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February 16, 2018

Dear Senators Moran and Blumenthal,

I am writing on behalf of USA Swimming in response to your February 2, 2018 letter. USA Swimming shares your objective to protect the health and safety of athletes through comprehensive and effective preventative and responsive efforts. We appreciate the opportunity to share some of our policies and practices with you.

I have used my best efforts to be as accurate and responsive as possible; however, my responses are based on reasonably available information and are not intended to, and do not, capture every event related to your questions, nor are they an exhaustive description of events discussed.

With respect to questions two, three and four, I have limited USA Swimming's responses to the relevant context agreed upon by Max Cobb, on behalf of the NGB Council, and Conor McGrath, on behalf of Senator Moran.

Should you require any additional information from USA Swimming, please let me know.

Best regards,

Tim Hinchey III
USA Swimming Chief Executive Officer

1. What reporting protocols for child and sexual abuse allegations are currently in place to ensure that all reports receive fair, timely, and thorough review by all appropriate parties, including law enforcement?

Since 2010, USA Swimming members have been required “to promptly report any incident of sexual misconduct ...” to USA Swimming and, effective July 1, 2017, to the US Center for Safe Sport. “Reporting must occur when an individual has firsthand knowledge of misconduct or where specific and credible information has been received from a victim or knowledgeable third party.”¹

USA Swimming requires athlete protection training of all its non-athlete members (approximately 35,000 individuals). USA Swimming's athlete protection training includes reporting requirements and information about how to report, and the training is required to be renewed every other year.²

¹ 2018 USA Swimming Rules and Regulations, Article 306 Sexual Misconduct Reporting Requirements, Section 306.1.

<https://www.usaswimming.org/docs/default-source/rules-regulations/2018-rulebook.pdf>

² 2018 USA Swimming Rules and Regulations, Article 502 Membership, Section 502.6.

<https://www.usaswimming.org/docs/default-source/rules-regulations/2018-rulebook.pdf>

USA Swimming accepts reports through any communication method used by the reporting party, such as mail, phone, email, text message, or online reporting form. USA Swimming's website provides detailed information on how to report what and where available at www.usaswimming.org/report. We accept anonymous reports and all reports are confidential.

Also since 2010, USA Swimming policy requires the organization to report any incident of child sexual abuse to the relevant law enforcement agency. Since that time, USA Swimming Safe Sport staff has either made a report to law enforcement or confirmed that a report to law enforcement has already been made when it has received notice of an allegation.

To ensure that the necessary individuals at the local level have knowledge of alleged misconduct and can take appropriate employment action, USA Swimming's rules also require USA Swimming to disclose the initiation of the hearing process regarding alleged Code of Conduct violations, including sexual misconduct.³ As a matter of practice, USA Swimming notifies the relevant member club when one of its coaches or other non-athlete members is being investigated for misconduct.

Finally, USA Swimming welcomes the enactment of the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 into law and already substantially complies with its requirements.

2. Are there special accommodations to account for volunteers that are separately employed by non-NGB institutions, like the case of Dr. Nassar who was employed by MSU, in these reporting practices?

USA Swimming has approximately 35,000 non-athlete members. Individuals required to register as non-athlete members by USA Swimming's Rules and Regulations include: coaches, officials, meet directors, team chaperones, individuals with any ownership interest in a member club, individuals with password access to USA Swimming's membership database, members of the USA Swimming Board of Directors, members of any USA Swimming national committee, members of the USA Swimming House of Delegates, USA Swimming headquarters staff, and "employees and volunteers of USA Swimming, Zones, LSCs, and member clubs who interact directly and frequently with athletes as a regular part of their duties ..."⁴ which includes team physicians. All non-athlete members are designated as "Covered Individuals"⁵ to the US Center for Safe Sport and are therefore under its jurisdiction and subject to its mandatory reporting requirements.

All non-athlete members of USA Swimming are bound by the reporting requirements and procedures outlined in the response to question 1.

3. Has your organization ever utilized an NDA to enforce confidentiality against any athlete, volunteer, or employee in the past? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual NDA used by your organization.

³ 2018 USA Swimming Rules and Regulations, Article 410 Confidentiality, Section 410.3.

<https://www.usaswimming.org/docs/default-source/rules-regulations/2018-rulebook.pdf>

⁴ 2018 USA Swimming Rules and Regulations, Article 305 Athlete Protection Policies, Section 305.5.

<https://www.usaswimming.org/docs/default-source/rules-regulations/2018-rulebook.pdf>

⁵ SafeSport Code for the US Olympic and Paralympic Movement, Section II, Item E, "Covered Individual".

<https://77media.blob.core.windows.net/uscss/1514557352240.safesport-code.pdf>

Upon information and belief, USA Swimming has never utilized a non-disclosure agreement to enforce confidentiality against any athlete, volunteer, or employee in the context of Safe Sport or involving allegations of child abuse or child sexual abuse.

4. *Has your organization ever utilized additional binding agreements other than NDAs with athletes under your purview? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual agreement used by your organization.*

USA Swimming has been a defendant in civil litigation relating to allegations of abuse made by athletes. Some of those matters were resolved through agreement between or among the parties. Those agreements typically contain confidentiality provisions that apply to the terms of the agreement (or often just the settlement amount); however, such confidentiality provisions do not apply to the athletes' abilities to discuss their experiences, including the abuse suffered.

Additionally, USA Swimming has addressed a number of peer-to-peer cases of sexual misconduct involving minor athletes. In those instances, USA Swimming seeks to achieve a cooperative resolution with the athlete, rather than proceed through its adversarial hearing process. The resolution of those cases has involved binding agreements with the offending athletes regarding their membership status and ability to participate in the organization.

Follow up: Address all cases in which an NGB might have required an athlete to participate in forced binding arbitration.⁶

Under the Ted Stevens Olympic and Amateur Sports Act, NGBs are required to participate in binding arbitration where an athlete (or other participant) alleges that the NGB has denied him or her an opportunity to participate in certain competitions and where a member alleges that the NGB has violated certain provisions of the Sports Act or USOC Bylaws. In these cases, it is the athlete (or other participant) who chooses whether to require an NGB to participate in binding arbitration. There has been at least one arbitration involving athlete members of USA Swimming (*Kirk v. USA Swimming (2001)*) related to a team selection dispute.⁷ In the context of Safe Sport, USA Swimming has been a party to four arbitrations, all of which were initiated by former member coaches removed from the organization for engaging in sexual misconduct with athletes.

5. *Since the recent lawsuits filed against USOC, USAG, and MSU for organizational failures to investigate, discipline, or remove Dr. Nassar after complaints of sexual abuse, has your organization taken any additional steps to improve the transparency, efficiency, and effectiveness of its criminal misconduct reporting mechanisms?*

USA Swimming's reporting mechanisms (as described above) have been in place since 2010. Consequently, no subsequent action was taken following the recent lawsuits filed in connection with Dr. Nassar's sexual abuse of gymnasts.

⁶ Request made pursuant to email correspondence from Anna Yu, on behalf of Senator Blumenthal, to Max Cobb, on behalf of the NGB Council, dated February 7, 2018.

⁷ Arbitration and Hearing Panel Cases in the Olympic Movement are available here: <https://www.teamusa.org/Footer/Legal/Arbitration-and-Hearing-Panel-Cases>

- 6. Please identify any circumstance in which USOC did not take any action following a report of criminal behavior from your organization. To the extent possible, please provide all details regarding the justification and circumstances involved in USOC's decision not to act.**

Notifying the USOC of alleged misconduct by members of USA Swimming is not an established part of USA Swimming's processes. Therefore, we are not aware of any circumstances in which USA Swimming provided a report of criminal behavior directly to the USOC. Instead, USA Swimming followed its Rules & Regulations regarding the handling of sexual misconduct cases until July 1, 2017 when requirements for reporting such cases to the Center for Safe Sport (but not the USOC) went into effect.

- 7. In 2017, USOC engaged with a third-party consultant to assess compliance with SafeSport policies and procedures within USOC and all of its NGBs and High Performance Management Organizations (HPMO). Please describe the report issued for your organization, including any recommendations for full compliance. If additional recommendations were issued, what actions were taken by your organization? Are there any remaining recommendations that your organization has yet to fully implement?**

The USOC's SafeSport Audit of USA Swimming, dated September 2017, found, "USA Swimming's policies and procedures met the requirements of the Athlete Safety Standards" without observation. A copy of USA Swimming's report is enclosed for your reference.