employee 1's matter, answering at times "I don't know" or "I was not involved in the decision." In addition, Title IX Coordinator 2 could not recall whether she read the notice of outcome that was issued to Employee 1.

Furthermore, in interviews with OCR, senior University administrators, including President 2 and the Provost, professed to have had little to no knowledge of Employee 1's matter, other than what the Office of General Counsel told them, and they were consistent in their statements to OCR that they were told by the Office of General Counsel that Employee 1's conduct involved harassing words and outdated medical practices, with no mention of the possibility of physical misconduct.

Based on the foregoing, OCR has a compliance concern that, in the context of the 2016 Title IX investigation of Employee 1's sexual misconduct, the Office of General Counsel may have exceeded its advisory role to the point of undermining the autonomy and independence of the Title IX Coordinator 2 and OED which may have impacted the scope of the investigation as well as fidelity to OED's policies and procedures.

CONCLUSION

OCR has determined that the evidence supports a conclusion that the University violated the Title IX implementing regulations at 34 C.F.R. §§ 106.8(b) and 106.31. The evidence showed that since at least 2000, the University had notice of possible sexual harassment by Employee 1 of patients and systemically failed at multiple points in time and at multiple levels of responsibility to respond promptly and effectively to notice of the alleged sexual harassment; and that its failure may have allowed female students to be subjected to continuing sex discrimination. Specifically, OCR found, as follows:

- The University had notice of possible sexual harassment by Employee 1 of Patients 1 – 5 from 2000 to 2009 and failed to investigate, assess whether interim measures were needed, determine whether patients were subjected sex discrimination, or ensure that steps were taken to prevent recurrence of the conduct and correct its effects for patients who complained and/or other patients. Additionally, with regard to Patients 1, 2, and 5 who submitted written complaints, the University failed to provide a notice of outcome regarding the complaint. The University’s failure to respond promptly and effectively to notice of possible sexual harassment may have allowed Patients 1 – 5 to be subjected to continuing sex discrimination.
- With regard to Patients 6 – 9, SHC administrators and the Title IX Coordinators had notice of possible sexual harassment of these patients by Employee 1, yet the University failed to respond effectively. Additionally, with regard to Patient 7 who submitted a written complaint, and Patient 8 who informed the University’s Title IX investigator about alleged harassing conduct by Employee 1, the University did not provide a notice of outcome regarding their matter. The University’s failure to respond promptly and effectively to notice of possible sexual harassment may have allowed Patients 6 – 9 to be subjected to continuing sex discrimination.
- In 2016, OED failed to investigate and address, as possible sexual harassment, Patient 9’s complaint that Employee 1 had digitally penetrated her with two fingers, despite telling him not to do it.
- In 2016, OED failed to investigate and address, as possible sexual harassment, complaints raised by chaperones and the Nurse Supervisor regarding Employee 1’s digital penetration of patients during examinations and the full body skin checks.
- When in 2016 the University discovered over 200 photographs in Employee 1’s office providing physical evidence that he was photographing patients’ genitals, it failed to investigate the photographing of patients and the possession of the photographs as potential sex discrimination; it failed to take reasonable steps to locate the remaining photographs that Employee 1 stated he had taken from 1989 to 2010; and permitted Employee 1 to continue seeing patients for a day and a half after the discovery of the photographs.
- The University failed to maintain a recordkeeping system to identify and monitor incidents of possible sexual harassment by its employees.
- The University failed to provide a timely response to Employee 1’s appeal of the University’s 2016 determination regarding Employee 1’s alleged sexual misconduct.

OCR also identified the following compliance concerns:

- OCR has a compliance concern that the University did not complete an investigation of whether SHC employees who worked with Employee 1 were subjected to sex discrimination, assess whether any interim measures were needed by SHC employees, or identify remedies for SHC employees to address the sex discrimination, if found.
- OCR has a compliance concern that, in the context of the 2016 Title IX investigation of Employee 1's sexual misconduct, the Office of General Counsel may have exceeded its advisory role to the point of undermining the autonomy and independence of Title IX Coordinator 2 and OED which may have impacted the scope of the investigation as well as fidelity to OED's policies and procedures.

On February 21, 2020, the University signed the attached resolution agreement to resolve the violations and compliance concerns described above.

This concludes OCR's directed investigation. This letter of findings should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter, including the remaining portions of the monitoring reports that have been or will be submitted to OCR by the University under the 2018 Agreement, which OCR will address under separate cover.

This letter sets forth OCR's determination in this directed investigation; it is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Laura Welp, Civil Rights Attorney, at laura.welp@ed.gov or at (415) 486-5555.

Sincerely,

/s/

Anamaria Loya
Acting Regional Director

Enclosure

cc: Leslie Gomez, Counsel for the University (by email)