

Summary of the Investigation Reports/Findings

Trigger Warning: The following summary describes sexual misconduct. SJSU shares this information because of the importance of accountability and transparency in rebuilding community trust. At the same time, we respect our students' privacy. We have therefore prepared this summary with these principles in mind.

Background

In December 2009, SJSU Women's Head Swimming and Diving Coach Sage Hopkins reported to SJSU administrators that multiple student-athletes on his team had reported to him that during physical therapy sessions, SJSU Head Athletic Trainer Scott Shaw at times touched their breasts (under the bra and close to the nipple) when treating shoulder injuries, and at the bikini line when treating back or hip injuries. The matter was investigated by Arthur Dunklin, an SJSU Human Resources administrator, who interviewed the complainant, 14 student witnesses, two athletic trainers, and Shaw. In May 2010, the investigator concluded that although Shaw "might have done a better job explaining what he was doing and provided athletes an option of not using pressure point therapy," the claims of improper touching ("sexual harassment" as that conduct was defined in the SJSU policy in effect at that time) were not substantiated by a preponderance of the evidence because the evidence established that Shaw's method of treatment – pressure point therapy – is a "bona fide means of treating muscle injury."

In December 2019, President Papazian directed that a Title IX investigation into Shaw's conduct be initiated because of concerns that the 2009-2010 investigation may have been incomplete or inadequate.

The 2020 Investigation

The investigation initiated in December 2019 was undertaken by an external (attorney) investigator, Marilou Mirkovich of the law firm Atkinson, Andelson, Loya, Ruud & Romo, and was overseen by CSU's Systemwide Title IX Compliance Officer, Linda Hoos. Eight former and two current female SJSU student-athletes alleged that Shaw had touched them inappropriately during physical therapy sessions. The allegations included that Shaw touched their breasts, skin-to-skin, (under the bra and close to the nipple) and/or near their genital/groin area (under clothing) when treating back or hip injuries. Other former student-athletes participated in the investigation as witnesses. The incidents occurred primarily between 2006 and 2009 (there were also two incidents after 2017 that came to light during the 2020 investigation). Shaw declined to participate in the investigation. The investigation of Shaw concluded in late February 2021.

The investigator found that all of the allegations were substantiated by a preponderance of the evidence and that Shaw engaged in sexual harassment and sexual misconduct in violation of SJSU and CSU policies.

In coming to her conclusions, the investigator also relied on the opinion of an expert, Dr. James Borchers of the U.S. Council for Athletes' Health. Dr. Borchers opined that Shaw did not follow the "normal" procedures of communication – including obtaining affirmative consent -- when administering the described treatment. Dr. Borchers also stated: "Massage of the breast and groin/pubic area is generally considered inappropriate unless there are clear medical circumstances [that] dictate these occur. These treatments should only be carried out by specifically trained individuals and for very specific medical diagnoses or conditions."

Borchers continued: "There is no explanation or documentation available that there was therapeutic justification for the use of techniques and their application for treatment. There are no medical records that were provided for review that substantiate the justification for these treatments and describe the indications for [their] use."

A new investigation is underway to determine the adequacy of the 2009 investigation, and whether the university properly responded to subsequent concerns about that original investigation. President Papazian and SJSU encourage anyone with relevant information to share their concerns with the external investigator, Elizabeth V. McNulty, who can be reached directly 949-399-5026.