MICHIGAN STATE
UNIVERSITY

December 6, 2017

The Honorable Bill Schuette
Attorney General
State of Michigan
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

DEPT. OF THE
ATTORNEY GENERAL

DEC 0 6 2017

Assigned to

Dear Attorney General Schuette:

I write in response to your letter of December 4, 2017 regarding your office's prosecution of Lawrence Nassar and your request for the results of attorney Patrick Fitzgerald's work on behalf of the University. As the prosecutions and criminal investigations of Nassar now come to fruition, a successful result of the cooperation between the MSU Police Department, your office, the FBI, and United States Attorney's Office, the University has been and remains ready, willing, and able to fully cooperate with any inquiry by law enforcement authorities. Accordingly, I have asked Mr. Fitzgerald to respond to your request. He will do so under separate cover.

Sincerely,

Lou Anna K. Simon, Ph.D.
President

Office of the President

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December 6, 2017

The Honorable Bill Schuette
Attorney General of Michigan
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Dear Attorney General Schuette:

We represent Michigan State University ("MSU" or "University"), and write in response to your letter of December 4, 2017, to Lou Anna K. Simon, President of MSU.

By way of background, the law firms of Skadden, Arps, Slate, Meagher, and Flom LLP and Miller, Canfield, Paddock, and Stone P.L.C. were retained last year to assist MSU in responding to allegations of misconduct concerning Dr. Larry Nassar. The firms were retained to facilitate MSU's cooperation with appropriate law enforcement and regulatory authorities, counsel MSU on any internal reviews conducted to make sure they were carried out in a manner that will best assist the University's response and not compromise any law enforcement or regulatory actions concerning Nassar, and to provide advice and assistance in anticipation of and with respect to any civil litigation. As part of that effort, the firms were tasked with reviewing the underlying facts.

At all times, MSU and the law firms have been acutely aware of the egregious nature of Nassar's conduct and the need to cooperate with law enforcement. From the beginning, MSU directed the law firms that if in the course of their representation they found any evidence that anyone at MSU other than Nassar knew of Nassar's criminal behavior and did anything to conceal or

facilitate it, then that evidence of criminal conduct would be reported immediately to the MSU administration, the Board of Trustees, and to appropriate law enforcement authorities.

Given the confusion caused by a press campaign involving some of plaintiffs' counsel, we provide some clarifying context. First, plaintiffs' counsel have publicly compared this case with the matter involving Penn State University.[1] Although both involve horrible actions by disturbed individuals—Sandusky and Nassar—the role of the University here is different. In the Penn State matter, it appears that high-ranking officials were aware of sexual abuse by an employee, decided to report the abuse to law enforcement, and then changed their minds and did not report the abuse. As a result of their conscious decision not to report sexual abuse of which they were clearly aware, the abuse continued. For that conduct, certain officials have been criminally convicted.

In the MSU matter, we believe the evidence will show that no MSU official believed that Nassar committed sexual abuse prior to newspaper reports in late summer 2016. Indeed, even after reports of sexual abuse surfaced in the press and MSU fired Nassar, many in the community strongly disbelieved the allegations given that Nassar lived a "double-life," as the United States Attorney's Office aptly described it in a recently filed sentencing memo.[2] On the surface, Nassar was a world-renowned doctor for elite athletes, a husband, and a father. But underneath that veneer lurked a predator. It is clear that Nassar fooled everyone around him—patients, friends, colleagues, and fellow doctors at MSU. While many in the community today wish that they had identified Nassar as a predator, we believe the evidence in this case will show that no one else at MSU knew that Nassar engaged in criminal behavior. On a number of occasions, Nassar was even devious enough to deceive parents who were present in the room during the abuse. Given those facts, to malign University administrators by asserting that they must have known about Nassar's misconduct and assume that they behaved like criminals in a cover-up is just flat wrong.[3] Yet plaintiffs' attorneys have used

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1 *See, e.g.*, Press Release, Manly, Stewart, & Finaldy, Victim's Attorneys Manly, Stewart & Finaldi Demand Release of Michigan State University's Internal Investigation of Larry Nassar Case (Oct. 4, 2017), http://www.californiasexualabusefirm.com/documents/10.4.2017-MSU-Press-Release.pdf; Press Release, David Mittleman, MSU to Take a Cue from PSU? (Mar. 13, 2017), http://www.churchwyble.com/msu-to-take-a-cue-from-psu/

2 U.S. Sentencing Mem. at 6, *United States v. Nassar*, No. 1:16-CR-242 (W.D. Mich. Nov. 30, 2017), ECF. No. 44.

3 *See, e.g., Ex-Jurupa Valley player sues doctor, alleges abuse*, The Press Enterprise (Dec. 21, 2016), http://www.pe.com/2016/12/21/ex-jurupa-valley-player-sues-doctor-alleges-abuse/; Press Release, David Mittleman, MSU and Twistars Enabled Larry Nassar's Ability to Sexually

baseless allegations of criminal conduct and a cover-up to mount a campaign to force MSU to divulge information publicly so that they can continue to try their case in the press.[4] The confusion has gotten to the point where a press article can decry the lack of an independent investigation while casually mentioning – twice -- that in fact there was an FBI investigation.[5] And the same article notes that the FBI review led to no charges without allowing for the idea that the lack of charges might reflect that there was no criminal coverup.

Like any other attorney-client relationship, it was and is important for MSU to maintain applicable privileges when facing litigation that, according to one plaintiffs' counsel, could cost MSU over $1 billion.[6] We will not be goaded into doing otherwise by plaintiffs' attorneys. We intend to continue to represent MSU appropriately in this matter to avoid a legal judgment against the University that is not supported by the law and which, by one plaintiffs' lawyer's calculation, would be very costly for a great University that has a duty to serve the citizens of the state of Michigan.

As to the demands by plaintiffs' counsel for an "investigative report," MSU cannot produce an investigative report for a simple reason: as has been stated publicly before, there is no investigative report. The law firms were retained to represent MSU in its response to allegations related to Nassar's misconduct and to review the underlying facts and disclose any evidence that others knowingly assisted or concealed his criminal conduct. Had we found such conduct, we would have reported such evidence to law enforcement promptly. And much as there is no "investigative report," there is no document that constitutes "Fitzgerald findings."

Regardless, we emphasize that MSU has been and remains ready, willing, and able to cooperate with any inquiry by the United States Attorney's Office, the Federal Bureau of Investigation, the Michigan State Police, and your Office. If

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Assault, Abuse, and Molest Young Girls (Jan. 16, 2017), http://lansing.legalexaminer.com/medical-malpractice/msu-and-twistars-enabled-larry-nassars-ability-to-sexually-assault-abuse-and-molest-young-girls/

[4] *See, e.g., Nassar Accusers to address media after plea hearing Wednesday*, WILX News (Nov. 22, 2017), http://www.wilx.com/content/news/Nassar-Accusers-to-address-media-after-plea-hearing-Wednesday-459203763.html

[5] Nolan Finley, *MSU cost in gymnast abuse scandal could top $1B*, Detroit News, (Dec. 2, 2017), http://www.detroitnews.com/story/opinion/columnists/nolan-finley/2017/12/02/cost-msu-gymnast-scandal/108247652/

[6] *Id.*

either you or any member of your staff would like to be briefed on our internal review and how it relates to any aspect of your criminal inquiry, pursuant to a procedure which does not waive any applicable privileges in civil litigation, we are more than willing to do so at your earliest convenience. Indeed, while your letter asked for a briefing upon the conclusion of our review, we are willing to provide a briefing in advance of that time if you would prefer.

Sincerely,

Patrick J. Fitzgerald

cc: Col. Kriste Kibbey Etue, Michigan State Police
Special Agent in Charge David P. Gelios, FBI
U.S. Attorney Andrew B. Birge, Western District of Michigan