

Report of Employee Review
Michigan State University
2019 Resolution Agreement, Section III

Date: September 1, 2020

RE: Employee Action Review Regarding Lawrence Nassar

United States Department of Education, Office for Civil Rights Resolution Agreement

Docket No. 15-18-6901

Introduction

Michigan State University (“MSU”) recognizes that former physician Larry Nassar purposely abused hundreds of patients under the guise of medical treatment throughout his career. Since Reporter 1’s report to the Michigan State University Police Department (“MSUPD”) in August 2016 and the *Indianapolis Star* article in September 2016, MSU has taken many steps and actions to apologize to the survivors, to be accountable, and to invest in education and training to prevent abuse and protect the safety of our communities. MSU again apologizes to the survivors.

As the United States Department of Education, Office for Civil Rights (“OCR”) is aware, after Nassar’s abuse was revealed, MSU, as well as certain of its former or current employees, went through numerous independent investigations, inquiries, and reviews, including:

- OCR
- United States Department of Education, Federal Student Aid
- United States Department of Health and Human Services, Office for Civil Rights
- United States Senate; Committee on Commerce, Science, and Transportation; Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security
- United States House of Representatives; Committee on Energy and Commerce; Subcommittee on Oversight and Investigations
- United States House of Representatives; Committee on Oversight and Government Reform
- Michigan Attorney General
- Michigan Department of Licensing and Regulatory Affairs
- Michigan House of Representatives, Law and Justice Committee and the Appropriations Subcommittee on Higher Education
- National Athletic Trainers Association

With each independent investigation or inquiry, MSU sought to learn and improve.

Indeed, on September 5, 2019, MSU and OCR entered into a Resolution Agreement. As a result of the Resolution Agreement, MSU and OCR outlined numerous actions and requirements that MSU must take. This employee review is one of those requirements. Specifically, under Section III of the Resolution Agreement, MSU is required to:

[R]eview the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by either [Lawrence Nassar] or [William Strampel] and failed to take appropriate action in regard thereto. If the University's review determines that such person did receive a complaint of sex discrimination, the University will review whether that person failed to adequately respond in accordance with then-applicable law and University policies. If so, the University will then determine what further responsive steps, if any, must be taken with regard to that person.

Accordingly, MSU's review here is limited to Section III of the Resolution Agreement.

Even though this review is expressly focused on Section III, the Resolution Agreement itself contains many more actions that MSU must take to improve and strengthen the university's Title IX related policies and procedures. Further, MSU is constantly working to improve and has already taken many actions in response to Nassar's abuse beyond bolstering policies to prevent sexual assault, including:

- Settled civil litigation financially with more than 530 plaintiff-survivors
- Created a Counseling and Mental Health Services Fund to help with the counseling of many survivors and their families so they can continue their recovery and healing
- Improved Relationship Violence and Sexual Misconduct ("RVSM") and health care policies and procedures at MSU
- Formed the RVSM Expert Advisory Workgroup
- Doubled staff in MSU's Office for Civil Rights and Title IX Education and Compliance
- Created the MSU Prevention Outreach and Education office to promote safety and improve quality of life by educating members of the MSU campus community on sexual assault and relationship violence, eliminating violence on campus, empowering staff, faculty and students to become advocates for a non-violent community and positively affecting social change
- Added more counselors at MSU's Center for Survivors
- Created a trauma-informed investigation program through MSUPD
- Created a Sexual Assault Nurse Examiner program (opening delayed due to COVID-19)
- Reorganized and increased the scope of MSU's Office of Audit, Risk and Compliance
- Created a Youth Programs Director to implement and strengthen youth protection policies and training
- Engaged external experts to conduct climate assessments of specific units to identify concerns and make recommendations to inform positive change
- Hired a Climate Response Specialist to assist with ongoing workplace improvement, including training on reporting and OIE processes
- Administered a campus-wide Know More survey, which focused on the culture, perceptions and policies associated with sexual misconduct among undergraduate students, graduate/professional students, faculty and staff

- Created a CORE Framework for Professional Conduct at MSU College of Osteopathic Medicine
- Developed a Code of Professional Standards and Behaviors for Faculty and Academic Staff across MSU (approval and implementation expected Fall 2020)
- Changed the process for reviewing deans by creating a standard survey which must be used in all dean reviews; providing an option for faculty, staff, or students to communicate confidentially with an individual outside of MSU, who will then provide anonymized information to the provost for consideration; instituting first year “landing” surveys for new deans, to be completed by faculty and academic staff after the dean has completed the first year of service
- Amended the Discipline and Dismissal of Tenured Faculty for Cause Policy to: 1) afford the President the discretion to determine whether to place a faculty member on unpaid or paid leave during dismissal for cause proceedings; 2) provide that once written charges have been filed against the faculty member, the faculty member may not obtain official retiree status from the University during the dismissal for cause proceedings; and 3) provide that a faculty member who is dismissed for cause at the conclusion of the process is not eligible for official retiree status
- Revised the Emeritus policy to provide a process for revoking emeritus status.
- Implemented a Consensual Amorous or Sexual Relationships with Students policy to prohibit relationships between faculty/academic staff and undergraduate students
- Implemented a Travel Lodging policy to prohibit supervisors and employees to lodge with students
- Revised the Criminal Background Checks for Faculty and Academic Staff policy to require self-disclosure of criminal events while currently an employee

MSU acknowledges that more work needs to be – and will be – done.

Michigan State University Policy and the Law

Section III of the Resolution Agreement requires that if MSU determines that a former or current employee did receive a complaint of sex discrimination regarding Nassar, MSU must then determine whether that employee failed to adequately respond in accordance with then-applicable law and University policies. The following is an examination of then-applicable law and MSU policy.

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance. In 1975, the Department of Health, Education, and Welfare promulgated regulations requiring Universities to, among other things, publish a non-discrimination statement; designate an employee to coordinate efforts to comply with Title IX; and adopt and publish grievance procedures providing for prompt and equitable resolution of complaints. In the years following, no additional Title IX regulations were promulgated to address sexual harassment as a form of sex discrimination until the Department of Education’s Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, was published this year on May 19, 2020.

Neither Title IX nor legally binding regulations set forth a legal requirement that a university's employees must report sex discrimination or sexual harassment of which they are aware to the university. Case law, including the Supreme Court's *Gebser* and *Davis* cases, have provided a framework for evaluating when a university's response to sexual harassment may subject the university to money damages in a private lawsuit under Title IX,¹ but has not established that university employees are legally obligated to report conduct that may constitute sexual harassment. However, in order to ensure university compliance with Title IX, and in accordance with Department of Education guidance, universities have often and appropriately imposed reporting expectations or requirements on their employees.

For example, prior to 2011, MSU's Sexual Harassment Policy did not include a reporting requirement for MSU employees. In January 2011, however, MSU's Sexual Harassment Policy was revised to address reporting, stating:

University employees who become aware of specific and credible allegations of sexual harassment, whether through the report of a complainant or otherwise, should report the allegations promptly to the Title IX Coordinator.

...

To assure University-wide compliance with this policy and with federal and state law, the Office for Inclusion and Intercultural Initiatives must be advised of all reported incidents of sexual harassment and their resolution.

(Sexual Harassment Policy, Revision January 2011.)

Further, in May 2011, MSU's Sexual Harassment Policy was revised again to add that "supervisors, managers, and other designated employees are *expected* to promptly report all allegations of sexual harassment to the Title IX Coordinator." (Sexual Harassment Policy, Revision May 2011) (emphasis added.)

Subsequently, on April 6, 2012, MSU's then-President issued a memorandum to all MSU employees reminding them of the University's reporting protocols for "suspected child abuse, child pornography, and allegations of sexual assault." The memorandum provided in part: "If in your position with MSU, you suspect that a child may be abused or neglected, you must contact the MSU police department immediately." The memorandum also provided: "If you receive an allegation of sexual assault related to a member of the University community (faculty, staff or student) you must report the alleged assault to the MSU Police Department and [the Title IX

¹ In *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998), the Supreme Court held that where a school has "actual knowledge" of an employee sexually harassing a student but responds with "deliberate indifference" to such knowledge, the school itself has engaged in discrimination. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the Supreme Court held that the same standards of actual knowledge and deliberate indifference apply where the sexual harassment is committed by a fellow student rather than an employee.

office]. This would include an allegation that an MSU community member has sexually assaulted a child.” (*Id.*)

As OCR is aware, on January 1, 2015, MSU implemented its Relationship Violence and Sexual Misconduct Policy (“RVSM Policy”), which replaced the Sexual Harassment Policy. The RVSM Policy designated most MSU employees as mandatory reporters, providing:

All University Employees, other than those appointed in the offices listed above [as confidential resources] have the following reporting obligation when the employee becomes aware of relationship violence or sexual misconduct allegedly perpetrated by a member of the University community (faculty, staff, or student) or occurring at a University event or on University property.

...

Employees are only required to report relationship violence or sexual misconduct of which they become aware in their capacity as a University employee, not in their personal capacity.

...

The employee must report all relevant details about the alleged relationship violence or sexual misconduct that occurred on campus or at a campus-sponsored event, including the name of the victim, the accused, any witnesses, and any other relevant facts, including the date, time, and specific location of the incident.

(RVSM Policy, January 1, 2015 Revision) (internal references omitted.) In September 2015, the RVSM Policy was amended slightly to provide that all MSU employees were “expected to promptly report”:

All University employees, other than those appointed in the offices listed above, are expected to promptly report sexual misconduct or relationship violence that they observe or learn about and that involves a member of the University community (faculty, staff, or student) or occurred at a University event or on University property.

(RVSM Policy, September 2015 Revision) (internal references omitted.) MSU’s Office of Institutional Equity (“OIE”) was also established in late 2015, replacing the Office of Inclusion and Intercultural Initiatives (“I3”) as the office responsible for institutional compliance with Title IX, including receiving and investigating reports of sexual harassment.

These employee reporting obligations remained in the RVSM Policy, and employees were subject to discipline for failure to report. (RVSM Policy, revision January 3, 2020.) Recently, MSU issued its RVSM and Title IX Policy to comply with the U.S. Department of Education’s May 19, 2020 Title IX Final Rule.

A copy of all relevant Sexual Harassment and RVSM policies are attached to this report.

MSU employees are also guided by reporting protocols for suspected child abuse, which has also evolved over time. Certain MSU employees are legally required to report reasonable suspicion of child abuse to authorities, as set forth under MCL 722.623. On January 28, 2013, MSU issued its University Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography. This policy required that all MSU employees or volunteers who are mandated reporters and who suspect child abuse or neglect must make an immediate verbal report to Child Protective Services and file a written report with Child Protective Services within 72 hours. Mandated reporters included: physicians, dentists, physician's assistants, registered dental hygienists, medical examiners, nurses, licensed emergency medical care providers; audiologists; psychologists; marriage and family therapists; licensed professional counselors; social workers; licensed master's social workers; licensed bachelor's social workers; registered social service technicians; social service technicians; any person employed in a professional capacity in any office of the Friend of the Court; law enforcement officers; members of the clergy; regulated child care providers; school administrators; school teachers; and school counselors. Further, all MSU employees or volunteers who suspected a child may be abused or neglected were required to contact MSUPD. Employees or volunteers who received an allegation of sexual assault related to a member of the University Community (faculty, staff, students) were required to report the alleged sexual assault to MSUPD and OIE. The reporting protocols policy was minimally amended on July 1, 2016, but all reporting obligations remained the same for purposes of this review.

MSU also has legally mandated reporting obligations under the Clery Act, 20 U.S.C. §1092(f) *et seq.* The Clery Act requires colleges and universities that receive federal funding to annually disseminate a public annual security and fire safety report ("ASFSR") to employees and students. This ASFSR must include statistics of campus crime for the preceding three calendar years as well as details about efforts taken to improve campus safety. The ASFSR must also provide campus policies concerning, but not limited to, crime reporting, campus facility security and access, law enforcement authority, incidence of alcohol and drug use, and the prevention of/response to sexual assault, domestic or dating violence, and stalking.

Background of Employee Review

When conducting its review under Section III of the Resolution Agreement, MSU must review the actions of the following individuals:

- Former President Lou Anna Simon;²
- Former Provost June Youatt;³

² Simon resigned her administrative role of President on January 24, 2018, and she retired from MSU effective August 31, 2019.

³ Youatt is a tenured faculty member. She resigned her administrative role of Provost on September 5, 2019. Pursuant to her March 18, 2014 offer letter, Youatt completed a six-month sabbatical leave and is currently completing a six-month research leave that ends November 15, 2020. Consistent with MSU's Retirement Eligibility Requirements for Faculty and Academic Staff, from January 21, 2021 to December 31, 2021, Youatt will serve a one-year terminal consultancy with such duties determined by International Studies and Programs. Youatt will retire from MSU effective December 31, 2021. MSU was not able to identify any record or allegation that Youatt had or received notice of complaint or concern of sex discrimination committed by Nassar.

- Former Associate Provost and Associate Vice President for Academic Human Resources Terry Curry;⁴
- Unidentified employees of the Office of the General Counsel; and
- Former head coach of the women’s gymnastics team, Kathie Klages.⁵

In addition, MSU must review “current or former responsible employees who have been identified by name, title, or position in University memoranda, Title IX reports, or police reports as having received notice of complaints or concerns of sex discrimination committed by either [Nassar] or [Strampel], and failed to take appropriate action in regard thereto.” The Resolution Agreement acknowledges that MSU may be limited in its ability to review based on the availability of evidence or witnesses.

MSU identified the following MSU current and former employees as potentially having received notice of a complaint of concern of sex discrimination by Nassar:

- Former Assistant Track Coach Kelli Bert;⁶
- Athletic Trainer Lianna Hadden;
- Faculty Member Dr. Christopher Hannasch;
- Former Athletic Trainer David Jager;⁷
- Former Gymnastics Coach Klages;
- Associate Professor Dr. Jeffrey Kovan;
- Former MSU Physician Dr. Brooke Lemmen;⁸
- Former Athletic Trainer Tory Lindley;⁹
- Former Resident Dr. Christine Liszewski;¹⁰
- Athletic Trainer Thomas Mackowiak;
- Former Intern Athletic Trainer Zach Mouaikel;¹¹
- Former Department Chair, Radiology, Dr. Suresh Mukherji;¹²

⁴ Curry is a tenured faculty member. He resigned his administrative role of Associate Provost and Associate Vice President for Academic Human Resources on July 5, 2020. Consistent with MSU’s Retirement Eligibility Requirements for Faculty and Academic Staff, from July 5, 2020 to July 4, 2021, Curry will serve a one-year terminal consultantship with such duties determined by the Provost. Pursuant to his March 26, 2007 offer letter, Curry will begin a six-month research assignment effective July 5, 2021. Curry will retire from MSU effective January 4, 2022.

⁵ Klages retired from MSU on February 14, 2017.

⁶ Bert’s last day of employment with MSU was August 30, 1999.

⁷ Jager was terminated on July 6, 2020.

⁸ Lemmen resigned from MSU in January 2017.

⁹ Lindley last worked for MSU in 2000.

¹⁰ Liszewski’s last day of employment with MSU was June 30, 2017.

¹¹ Mouaikel received his undergraduate degrees from MSU in 2016 and 2017 in athletic training and kinesiology, respectively. During the 2016-2017 school year, he served as a student athletic trainer. Mouaikel’s last day of employment with MSU was June 16, 2017.

¹² Mukherji resigned from MSU, and his last day of employment with MSU was in September 2019.

- Former Post-Graduate Intern Nancy Naradzay;¹³
- Former Athletic Trainer Anthony Robles;¹⁴
- Professor Dr. Lionel Rosen;
- Former Professor Dr. Gary Stollak;¹⁵
- Athletic Trainer Destiny Teachnor-Hauk;
- Former Graduate Student Athletic Trainer Henna Shah Trivedi;¹⁶
- Vanessa (last name unknown).¹⁷

Certain additional employees were on notice of a complaint of sex discrimination by Nassar within the context of a 2014 OIE formal investigation initiated by a report from Reporter 11¹⁸ (“2014 Investigation”), but are not otherwise alleged to have independent notice of a complaint or concern of sex discrimination by Nassar that would trigger a reporting obligation. Nonetheless, MSU also reviewed whether current and former employees followed obligations under applicable law and then-applicable MSU policies based on their knowledge of, or involvement with, the 2014 Investigation. The employees included:

- Dr. Lisa DeStefano;
- Dr. Jennifer Gilmore;
- Kristine Moore;
- Mukherji;
- MSUPD Detective Valerie O’Brien; and
- Strampel.

With respect to the 2014 Investigation, on January 30, 2018, MSU sent OCR results of MSU’s internal review of all sexual harassment complaints filed in the 2014-2015 school years, including the 2014 Investigation. (OCR Findings, p. 17.) MSU concluded that the 2014 Investigation was handled properly at that time and that no additional actions or remedies were warranted regarding the 2014 Investigation. Accordingly, pursuant to Section III of the Resolution

¹³ Naradzay is a former post-graduate intern in Athletic Training, and her last day of employment with MSU was April 21, 2014.

¹⁴ Robles’s last day of employment with MSU was May 20, 2005.

¹⁵ Stollak retired from MSU in 2010.

¹⁶ Shah Trivedi’s last day of employment with MSU was on or about May 5, 2000.

¹⁷ MSU records reflect that a Vanessa Gomez was a post-graduate intern with the Athletic Training Department in 2012-2013, but, as explained below, the reporter did not provide a last name for Vanessa, Nassar’s abuse occurred in the 2009-2010 timeframe, and MSU has not been able to confirm the trainer’s identity.

¹⁸ The Reporters identified by number are identified in the same manner as they are in the OCR Letter of Findings (“OCR Findings”).

Agreement, a review of the 2014 Investigation, its findings, and later reviews of the 2014 Investigation are outside the scope of this employee review.¹⁹

Evidence Reviewed

MSU reviewed MSU memoranda, Title IX reports, MSUPD reports, public documents, and other evidentiary documents, including the following:

- September 5, 2019 OCR Findings.
- OIE Investigation Materials and Exhibits attached thereto. (See MSU 02.05.2018 8-01282 to 8-02512, MSU-OCR 03.09.2018 0004748 to 0005132, MSU-OCR 04.16.2018 0010719 to 0010838, MSU-OCR 04.16.2018 0017195 to 0017211, MSU-OCR 04.16.2018 0017901 to 0017966, MSU-OCR 05.30.2018 0018217 to 0018231, MSU-OCR 07.09.2018 0018417 to 0018452, MSU-OCR 07.16.2018 0018951 to 0018953, MSU-OCR 09.14.2018 0019001 to 0019297, MSU-OCR 09.28.2018 0020043 to 0020061, and MSU-OCR 08.01.2020.)
- Nassar’s Personnel File. (MSU-OCR 03.09.2018 0002159 to 0004348; MSU-OCR 04.16.2018 0014395 to 0014555.)
- Personnel File of individuals reported to have received notice of a concern or complaint of sex discrimination by Nassar.
- *People v. Strampel*, No. 18-479-FH-C30 trial transcript.
- *People v. Simon*, No. 18-2261-FY preliminary examination transcript.
- *People v. Klages*, No. 18-825-FH trial transcript.
- *People v. Nassar*, 17-020217-FC (Eaton County), 17-143-FC (Ingham County) observation of preliminary examination, plea hearing, and victim impact statements.
- Complaints filed in civil *Nassar* lawsuits.
- State of Michigan Department of Licensing and Regulatory Affairs (“LARA”) Hearing Transcript in the Matter of Teachnor-Hauk and Hadden, Complaint No. 26-18-149885 and 26-18-149886, and other LARA correspondence concerning its administrative complaints against Stollak, Kovan, Lemmen, Nassar, Dr. Douglas Dietzel, and Strampel.

¹⁹ As OCR is aware, this is not to say that MSU has not addressed the 2014 Investigation. Working with OCR, for example, the Resolution Agreement provides that MSU will (a) continue to ensure that medical or scientific experts called upon in a Title IX investigation do not have a conflict of interest or bias (Sections I.B. and II.E.); (b) provide the same investigative reports to the parties (Section II.F.); and (c) provide a process for determining when it must reopen a previously completed matter due to newly discovered evidence (Section II.G.).

- Depositions and Recorded Interviews of MSU Employees reported to have received notice of a concern or complaint of sex discrimination by Nassar including Moore, Lemmen, Kovan, Hadden, and Teachnor-Hauk.
- MSUPD Department Reports. (See MSU 02.02.2018 8-00001 to 8-01261; MSU 02.02.2018 8-02513 to 8-02516; MSU-OCR 03.09.2018 0004349 to 0004747; MSU-OCR 04.16.2018 0010862 to 0010937; MSU-OCR 04.16.2018 0014711 to 0017183; MSU-OCR 04.16.2018 0018008 to 0018091; MSU-OCR 07.09.2018 0018453 to 0018524; MSU-OCR 07.16.2018 0018971 to 0019000; MSU-OCR 09.28.2018 0020202 to 0020208; MSU-OCR 11.27.2018 0023417 to 0023503.)
- Department of Michigan Attorney General, December 21, 2018, Status of Independent Counsel’s Investigation into [MSU]’s Handling of Larry Nassar Matter (“AG Update”).
- MSU also considered information that was provided during interviews by OCR when it was on-campus and by the Michigan State Police.

Evidentiary Standard

In investigations concerning a potential violation of the Sexual Harassment or RVSM policies, MSU has utilized the preponderance of the evidence standard. The same standard is utilized when analyzing whether an MSU employee failed to follow MSU mandatory reporting protocols in violation of those policies. Under the standard, a person is presumed not to have violated the policy unless a preponderance of the evidence establishes a policy violation. A preponderance of the evidence is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on a particular allegation is equally balanced, it has not been proven by a preponderance of the evidence.

Analysis Pursuant to Section III

By way of background, Nassar is a former osteopathic physician and associate professor of MSU’s College of Osteopathic Medicine (“MSUCOM”). On September 16, 2016, Nassar’s employment was suspended, and on September 20, 2016, MSU terminated Nassar.

Nassar was indicted in state court in November 2016, on multiple state charges of “sexual assault of a child” that spanned from 1998 to 2005. He was charged with 22 counts of first-degree criminal sexual conduct with minors in two counties in Michigan. The allegations asserted that Nassar had molested minors at his home, MSU’s Sports Medicine Clinic, and elsewhere, including under the guise of medical treatment. In December 2016, Nassar was arrested and indicted by a federal grand jury on child pornography charges.

On July 11, 2017, Nassar pled guilty in federal court to (a) receiving child pornography in 2004, (b) possession of pornographic images of children dating from 2004 to 2016, and (c) tampering with evidence by destroying and concealing the images. On November 22, 2017, Nassar pled guilty in state court to seven counts of first-degree criminal sexual conduct with minors under

the age of sixteen. On November 29, 2017, he pled guilty in state court to three additional counts of first-degree criminal sexual conduct.

On December 7, 2017, the United States District Court for the Western District of Michigan sentenced Nassar to 60 years in federal prison for the pornography charges. On January 24, 2018, the Ingham County Circuit Court sentenced Nassar to 40 to 175 years in prison for the sexual assault of minors. On February 5, 2018, the Eaton County Circuit Court sentenced Nassar to 40 to 125 years in prison for three additional counts of criminal sexual assault. The state sentences will run concurrently, but the federal and state sentences are to run consecutively.

Starting in December 2016, various state and federal lawsuits arising from Nassar's conduct have been filed in state and federal court against Nassar, MSU, current and former employees of MSU, USA Gymnastics, Twistars Gymnastics Club, and the United States Olympic Committee. On May 16, 2018, MSU settled lawsuits filed against MSU brought by 332 Nassar survivors. Subsequently, lawsuits against MSU and/or certain employees or former employees of MSU have also been filed by other Nassar survivors, and remain pending in the Michigan Court of Claims, Ingham County (Mich.) Circuit Court, and the United States District Court for the Western District of Michigan.

A. Relevant Documents

i. OCR Findings

On September 5, 2019, OCR issued its Letter of Findings following its directed investigation of MSU's Title IX compliance regarding the employment and conduct of Nassar. As such, MSU is guided by OCR's Findings and the employees identified therein. OCR identified the following MSU employees as receiving a report of potential sex discrimination by Nassar:

- Former Assistant Coach Bert (OCR Findings, p. 7)
- Athletic Trainer Hadden (*Id.*)
- Former Head Women's Gymnastics Coach Klages (*Id.*)
- Former MSU Physician Lemmen (*Id.*)
- Former Athletic Trainer Lindley (*Id.*)
- Former Athletic Trainer Robles (*Id.*)
- Athletic Trainer Teachnor-Hauk (*Id.* pp. 7-8)
- MSU Physician Hannasch (*Id.* p. 8)
- Athletic Trainer Mackowiak (*Id.*)
- Former Athletic Trainer Mouaikel (*Id.*)
- MSU Physician Kovan (*Id.*, p. 12)²⁰

As part of its investigation, OCR interviewed numerous MSU employees. All MSU employees interviewed denied or could not recall receiving any reports or concerns about Nassar's

²⁰ As set forth above, OCR also reviewed the 2014 Investigation and identified various current and former employees in the context of their role in the investigation. OCR's Findings does not allege that any of these employees received a report of sex discrimination by Nassar except through their involvement in the 2014 Investigation.

conduct or behavior at any time before allegations against Nassar became public in September 2016.

ii. OIE Investigation Reports

MSU reviewed all OIE files and reports regarding Nassar's conduct. MSU received its first report regarding Nassar in April 2014: the 2014 Investigation. MSU's I3 conducted a formal investigation in response to the complaint.

The next report regarding Nassar was in August 2016, and as survivors came forward publicly, spoke with MSUPD, and filed civil lawsuits, OIE received hundreds more reports.

Upon receipt of a report, it is OIE's practice to reach out to the potential claimant to provide information regarding the availability of supportive and confidential resources as well as investigation options. OIE completed five full investigations into 2016 complaints regarding Nassar, finding that Nassar had violated MSU policies by a preponderance of the evidence. Some potential claimants provided a statement to OIE but decided not to move forward with a formal OIE investigation; some did not respond to MSU's outreach; and some chose to pursue legal action instead of remedies through the OIE process. Pursuant to Section VI(A) of the Resolution Agreement, on June 1, 2020 MSU provided OCR with additional, detailed information regarding its response to allegations regarding Nassar, including remedial measures provided.

A review of all OIE documents that report a current or former MSU employee received notice of potential sex discrimination by Nassar is set forth below.

i. 2014 Investigation

MSU received its first report regarding Nassar in April 2014 from Reporter 11, which was immediately referred to MSU's I3 for investigation. Reporter 11²¹ did not report that any current or former employee had notice of a complaint or concern of sex discrimination by Nassar and failed to take appropriate action. Nonetheless, MSU has reviewed the actions of employees involved with the 2014 Investigation, but only – pursuant to Section III of the Resolution Agreement – to the extent their role in the investigation created a reporting obligation under then-applicable law or MSU policies. As noted above, on January 30, 2018, MSU sent OCR results of its internal review of all sexual harassment complaints filed in the 2014-2015 school years, including the 2014 Investigation. (OCR Findings, p. 17.)

On April 18, 2014, Reporter 11 reported concerns about Nassar's conduct during a March 24, 2014 appointment to Kovan. Kovan met with Reporter 11 on April 21, 2014 and, upon hearing that the concerns were potentially sexual in nature, promptly reported Reporter 11's concerns to MSU's I3. (MSU 02.05.2018 8-02354.)

Moore, an investigator for MSU's I3 at the time and currently an attorney in the Office of the General Counsel, conducted the 2014 Investigation. Moore first contacted Reporter 11 on May 15, 2014 via telephone to schedule an interview. On May 15, 2014, upon realization that Reporter

²¹ Again, the Reporters identified by number are identified in the same manner as they are in the OCR Findings.

11 was making a complaint of not only harassing or discriminatory conduct, but of sexual assault, Moore promptly reported the matter to MSUPD. (MSU-OCR 04.16.2018 0015250.)

On May 29, 2014, Moore and MSUPD Detective O'Brien co-interviewed Reporter 11. Reporter 11 reported that she had an appointment with Nassar for hip pain and that after requesting that the female resident in the examination room leave, Nassar inappropriately touched and massaged near her vagina, on her breast, and on her buttocks. Further, Reporter 11 stated that she told Nassar to stop and that he was hurting her and that toward the end of the appointment, Nassar made a comment that he could continue to treat her, even if she was on her period. The day after the appointment, Reporter 11 called Nassar's office and cancelled her next appointment, advising the desk receptionist that she was cancelling "because she felt violated." (MSU 02.05.2018 8-02356-58.)

On June 9, 2014, Moore interviewed Nassar, and he stated he did not recall the specific appointment. However, Nassar did not dispute it was possible he manipulated Reporter 11's breasts during his examination of her shoulder, as it was medically necessary. Nassar also did not dispute touching near Reporter 11's vaginal area, stating that if a patient presented with hip pain, he would have manipulated in the pelvic floor area, including the sacrotuberous ligament ("STL"), a ligament very closely connected to the pelvic floor area and, thus, close to the vagina. Nassar reported that touching near the vaginal area to work on the STL is common. Nassar generally confirmed that a patient may have stated that he was hurting them, and Nassar stated that he would understand that to mean that the specific touch was hurting, not that he should stop the entire manipulative medicine examination. Nassar also stated that he would have advised a female patient that her menstrual cycle would not be problematic in providing treatment, as young women sometimes become embarrassed about such an issue. (MSU 02.05.2018 8-02361-63.)

Consistent with then-standard operating protocols, and because Nassar did not dispute the possible or alleged medical manipulation, claiming it was medically necessary, MSU's I3 also interviewed four professionals. Moore interviewed MSU osteopathic doctors Lemmen, DeStefano, and Gilmore, and MSU athletic trainer Teachnor-Hauk. (MSU 02.05.2018 8-02365-70.) Nassar, as a respondent in the investigation, identified Lemmen and Teachnor-Hauk as individuals who may be able to provide relevant information. Strampel identified to I3 Drs. DeStefano and Gilmore as being able to explain whether the manipulation was medically necessary. Based in part on the statements of all four of these medical professionals, I3 concluded that Nassar's touching was medically appropriate and not sexual in nature. (MSU 02.05.2018 8-02375.)

MSU issued the final report to the parties on July 18, 2014, inviting Reporter 11 to respond. Neither Reporter 11 nor Nassar provided a response to the report and the file was closed at that time. MSU's report, with recommendations, was forwarded to MSUCOM's Dean, Strampel, as the unit administrator, to consider any next steps or procedures for the department and any additional response required as to Nassar.

ii. Other OIE Investigation Reports

On August 25, 2016, Reporter 1 contacted MSUPD to report that from February to April of 2000, Nassar sexually assaulted her when she was fifteen years old under the guise of medical treatment. The matter was also referred to OIE. (MSU 02.05.2018 8-01897.) MSU immediately suspended Nassar. On September 8, 2016, OIE interviewed Nassar, who denied Reporter 1's allegations, disputed her account of what occurred, and stated that he would have been providing legitimate medical treatment. Subsequently, on March 17, 2017, OIE determined that the preponderance of the evidence supported that Nassar had violated MSU's policies prohibiting sexual harassment and that Nassar's conduct was sexual in nature, regardless of whether it was allegedly done for a medical purpose. (OCR Findings, p. 17.)

OIE continued to receive numerous sexual misconduct complaints regarding Nassar. (OCR Findings, p. 6.) OIE conducted five formal investigations into Nassar, each of which determined that he had violated MSU policies by a preponderance of the evidence. (OCR Findings, p. 18.)

ii. Statements By Claimants in Lieu of OIE Investigation

During the 2016-2017 academic year, MSU decided, out of respect for survivors, that claimants with a report of violations of the RVSM Policy by Nassar would be offered the option to provide a statement in lieu of participation in a formal investigation, at the claimant's discretion. (OCR Findings, p. 18.) OIE considered all of the statements and utilized them to review internal policies and procedures, even if OIE did not conduct a formal investigation. The following claimants reported that an MSU employee may have been on notice of sex discrimination by Nassar.

On September 28, 2016, OIE interviewed Reporter 9. Reporter 9 stated that her athletic trainer, Mackowiak, may have recommended that she treat with Nassar for lower back pain. After her appointment, Mackowiak scheduled another appointment with Nassar for Reporter 9, but Reporter 9 informed Mackowiak that "the doctor made [her] uncomfortable" and she "didn't want to see him anymore." Reporter 9 stated that she did not give Mackowiak any further details. (MSU 02.05.2018 8-01509.)

On December 6, 2016, Reporter P²² reported to OIE that she was hired by Nassar as a simulated patient in 2008 or 2009. Upon receiving a pelvic examination by Nassar, Reporter P stated she was very uncomfortable and told her supervisor "Rebecca" (later identified as Rebecca Cass) within MSUCOM. Specifically, Reporter P stated that she was uncomfortable that Nassar had instructed students to speak to lower income patients differently than affluent patients. Reporter P also stated, however, that she was not uncomfortable with Nassar with regard to his medical examination on her and she understood what the role of simulated patient entailed. Accordingly, MSU has determined this report is outside of the scope of the review contemplated by Section III of the Resolution Agreement because it is not a complaint or concern of sex discrimination by Nassar. (MSU 02.05.2018 8-01751.)

²² The Reporters identified by letter were not identified in the OCR Findings.

On February 22, 2017, Reporter F was interviewed by OIE and stated that in 2009-2010, she was treated by Nassar and an athletic trainer, Nancy (later identified as Nancy Naradzay), “wouldn’t let me go in the doctor’s office without her.” Another trainer, Vanessa, also would not let her go in the room alone with Nassar. Reporter F stated that Nancy appeared taken aback when she witnessed Nassar touch Reporter F’s breast, but that Nassar explained what he was doing and that it was to help Reporter F’s ribs. Nancy did not question the procedure moving forward. Reporter F stated she continued to treat with Nassar as he was “the only doctor who has positively affected her pain.” Reporter F also stated that another teammate told her that Nassar put his fingers in the teammate’s vagina. Reporter F remembered being extremely shocked and the teammates talked to a trainer about the issue and the trainer appeared to brush it off. Reporter F said “we just seemed to move on and we never talked about it again.” (MSU 02.05.2018 8-02488.) Reporter F did not provide a trainer’s name and did not provide any additional detail as to what was stated to that trainer.

On March 21, 2017, Reporter G was interviewed by OIE and stated that on one occasion, a medical student was shadowing Nassar. Reporter G stated that when the medical student left the room, Nassar vaginally penetrated her. She stated that this was the only occasion in which another individual was in the exam room at any time. (MSU 02.05.2018 8-01621.) Reporter G did not identify the medical student and, importantly for Section III of the Resolution Agreement, did not report that the student had any notice of a concern or complaint of sex discrimination.

On March 21, 2017, Reporter H was interviewed by OIE. Reporter H treated with Nassar at his office and stated that she believed there was a female nurse in the room to record Nassar’s notes at every appointment. Reporter H further stated that she believed the nurse was in the room during the whole appointment. Reporter H stated that Nassar did not at any time fully penetrate her, but Nassar would massage her groin area underneath her gown. (MSU 02.05.2018 8-01613.) Reporter H did not identify the female nurse and, importantly for Section III of the Resolution Agreement, did not report that the nurse had any notice of a concern or complaint of sex discrimination.

On January 30, 2018, Reporter 14 stated that during the 2015-2016 school year, Mouaikel was present at one of her appointments with Nassar where Nassar “had his hands all over [her] butt” and “in her inner thighs.” (OCR Findings, p. 8.) Reporter 14, however, stated that Mouaikel would not have been in a position in the treatment room to see what Nassar was doing. Reporter 14 reported to OIE that she walked out of the appointment and told Mouaikel “that was weird.” (MSU-OCR 03.09.2018 0004787.)

iii. MSUPD Reports

MSUPD received and investigated Reporter 11’s 2014 complaint regarding Nassar, as well as hundreds of additional complaints beginning with Reporter 1’s in August 2016. According to protocol, MSUPD and OIE each referred reports to the other as they came in. MSUPD also carried out a search warrant at Nassar’s residence and worked jointly with the Office of the Michigan Attorney General to secure Nassar’s state criminal convictions.

Several MSUPD reports indicate that current or former MSU employees may have been made aware of concerns of sex discrimination by Nassar prior to August 2016. First, MSUPD investigated the complaint of misconduct by Reporter 11 alongside OIE. O'Brien was the lead MSUPD investigator. On May 29, 2014, O'Brien and Moore interviewed Reporter 11 together and O'Brien interviewed Nassar later the same day. On July 1, 2015, MSUPD forwarded its report to the Ingham County Prosecutor's Office, requesting a warrant for Nassar's arrest. On December 15, 2015, the Ingham County Prosecutor's Office declined to authorize criminal charges against Nassar because "after careful review of the Victim's statement, the Defendant's statement and the videos of medical procedures submitted, it appears that what the Dr. is doing is actually a very innovative and helpful manipulation of a ligament located in the butt cheek and lateral to the vaginal opening. . . . I called Det. Johnson [*sic*] and let her know she should make contact with the Dr. and explain that he should have a witness and do a better job explaining his techniques as he sees patients." (MSU-OCR 04.16.2018 0015263.)

On February 8, 2017, Reporter Q reported to MSUPD that in June 2015 she reported a concern regarding Nassar's treatment to her then-boyfriend and MSU athletic trainer, Jager. Specifically, she reported that Nassar groped her breasts, that she told Jager, and that he stated it was a proper medical procedure. (MSU 02.02.2016 8-00875.)

On November 1, 2016, Reporter 12 reported to MSUPD that in October 2015 she informed the referring doctor, Hannasch, that Nassar had "touched areas of [her daughter] that she was not comfortable with." (MSU 02.02.2018 8-00123.) Hannasch was reported to have replied that he worked with Nassar and was aware that he does "need to get into private areas." (*Id.*) Reporter 12 did not state that she communicated with Hannasch about her concerns in any greater detail.

On February 8, 2017, Reporter 2 told MSUPD that sometime in 1997, when she was about 16 years old and participating in a program called Spartan Youth Gymnastics, she reported to Klages that Nassar touched her inappropriately. (OCR Findings, p. 9; MSU-OCR 04.16.2018 0016030-35.) Reporter 2 stated that Klages responded that she could not imagine Nassar doing anything inappropriate. Klages, according to Reporter 2, then called Reporter 2's teammates into her office to ask each if they had any similar concerns about Nassar. Reporter 2 stated one teammate confirmed that she too had been touched inappropriately by Nassar. Reporter 2 stated that Klages provided her with complaint papers to consider, but said, "Well, I could file this but there's going to be very serious consequences for you and Dr. Nassar." (MSU-OCR 04.16.2018 0016033.) Reporter 2 stated she assumed she was incorrect and, therefore, did not file a complaint at that time and instead was treated by Nassar again thereafter. Reporter 2 stated that Nassar confronted her about her concerns she raised with Klages.

On February 22, 2017, Reporter I reported to MSUPD that in 2010, she was aware that athletic trainers Teachnor-Hauk and Naradzay knew that Nassar utilized penetration techniques. Further, she reported that she told her sports psychologist, Rosen, that Nassar used penetration in his medical examinations, and Rosen did not tell her it was wrong or improper. (MSU-OCR 04.16.2018 0016137.)

On April 3, 2017, Reporter J reported to MSUPD that she reported Nassar's intervaginal treatment to Rosen's understudy named "Kristina" (later identified as Christine Liszewski) during a sports psychology counseling session. Reporter J stated that she told Liszewski that when Nassar penetrated her it reminded her of another assault. (MSU-OCR 04.16.2018 0016323.)

On April 10, 2017, Reporter 6 reported to MSUPD that she played volleyball at MSU from 2000-2003. (MSU-OCR 04.16.2018 0016337.) In 2000, Reporter 6 treated with Nassar. Prior to the treatment, Reporter 6 stated that she was aware that Nassar's treatments were "uncomfortable" because "word got around" with teammates that Nassar applied pressure to private areas. However, when Nassar vaginally penetrated her, she was concerned. Reporter 6 advised her athletic trainer, Hadden, that Nassar made her feel very uncomfortable, but did not tell Hadden that he vaginally penetrated her with his fingers. (*Id.*) Reporter 6 stated that Hadden "was very supportive and told her if she felt uncomfortable she should report it." On May 1, 2017, Reporter 6 provided MSUPD with a written statement. In the statement, Reporter 6 stated that she decided to go to Hadden to learn how to file a general complaint about an uncomfortable doctor's visit. As to Hadden, Reporter 6's statement provided:

My trainer, Lianna or "Lee-Lee," was one of the most caring, concerned, and wonderful people you could meet. I don't remember all the details of our conversation, but I remember her being very patient, appropriately concerned, but also sober minded (and understandably so). I say sober minded because *she knew I was young and immature.* (emphasis in original.) For example: One time, I remember running into the training room sobbing one day because I was regretful of a kissing encounter I had with my boyfriend. From her perspective [ellipses in passage] She sees me clearly upset, learns it's over a physical encounter with my boyfriend, and in light of such a reaction she's fearful of the possibility I've been physically assaulted ... [ellipses in passage] only to find out her young athlete (ME) was a baby Christian wrestling with her own personal conviction and disappointment that she had crossed a self-imposed boundary line All this to say, she knew me well.

So when I came to her asking if I could file a general complaint, yes... [ellipses in passage] she treated the situation with both seriousness and sober-mindedness.

Lianna tried to walk me through the process the best way she knew how. She asked me all sorts of questions ("Did Dr. Nassar do something you thought was criminally wrong?" "Did he hurt you?"). I remember trying to answer the questions as truthfully as possible, but I was so scared of revealing shameful details that I didn't give her much to go on.

(MSU-OCR 04.16.2018 0016342.) Reporter 6 further stated that Hadden provided her with an understanding of the reporting process and that it would entail an investigation into the accusations. Reporter 6 decided not to file a complaint.

On October 27, 2017, Reporter 7 reported that in or around 2002, she told her teammate something to the effect of she was about to get "fingered" by Nassar. According to Reporter 7, an

athletic trainer, Robles, overheard the conversation and “pulled her aside away from the others [sic] rowers and seemed concerned.” (MSU-OCR 04.16.2018 0016417.) Reporter 7 told MSUPD that Robles asked her whether or not she was serious and she stated “no and that everything was fine.” (*Id.*)

On January 8, 2018, Reporter 8 reported that she cried in front of her mother after an appointment with Nassar. Her mother was surprised by her distress. Reporter 8 stated that her mother asked Lemmon that she be seen by a female doctor moving forward because Reporter 8 was “uncomfortable” with Nassar. Lemmen, then-another doctor at the MSU Sports Medicine Clinic, stated “we get a lot of that.” Lemmen did not ask any additional questions and did not seem suspicious of Reporter 8’s mother’s statement. (MSU-OCR 04.16.2018 0016497.)

On January 27, 2018, Reporter K reported that her teammate had informed sports psychologists Rosen and Liszewski that Nassar vaginally penetrated them. Reporter K does not report that her teammate informed her of this information contemporaneously. This report is generally consistent with the reports of her teammates, Reporter J and Reporter I. (MSU-OCR 04.16.2018 0016323.)

On January 28, 2018 Reporter 10 reported that on a variety of occasions, she asked Nassar what he was doing during treatment. Reporter 10 stated that her trainer, Teachnor-Hauk, was always in the room when she was treated by Nassar and every time she asked Nassar what he was doing, Teachnor-Hauk would state “it’s fine...he’s just doing....” (ellipses in original and quotation) (MSU-OCR 03.09.2018 0004482.)

On February 21, 2018, Reporter 3 reported that an athletic trainer, Lindley, would have heard her and her teammates “joking about Nassar’s treatments and calling him ‘Happy Fingers.’” (MSU-OCR 03.09.2018 0004721.) Reporter 3 also remembered she would see another physician, Gilmore, for manipulations and did not report any misconduct by Gilmore. However, Reporter 3 stated that she and her fellow teammates would also call Gilmore “Happy Fingers” and “Happy Gillmore” [sic]. (*Id.*)

On September 6, 2018, Reporter L reported to MSUPD that starting in 1998, when she was a minor, Nassar molested her and that she later informed an MSU psychologist, Stollak, about her concerns as a sixth grader. (MSU-OCR 04.16.2018 0015189-95.) Reporter L also testified under oath regarding this report during a preliminary examination in Nassar’s criminal proceedings.

iv. Civil Litigation

MSU remains a defendant in pending litigation in both state and federal court. MSU has reviewed allegations in civil complaints against Nassar and/or MSU for any assertions that a current or former MSU employee received notice of a concern or complaint of sexual discrimination by Nassar. The assertions in the lawsuits largely mirror reports gleaned from OIE and MSUPD files and, therefore, are not duplicated here. (*See e.g., Nagle v. Michigan State University*, Court of Claims Case No. 18-156-MZ, member case No. 18-163-MZ allegations as they appear in the complaint regarding Klages, Bert, Hadden, Teachnor-Hauk, Stollak, Kovan,

Cass, Lemmen, Moore, DeStefano, Gilmore, Strampel, and Dietzel; *see also Denhollander, et al v. Michigan State University, et al*, W.D. Mich. Case No. 1:17-cv-00029.)

On December 21, 2016, Reporter 5 filed a now-dismissed complaint against Nassar and MSU in Los Angeles Superior Court. (*Thomas Lopez v. Dr. Larry Nassar and Michigan State University*, Docket No. BC644417.) In her complaint, Reporter 5 alleged that in 1999 or 2000 she complained to three athletic trainers after being treated by Nassar, without any detail as to what she reported to the trainers. The trainers were later identified as Shah Trivedi, Hadden, and Teachnor-Hauk. Further, Reporter 5's complaint alleges that Teachnor-Hauk told Reporter 5 that what happened to her was not sexual abuse, Nassar was a world-renowned doctor, and that Reporter 5 was to continue to treat with Nassar.

In February 2018, Reporter 4 reported that in 1999, while a student-athlete at MSU, she complained to athletic trainers and her track coach, Bert, that Nassar touched her in her vaginal area when she sought treatment for an injured hamstring. (*See Denhollander, et al v. Michigan State University, et al*, W.D. Mich. Case No. 1:17-cv-00029.) She did not provide names of the athletic trainers.

Reporter 13, a former associate professor at MSU, claimed that in 2015, she reported to staff at MSU's Sports Medicine Clinic that Nassar acted inappropriately during a medical examination. Reporter 13 was interviewed by MSUPD and OIE, but Reporter 13 did not report that she informed a staff member of her concerns to any University department. Reporter 13's allegations were set forth in the *Larissa Boyce et al v Michigan State University et al*, matter before the United States District Court, Western District of Michigan, Lead Case No. 1:17-cv-00029. Reporter 13 has not identified any MSU employees who had notice of sex discrimination by Nassar.

v. ***Victim Impact Statements***

During Nassar's criminal sentencing hearing in Ingham County, 204 individuals provided impact statements. Of these statements, three individuals stated that a current or former MSU employee may have been on notice of sex discrimination by Nassar. On January 16, 2018, as set forth above, Reporter 6 stated she went to her trainer, Hadden, to ask how to file a general complaint about a doctor's visit being uncomfortable. Reporter 6 stated that Hadden treated the complaint with seriousness and asked her about the procedure in detail. In the end, Hadden told Reporter 6 that if she did file a complaint, it would involve an investigation. Reporter 6 decided not to report it. Reporter 6 did not state she provided Hadden with any detail about what made the visit uncomfortable.

On January 17, 2018, Reporter 11 stated that she reported a concern to Kovan and interviewed with Moore during I3's investigation.

On January 19, 2018, Reporter 2 stated that she and a teammate reported their concerns to Klages in 1997.

vi. Criminal Trial Transcripts

MSU reviewed the preliminary examination and trial transcripts of the criminal trial of Klages, *People v Klages*, No. 18-825-FH, and Strampel, *People v Strampel*, No. 18-479-FH-C30.²³

At the Klages preliminary examination hearing and trial, Reporter 2 and Reporter M testified that in 1997, they met with Klages and told her that Nassar had abused them. (PE Tr., pp. 20-24; 58-61.) Klages reported to police that she could not remember such a meeting. On February 14, 2020, Klages was convicted by a jury of one felony and one misdemeanor for lying to the police.

vii. Michigan Department of Licensing and Regulatory Affairs (“LARA”) Hearings

LARA has opened seven investigations into current and former MSU employees regarding alleged notice of a complaint or concern regarding Nassar. These investigations focused on the license of a health professional to determine whether or not the licensee violated the Public Health Code. The current or former employees investigated include:

- Kovan (case closed July 10, 2018, no finding);
- Lemmen (case closed November 27, 2018, no finding);
- Dietzel (case closed July 27, 2018, no finding);
- Stollak (license surrendered);
- Strampel (license surrendered);
- Hadden and Teachnor-Hauk (consolidated hearing held on January 21, 22, and 23, 2020; final determination pending.)

During the Hadden and Teachnor-Hauk hearing, Reporter 6 testified that she expressed discomfort about her examination with Nassar to Hadden. Reporter 6 stated that: she did not provide specifics and her only recollection is that Hadden was comforting, (LARA Transcript, January 21, 2020, p. 36); she told Hadden she was uncomfortable and simply was requesting guidance about how to file a report of her discomfort, (*Id.* p. 37); she was scared and did not provide any specific details to Hadden about her discomfort, (*Id.* p. 39); Hadden told her that if she feels something criminally wrong occurred she needed to say something to her, and Reporter 6 did not provide Hadden with additional detail, (*Id.* p. 42-43.); and she never told Hadden that Nassar penetrated her during treatment, (*Id.* pp. 88). Reporter 6 further stated, “I feel like if I had the same clarity then about what happened as I do now and really opened up to her, she would have waged war on Nassar on my behalf.” (*Id.* pp. 88; 98.)

Reporter 5 also testified at the hearing, stating: “I can’t tell my story about Nassar without you two, you were there for me. You saved me from having to go and see the doctor when I didn’t want to. . . . It’s hard for me to sit here and say these things because I feel like I’m making you out to be a super bad person, but you were there for me.” (LARA Transcript, January 23, 2020 pp.

²³ The Strampel criminal trial does not provide any additional allegation that a current or former MSU employee was on notice of a complaint or concern of sex discrimination by Nassar. The trial did include testimony concerning the 2014 Investigation, which is consistent with other materials reviewed by MSU.

14-15.) Further, Reporter 5 testified that Hadden and Teachnor-Hauk together explained treatments that may be beneficial for her injuries, showed her treatments on a model, and provided her with literature. (*Id.* p. 18.) Reporter 5 also testified that she showed Nassar’s technique to Hadden, but Reporter 5 did not penetrate herself when she provided Hadden with her understanding of the treatment. (*Id.* p. 28.) She stated that she perceived that Hadden turned red and started to cry and then told Reporter 5 to talk to Teachnor-Hauk. Reporter 5 testified that when she spoke to Teachnor-Hauk about her concerns, Reporter 5 did not state that Nassar vaginally penetrated her when they were discussing the procedure, but Reporter 5 was apparently under the impression that Teachnor-Hauk was aware. (*Id.* p. 68.) Reporter 5 also stated that Teachnor-Hauk provided her guidance on filing a complaint and that at the time reporter 5 did not feel intimidated but that Teachnor-Hauk stated filing a complaint would place a huge burden on Reporter 5’s family. (*Id.* p. 74.)

Hadden testified on January 22, 2020 and denied the allegations of Reporter 6 and Reporter 5. Further, Hadden stated that if she had cried with an athlete, she would have remembered it happening. (LARA Transcript, January 22, 2020, pp. 211; 228.) Hadden’s statements were consistent with her recorded statement and other interviews.

Further, Teachnor-Hauk testified on January 23, 2020, and she denied Reporter 5’s allegations and stated that she did not have any memory of meeting with Reporter 5 and Hadden at any time. (LARA Transcript, January 23, 2020, p. 121.) Further, Teachnor-Hauk testified that if a patient stated “they were vaginally penetrated [it] would have been a huge red flag because I was not aware of any procedure that we did, at all, anybody, and when I say we, not me, the physicians, I was not aware of that. That would have been a huge red flag.” (*Id.*)

viii. Other

Approximately eleven individuals have reported that Nassar sexually assaulted them and that (a) medical students were in the examination room and dismissed when Nassar started to provide treatment, (b) medical students or doctors were nearby or entered/exited the room during an examination, or (c) a student may have been in the examination room but unable to see the treatment. None of these reports name anyone specifically; nor do the reports provide that the person – even an anonymous person – was provided notice of a complaint or concern of sex discrimination concerning Nassar’s treatment.

B. MSU Employee Review

I. Current and Former MSU Employees Reported to Receive a Complaint or Concern of Sex Discrimination by Nassar

i. Kelli Bert

Bert is a former MSU assistant track coach, a position she held for one year. A former MSU track athlete, Reporter 4, alleged in a February 2018 civil lawsuit that in 1999, she

complained to Bert about Nassar's conduct during an appointment.²⁴ According to Reporter 4, Bert responded that Nassar was an "Olympic doctor and he should know what he is doing." Reporter 4 did not provide a statement to OIE. (MSU-OCR 09.07.20180019251.) Further, Reporter 4 did not communicate with MSUPD. Bert stated that she does not remember Reporter 4 complaining about Nassar and that Bert did not know, at the time, that Nassar was an Olympic doctor.

Pursuant to Section III of the Resolution Agreement, MSU is required to "review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by" Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. A preponderance of the evidence does not support that Bert had notice or received a complaint of sex discrimination by Nassar.

ii. Lianna Hadden

Hadden is currently an MSU athletic trainer, a position she has held for twenty years. Whether Hadden was on notice of misconduct by Nassar is the subject of pending litigation and a LARA investigation.

As set forth above, Reporter 6, a former University volleyball player, stated that, in or around 2002, she reported to Hadden that Nassar made her uncomfortable during a medical appointment. (OCR Findings, p. 7.) On February 13, 2017, Reporter 6 provided MSUPD with a written statement and expressly stated that she did not give Hadden very many details, as she was embarrassed about her treatment experience with Nassar. Reporter 6 further stated that Hadden handled the conversation the best way she knew how, asked questions such as "Did Dr. Nassar do something you thought was criminally wrong?" and "Did he hurt you?" Reporter 6 did not provide responses to these questions. Further, Reporter 6 stated that Hadden provided her with guidance as to how to file a report, if she felt so compelled. (MSU-OCR 04.16.2018 0016341.) Reporter 6 also testified in the LARA hearing involving Hadden and stated, "I feel like if I had the same clarity then about what happened as I do now and really opened up to her, she would have waged war on Nassar on my behalf." (LARA Transcript, January 21, 2020, p. 98.) Based upon this testimony, Reporter 6 acknowledges that Hadden did not have notice of a complaint or concern of sex discrimination by Nassar.

²⁴ The OCR Findings provides that Reporter 4 informed the "head coach;" however, Reporter 4 stated that she informed Bert. For the avoidance of doubt, the head coach of Women's Track, Walter Drenth, was also interviewed and stated that he was not aware of any complaint or concern of sex discrimination by Nassar. Drenth stated that he had never heard anything negative, or any jokes or sarcasm, regarding Nassar before claims regarding Nassar became public in 2016.

Further, in her December 2016 civil lawsuit against Nassar and MSU, Reporter 5 alleged that in 1999 or 2000, she informed Hadden about her concerns regarding Nassar's treatment. Her civil lawsuit does not provide any detail as to what Reporter 5 specifically stated to Hadden. At the LARA Hearing, however, Reporter 5 testified that she showed Hadden the technique Nassar utilized but Reporter 5 did not indicate penetration when she demonstrated the technique. Reporter 5 additionally reported that Hadden suggested that Reporter 5 speak with Teachnor-Hauk about any concern.

OCR also interviewed Hadden on May 1, 2018, during which Hadden stated that she could not recall ever receiving a complaint regarding Nassar's treatment and further denied ever receiving a report or concern of his treatment being sexual in nature. During her OCR interview, however, Hadden was not specifically questioned about Reporter 6 or Reporter 5. Further, Hadden stated that a student-athlete never stated that they would prefer to see someone other than Nassar, she was not aware of a student-athlete telling another trainer that he or she did not want to treat with Nassar, she never heard student-athletes talking negatively about Nassar's treatment methods, and she never heard student-athletes state they were uncomfortable with Nassar. Hadden stated she was not aware of any allegation of sexual misconduct by Nassar until 2016, when she was informed of his arrest.

In her pre-hearing sworn testimony in connection with the LARA proceedings, Hadden made consistent statements in that regard. She stated that "Nobody ever complained to me about him," and that Reporter 5 never came to her about anything related to Nassar. Hadden also explained that she would have remembered if she was informed of a concern and would have remembered if she cried. (August 14, 2018 pre-hearing testimony, p. 15.) Further, Hadden stated she never told Reporter 5 to report her concerns to Teachnor-Hauk, (*id.* p. 16), never observed Nassar work on the pelvic floor utilizing an intervaginal manipulation method, (*id.* p. 23), and never received a report of concern of sex discrimination from Reporter 6 (*id.* p. 29). Hadden also provided a then-recent text message from Reporter 6 to a former teammate that explicitly provides that Reporter 6 loved Hadden and that Reporter 6 wished she had been as clear then about her concerns as she is now. (*Id.* p. 29.)

Hadden also stated further that she would have never told a student-athlete that if they believed something criminal occurred they should make a report; instead, Hadden testified that she would have followed up with additional questions if she believed something criminal may have occurred. (*Id.*) Hadden testified that if a student-athlete stated they were uncomfortable, she would have asked what happened during the evaluation to try to find out what occurred and "if an athlete didn't tell me, they didn't tell me." (*Id.*)

With respect to Reporter 5, the Judicial Panel of the National Athletic Trainers' Association ("NATA") Committee on Professional Ethics opened an investigation regarding Hadden. On January 17, 2019, the Judicial Panel of NATA advised that it completed its investigation and review, and the Judicial Panel concluded that the complaint against Hadden based upon Reporter 5's report was found to have no ethics violations due to inconclusive evidence and information.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Hadden did not have notice of a complaint or concern of sex discrimination by Nassar. Reporter 6’s written statement provided that she “did not give [Hadden] much to go on,” and in her lawsuit Reporter 5 does not provide any detail as to what information she specifically provided to Hadden. Further, Reporter 5 stated that when she demonstrated Nassar’s treatment, she did not explain that Nassar had vaginally penetrated her. To the extent a general concern was brought to Hadden’s attention about a student-athlete being “uncomfortable,” Reporter 6 stated Hadden provided guidance on how to file a complaint, and Reporter 5 was allegedly advised that she should speak with a more senior athletic trainer about the treatment. The preponderance of the evidence supports that Hadden was not on notice of a concern or complaint of sex discrimination by Nassar.

iii. Christopher Hannasch

Hannasch is a faculty member of MSUCOM. On November 1, 2016, Reporter 12 reported to MSUPD that in October 2015, she informed Hannasch that Nassar had “touched areas of [her daughter] that she was not comfortable with.” Hannasch was reported to have replied that in his experience in working with Nassar, Hannasch was aware that Nassar does “need to get into private areas.” Reporter 12, however, did not report that she communicated with Hannasch about her concerns in any greater detail.

In an interview, Hannasch believed Reporter 12 may have been the mother of a former cheerleading patient. Hannasch stated that he referred a few patients to Nassar for treatment, because he was aware that Nassar worked with gymnasts and dancers. Thus, he would have referred the patient he recalled, because she was a cheerleader. Hannasch stated that this patient (or the patient’s mother, on her behalf) later said that she did not feel comfortable with Nassar’s treatment. The patient’s discomfort was not discussed in any greater detail. Hannasch denied ever stating he was aware Nassar does “need to get into private areas.” Further, he stated that if he ever thought that a treatment by a referred physician was going to be in a private area, he would have advised the patient in advance. Hannasch also stated that prior to 2016, he did not know and could not speak to the nature of Nassar’s treatment techniques.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. A preponderance of the evidence supports that Hannasch was not on notice of a complaint or concern of sex discrimination by Nassar. Considering the medical procedures associated with manipulative

osteopathic medicine, specifically for a patient’s hips or other injuries, a statement that the exam was not comfortable, standing alone, does not give rise to a concern of sex discrimination.

iv. David Jager

Jager is a former MSU athletic trainer. Jager’s then-girlfriend, Reporter Q, reported on February 8, 2017, that she told Jager in June 2015 that Nassar groped her breasts during a medical examination and that Jager responded by stating that Nassar’s treatment was medically proper. (MSU 05.01.2018 19-01468.) Further, the Michigan Attorney General’s investigation update provided: “According to [Reporter Q], Jager responded with indifference, saying Nassar was ‘the best in the world.’ According to Jager, he recalled [Reporter Q’s] complaint and told her to make a report if she felt uncomfortable.” (AG Update, p. 9.) In connection with this review, Jager provided a written statement, through his attorney, in which he denied that Reporter Q reported either a sexual assault or sex discrimination to him. Rather, Jager described Reporter Q’s statement to him – which Jager designated as a comment at home, afterhours in the context of their ongoing romantic relationship and, thus, not as an MSU employee – as a “vague description of having her breast tissue briefly touched during a treatment for her back and neck.” According to his written statement, Jager was not present for Reporter Q’s treatment, and he encouraged Reporter Q (also an MSU employee) “to make a report if she was uncomfortable with what had occurred.” In his statement, Jager states that Reporter Q decided not to make a report.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Jager may have been on notice of a concern or complaint of sex discrimination by Nassar. Pursuant to Section III of the Resolution Agreement, because Jager may have received notice of a concern of sex discrimination, “the University will review whether that person failed to adequately respond in accordance with then-applicable law and University policies.” With respect to MSU policies, as of January 1, 2015, the RVSM Policy required all MSU employees to report any knowledge of relationship violence or sexual misconduct allegedly perpetrated by a member of the MSU community or occurring at an MSU event or on MSU property. The term “sexual misconduct” included sexual harassment. Under the then-applicable policy, however, employees were “only required to report relationship violence or sexual misconduct of which they become aware in their capacity as a University employee, not in their personal capacity.” A preponderance of the evidence, including Reporter Q’s description of her relationship with Jager and the evidence regarding the context in which she discussed Nassar’s treatment of her with Jager, supports that Jager did not violate then-applicable policy

v. Kathie Klages

Klages is the former head coach of the University’s women’s gymnastics team, a position she held from 1990 to 2017. Reporter 2, a former youth gymnast and participant in the Spartan

Youth Gymnastics program, told MSUPD on February 8, 2017 that in 1997, she told Klages that Nassar had touched her inappropriately. (Report, pp. 7; 9.) Reporter 2 stated that when she told Klages that Nassar had touched her inappropriately, Klages responded by stating that she could not imagine Nassar doing anything inappropriate. Reporter 2 also alleged that Klages investigated the matter by calling other athletes into her office and that one teammate reported a similar concern. OCR interviewed Reporter 2 and her teammate, Reporter M, and OCR found that their statements in the interviews were consistent. (OCR Findings, p. 9.)

When Klages was asked by police about the alleged reports, Klages responded, “I have beat myself up trying to remember but I have no idea,” and further stated that she had no additional information regarding the reported incident. (*Id.* p. 9.)

On February 14, 2020, and in the face of Reporter 2’s and Klages’s differing statements to law enforcement, Klages was convicted by a jury of one felony and one misdemeanor of lying to the police. Klages was sentenced on August 4, 2020 to 90 days in jail and 18 months probation; her attorney has represented that Klages intends to appeal the conviction.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. Accepting Klages’s above conviction for purposes of this review, a preponderance of the evidence supports that Klages was on notice of a concern or complaint of sex discrimination by Nassar.²⁵ Accordingly, pursuant to Section III of the Resolution Agreement, because Klages received notice of concerns of sex discrimination by Nassar, as the criminal conviction provides, “the University will review whether that person failed to adequately respond in accordance with then-applicable law and University policies.” With respect to then-applicable law, Klages was not a mandatory reporter as defined by the Child Protection Law. With respect to then-applicable MSU policies, in 1997, the Sexual Harassment Policy did not require mandatory reporting of allegations of sex discrimination or harassment. In addition, Klages did not receive the reports in her role as MSU’s gymnastics coach (the youth program was not MSU-sponsored or related to Klages’s MSU employment). This does not mean that MSU would not have responded or imposed discipline if it discovered in 1997 the circumstances underlying Klages’s criminal conviction, which is accepted for purposes of this review. However, given the lack of reporting requirements in then-applicable policies and that the report occurred outside the context of MSU employment, the preponderance of the evidence does not support that Klages failed to follow then-applicable reporting obligations.

vi. Jeffrey Kovan

Kovan is an Associate Professor and was formerly the Clinical Director of Sports Medicine. In this role, Kovan oversaw day-to-day clinical functions, supervised sports medicine

²⁵ Should Klages’s conviction be overturned on appeal, however, this determination may be reconsidered.

physicians, and conducted annual evaluations for physicians. Kovan reported to the Dean of MSUCOM and the Chief Executive Officer of MSU HealthTeam.

On April 21, 2014, Reporter 11 reported concerns about Nassar's behavior to Kovan, and Kovan promptly reported these concerns to I3. Further, I3 investigated the matter, including by communicating with Kovan. On December 20, 2019, Kovan was deposed in connection with *Kristin Nagle et al v. Michigan State University et al.*, matter, Lead Case No. 18-000156-MZ, in the Michigan Court of Claims. In his deposition, Kovan testified that he spoke with Reporter 11, she stated that she felt uncomfortable, and therefore they "talked around some of what was performed, but more so what I insisted with her is that I was not there to judge it or in any way question what happened." (Kovan Dep. T. 56.) Kovan also stated in his deposition that he understood his role as a mandatory reporter to mean that "if some patient and/or other individual brings a complaint forward relative to a – either an assault, harassment, or otherwise, that it is my obligation to report that to our Office of Institutional Equity and the police." (*Id.* 160-161.)

Pursuant to Section III of the Resolution Agreement, MSU is required to "review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by" Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence indicates that Kovan had notice of Reporter 11's complaint or concern of potential sexual discrimination committed by Nassar. Accordingly, pursuant to Section III of the Resolution Agreement, because Kovan received notice of a concern of potential sex discrimination, "the University will review whether that person failed to adequately respond in accordance with then-applicable law and University policies."

With respect to then-applicable law, the preponderance of the evidence supports that Kovan did not receive a report of assault or other crime. Specifically, Kovan's testimony reflects that he understood his reporting obligations, including when he needed to report to MSUPD. Kovan promptly reported Reporter 11's concern of a potential violation of the Sexual Harassment Policy to I3; however, Kovan did not believe he received a report of assault or a crime, as is evidenced by his explanation of the complaint to Moore. Similarly, Moore did not report the complaint to MSUPD until *after* she spoke with Reporter 11 and received additional detail not provided to Kovan. Upon receiving additional detail that informed Moore that Reporter 11 was indeed reporting a potential assault, she immediately informed MSUPD.

Further, with respect to MSU policies, under the then-applicable MSU policies in April 2014, Kovan was expected to promptly report all allegations of sexual harassment to I3. Kovan followed this protocol. Accordingly, a preponderance of the evidence supports that Kovan followed all applicable law and then-applicable MSU policies.

vii. Brooke Lemmen

Lemmen is a former MSU doctor who resigned in January 2017. In January 2018, Reporter 8, a former patient of Nassar and minor at the time, reported to MSUPD that in or around 2013,

Nassar made Reporter 8 uncomfortable and, thus, she did not want to see Nassar again. Reporter 8 alleged that her mother subsequently told Lemmen that Reporter 8 was uncomfortable and that Lemmen said “we get that a lot” and did not ask any follow up questions. (OCR Findings, p. 8.)

Lemmen was also interviewed as a peer medical professional in the 2014 Investigation and provided that Nassar was not acting in a sexual manner, based on Lemmen’s many years of observing Nassar’s treatment styles and techniques. Lemmen stated she had always observed Nassar explain everything to the patients before exams. (OCR Findings, p. 12.)

In a December 12, 2017 letter from Strampel to Lemmen, Strampel provided:

I learned that Dr. Nassar informed you in July 2015 that he was under investigation by USA Gymnastics for athletes’ concerns regarding his “therapy techniques” and feeling “uncomfortable with certain areas of their bodies that are being treated.” It is my understanding that you told no one at MSU of this investigation at that time. This is troubling, especially given your detailed knowledge of the allegations investigated by MSU Police and the Office of Inclusion and Intercultural Initiatives in 2014. Had the University known of additional allegations, it could have taken steps to review Dr. Nassar’s volunteer and clinical activities in 2015.

LARA launched an investigation into Lemmen, but LARA dismissed the administrative complaint without finding on or about November 27, 2018.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Lemmen was not on notice of sex discrimination by Nassar related to Reporter 8. Reporter 8’s mother’s comment (that her daughter was “uncomfortable,”) standing alone, is not evidence of potential sex discrimination given the context in which it was stated – a medical examination that included examination of a patient’s hip alignment. Considering the general nature of the osteopathic medical care Nassar would provide patients, the term “uncomfortable” could reasonably relate to the care itself.

As to Lemmen’s statements as a part of the 2014 Investigation, Lemmen provided her statements *after* MSU’s I3 launched a formal investigation into potential sex discrimination by Nassar. Lemmen followed all applicable obligations and MSU policies in this process.

Regarding Lemmen’s knowledge of an USAG investigation in 2015, Lemmen has maintained that she was informed by Nassar, in her personal capacity as a friend, that USAG was conducting a “review” of his techniques, and she was not aware of an investigation into, or any specific allegations regarding, sexual misconduct. Nonetheless, Strampel’s December 2017 letter

to Lemmen makes clear that MSU would have expected Lemmen to report to MSU, especially given Lemmen’s knowledge of the 2014 Investigation, and that MSU would consider pursuing employment action against Lemmen for lack of judgment and failing to apprise MSU. Nonetheless, Section III of the Resolution Agreement provides that if a current or former employee received notice of concerns of potential sex discrimination, “the University will review whether that person failed to adequately respond in accordance with then-applicable law and University policies.” Even assuming for the sake of argument that Lemmen had notice of alleged sex discrimination, MSU’s January 2015 RVSM Policy applicable at the time provides that Lemmen being informed by Nassar of USAG’s action did not require reporting relating to matters in an employee’s personal capacity, unrelated to an MSU program or activity. Therefore, considering all the available evidence, a preponderance of the evidence does not support that Lemmen failed to adequately respond in accordance with then-applicable law and MSU policies.

viii. Tory Lindley

Lindley is a former MSU athletic trainer. Reporter 3, a former student-athlete at MSU, reported on February 21, 2018 that in 1998 or 1999, Lindley was present for one or more conversations where Reporter 3 and her teammates referred to Nassar as “happy fingers” in 1998-1999 and talked about his “crotch massages.” Lindley left MSU in 2000. (OCR Findings, p. 7.) On February 21, 2018, MSUPD interviewed Reporter 3. (MSU-OCR 03.09.2018 0004719-22.) The police report reflects that Reporter 3 stated that Lindley would have heard her and her teammates joking about treatments and calling Nassar “Happy Fingers.” Reporter 3 also stated that she had called another physician “Happy Fingers,” but Reporter 3 did not allege that this physician was inappropriate in any manner. (*Id.*) Lindley was never interviewed by OCR.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence indicates that Lindley did not have notice of a complaint or concern of sex discrimination committed by Nassar. Reporter 3 did not state she was certain that Lindley overheard her and her teammates joking about Nassar, and Reporter 3 does not allege she ever reported a complaint or concern about Nassar to Lindley. Reporter 3’s statement that Lindley may have overheard MSU student-athletes joking about Nassar’s treatments and calling him “Happy Fingers” does not support, by a preponderance of the evidence, that Lindley received notice of a complaint or concern of sex discrimination by Nassar.

ix. Christine Liszewski

Liszewski is a former MSU psychiatry resident. On April 3, 2017, Reporter J stated to MSUPD that she told Liszewski during a counseling session that Nassar penetrated her during treatment. Reporter J’s former teammate, Reporter K, also told MSUPD that Reporter J told her

Reporter J informed Liszewski that Nassar treated her utilizing vaginal penetration. Reporter J stated that the penetration reminded her of an assault. (MSU-OCR 04.16.2018 0016320-34.)

In an interview with MSU, Liszewski confirmed that she had treated Reporter J, but Liszewski provided that Reporter J never stated that Nassar utilized a vaginal penetration technique. Moreover, Liszewski was a psychiatry resident when she would have worked with Reporter J. Given she was just starting out in her career, Liszewski stated that she believed a statement about vaginal penetration would have been memorable to her, she would have recorded such a comment in her notes, and she would have went to her supervisors with such an issue. Liszewski further stated that to her recollection, Reporter J did not mention Nassar at all. Liszewski was not aware that Nassar treated athletes that were not gymnasts.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the available evidence supports that Liszewski was not on notice of a concern of sex discrimination by Nassar based on Reporter J’s report alone. Importantly, Reporter J does not state that she informed Liszewski that she was concerned that Nassar’s conduct in the context of a medical examination was sexual in nature. Rather, Reporter J stated that she informed Liszewski that the examination reminded her of an assault because Nassar was near Reporter J’s vaginal area. Further, Liszewski stated she never received such a report.

x. Thomas Mackowiak

Mackowiak, an MSU trainer since 1987, is currently the undergraduate Athletic Training Program’s Clinical Education Coordinator in clinical athletic training student education, placement, and evaluation. He is also the full-time staff athletic trainer directly assigned to MSU’s women’s golf program. Reporter 9, a former student-athlete on the MSU’s golf team, alleged that during the 2013-2014 academic year, she told Mackowiak that Nassar had made her uncomfortable during an appointment and that she did not want to see him again. (OCR Findings, p. 8; MSU 02.05.2018 8-01509.) Reporter 9 further stated in her OIE interview that she did not provide Mackowiak with any further details.

OCR interviewed Mackowiak on April 30, 2018. During the interview, Mackowiak confirmed that Reporter 9 told him that she did not want to treat with Nassar again. Mackowiak stated that Reporter 9 did not provide any additional comment as to why she did not want to see him again. Mackowiak further stated that he had no reason to believe there was a concern, as many student-athletes simply preferred to treat with Mackowiak, as their day-to-day athletic trainer. Mackowiak also stated he had never received any other reports of concern regarding Nassar and never noticed anything unusual about Nassar or his treatment.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received

notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Mackowiak was not on notice of a complaint or concern of sex discrimination by Nassar. Reporter 9’s report that her appointment was “uncomfortable,” standing alone, is not evidence of potential sex discrimination given the context in which it was stated – a medical examination for lower back pain. Considering the nature of the medical care associated with treatment for lower back pain, the term “uncomfortable” could reasonably relate to the care itself. Further, both Reporter 9 and Mackowiak agree that Reporter 9 did not provide any additional explanation as to why she did not want to treat with Nassar.

xi. Zach Mouaikel

Zach Mouaikel received his undergraduate degrees from MSU in 2016 and 2017 in athletic training and kinesiology, respectively. During the 2016-2017 school year, he served as an intern athletic trainer. On January 30, 2018, Reporter 14 reported to OIE that during the 2015-2016 school year, Mouaikel was present at one of her appointments with Nassar where Nassar “had his hands all over [her] butt” and “in her inner thighs.” (OCR Findings, p. 8.) Reporter 14 stated that Mouaikel would not have been in a position in the treatment room to see what Nassar was doing. Reporter 14 also reported that she walked out of the appointment and told Mouaikel “that was weird.” (MSU-OCR 03.09.2018 0004787.) Reporter 14 did not indicate whether Mouaikel responded to her statement. Reporter 14 declined a formal OIE investigation.

In an interview, Mouaikel confirmed that he was familiar with Reporter 14 and had observed her receive treatment by Nassar. Mouaikel stated that Reporter 14 was treated for a hip injury and that Nassar utilized osteopathic manipulative medicine on her hip. Mouaikel witnessed the treatment, as he was just starting his career and would have wanted to observe and learn from other practitioners. Mouaikel stated that there was nothing he found inappropriate about the treatment session. Mouaikel also stated that he did not recall Reporter 14 stating that the treatment was weird and further stated that he and Reporter 14 did not discuss the treatment at all.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence does not indicate that Mouaikel had notice of a concern or complaint of sex discrimination by Nassar. Reporter 14 does not allege that Mouaikel would have been able to see Nassar’s treatment and further, it is undisputed that all she stated was “that was weird.” Mouaikel stated that he did observe the treatment, but he did not observe anything sexual in nature and found the treatment to be appropriate for a hip issue. Further, Mouaikel stated that Reporter 14 did not discuss the treatment with him afterward in any manner.

xii. Nancy Naradzay

Naradzay is a former post-graduate intern in Athletic Training at MSU. On February 22, 2017, Reporter F reported to MSUPD that Naradzay would not let Reporter F receive treatment by Nassar without a trainer in the examination room. (MSU 02.05.2018 8-02488.) Further, on February 22, 2017, Reporter I reported to MSUPD that in 2010, she was aware that Naradzay knew that Nassar utilized penetration techniques. (MSU-OCR 04.16.2018 0016136.)

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. Standing alone, the preponderance of available evidence supports that Naradzay did not have notice of a complaint or concern of sex discrimination by Nassar in his medical treatment. Naradzay’s determination to accompany her student-athletes to their treatment session or knowledge of medical techniques does not rise to receiving a concern that these medical treatments were sexual in nature or potential sex discrimination.

xiii. Anthony Robles

Robles is a former MSU athletic trainer. On October 27, 2017, Reporter 7, a former student-athlete on MSU’s crew team, alleged that in 2002, she told her teammate that Nassar had sexually assaulted her during an appointment. (OCR Findings, p. 7.) Reporter 7 told MSUPD that Robles overheard this comment; specifically, her statement that she was going to get fingered by Nassar. According to Reporter 7, Robles immediately pulled Reporter 7 aside to ask if she was serious. Reporter 7 responded to Robles’s concern, stating that she was not serious. Reporter 7 confirmed to MSUPD that she informed Robles she was not serious and that there was nothing to worry about. MSUPD interviewed both individuals and their reports were consistent. (MSU-OCR 04.16.2018 0016417.)

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. A preponderance of the evidence supports that Robles did not have notice of a complaint or concern of sex discrimination by Nassar.

xiv. Lionel Rosen

Rosen is a professor in the Department of Psychiatry and worked with MSU student-athletes. On February 22, 2017, Reporter I reported to MSUPD that, in 2010, she told Rosen that

Nassar vaginally penetrated her during a medical examination and that Rosen did not say such a procedure was wrong. (MSU-OCR 04.16.2018 0016137.)

OCR interviewed Rosen on May 2, 2018. Rosen denied ever hearing a report of impropriety by Nassar until after 2016, and Rosen denied ever having a student-athlete explain an intervaginal manipulation to him during a counseling session. Rosen stated that when news on Nassar broke, he looked up the STL procedure because his medical training did not include manual medicine. He was surprised to hear of the procedure.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the available evidence supports that Rosen was not on notice of a complaint or concern of sex discrimination by Nassar. Reporter I does not report that she stated she was concerned that the procedure appeared sexual in nature, and Rosen denied ever receiving a report from a patient that Nassar had vaginally penetrated them during an examination. Without additional detail from Reporter I, it does not appear that Rosen would have been on notice of a complaint or concern that the procedure was sexual in nature or potential sex discrimination. Further, as a sports psychiatrist, Rosen would have been a confidential resource, even if Reporter I was concerned that the behavior was sexual in nature. As a confidential resource he would have been prohibited from breaking confidentiality without consent, unless the conduct involved suspected abuse of a minor. Reporter I was not a minor at the time that she states she reported to Rosen.

xv. Gary Stollak

Stollak is a former professor in the Department of Psychology who retired from MSU in 2010. Stollak also had a private psychology practice neither associated with MSU nor part of his assigned duties on behalf of MSU. Reporter L reported to police that in 1998, she saw Stollak at his private practice. Again, Stollak’s counseling sessions were not affiliated with MSU. During the session, Reporter L reported that she told Stollak in 2004 that Nassar, who was a family friend and neighbor, had sexually abused her as a minor at both her and Nassar’s homes starting in 1998. Reporter L also reported that her parents discussed this matter with Stollak in 2004. Under oath at Nassar’s preliminary examination, Reporter L testified regarding this report to Stollak.

On September 24, 2016, Stollak reported to MSUPD that he had destroyed all medical records in 2012 after his retirement. Further, Stollak stated that he had suffered a stroke and, therefore, had significant memory loss. LARA filed an administrative complaint against Stollak for his failure to report suspected abuse of a minor. On July 5, 2018, Stollak resolved the matter by pleading no contest and stipulating to the permanent revocation of his psychology license.

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable

evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Stollak, as a private practitioner and outside the scope of his work as an MSU employee, had notice in 2004 of a complaint or concern of sexual abuse by Nassar and failed to notify authorities of a report of suspected child abuse as required under the law. Reporter L testified under oath regarding her report; due to his memory loss, Stollak has been unable to refute that testimony and stipulated to the permanent revocation of his license.

xvi. Henna Shah Trivedi

Shah Trivedi is a former graduate student athletic trainer at MSU and is reported to have been on notice of a complaint or concern about Nassar’s medical practices in 1999 or 2000, when Reporter 5 claims to have complained to her about Nassar. Specifically, Reporter 5 testified that Shah Trivedi was aware that her treatments were “uncomfortable” and was present during her first treatment with Nassar, but Reporter 5 stated that Nassar did not vaginally penetrate her at that appointment. (LARA Hearing Transcript, January 21, 2020, p. 222.) Further, Reporter 5 stated that “as far as like confiding in someone and really letting them know what was actually going on, that did not take place.” (*Id.* p. 244.) Notably, during her LARA testimony, Reporter 5 did not name Shah Trivedi when asked – on two occasions – to name all MSU employees to whom she reported concerns. (*Id.* pp. 256; 262.)

Shah Trivedi has no recollection of any MSU employee performing the STL procedure, an intravaginal procedure, or any procedure involving sensitive areas. (LARA Hearing, Exhibit 4.) Shah Trivedi also does not recall any complaints, rumors, or concerns about Nassar, but Shah Trivedi explained that, as a graduate student, she had little oversight. (LARA Hearing, Exhibit 4.) Further, while Shah Trivedi recalled Reporter 5, she could not recall any specifics regarding Reporter 5’s medical condition or treatments. (LARA Hearing, Exhibit 4.)

Pursuant to Section III of the Resolution Agreement, MSU is required to “review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by” Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The preponderance of the evidence supports that Shah Trivedi was not on notice of a complaint or concern of sex discrimination because Reporter 5 herself testified that she never explicitly reported such a concern to Shah Trivedi.

xvii. Destiny Teachnor-Hauk

Teachnor-Hauk is an MSU athletic trainer. Since 2005, Teachnor-Hauk has been the athletic trainer for gymnastics, rowing, and softball, and she has other administrative duties for MSU. Whether Teachnor-Hauk was on notice of misconduct by Nassar is the subject of pending litigation and an investigation by LARA.

In a December 2016 civil lawsuit against Nassar and MSU, Reporter 5 alleged that in 1999 or 2000, she informed Teachnor-Hauk about concerns regarding Nassar's treatment and that Teachnor-Hauk dismissed her concerns and stated that what Reporter 5 had experienced was not sexual abuse. The civil lawsuit does not provide any detail as to specifically what Reporter 5 reported to Teachnor-Hauk.

Teachnor-Hauk is also reported to have been present when Reporter 10, a former member of the University's crew team, stated she was sexually assaulted by Nassar in or around January of 2014. OCR's report stated that Reporter 10 reported that she asked Nassar what he was doing during an appointment and Teachnor-Hauk responded for Nassar that everything was fine. (OCR Findings, p. 8.) In Reporter 10's statement to MSUPD, Reporter 10 stated that Teachnor-Hauk was present during multiple appointments with Nassar and that Teachnor-Hauk had a clear view of the treatments as they occurred, positioning herself at Reporter 10's feet. (MSU-OCR 03.09.2018 0004482.) Reporter 10 stated that during a few visits with Nassar, Reporter 10 would ask what he was doing. Reporter 10 stated that Teachnor-Hauk would always answer "...it's fine...he's just doing..." in an attempt to explain the procedure, from her vantage point. (*Id.*) Reporter 10 does not report that she ever raised a complaint or concern about Nassar with Teachnor-Hauk that was sexual in nature or potential sex discrimination.

Reporter F stated that in 2009-2010, she was treated by Nassar at MSU and stated many trainers, including Teachnor-Hauk, would continually state how great Nassar was. (MSU 02.05.2018 8-02492.) Reporter F did not report any concern or complaint of sexual discrimination by Nassar. Reporter I reported to MSUPD that Teachnor-Hauk was aware that Nassar utilized penetration techniques. (MSU-OCR 04.16.2018 0016136.)

I3 interviewed Teachnor-Hauk on June 19, 2014 in connection with the 2014 Investigation. (OCR Findings, p. 12.) Teachnor-Hauk stated that she had worked directly with Nassar for an average of 4 hours each week for 17 years. Teachnor-Hauk stated that she believed that Nassar had no inappropriate intent and that she "really respected" Nassar and that her opinion was that Nassar was "very professional" and "extremely smart." Teachnor-Hauk understood manipulations to be medically appropriate in certain circumstances. (*Id.* p. 13.)

MSUPD interviewed Teachnor-Hauk on March 15, 2017 and September 9, 2017. (MSU-OCR 04.16.2018 0015952-91; MSU-OCR 04.16.2018 0016133-42.) Teachnor-Hauk reported that the first time she ever heard a concern or complaint of sex discrimination by Nassar was on September 12, 2016, when the athletic department was informed that Nassar had been arrested. MSUPD directly asked Teachnor-Hauk if any student-athlete had ever previously disclosed anything to her regarding Nassar, and she stated that they had not. Teachnor-Hauk was also interviewed by OCR and stated that prior to September 2016, she had never heard rumors, complaints, or comments about Nassar that raised concerns. Teachnor-Hauk also reported that while she was aware of the 2014 Investigation, she was not aware of any protocols or procedures put in place generally, or for Nassar specifically, concerning medical care. (MSU-OCR 04.16.2018 0016138.)

During her March 2017 interview with the MSUPD, Teachnor-Hauk stated that she would often write notes as Nassar provided treatment. Teachnor-Hauk stated she was unaware that anyone at MSU utilized intervaginal treatment of any kind, and Teachnor-Hauk reported that she had never had a student-athlete tell her that Nassar performed an intervaginal treatment on them and had never seen him treat a student-athlete using an intervaginal treatment. Further, Teachnor-Hauk stated that when news stories came out, she asked Lemmen if she was aware Nassar utilized intervaginal treatments and Lemmen also stated that she was not aware.

MSUPD advised Teachnor-Hauk that women had reported that athletic trainers knew of Nassar's treatments and joked with the student-athletes about the treatments being very personal. Teachnor-Hauk did not recall this occurring and stated that she assumed they were referring to the STL adjustment because it involves hand placement near the area of (but not on or in) the vagina. Teachnor-Hauk stated that she has a model of the pelvis in the athletic training office that shows the ligament and helps to inform student-athletes about the treatment, which she herself will also provide when needed. Teachnor-Hauk reported that when student-athletes would talk about Nassar being in their private area, she would use the model to provide an understanding of where the ligament is and no student-athlete ever shared that the treatment Nassar was providing was different than what she was modeling. (MSU-OCR 04.16.2018 0016138.)

Teachnor-Hauk informed MSUPD that she had overheard one gymnast, Reporter N, talking to another athlete and that she said something to the effect of Nassar being in her private area. Teachnor-Hauk stated that the student-athlete was laughing and did not seem uncomfortable. Teachnor-Hauk heard other comments by student-athletes about Nassar that were like Reporter N's statement and further stated that she had never had a student-athlete report that Nassar made them uncomfortable.

Teachnor-Hauk was aware of Nassar seeing one gymnast, Reporter O, at his house. Teachnor-Hauk was informed of this information when Reporter O told Teachnor-Hauk that Nassar had seen her for an injury. Teachnor-Hauk stated that it did not "raise any red flags" for her, though she acknowledged her own doctor typically does not see her at the doctor's home and further stated she spoke to Nassar about this matter because she wanted to understand what was going on with her student-athlete. Reporter O did not raise any complaints or concerns.

Teachnor-Hauk also provided a pre-hearing sworn statement in connection with the LARA proceeding on September 3, 2018, testifying in a manner consistent with her other statements, including that she had never been made aware that Nassar was performing any internal vaginal treatments and never received a complaint concerning Nassar. (September 3, 2018 sworn statement, pp. 18-19.) Further, Teachnor-Hauk testified that she never spoke with Reporter 5 about Nassar and further testified that Reporter 5's reported allegations were untrue. (*Id.* p. 24.) Teachnor-Hauk's testimony at her LARA hearing was consistent to her sworn statement. At the hearing, Teachnor-Hauk stated that if a patient stated "they were vaginally penetrated [it] would have been a huge red flag because I was not aware of any procedure that we did, at all, anybody, and when I say we, not me, the physicians, I was not aware of that. That would have been a huge red flag." (LARA Transcript, January 23, 2020, p. 121.)

With respect to Reporter 5, the Judicial Panel of NATA Committee on Professional Ethics opened an investigation regarding Teachnor-Hauk. On January 17, 2019, the Judicial Panel of NATA advised that it completed its investigation and review, and the Judicial Panel concluded that the complaint against Teachnor-Hauk based upon Reporter 5's report was found to have no ethics violations due to inconclusive evidence and information.

Pursuant to Section III of the Resolution Agreement, MSU is required to "review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by" Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. Based on the currently available evidence, the preponderance of the evidence supports that Teachnor-Hauk did not have notice of a complaint or concern of sex discrimination by Nassar. It is not disputed that Teachnor-Hauk understood that Nassar would perform an STL adjustment on certain student-athletes, but Teachnor-Hauk denied ever having knowledge of intervaginal treatment by Nassar or any other MSU employee. Teachnor-Hauk further denied ever having a student-athlete complain that they were uncomfortable with Nassar. The allegations in Reporter 5's civil lawsuit do not state what she specifically reported to Teachnor-Hauk. Moreover, during Reporter 5's testimony at Teachnor-Hauk's LARA hearing, Reporter 5 acknowledged that she did not specifically inform Teachnor-Hauk of vaginal penetration. Further, the OCR and MSUPD reports are inconsistent as to Reporter 10's testimony. In either case, it appears Reporter 10 stated when she asked about a particular procedure, Teachnor-Hauk attempted to explain the medical procedure being conducted from her vantage point. It does not appear Reporter 10 ever expressed a complaint or concern that the medical examination was of a sexual nature or potential sex discrimination. Finally, Reporter F does not allege that Teachnor-Hauk had any notice of a complaint or concern of sex discrimination by Nassar.

xviii. Vanessa

On February 22, 2017, Reporter F reported to MSUPD that an athletic trainer named Vanessa would not let Reporter F receive treatment by Nassar without a trainer in the examination room. (MSU 02.05.2018 8-02488.) MSU's records show that a Vanessa Gomez served as a post-graduate intern for Athletic Training during the 2012-2013 academic year. It is unclear if this is the Vanessa to whom Reporter F was referring.

Pursuant to Section III of the Resolution Agreement, MSU is required to "review the actions of those current and former employees who had notice or were reported to have received notice of a complaint or concern of sex discrimination committed by" Nassar. Under the applicable evidentiary standard, a preponderance is the amount of evidence that causes one to conclude that an allegation is more likely true than not true. If the evidence on an allegation is equally balanced (*i.e.*, 50% / 50%), it has not been proven by a preponderance of the evidence. The available evidence does not support that Vanessa had notice of a complaint or concern of sex discrimination by Nassar.

II. Current and Former Employees Involved in the 2014 Investigation

i. Kristine Moore

Moore is employed by MSU as an assistant general counsel in MSU's Office of the General Counsel. Prior to this role, Moore was an investigator for I3 from 2007 through 2014. Moore was the investigator for the 2014 Investigation. Moore has been deposed, testified at the Lou Anna Simon preliminary examination, testified at the William Strampel criminal trial, and was interviewed by OCR and other entities. Her testimony is consistent in all these interviews.

As set forth above, I3 was first provided notice of a concern regarding Nassar on or about April 24, 2014. (Strampel Trial Transcript, June 6, 2019, p. 9.) As stated in her testimony at the Simon preliminary examination, Moore interviewed Reporter 11 by telephone on May 15, 2014 and upon learning that Reporter 11 was reporting what sounded like sexual assault, Moore called MSUPD and the Office of the General Counsel. (Preliminary Examination Hearing, April 8, 2019, Tr. p. 45.) Moore also notified her supervisor, Paulette Granberry Russell, the Title IX Coordinator. Moore interviewed Reporter 11 in person with MSUPD investigator O'Brien on May 29, 2014, when Reporter 11 returned from a vacation. (*Id.* p. 67.) Moore then interviewed Nassar and four medical professionals (two identified by Nassar, and two identified by Strampel). Moore testified that she made the decision to interview additional medical professionals within MSUCOM besides those identified by Nassar based on advice she received from MSU administrators and the Office of the General Counsel. (Strampel Trial Transcript, June 6, 2019, p. 19.)

Moore stated that she learned during the investigation that Nassar was suspended, but that she would not have been a part of that determination. (*Id.*) Nassar was suspended from May 23, 2014 to July 1, 2014. (OCR Findings, p. 10.) When Nassar notified Moore that he intended to return to work prior to the closure of the investigation, Moore promptly informed Nassar's unit administrator, Strampel, about this statement. The I3 investigation was completed in mid-July of 2014 and Moore prepared a report. (Preliminary Examination Hearing, April 8, 2019, Tr. p. 88.) The report did not find a violation of the Sexual Harassment policy.

Moore testified that in her role as I3 investigator, she did not have authority to implement any disciplinary action, but she could provide recommendations to the unit administrator. (*Id.*, p. 83.) Thus, Moore provided certain suggested protocols at the conclusion of her report to be shared internally within MSU. (Strampel Trial Transcript, June 6, 2019, p. 22; 26.) On July 30, 2014, Strampel forwarded Moore an email between him and Nassar that indicated that he had met with Nassar to advise him on the strategies that Moore suggested and informed Nassar that they were to be implemented moving forward. (*Id.* pp. 35-36.)

It is undisputed that Moore was notified as an I3 investigator of a concern of sex discrimination by Nassar that came to I3 via a report from Kovan. The preponderance of the evidence supports that Moore adequately responded to that report in accordance with then-applicable law and MSU policies. There is no assertion by any person that Moore received any independent notice of a complaint or concern of sex discrimination by Nassar apart from being assigned to investigate Reporter 11's complaint.

ii. Valerie O'Brien

O'Brien is an Assistant Chief for MSUPD. O'Brien was the lead investigator on the Reporter 11 MSUPD investigation. MSUPD investigated the complaint of misconduct by Reporter 11 alongside I3. On May 29, 2014, O'Brien and Moore interviewed Reporter 11 together, and O'Brien interviewed Nassar separately later the same day at MSUPD.

On July 1, 2015, MSUPD forwarded its report to the Ingham County Prosecutor's Office with a warrant request against Nassar. On December 15, 2015, the Ingham County Prosecutor's Office declined to authorize criminal charges against Nassar because "after careful review of the Victim's statement, the Defendant's statement and the videos of medical procedures submitted, it appears that what the Dr. is doing is actually a very innovative and helpful manipulation of a ligament located in the butt cheek and lateral to the vaginal opening. . . . I called Det. Johnson [sic] and let her know she should make contact with the Dr. and explain that he should have a witness and do a better job explaining his techniques as he sees patients." (MSU-OCR 04.16.2018 0015263.)

It is undisputed that O'Brien was notified as an MSUPD investigator of a complaint or concern of sex discrimination by Nassar that came to I3 via a report from Kovan and to MSUPD via a report by Moore after speaking with Reporter 11. She prepared her report and elevated it to the Prosecutor's Office for review. The preponderance of the evidence supports that O'Brien responded in accordance with then-applicable law and MSU policies. There is no assertion by any person that O'Brien received any independent notice of a complaint or concern of sex discrimination by Nassar apart from being assigned to investigate Reporter 11's complaint.

iii. Lou Anna Simon

Simon is the former President of MSU. Simon held various positions at the University from 1993 through 2004, including Assistant Director of the Office of Institutional Research, Assistant Provost for General Academic Administration, Associate Provost, and Provost and Vice President for Academic Affairs until she was appointed interim President of MSU in 2003. She served as President from 2005 until her resignation on January 24, 2018. In October 2019, Simon was charged by the Michigan Attorney General in a four-count criminal complaint with knowingly and willfully making a false or misleading statement to a peace officer regarding a material fact in a criminal investigation related to Nassar. A preliminary examination was held, and Simon was bound over as charged. On May 13, 2020, the Eaton County Circuit Court granted Simon's motion to quash the bindover determination by the 56-A District Court as to all counts, dismissing the case in its entirety. On June 29, 2020, the Attorney General filed a claim of appeal with the Michigan Court of Appeals.

The criminal charge against Simon relates to a statement during an interview with police that she was aware of the 2014 Investigation, but denied knowing the identity of the sports medicine physician or details about the allegations. Even though the criminal case against Simon is currently on appeal, there is no allegation that Simon had independent notice of a complaint or concern of sex discrimination by Nassar. Any alleged notice regarding the 2014 Investigation coincided with I3's and MSUPD's notice of the same complaint.

iv. William Strampel

Strampel is the former Dean of MSUCOM. In December 2017, Strampel requested medical leave and on June 30, 2018 Strampel officially resigned.

On March 27, 2018, the Michigan Attorney General charged Strampel with two counts of willful neglect of duty as a public officer, one count of criminal sexual conduct, and one count of misconduct by a public official in office. On June 12, 2019, Strampel was convicted of two counts of willful neglect of duty for (i) allowing Nassar to continue to see patients during the pendency of the 2014 Investigation, and (ii) failing to enforce protocols resulting from the 2014 Investigation. The jury also convicted Strampel of the common law offense of misconduct of a public official, a felony. The jury returned a not-guilty verdict on the criminal sexual conduct charge that alleged use of force or coercion to accomplish sexual contact. On August 7, 2019, Strampel was sentenced to prison for one year for each misdemeanor count and eleven months for the felony count, to be served concurrently. Strampel has appealed his conviction to the Michigan Court of Appeals.

Strampel was Nassar's direct supervisor and the "unit administrator" for MSUCOM. Strampel was on notice of a complaint or concern of sex discrimination by Nassar in May of 2014 after I3 had already initiated the 2014 Investigation. Strampel would have been the key decision maker in placing Nassar on leave during the pendency of the investigation – which he did initially – from May 23, 2014 through July 1, 2014; however, Nassar returned to clinical duties before the 2014 Investigation was final.

Strampel received Moore's I3 investigation report, with internal recommendations, and he reviewed her recommendations for procedures to be implemented in the MSUCOM clinic moving forward. On July 30, 2014, Strampel forwarded Moore an email between him and Nassar that indicated that Strampel had counseled Nassar and provided him with the protocols Moore suggested, and Strampel informed Nassar that they were to be implemented moving forward. (Strampel Trial Transcript, June 6, 2019, pp. 35-36.)

On September 12, 2016, the *Indianapolis Star* article was published that contained Reporter 1's allegations against Nassar. On September 16, 2016, Strampel sent Nassar a letter stating that MSU had received claims of Nassar's violation of the requirements put in place after the 2014 Investigation. (OCR Findings, p. 16.) On September 20, 2016, Strampel terminated Nassar's employment.

Strampel was on notice of a complaint or concern of sex discrimination by Nassar in May of 2014, but Strampel's notice was not independent and coincided with I3's notice of the same complaint. Accordingly, Strampel's notice postdates MSU's response to a complaint or concern of sex discrimination by Nassar. Strampel is not alleged to have had notice of any other concern or complaint of sex discrimination by Nassar.

Nonetheless, Strampel was the Dean of MSUCOM. In that role, he served as the unit administrator under the then-applicable Sexual Harassment Policy. Under the Policy, "Unit administrators set the tone regarding acceptable conduct and climate within their units" and were

“responsible for processing complaints under this policy in which the alleged harasser is an employee.” Further, the unit administrator and the Department of the employee alleged to have violated MSU policy would be responsible for any interim measures imposed upon the employee during the pendency of the investigation.

v. *Lisa DeStefano*

DeStefano is an MSU professor and the Director of MSUCOM’s Osteopathic Manipulative Medicine Program. On June 20, 2014, Moore interviewed DeStefano in connection with the 2014 Investigation. DeStefano provided a statement based on her medical expertise. DeStefano provided her medical opinion *after* I3 launched a formal investigation into potential misconduct by Nassar. DeStefano followed all applicable obligations and MSU policies in this process. There are no additional allegations or reports that DeStefano was on notice of a complaint or concern of sex discrimination by Nassar independent of her role in the 2014 Investigation, and in her interview with OCR on May 2, 2018, she reported that she had never received a report of concern regarding Nassar outside of the 2014 Investigation.

vi. *Jennifer Gilmore*

Gilmore is an MSU professor and physician. On July 1, 2014, Moore interviewed Gilmore in connection with the 2014 Investigation. Gilmore provided a statement based on her medical expertise. Gilmore provided her medical opinion *after* OIE launched a formal investigation into potential misconduct by Nassar. Gilmore followed all applicable obligations and MSU policies in this process. There are no additional allegations or reports that Gilmore was on notice of a complaint or concern of sex discrimination by Nassar independent of her role in the 2014 Investigation.

vii. *Suresh Mukherji*

Mukherji is the former Chair of the Department of Radiology. On September 16, 2016, Mukherji and Strampel sent Nassar a letter that stated that they were on notice of potential sexual misconduct by Nassar and further stated that Nassar “deviated from . . . required best practices” put in place after the 2014 Investigation. Mukherji and Strampel also co-signed Nassar’s termination letter dated September 20, 2016. (OCR Findings, p. 16.)

There is no allegation that Mukherji had notice of a complaint or concern of sex discrimination by Nassar until September of 2016, when the concern was already being investigated by MSUPD and OIE.

ix. *Theodore Curry*

Curry was Associate Provost and Associate Vice President of Academic Human Resources at MSU until July 5, 2020. There is no allegation that Curry had independent notice of a complaint or concern of sex discrimination by Nassar. Curry became aware of a complaint in 2014 after MSU was actively responding to the complaint and conducting the 2014 Investigation.

Further Responsive Steps

Section III of the Resolution Agreement requires that if MSU's review determines that any of the current or former employees reviewed received a concern or complaint of sex discrimination, MSU must next determine whether that person failed to adequately respond in accordance with all then-applicable laws and University policies. If so, MSU:

[W]ill then determine what further responsive steps, if any, must be taken with regard to that person. The University will document any actions taken in the employee's or former employee's personnel file The University will not be required to engage in actions that are inconsistent with its obligations under governing law and applicable collective bargaining agreements related to the employment relationship and due process concerns stemming from the public nature of the person's employment or former employment.

* * *

Responsive actions to be considered include, but are not limited to, the following: disciplinary proceedings; revocation of tenure; revocation of honorary and other titles; demotion; reassignment; prohibition from University facilities, programs, and activities; removal of benefits; pay reductions; removal of housing benefits; permanent removal from administrative roles; revocation of honorary and other titles; prohibition from University facilities, programs, and activities; and/or other responsive action.

As required under the Resolution Agreement, MSU must further analyze the following individuals and determine what further steps, if any, must be taken with regard to that person:

- Stollak
- Strampel

i. Gary Stollak

A preponderance of the evidence supports that Stollak, as a private practitioner and outside the scope of his work as an MSU employee, had notice in 2004 of a complaint or concern of sexual abuse by Nassar and failed to notify authorities of a report of suspected child abuse as required under the law. **Further responsive steps:** Stollak retired from MSU in 2010. In accordance with MSU policy and Items II.D and II.H of the Resolution Agreement, a summary of this review will be documented in his personnel file. Additionally, a restricted hire notation will be entered in Stollak's file.

ii. William Strampel

Strampel has been convicted of two counts of willful neglect of duty for (i) allowing Nassar to continue to see patients during the pendency of a 2014 Investigation, and (ii) failing to enforce protocols resulting from the 2014 Investigation. The jury also convicted Strampel of the common law offense of misconduct of a public official, a felony. Accepting these convictions for

purposes of this review, a preponderance of the evidence supports that Strampel failed to adequately respond to the 2014 Investigation regarding Nassar. ***Further responsive steps:*** In February 2018, MSU took steps to ensure that Strampel would not return from medical leave, initiating dismissal for cause proceedings and securing Strampel's retirement effective June 30, 2018. The retirement agreement did not allow Strampel to receive emeritus status, a traditional and prestigious honor for retiring faculty. Strampel also did not receive benefits typically awarded upon retirement. In accordance with MSU policy and Items II.D and II.H of the Resolution Agreement, a summary of this review will be documented in his personnel file. Additionally, a restricted hire notation has already been entered in Strampel's file.