

RESPONSES OF KERRY PERRY
CEO AND PRESIDENT, USA GYMNASTICS

TO QUESTIONS FOR THE RECORD

MAY 23, 2018 HEARING BEFORE
HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
EXAMINING THE OLYMPIC COMMUNITY'S ABILITY TO PROTECT ATHLETES FROM SEXUAL ABUSE

August 31, 2018

The Honorable Gregg Harper

1. According to various reports, some NGB members that have been accused of sexual abuse have been allowed to continue coaching or competing, and having contact with minor athletes, even while they are under investigation. The purpose of interim measures is to prevent an alleged abuser from continuing the pattern of abuse during the period of time in which that individual is under investigation. Is it your practice to take an interim measure, such as suspending the member, while that individual is under investigation?

Response: According to the SafeSport Code for the U.S. Olympic and Paralympic Movement, the U.S. Center for SafeSport (the "Center") maintains exclusive jurisdiction over the investigation and resolution of all matters involving allegations of sexual misconduct and/or abuse. The Center's authority to impose interim measures, however, is not exclusive. The SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (the "SafeSport Procedures") state that National Governing Bodies ("NGBs"), which include USA Gymnastics, are not prohibited by the SafeSport Procedures from taking appropriate interim measures upon notice of an imminent threat of harm. It is USA Gymnastics' policy to assess each case and impose interim measures, such as suspension, when the Gymnastics community may be at risk. In the case of complaints originating with the Center, however, USA Gymnastics has limited information on which to assess the case and may have to rely on the Center's notification as the basis for taking an interim measure.

a. If so, what are the types of interim measures that might be used and what determines which type of interim measure is used?

Response: Interim measures may include, but are not limited to, altering training schedules, providing chaperones, implementing contact limitations, imposing restrictions on a member club, or suspensions. In cases where USA Gymnastics recognizes a threat of imminent harm, USA Gymnastics will issue an immediate suspension, effectuating total prohibition from any contact with members, member clubs, or sanctioned events.

- b. If an allegation is turned over to the U.S. Center for SafeSport, what authority does USA Gymnastics have to implement interim measures while the Center investigates?**

Response: Please refer to the answer to Question 1 above.

- i. Does the nature of the interim measure adopted differ based on whether the NGB or the Center is conducting the investigation?**

Response: The Center has exclusive jurisdiction over investigations of sexual abuse and/or misconduct.

- c. Is some measure taken in every case, or is this determined on a case-by-case basis? If a measure is not taken in some cases, why not?**

Response: USA Gymnastics assumes that “measure” as used in Question 1(c) is intended to refer only to interim measures. Interim measures imposed by USA Gymnastics are decided on a case-by-case basis. USA Gymnastics may impose interim measures to ensure the safety and well-being of the gymnastics community or where an allegation is sufficiently serious that the accused individual’s continued participation could be detrimental to the sport or its reputation. USA Gymnastics cannot answer on behalf of the Center.

- d. If an interim measure is imposed, how quickly are such interim measures implemented?**

Response: In emergency circumstances, an interim measure can be imposed immediately—even prior to notice from the Center. Absent emergency circumstances, the accused party may request a hearing, which is conducted on an expedited basis. USA Gymnastics cannot answer on behalf of the Center regarding its process and timeline for implementing interim measures.

- e. Whose responsibility is it to enforce the interim measures? What are the potential consequences if an interim measure is not adequately enforced?**

Response: It is the responsibility of USA Gymnastics to notify the relevant or affiliated member club of imposed interim measures. These members are expected to ensure that the imposed interim measures are followed. Notice is also provided to the general public via the USA Gymnastics website. USA Gymnastics may revoke a club’s member status for disregarding interim measures if certain criteria are met.

2. Recently, USA Gymnastics terminated its agreement with Karolyi Ranch. During the hearing, you stated that you did not want the athletes to have to return to such an emotionally painful place where they were abused. I then asked you why USA Gymnastics renewed its contract with Karolyi Ranch in Spring of 2017 even though USA Gymnastics was aware of the allegations against Nassar in 2015. You indicated that you could not answer the question and you hoped that it was one of the questions that will be answered through the independent investigation with Ropes & Gray. Can you answer this question today? If not, when do you believe you will be able to answer the question?

Response: My tenure at USA Gymnastics began on December 1, 2017. I was not with the organization in the spring of 2017 when it renewed the Karolyi Ranch lease; thus, I do not have personal knowledge about why that decision was made. The Ropes & Gray independent investigation remains ongoing, and we anticipate reviewing the findings—including those related to the renewal of the Karolyi Ranch lease—when the investigation is complete.

3. During the hearing, Representative Costello asked you what types of background check results would lead USA Gymnastics to deny or terminate an individual’s membership. Can you please clarify the types of background check results that would lead USA Gymnastics to deny or terminate an individual’s membership?

Response: USA Gymnastics has partnered with the National Center for Safety Initiatives (“NCSI”) to perform background screening for members of USA Gymnastics. NCSI will issue results to the applicant and USA Gymnastics based upon a “Red Light”/“Green Light” system. A Red Light finding results from reportable convictions, pending dispositions or registrations, or disclosures of convictions of any of the following offenses or registrations:

- Any felony (any crime punishable by confinement of greater than one year);
- Any lesser crime involving force or threat of force against a person;
- Any lesser crime in which sexual relations is an element, including “victimless” crimes of a sexual nature (including pornography, indecent exposure, or lewd behavior);
- Any lesser crime involving controlled substances (not paraphernalia or alcohol);
- Any lesser crime involving cruelty to animals;
- Any sex offender registrant; or
- Any lesser crime involving harm to a minor.

Additionally, a Red Light finding also results from any charge involving a sexual offense or harm to minors, even if it resulted in a disposition favorable to the applicant, including but not limited to, pardons or dismissals after deferred adjudication. These criteria are contained within the guidelines developed by the National Council on Youth Sports (“NCYS”) and have been adopted by USA Gymnastics. We understand and believe that the NCYS considers this criteria for a Red Light finding to be consistent with the principles of the federal PROTECT Act of 2003.

Once informed of an applicant’s Red Light finding, a USA Gymnastics review panel will evaluate the Red Light status. Absent evidence of a pardon, mistaken identify, or an overturned conviction on merit by a court of law, the review panel will uphold the NCSI’s Red Light determination for the following offenses: offenses involving an element of control; stalking; voyeurism; public indecency involving sexual activity; invasion of privacy or violation of a restraining, protective, or similar judicial order; or any category of “special misconduct”¹ as defined in the Bylaws. Similarly, and also absent evidence of a pardon, mistaken identity, or an overturned conviction

¹ Article 9 of the Bylaws defines Special Categories of Misconduct to include (i) listings on any state or federal sex offender list or registry; (ii) status as a sex offender in any applicable state or federal jurisdiction; or (iii) convictions of or guilty pleas, statements of no contest, or sentencing to any affirmative terms related to a criminal charge or indictment issued by an applicable city, county, state, or federal jurisdiction, and such charge or indictment directly or indirectly involved or related to sexual misconduct, child abuse, or conduct that is a violation of any law or regulation that is specifically designed to protect minors.

on merit by a court of law, the review panel will uphold NCSI's Red Light determination for felony drug offenses; violent offenses; offenses causing bodily injury; or operating while intoxicated felonies that include prior convictions and/or serious bodily injury or death, unless exceptional circumstances are shown and the applicant can meet his or her burden of proof beyond a reasonable doubt. For offenses other than those described above, the review panel may consider criteria including, but not limited to: the age of the individual at the time the offense occurred; the amount of time that has lapsed since the offense occurred; the severity of the offense (misdemeanor or felony); crime classifications that are inconsistent from state to state; criminal history or pattern of offenses; status of the case; evaluation of appeal request, including recommendation letters and support documentation; evaluation of whether an individual may pose a threat to athlete welfare; and consistent policy application.

The Honorable Michael C. Burgess

1. Larry Nassar was licensed in the state of Michigan, but treated gymnasts at the Karolyi Ranch in Texas without a Texas medical license. He also treated gymnasts during competitions abroad, including at the World Championships and Olympics.

a. How does the United States Olympic Committee and its National Governing Bodies ensure that its physicians are compliant with licensing obligations?

Response: USA Gymnastics guidelines require that all National Medical Staff members meet current regulatory, licensing, insurance, and other requirements to practice and be in good standing with the appropriate state and/or national Boards. Potential USA Gymnastics National Medical Staff professionals must submit a resume or curriculum vitae, which the Athlete Care Coordinator or designated member of the USA Gymnastics Medical Task Force will review to verify that the applicant has the appropriate medical certifications, licenses, and experience. USA Gymnastics cannot answer on behalf of the United States Olympic Committee or other National Governing Bodies.

b. Is parental consent required for amateur athletes to be treated by a team doctor? Are parents provided with information, such as status of medical license, for these providers?

Response: A Consent to Treat form must be completed by participating gymnasts or parents or guardians of minors. USA Gymnastics will provide information about the National Medical Staff, such as the status of a physician's medical license, upon the request of an athlete, parent, or guardian.

2. Some victims of Larry Nassar have expressed concern that USA Gymnastics personnel who knew about the abuse may still be actively involved in the sport. Were all individuals involved in the Junior and Senior level national teams investigated following allegations of misconduct?

a. If not, why not? If so, do you plan to follow up on the continuing concerns of these athlete victims?

Response: Over the last several months, USA Gymnastics has undergone a leadership transformation, removing and replacing the entire Board of Directors and the CEO and President. USA Gymnastics also underwent a reorganization that resulted in staff changes in May 2018. It is the intent of USA Gymnastics to ensure that, going forward, the leadership reflects the organization’s mission, protecting athletes and creating a culture of empowerment.

USA Gymnastics will take swift and decisive action if it becomes aware, via the ongoing Ropes & Gray independent investigation or otherwise, that any USA Gymnastics member who works with the Women’s National Team or otherwise was involved in sexual misconduct and/or abuse, or failed to report the same.

The Honorable Chris Collins

1. Non-disclosure agreements are widely used in business resolutions, and serve as useful tools in not only creating confidential relationships between parties, but also protecting certain confidential and proprietary information. Whether it be unilateral or multilateral, they vary in nature — protecting trade secrets and intellectual property, formalizing a relationship between collaborating organizations, or serving as an added layer when resolving disputes between individuals and entities. Within the Olympic community, various news sources revealed some sexual assault victims are bound by NDAs as part of their settlement agreement. One of the most widely publicized instances is the case of Olympic gold medalist, McKayla Maroney, who signed an NDA with USA Gymnastics in late 2016. However, USA Gymnastics chose not to seek action against Maroney when she breached her NDA earlier this year by speaking at the sentencing hearing of serial child molester, Larry Nassar. I would like to better understand the driving factors in NDA utilization within the Olympic community, as it may be indicative of protecting the brand and management more so than treating the problem at its source — stopping sexual abuse.

- a. How many NDAs has your organization entered into since 2005 and when was the most recent NDA or settlement entered into? Of those NDAs, how many were minors at the time of the dispute?**

Response: While USA Gymnastics has entered into a small number of settlements that contain confidentiality agreements, we are aware of only one NDA entered into since 2005. The NDA was executed in 2016 as part of a mutual settlement agreement (“the 2016 Agreement”). The other party to the 2016 Agreement was not a minor. USA Gymnastics has since released the other party from provisions of the 2016 Agreement that would prohibit the athlete’s ability to speak publicly about the abuse.

- b. As to the nature of these NDAs or settlements, do the agreements prohibit the victim from speaking about the details of the settlement — such as the amount of any financial award — or do they prohibit the victim from speaking about the details of the case — such as the fact that they were abused, where and when the abuse occurred, who their abuser was, etc.? Are any of these NDAs entered into in lieu of the responding party being given appropriate sanctions, such as being suspended or banned from the NGB?**

Response: USA Gymnastics released the other party from provisions of the 2016 Agreement that would prohibit the athlete from speaking publicly about the abuse. The 2016 Agreement's nondisclosure provisions remain enforceable as to the details of the settlement, such as the amount of any financial award. The 2016 Agreement was not executed in lieu of sanctions against Larry Nassar, including permanently banning Nassar from USA Gymnastics.

Similarly, the confidentiality clauses of the settlement agreements referenced above related to the details of the settlement; these clauses are not intended to prohibit the athlete from speaking publicly about the abuse.

USA Gymnastics will not enter into, or enforce, nondisclosure agreements that prevent or prohibit victims of sexual abuse from speaking publicly about their experiences.

The Honorable Frank Pallone, Jr.

1. The U.S. Olympic Committee's current NGB Athlete Safety Policy requires sports governing bodies to conduct criminal background checks at least once every two years on anyone who is in a position of authority over an athlete or who has frequent contact with an athlete. However, the policy does not provide specific direction on how to design background check programs. For example, it does not specify whether all sports governing bodies should use a common background check provider. It similarly does not specify whether governing bodies should require background or reference checks of all staff and volunteers. What does USA Gymnastics do beyond the minimum requirements of the Athlete Safety Policy when conducting criminal background checks and reference checks?

Response: As a condition to being granted the privilege of membership in USA Gymnastics, individuals over the age of 18 applying for professional or instructor memberships² must submit to criminal background screening. USA Gymnastics also checks at least two references for each applicant. Background checks are also required for all directors and officers, board members, members of standing committees and special committees, individuals serving in any elected capacity on a national, regional, or state-level USA Gymnastics committee, or any individual representing USA Gymnastics in a leadership capacity including, but not limited to, international representatives, national coaching staff members/clinicians, medical staff members, meet directors or referees, presenters at national or regional congresses, instructors for USA Gymnastics University, and staff members. USA Gymnastics, in its sole discretion, may require other members or individuals to complete background checks.

USA Gymnastics continually monitors and reviews individuals subject to criminal background searches, with the primary goal of safeguarding gymnasts and other participants through proactive measures while conforming to legal norms and industry best practices. Background screening must be performed upon application and every two years thereafter.

The background screens performed by USA Gymnastics, in connection with NCSI, check two independent national databases, the sex offender registries of all available states, the federal

² Personal coaches of athletes participating in USA Gymnastics sanctioned events, designated training camps, and domestic/international competitions must be members of USA Gymnastics.

terrorist database, and county criminal records of all jurisdictions of residence in the past seven years, as well as validate the individual's social security number, name, and address.

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recommendation letters and support documentation; evaluation of whether an individual may pose a threat to athlete welfare; and consistent policy application.

In addition, USA Gymnastics has suggested that each Member club should adopt its own background check policies, in addition to the requirements of USA Gymnastics.