

# **EXHIBIT A**

**USC Student Health Center Settlement  
Tier 2 and 3 Claim Severity Assessment and  
Allocation Plan**

**Final Report of Panel**

**March 24, 2021**

**Table of Contents**

I. Introduction ..... 4

II. Definitions ..... 4

III. Background ..... 5

    A. Case Against Dr. George Tyndall..... 5

    B. The Class Action Lawsuit and Settlement ..... 6

    C. Goals of the Tyndall Severity and Injury Allocation ..... 6

    D. The Claims Process and Allocation Plan ..... 7

    E. Severity Assessment and Team..... 8

        1. The Special Master’s Panel ..... 8

        2. Claims Administration ..... 10

        3. Special Master Team Interviewers and Coders ..... 10

IV. Assessing the Severity of Injury ..... 10

    A. The Claim Form ..... 11

    B. The Interview ..... 11

V. The Special Master’s Team Portal ..... 11

VI. Special Master Team Interviewer Recruitment, Selection, Training, and Monitoring..... 12

    A. Recruitment Efforts ..... 12

    B. Training..... 12

        1. Training Manual and Webinar ..... 12

        2. Homework ..... 12

    C. Ongoing Quality Assurance ..... 13

        1. Panel Review of Claim Form Coding ..... 13

        2. Review of Random Interviews by Panel Members..... 13

        3. Interviewer Supervision (conference calls)..... 13

    D. Special Master Team Communication ..... 13

    E. Scheduling of Interviews for Tier 3 Claimants..... 14

VII. Special Claimant Circumstances..... 14

VIII. Severity Assessment ..... 15

    A. Claim Form and Coding Matrix..... 15

    B. Analyzing the Claim Form..... 17

C. The Interview ..... 17

D. Analyzing the Interview ..... 19

IX. Determining Allocations for Claimants ..... 20

A. Allocations for Tier 2 Claimants ..... 20

B. Allocations for Tier 3 Claimants ..... 20

## I. Introduction

A Settlement reached in a class action lawsuit against the University of Southern California (“USC”), its Board of Trustees and with George M. Tyndall, M.D. (“Dr. Tyndall”) established a Settlement Fund of \$215 million. This Settlement is for women who were seen for treatment by Dr. Tyndall at the USC Student Health Center during the period from August 14, 1989 to June 21, 2016 (a) for women’s health issues; or (b) whose treatment by Dr. Tyndall included an examination by him of her breast or genital areas; or (c) whose treatment included the taking of photographs or videotapes of her unclothed or partially clothed body.

In order to assess the severity of damages and allocate the Settlement fairly among Settlement Class Members, the Court appointed a Special Master as chair of a three-person Panel as well as JND Legal Administration as Settlement/Claims Administrator. This Final Report from the Special Master’s Panel describes the background and context of the case, the make-up of the Panel and Claims Administrator, the damages assessment process developed by the Panel, how that process was put into operation, and how allocations for each member of the Class were determined.

In this report, claimants may be referred to as “women” and the pronouns “she” and “her” are used for simplicity, although the Panel recognizes that these gender identifiers may not be used by all claimants.

## II. Definitions

- 1. “Allocation Plan” means the allocation plan approved by the Hon. Stephen V. Wilson.
- 2. “Boundary violations” means, but is not limited to, inappropriate physical or verbal conduct that falls outside of the physician-patient relationship or otherwise violates applicable professional standards of care.
- 3. “Claimant(s)” means a Settlement Class Member who was Pre-Identified or who completed a qualifying Statement of Settlement Class Membership Form by November 8, 2019 or whose late claim was approved by the Special Master.
- 4. “Claim Form” means the Tier 2 and Tier 3 Claim Form.
- 5. “Class” means the Settlement Class certified by the Court, and comprises all women seen for treatment by Dr. George M. Tyndall at the University of Southern California Student Health Center during the period from August 14, 1989 to June 21, 2016 for women’s health issues, or whose treatment by Dr. Tyndall included an examination of her breast or genital areas, or whose treatment included taking photographs or videotapes of her unclothed or partially clothed body.
- 6. “Class Counsel” means the law firms of Hagens Berman Sobol & Shapiro LLP,

Girard Sharp LLP, Lieff Cabraser Heimann & Bernstein LLP, Sauder Schelkopf LLC, and Kohn, Swift & Graf, P.C., appointed by the Court to represent the Class.

- 7. “Settlement and Claims Administrator” or “JND” means JND Legal Administration LLC, retained by Class Counsel and approved by the Court.
- 8. “Legally Authorized Representative” means a personal representative, administrator of a deceased Class Member’s estate, a guardian, conservator or next friend of an incapacitated Class Member, person with an executed durable or partial power of attorney, or any other legally appointed person responsible for handling the business affairs of a Class Member.
- 9. “Notice” means the court-approved Settlement Notice notifying Pre-Identified and Potential Class Members of actions and deadlines.
- 10. “Settlement Amount” means the sum of \$215,000,000.00.
- 11. “Settlement Class Member” means any Class Member who does not opt out of the Settlement, and “Settlement Class” means women who meet the Class definition certified by the Court.
- 12. “Special Master” means the Hon. Irma Gonzalez, who was selected to administer and adjudicate the Tier 2 and 3 Claims Process.
- 13. “Special Master’s Panel” means a panel composed of the Special Master, a forensic psychiatrist (Annie Steinberg, M.D.), and an obstetrician-gynecologist (Susan Ernst, M.D.).
- 14. “Special Master’s Team” means the Special Master’s Panel and support staff.

### **III. Background**

#### **A. Case Against Dr. George Tyndall**

Dr. Tyndall practiced medicine at the USC Student Health Center from August 14, 1989 until June 21, 2016. In 2016, following a complaint by another health care provider at USC, Dr. Tyndall was placed on administrative leave. An independent investigation ordered by USC concluded that his treatment of women at times fell outside what would be considered the prevailing standard of care. Dr. Tyndall was alleged to have had inappropriate physical contact with patients and to have made inappropriate racial and sexual comments. Dr. Tyndall’s employment ended in mid-2017. USC reported him to the Medical Board of California in March 2018.

In May 2018, the Los Angeles Times published a story about the allegations against Dr. Tyndall. Hundreds of women subsequently came forward with additional accusations. On June 26, 2019, Dr. Tyndall was arrested by the LAPD and charged with 29 felonies. He pleaded not guilty and was released on bail. Additional charges have since been filed.

## B. The Class Action Lawsuit and Settlement

The Second Amended Consolidated Class Action Complaint alleges that the chronic, repetitive sexual misconduct committed by Dr. Tyndall over many years constituted not only a profound betrayal of trust, but also an intention to harm innocent and unknowing young women in the form of sexual degradation, objectification for his own stimulation, and infliction of emotional distress. Dkt. 138 ¶¶ 1-3. Dr. Tyndall's sexual misconduct has been alleged to have resulted in varying degrees of confusion, anxiety, depression, avoidance and fear of medical caregivers, shame and humiliation, a loss of trust, and for some women, serious post-traumatic symptomatology. *Id.* at, e.g., ¶¶ 363, 379, 404 486, 636. These actions by Dr. Tyndall have been alleged to remain a contributing factor to the well-being, current clinical status, and prognosis for the future of many of the women he exploited. *Id.*

A class action lawsuit was filed against USC and Dr. Tyndall in May 2018, and was settled in February 2019, resulting in a Settlement of \$215 million for women who were seen for treatment by Dr. Tyndall during the period he practiced at USC. Dr. Tyndall's alleged misconduct included inappropriately touching women's bodies, making inappropriate remarks, and taking photographs of unclothed or partially clothed women, subjecting them to potential physical, mental, and emotional distress. Dkt. 138.

The parties settled the lawsuit for \$215 million (the "Settlement Fund"). The United States District Court, Central District of California (the "District Court"), by order dated February 25, 2020, granted final approval of the Settlement. In reaching the Settlement, the Defendants denied all allegations of wrongdoing. The Settlement, by its express terms, is not to be deemed an admission by any party as to the merits of any claim or defense. Per the Addendum to the Second Amended Settlement Agreement, Settlement Funds were deposited by the Defendants into an Escrow Account.

The Settlement Agreement laid out a three-tier structure based on claimant choice of how they wanted to communicate with the Settlement program. Judge Wilson appointed Judge Irma Gonzalez (Ret.) as the Special Master to adjudicate Tier 2 and 3 claims in conjunction with the Special Master's Panel. Per the Second Amended Settlement Agreement, the Panel was not responsible for adjudicating Tier 1 claims or determining Class Member status. Separate reports from JND have addressed these issues.

## C. Goals of the Tyndall Severity and Injury Allocation

1. To assess severity of injuries for each individual claimant with a process that would ensure fairness and the equitable assessment for each and every individual claimant.

2. To be as inclusive as reasonably possible for all claimants.
3. To provide claimants the opportunity to be heard, if they wished, privately, individually, and confidentially.
4. To capture data from the Claim Form and Tier 3 claim interview (“Interview”) in a manner that will enable analysis of injury severity.
5. To fairly allocate the Settlement Fund, less administrative expenses, to the Tier 2 and 3 Class Members who have submitted a valid claim. The allocation is based on the level of injury as determined by data collected on the Claim Form and through the Interview process.

In the absence of reasonable grounds to the contrary, the Special Master’s Panel assumed each claimant to be acting and responding to all claim-related inquiries honestly and in good faith.<sup>1</sup>

#### D. The Claims Process and Allocation Plan

Allocating Tier 2 and 3 Claim Awards required organizing Class Members according to their level of injury. The level of injury was affected not only by Dr. Tyndall’s actions but also by other factors that impact the degree of harm, such as age at the time of the incident; the duration and frequency of contact; emotional health and stability at presentation; and her available social supports. In addition, some of the women who made up Dr. Tyndall’s patient population were vulnerable due to their age and naivete about the gynecological examination at the time of their interactions with him, and peri-traumatic psychological processes due to the imbalance of power and betrayal trauma after the event as well as after learning of the violations. A history of childhood abuse, psychiatric history, and various types of previous adversity are all relevant factors likely to have enhanced the risk of post-traumatic symptoms for his former patients.

An individual’s subjective response to trauma was felt to be the most relevant and meaningful way to assess harm done in this matter; medical records were not uniformly available for all Class Members and using only post-injury medical records as evidence of harm would also unfairly discriminate against those who did not have the resources to seek help or who experienced barriers to medical and psychological care in the aftermath of their injury.

The Second Amended Settlement Agreement laid out a three-tiered process in which claimants self-determined the degree to which they were willing to disclose and undergo evaluation by the Settlement program. The Settlement also outlined a potential payment range for each tier with any residual amount of the Settlement to be disbursed *pro rata*. The Panel developed a process to assess severity of damage for Tier 2 and 3 claims and allocate the Settlement funds.

The Claim Form was designed to capture information regarding each woman’s experience of and feelings about being a patient of Dr. Tyndall; any inappropriate behaviors or comments he may

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<sup>1</sup> The Special Master’s Panel did not interview USC witnesses or Dr. Tyndall.

have made; the effect of these experiences on their emotional and physical well-being and mental health; and any interactions they may have had with the student health center or other professionals regarding Dr. Tyndall's behavior. The semi-structured Interview was developed by the Special Master's Panel, utilizing a template previously designed by Dr. Steinberg and Ms. Bain for the assessment of injury severity in similar cases. It was designed to provide each Tier 3 claimant the opportunity to express in more detail their experiences and the impact of those experiences on their lives.

At the next phase of Tier 2 and 3 claim award Allocation, data from both the Claim Form and Interview was identified and coded for capture in a database to enable the fair and equitable assessment of damages across all Class members and to determine the allocation of the Settlement for each individual Class Member. Additional documents submitted by Class Members in support of their claims were also reviewed by the Panel prior to making decisions about severity of injury (see Section V).

Consistent with the Settlement, the Special Master's Panel considered data from the Claim Form only for Tier 2 claimants and from both the Claim Form and Interview in determining the severity of injury for Tier 3 claimants. Based on the severity of injury, the Panel recommended appropriate allocations from the Settlement Fund for each Tier 2 and Tier 3 claimant within the guidelines established by the Second Amended Settlement Agreement.

The Settlement stipulated that the decisions of the Special Master's Panel are not subject to appeal.

A total of 2,974 claimants filed valid Tier 2 and 3 claims. After all Claim Forms had been reviewed, the Panel asked Class Counsel and Counsel for USC to consider the Panel's request to reclassify approximately 40 Tier 2 claimants from Tier 2 to Tier 3 based on the severity of injuries reported on their Claim Forms. The Panel reasoned that interviewing these claimants to further assess their experiences could allow them to be compensated at an appropriate amount given their level of injury severity. Class Counsel and Counsel for USC agreed to this request and a Stipulation was filed with the Court and approved by Judge Wilson on December 14, 2020. Thus, of the 2,974 total Tier 2 and 3 claimants, 1,653 are classified as Tier 2 and 1,321 are classified as Tier 3.

## E. Special Master's Team

### 1. The Special Master's Panel

#### *Hon. Irma E. Gonzalez, Special Master*

Hon. Irma E. Gonzalez (Ret.) joined Judicial Arbitration and Mediation Services, Inc. (JAMS) following a judicial career spanning nearly 30 years. She was appointed to the United States District Court for the Southern District of California in 1992, serving as chief judge from 2005 to 2012. Prior to her appointment to the federal bench, Judge Gonzalez also worked as an Assistant United States Attorney in the District of Arizona and the Central District of California, as well as an attorney in private practice. She later served as a United States Magistrate Judge and a San

Diego Superior Court Judge. Judge Gonzalez's fairness and deep knowledge of legal issues allows her to resolve even the most complex and contentious disputes. Judge Gonzalez is an arbitrator, mediator and special master for cases involving a wide range of issues, including business, class action, employment, intellectual property and securities matters, among others.

*Susan Ernst, M.D., Obstetrician-Gynecologist*

Dr. Ernst is an Assistant Professor of Obstetrics and Gynecology at the University of Michigan. She serves as the Chief of Gynecology for the Student Health Services at the University of Michigan and the Director of the Gynecology Clinic for Adolescents and Women with Disabilities at Michigan Medicine. She has 18 years of clinical expertise in college health including sexual assault evaluation and treatment, and also oversees the campus Sexual Assault Response Team (SART) at the University of Michigan. In 2019, she led the task force and published the national guidelines for the American College Health Association on Best Practices for Sensitive Exams and she now leads a task force creating implementation tools for policy, competencies, and educational resources for chaperone and sensitive exam policy development for the American College Health Association. Her previous research in college health includes factors affecting HPV vaccine uptake; knowledge, perceptions, and barriers to Long-Acting Reversible Contraception; and comparison of sexual assault services on campus versus in the emergency department. Dr. Ernst is currently funded to evaluate healthcare resources for transgender students, examine the Implementation of Expedited Partner Therapy (EPT) for sexually transmitted infections, and create a pregnancy decision-making tool for women with disabilities; she is the Principal Investigator of a study of Inappropriate, Disrespectful and Coercive healthcare experiences in the student population at the University of Michigan.

*Annie Steinberg, M.D., Forensic Psychiatrist*

Dr. Steinberg is a triple board-certified adult, forensic, and child and adolescent psychiatrist and pediatrician who is a Clinical Professor in the Department of Psychiatry at the Perelman School of Medicine at the University of Pennsylvania. Dr. Steinberg works in forensic adult, child and adolescent psychiatry, with a special emphasis on post traumatic disorders; abuse, neglect, and sexually reactive youth; attachment disorders; and family, education, mental health, and disability law. Dr. Steinberg directs the Child Forensic Psychiatry track in the Forensic Psychiatry Fellowship at the University of Pennsylvania and supervises the fellows' work in juvenile assessments, family, civil and criminal matters; she has provided seminars for the Pennsylvania State judges' conference and Philadelphia Family Court judges. Dr. Steinberg's civil work is balanced between plaintiff and defense cases; she has been retained and testified both for the defense and prosecution in criminal matters as well. For over ten years, she has been involved in complex class action litigation both for the plaintiff and defense, as well as the court ordered claims adjudicator, designing and implementing cost effective approaches to the assessment of class plaintiffs utilizing both qualitative and quantitative methodologies.

*Lisa Bain, Project Manager*

Ms. Bain is a science and medical writer who has worked with Dr. Steinberg on the assessment of injury severity and allocations of mass tort settlements. Previously, she worked with Dr. Steinberg as a Research Project Manager in the Department of Psychiatry at the Children's Hospital of Philadelphia. Ms. Bain managed all aspects of research projects including project planning, grant writing, data collection, data analysis, and manuscript preparation.

*Sophie Haeuber, Project Coordinator*

Sophie Haeuber graduated from McGill University in 2018 with a major focus in Gender Studies, Arabic and International Development. She has worked on various projects for Dr. Steinberg in the past. She spent 2019 and the beginning of 2020 traveling and working in Canada, India, Israel, and parts of Western Europe. After coordinating this project as a private consultant, Ms. Haeuber was hired as a full-time project manager for JND Legal Administration, LLC, near the end of this allocation project.

2. Settlement/Claims Administration

*JND Legal Administration*

JND was retained and approved as the Settlement/Claims Administrator and has collaborated closely with the Special Master's Panel by providing technical support and services through the use of JND's proprietary and secure platforms for data collection, review, and analysis, as well as managing the payment of the Special Master's Team. The JND leadership team working with the Panel has included Jennifer Keough (Chief Executive Officer), Darryl Thompson (Chief Information Officer), and Gretchen Eoff (Vice President). Other JND team members playing critical support roles have included Genevieve Pierce (Senior Project Manager) and Reed Baessler (Assistant Director).

3. Special Master Team Interviewers and Coders

Critical to the success of the project was the hiring of individuals to code Claim Forms and conduct Interviews. Candidates were recruited from graduate programs in clinical and research psychology programs, the Sexual Assault Prevention and Awareness Center at University of Michigan, and by recommendation of the Panel. More than 90 individuals submitted applications and resumes. Those with the most relevant qualifications (e.g., experience working with and/or interviewing vulnerable women and having a first-hand understanding of a normal gynecologic exam) were briefly interviewed virtually to ascertain their interest and evaluate their communication skills. Twenty-four individuals were offered positions and all accepted.

## **IV. Overview of the Process Undertaken to Assess the Severity of Injury**

The project used a combination of qualitative and quantitative methods to assess the severity of injury. Information about each claimant's case was gathered through two instruments: the Claim Form, which Tier 2 and 3 claimants were required to complete; and a semi-structured Interview for Tier 3 claimants. Data from both instruments were captured in a database as described in Section V. This approach enabled the collection of qualitative data that could be analyzed in a semi-quantitative way, i.e., by "coding" responses so that they could be fairly assessed and analyzed. Such an approach was necessary for the collection of an enormous amount of subjective information from a large number of individuals.

#### A. The Claim Form

The Claim Form was developed for the Settlement prior to the involvement of the Panel. Further details about the Claim Form are discussed in section VIII.

#### B. The Interview

An Interview protocol was developed after extensive discussion by the Panel and testing through the use of mock Interviews. Using a template designed by Dr. Steinberg and Ms. Bain for the assessment of injury severity in class actions, the Interview protocol included questions about experiences as a patient at the USC Student Health Center and of Dr. Tyndall, experiences during the gynecological examination and related care, past history of exposure to violence or abuse, and the sequela of his examination and the gynecologic care Dr. Tyndall provided. An Interview protocol was approved by the Special Master's Team in April 2020. Over the course of the subsequent interviewing period, only minor changes were allowed to ensure that each claimant was provided close to the same opportunity to share her experiences.

The Interview was designed as a script and written in plain language to ensure clarity and understanding among claimants of differing English language fluency and educational background. Interviewers were permitted to modify questions only to sound more natural and to retain a fluid conversational quality. Further details about the Interview are discussed in Section VIII.

### V. The Special Master's Team Portal

A secure portal/platform was developed for data entry, storage, retrieval, and analysis. It provided interviewers with the ability to contact claimants over the telephone in a safe, secure, and confidential environment and to record the Interviews if consent to record was given. Data housed in the portal for use by the Special Master's Team included Claim Forms, recordings of Interviews, Interview response data entered by the interviewers, statements submitted by claimants, comments from the coders and interviewers, and any supporting documents submitted by claimants. The portal also provided access to a Claim Form coding matrix, which enabled Claim Form data to be captured quantitatively to more efficiently and systematically assess severity of injury.

The portal enabled the Special Master's team to expeditiously review individual Claim Forms and Interviews, notes taken by the interviewers, medical records and other documents submitted by the claimants. A particularly elegant aspect of this platform was the seamless integration of the Interview audio file with the written response record so that segments of the Interview could be heard concurrently with a review of Interview coding and severity assessment.

Information shared by claimants was reviewed hundreds of times by Panel members for the purpose not only of developing the methodology to assess and categorize in the fairest way

possible the level of injury each individual claimant suffered, but also of re-examining the history provided by individual claimants.

## **VI. Special Master Team Interviewer Recruitment, Selection, Training, and Monitoring**

### **A. Recruitment Efforts**

In order to recruit appropriate and capable interviewers, the team reached out to academic training programs in the Philadelphia area, including the Philadelphia College of Osteopathic Medicine (PCOM) doctoral program, the Institute for Graduate Clinical Psychology at Widener University, and the University of Michigan Sexual Assault Prevention and Awareness Center. The requirements for interviewers included: excellent communication skills, experience working with vulnerable populations, comfort in discussing personal details with women about gynecologic exams, good computer skills and some training in counseling, psychology or social work.

### **B. Training**

#### **1. Training Manual and Webinar**

The interviewers participated in one of three on-line training webinars and were provided a Training Manual to be used in conjunction with the webinar. Modeled on a training protocol developed by Dr. Steinberg and Ms. Bain for interviewers involved in the assessment of injury severity in previous cases, the webinars and manual were designed to familiarize the interviewers with the case, project team, fundamentals of the gynecologic visit and physical exam, the Claim Form, Interview, portal, scheduling protocol, how to log into the portal and access claims to code or Interviews to conduct, the Claim Form coding worksheet embedded within the portal and how to use it, the system for contacting claimants and recording and conducting the Interview, systems for submitting hours and getting paid, and potential issues that might arise during the Interview, and the confidentiality provisions ordered by the Court. During the webinar, participants were given the opportunity to code mock Claim Forms, listen to mock Interviews, and discuss with the Panel issues that may arise during the coding or interviewing process.

#### **2. Homework**

Special Master Team coder/interviewers were assigned mock Claim Forms and mock Interviews to review and code. The Panel reviewed their coding to identify areas of confusion or coding inconsistencies. Zoom calls were held with groups of coder/interviewers to discuss coding issues and questions that may have arisen. During these calls, the Panel emphasized that the goal is to maximize consistency across coders, while recognizing that there is not always a right or wrong way to code each item. Through the course of the project, coding questions continued to be addressed in supervisory calls and Panel meetings (see below).

## C. Ongoing Quality Assurance

### 1. Panel Review of Claim Form Coding

The Panel randomly selected Claim Forms for review by Judge Gonzalez, Dr. Ernst, Dr. Steinberg, Ms. Bain, and Ms. Haeuber. These reviews consisted of comparing the Panel members' coding decisions against those of the coder/reviewers. Issues that were identified during this review were discussed in the interviewer supervision calls and Panel meetings (see below). These reviews led to a few minor changes in the coding system (described below in Section VIII.A.)

### 2. Review of Random Interviews by Panel Members

The Panel randomly selected Interviews for review by Judge Gonzalez, Dr. Ernst, Dr. Steinberg, Ms. Bain, and/or Ms. Haeuber. These reviews consisted of listening to the audio recordings and checking the claimants' responses against the interviewer's coding and comments. Issues identified during this review were discussed in the interviewer supervision calls and during Panel meetings (see below).

### 3. Interviewer Supervision (conference calls)

The Panel initially conducted twice weekly (later weekly) conference calls with coder/interviewers to provide feedback and give them an opportunity to discuss questions and concerns that arose while coding or during the Interviews. Coder/interviewers were encouraged/expected to attend one meeting per week. Ms. Bain and Ms. Haeuber moderated these calls; either Judge Gonzalez, Dr. Ernst, and Dr. Steinberg joined each call to provide the interviewers the opportunity to better understand what behaviors on the part of Dr. Tyndall fell outside of the normal standard of care for the assessment process and the legal issues being adjudicated through the Settlement. The interviewers provided tremendous insight into the experiences of the claimants which frequently led to refinement of the questions or coding. For example, after several interviewers reported that one Interview question seemed particularly traumatizing to many claimants, the question was dropped.

## D. Special Master Team Communication

Members of the Special Master's Team and JND met virtually through Zoom on approximately a weekly basis to review progress updates, discuss issues and concerns related to scheduling, training, interviewers, the database, and any claimant issues raised or identified.

Approximately every six weeks, Dr. Steinberg updated the parties regarding the progress of the Claim Form coding, interviewing, severity determinations, and allocations.

#### E. Scheduling of Interviews for Tier 3 Claimants

JND worked with Ms. Haeuber to schedule Interviews. As detailed above, the interviewers were highly skilled counselors, psychologists, social workers, and others with relevant education and experience, all trained by the Panel. They each signed the Confidentiality Agreement prior to the start of their employment.

On May 20, 2020, JND began contacting claimants and scheduling Interviews. The interviewer conducted the Interview following the Interview protocol created by the Special Master's Team to assess injuries.

### **VII. Special Claimant Circumstances.**

During the course of this project, JND or the Panel identified certain subsets of special circumstance. These subsets include the following:

- Claimants with communication issues. Communication issues made the standard Interview inappropriate for some claimants, including those whose primary language was other than English. Interpreters were engaged as needed to facilitate these Interviews. In addition, two individuals who self-identified as hard of hearing or having other communication issues were interviewed by Zoom rather than over the telephone.
- Support personnel. A number of claimants requested that their attorneys or support personnel be present for the Interview. All of these requests were granted; these supporters were advised that they should not interrupt the Interview and all complied.
- International claimants. Multiple claimants who live outside of the United States were interviewed in their preferred language and time zone.
- Incarcerated claimant. One claimant was incarcerated and was interviewed after special arrangements were made for the Interview to be conducted in a private office in the incarceration facility.
- Claimants with psychiatric disorders. Three claimants diagnosed with major psychiatric disorders such as schizophreniform illnesses (with documented involuntary commitments and lengthy psychiatric hospitalizations) and Claim Form-documented delusions involving Dr. Tyndall and USC were matched with an interviewer who has experience working with psychotic individuals. Each of these Interviews was completed without difficulty; it was possible to differentiate Dr. Tyndall's behaviors (consistent with other claimants' reports) from unrelated delusional symptoms.

- Deceased claimants. Two Tier 2 claims were filed by representatives of a deceased Class Member. With respect to the allegations concerning the deceased Class Members, medical and psychiatric records were requested, and the family members were contacted for additional information.
- Late Claims. JND received 208 Tier 1, 2, and 3 claims after the November 8, 2019 Court-ordered claim deadline. Per Section 6.6 of the Second Amended Settlement Agreement, the Special Master considered these late-claim requests for good cause, in consultation with JND and the Special Master Team, where appropriate, and the majority were accepted.
- Claimants who withdrew a claim or did not respond to interview scheduling outreach. One claimant withdrew her Tier 2 claim, and six claimants were re-classified from Tier 3 to Tier 2 after multiple Interview scheduling attempts by phone, email, and mail notification that their claim would be reclassified to Tier 2 if they did not respond to the request to the Interview scheduling request by a date certain.

## VIII. Severity Assessment

The Claim Form and Interview were designed to gather information about Dr. Tyndall's alleged actions, the boundary violations that occurred as perceived by the claimant, and the injuries (emotional distress, betrayal of trust, and functional changes) that resulted from those violations, such as avoidance of medical care and the impact of Dr. Tyndall's alleged actions on the claimant's personal life. The Interview inquired about aggravating factors, including underlying vulnerabilities (such as prior history of abuse, the age of the claimant, and number of visits with and length of treatment by Dr. Tyndall.) Information obtained through the review of additional evidence submitted by the claimant was noted and included for later review.

### A. Claim Form and Coding Matrix

The Claim Form (authored by the parties) collected basic information relevant to the case, including dates enrolled at USC, dates treated if not a student at USC, native language, whether represented by an attorney, and the choice of Tier 2 or Tier 3. It posed open-ended questions about treatment the claimant received from Dr. Tyndall at USC, and the claimant's reactions to and feelings about her interactions with Dr. Tyndall at the time of the encounter and at present. Claimants were asked specifically about disrobing, the presence of others during the exam, comments or actions by Dr. Tyndall that the claimant believes were inappropriate, emotional and physical distress resulting from their interaction with Dr. Tyndall, previous sexual abuse, and counseling or medical care received to address injuries resulting from their experience with Dr. Tyndall. Claimants were asked to report separately about each visit with Dr. Tyndall.

Since the Claim Form allowed claimants to write as little or as much as they wanted, there was wide variance in the data obtained. To systematically evaluate these Claim Forms, the Panel created a "coding matrix." This matrix enabled the coders to capture information in four broad

categories, and more specific information within those categories. Each category was weighted differently in determining the overall severity based on the Panel members' expertise in assessing injuries caused by sexual abuse. These categories are indicated below:

1. Vulnerabilities
  - a. Young age (under 21) and/or first time seeing an ob/gyn
  - b. More than two appointments with Dr. Tyndall
  - c. Racial profiling mentioned or alluded to
  - d. Pre-existing mental health problems
  - e. Previous abuse
  
2. Inappropriate or Inadequate Care
  - a. Dismissive of complaint and/or did not get treatment requested
  - b. Coerced or pressured into accepting alternative treatment or prescription
  - c. Inappropriate treatment, including sexually transmitted infection (STI) testing or birth control prescription for non-sexually active claimants
  - d. Treatment that claimant believes was harmful
  
3. Boundary Violations
  - a. Disrobing improprieties, e.g., coverup not provided or Dr. Tyndall present while disrobing
  - b. Chaperone improprieties, e.g., chaperone not present, made inappropriate comments, or failed to intervene when indicated
  - c. Exam conducted without gloves
  - d. Painful, lengthy, or unnecessary pelvic exam
  - e. Painful, lengthy, or unnecessary rectal exam
  - f. Painful, lengthy, or unnecessary breast exam
  - g. Dr. Tyndall took photographs or showed photos of other patients' genitalia
  - h. Inappropriate touch, e.g., touched in a way to intentionally arouse or hurt patient
  - i. Inappropriate comments, e.g., comments that were creepy, seductive, flirty, or inappropriate comments about patient's sex life
  - j. Insulting, judgmental, misogynistic, or racist comments
  - k. Asked to return for frequent exams or to come to office after hours
  
4. Physical, Emotional, and Functional Impact

Although the case largely revolved around the impact experienced by claimants as a result of their treatment by Dr. Tyndall, the wide variation in how individuals reported this impact made it difficult to systematically evaluate. The Panel thus asked coders – all of whom had experience working with victims of sexual abuse – to read through the entire Claim Form and make an assessment of overall injury, ranging from no injury to severe injury based on the claimant's emotional manifestations at the time of the exam or later, physical (somatic) manifestations of emotional injury, post-traumatic symptomatology, impact on seeking and obtaining medical care, impact on intimate relationships, impact on work and school life, and overall life course. Coders also were instructed to assess whether the claimant reported feeling a betrayal by or loss of trust in healthcare providers, USC, male doctors, gynecologists, and/or men in general.

To ensure consistency among coders regarding the impact assessment, the Panel developed a series of vignettes that typified a claimant in each category. The training and supervisory sessions discussed in Section VI devoted substantial time to ensure consistent assessments across coders for this aspect of the coding matrix:

- a. No or Minimal Injury
- b. Mild Injury
- c. Mild-Moderate Injury
- d. Moderate-Severe Injury
- e. Severe Injury

## B. Analyzing the Claim Form

The Panel used a mixed-method approach to analyze the qualitative information captured in the Claim Form. Through continual reviews by Panel members, the Panel reached consensus that this approach provided the closest and fairest estimate of severity.

While reviewing Claim Forms it was noted that there were some especially egregious behaviors by Dr. Tyndall as well as unexpected severe impacts on the claimants' lives. The Panel decided that these claims warranted some additional adjustments to these allocations to compensate for the egregious behaviors and subsequent injury.

## C. The Interview

A semi-structured Interview was provided as a script in the portal, which allowed interviewers to capture information in a consistent and systematic manner. Topics addressed by the Interview questions reflect information gleaned from the Claim Forms, which suggested multiple patterns of inappropriate behaviors on the part of Dr. Tyndall. The script was written in plain language and was meant to be read in its entirety, although interviewers were allowed to make minor modifications in order to sound more natural. Interviewers were instructed to avoid adding any supportive questions or facilitative comments that could be experienced as leading.

The questions were designed to be open-ended. Interviewers were offered both check boxes for predicted responses and space to type in verbatim responses in the event that the check boxes were inapplicable or insufficient to capture a claimant's full response. The check boxes were intended to make it easier for the interviewer to record responses and to enable quantitative analysis, while the text boxes allowed for the capture of more detailed and nuanced responses. In most cases, the interviewer had the option of checking "did not answer" or "don't know or remember." Space was also provided on each page for the interviewer to document particularly revealing claimant responses that may not have been adequately captured by the check boxes. Interviewers were also asked to note the claimant's affect (e.g., tearful, angry, upset, etc.).

At the completion of the Interview, interviewers were asked to make an overall assessment of severity of damage: none, mild, moderate, or severe. This assessment allowed the judgment of

the interviewers to be compared to be the more quantitative measure of overall severity of damages. Any major discrepancies could then be evaluated in more detail by the Panel as a quality check on the interviewers and ensure that claimants were being appropriately assigned to severity categories.

Some claimants became distraught during the Interview. For most of these cases, the interviewers were able to manage this distress with empathy and concern. In a few cases, the Interview was gently terminated. Interviewers also offered the resources of RAINN, a national hotline offering 24-hour support and resources for women who have experienced sexual violence. One claimant residing outside of the United States was unable to receive assistance from RAINN due to her geographic location and requested mental health guidance in dealing with her symptoms; a video consultation was arranged with Dr. Steinberg. When interviewers were concerned about the safety of claimants, the cases were also referred to Dr. Steinberg who reviewed the data recorded in the database, listened to a portion of or the entire recording of the Interview, and discussed the case with the interviewer. Occasionally, when necessary, she contacted the claimant directly to evaluate whether she was a danger to herself or others and offered suggestions for accessing local mental health resources.

A total of 1,321 Interviews were conducted by 25 interviewers (the 24 coder/interviewers hired plus Ms. Haeuber). These Interviews ranged from about 45 minutes to more than 3 hours in duration.

The Interview was divided into 10 sections as described below:

1. **Introduction.** This section introduced the interviewer to the claimant, asks for consent to record the Interview, and explains the purpose and expected length of the Interview. Claimants are advised that they can refuse to be interviewed or have the Interview recorded but that doing so would limit the Panel's ability to determine the level of injury and appropriate allocation.
2. **Section 1 – Introduction to Dr. Tyndall and Experience of Being His Patient.** This section aimed to capture the extent of contact the claimant had with Dr. Tyndall, her age at the time, her affiliation with USC, and whether she was an international student or non-native English speaker. These questions were seeking to learn whether the claimant was young and inexperienced or a racial minority since Dr. Tyndall appeared to have targeted such patients. Questions were also asked about the claimant's reasons for seeing Dr. Tyndall, whether he addressed the concerns, and level of satisfaction with his treatment.
3. **Section 2 – Dr. Tyndall's Gynecologic Exam.** This section asked specific questions about pelvic, rectal, and breast exams by Dr. Tyndall. The goal of this section was to learn about potential boundary violations, such as failing to give patients privacy when they undressed, failure to have a chaperone present, failure to wear gloves during a pelvic or rectal exam, etc. We also wanted to know the claimant's thoughts about the exams – were they longer or more painful than expected and were there other aspects of the exams that seemed inappropriate.

4. **Section 3 – Inappropriate Actions or Comments.** This section probed further into Dr. Tyndall’s comments and behaviors that the claimant perceived to be inappropriate.
5. **Section 4 – Diagnosis and Treatments Received.** This section asked about diagnoses and treatments that were suggested or provided by Dr. Tyndall, whether the claimant felt these diagnoses were correct, and whether she felt that the treatments were appropriate or inappropriate to address her concerns.
6. **Section 5 – Emotional Impact.** This section asked a series of questions about emotional and physical distress experienced at the time or shortly after the Claimant’s appointment with Dr. Tyndall or later on. We probed to find out how this distress may have affected claimants’ day-to-day lives, how long the distress continued, if it is triggered by certain situations, and if they have received counseling or treatment for this distress.
7. **Section 6 – Functional Impact.** This section asked about how the experience with Dr. Tyndall has affected other aspects of the claimant’s life, such as decisions about health care, relationships, and school and work life. We also asked whether the claimants feel that they have experienced major disruptions to the course or quality of their lives as a result of their experience with Dr. Tyndall.
8. **Section 7 – Vulnerabilities and Other Factors that May Influence the Severity of Damage.** The Panel’s review of Claim Forms suggested that Dr. Tyndall targeted for abuse young and minority patients and those inexperienced with the gynecologic exam. This section asked about other factors that appear to increase a claimant’s vulnerability to injury from Dr. Tyndall, including seeing him multiple times and/or having experienced previous abuse.
9. **Conclusion.** This section gave claimants the opportunity to provide additional comments or make a concluding statement about their experience. It also explained that the Special Master’s Panel will use the information from the Interview to decide how to fairly allocate the Settlement.
10. **Interviewer Assessment of Claimant Credibility.** In this final portion, we asked the interviewers to make an overall assessment of how severely the claimant was injured by her experience(s) with Dr. Tyndall and whether her narrative made sense.

#### D. Analyzing the Interview

As with the analysis of the Claim Form, the Panel used a mixed-method approach to analyze the qualitative information captured in the Interview. This methodology had been used successfully by Dr. Steinberg and Ms. Bain to assess injury severity in previous cases. To ensure the reliability of this approach, each Panel member reviewed many Interviews and the associated

coding. The Panel reached consensus that the coding matrix captured the severity of injury of each claimant in a fair and reliable way.

The often lengthy comments that interviewers entered into the portal proved to be very important in assessing severity of injury, as they highlighted several factors that were not adequately captured in the coding matrix for some Tier 3 Claims. These factors included especially egregious behaviors by Dr. Tyndall as well as the unexpected severe impact on the claimants' lives. The Panel decided that these claims warranted an increased allocation to ensure that all claimants would be compensated fairly.

## **IX. Determining Allocations for Claimants**

To determine allocations for each individual claimant per the terms of the Settlement, the Panel considered Tier 2 claimants and Tier 3 claimants separately.

### **A. Allocations for Tier 2 Claimants**

Final Claim Form severity rankings were reviewed. This assessment allowed the Panel to set allocation amounts that reflected the level of injury for each claimant.

The Panel determined that 1,606 claimants qualified for an enhanced damages award and awarded a total of \$19,539,000. The average Tier 2 Claim Award was \$12,166.25 and the maximum was \$20,000.

### **B. Allocations for Tier 3 Claimants**

Since Tier 3 claimants contributed data via both Claim Forms and Interviews, the Panel spent considerable time evaluating how the two measures compared and how best to understand severity of injury as represented in these two measures.

The Panel reviewed many Tier 3 claims across the range of the distribution to ensure that the Tier 3 Severity rankings corresponded to the severity of injuries sustained by claimants. A small group of claimants who experienced unusual injuries not fully captured in either the Claim Form or Interview were then reviewed, and allocations were then modified for the claims that warranted allocation adjustment. The adjustments varied depending on the Panel's assessment of the egregiousness of Dr. Tyndall's conduct and/or the impact on the claimant.

The Panel determined that 1,319 claimants qualified for an enhanced damages award and awarded a total of \$127,060,000. The average Tier 3 Claim Award was \$96,330.55 and the maximum was \$250,000.

In total, the Panel awarded \$146,599,000 in Tier 2 and 3 Claim Awards (prior to *Pro Rata* Adjustment).

Per the terms of the Second Amended Settlement Agreement, JND will calculate the total sum of all the Claim Awards and compare that sum to the total amount in the Settlement Fund and a *Pro Rata* Adjustment will occur prior to distribution of Claim Awards. JND's Declaration regarding the *Pro Rata* Adjustment will be filed simultaneously with this Final Report.