

Recommendations to the Sunset Commission

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1. Ban all parties affiliated with Quackwatch, such as Case Watch, Skeptics Anonymous, including but not limited to Stephen Barrett and Robert Baratz, from being able to file complaints or act as expert witness against any Texas physician or healthcare provider.
2. Improve protocol to check for bad faith complaints at the onset of the complaint process.
 - a. Determine if complainant is a serial complainant in that they have filed more than 3 complaints with the medical board.
 - b. Determine if complainant is a competitor or has financial conflicts of interest.
 - c. Determine if complainant is biased against complementary and alternative care protocols.
3. Only allow complaints to remain confidential if the complaint is filed by:
 - a. a patient who has suffered direct harm
 - b. a family member of a patient who has suffered direct harm
 - c. a health professional who has direct knowledge and contact with the patient or family member with knowledge or information that could lead to patient harm or death.

Submission to the Texas Sunset Commission regarding the Texas Medical Board.
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As a physician caring for Autistic children in Texas, in 2009, we were viciously attacked by Stephen Barrett of Quackwatch who filed the complaint against my clinic, Care Clinic and myself. Mr. Barrett is a serial complainant of physicians around the nation and yet he is a recommended resource of the Federal of State Medical Boards. His attack seemed to be coordinated with the insurance companies to destroy our Care Clinic who had achieved great success in the recovery of many of the 3300 Autistic children under my care. Barrett filed complaints with the medical board and I was prosecuted for a host of false allegations, which after three years of investigations by the board, FDA, IRS, Care Clinic and I were both exonerated by all parties. Barrett complaints are often accompanied by "expert witness, Robert Barratz. A California court ruling stated that Barrett was "*biased, and unworthy of credibility*" and was upheld in a published appeals court decision. And yet the medical still accepts complaint from Barrett as recently as 2016. The medical board agreed to drop the charges against me only if I would only offer treatments approved by the American Academy of Pediatrics, who had no effective protocol to offer. At the time, I utilized natural therapies, nutrition and genetic testing which now recognized as a standard therapy among the Autistic community, The damaged had been done and the clinic had to close and countless children have been deprived of treatment.

Recommendations for changes to the statutes and laws that govern, direct, regulate and otherwise apply to the sanctioning and/or disciplinary authority of the State of Texas Medical Board pursuant to the Texas Medical Practice Act.

1. Presumption of innocence until proof of wrongdoing is to be strictly adhered to. Currently, a physician brought before the Board is assumed to have by intention or neglect, transgressed Medical Board guidelines, directives, methods or means of practicing medicine with only an unsubstantiated complaint being made by an unknown accuser. Complaints are accepted without verifying complainant, their motives or intent. Board members are allowed to make facile and flippant remarks that are legally unrecorded and have no basis in fact or scientific studies. This attitude undermines basic democratic right to the freedom of speech as well as customary civil liberties tantamount to autocratic proceedings bordering on the totalitarian.
2. Medical Board Rule #161.3 (e) (9), which states that "a board member should avoid the use of the board's position to imply professional superiority or competence" shall be strictly adhered to and enforced. Violation of the above article shall constitute cause for overturning and otherwise making null and void the Medical Board's ruling and any disciplinary action against a physician and grounds for a new procedural hearing. Currently, Board members are allowed to make statements that have no basis in empirical or scientific fact bordering on mockery against the "accused." Further, to assure that a travesty of justice as an outcome of a procedural hearing does not occur such procedural hearings should be recorded by trained stenographers or videotaped to ensure that proper review of procedural hearings can be achieved. Archival records shall be made available for future appeal or contravention proceedings including prosecuting venues that apply in the State of Texas.
3. Medical Board rule #161.3 (e) (9) must be modified to replace the phrase "should avoid" to "shall or will avoid." This modification will insure that rule #161.3 (e) (9) is not a mere suggestion or guideline but a written finality that must be strictly undertaken. Failing to comply with this directive shall be cause for appeal, a new hearing, or recourse to judicial proceedings. The foregoing will insure that procedural hearings are held in a professional, respectful and transparent manner. Further, this modification will allow for the careful and thoughtful consideration of the diversity of medical approaches and philosophy in the art of medicine.
4. The Medical Board shall use the concept of due diligence regarding which complaints are to be actively investigated and pursued culminating in a prosecutorial hearing and sanctions. This would involve determination of the seriousness and/or validity of a complaint, the person making the complaint, as well as taking into consideration any hidden agendas of the one making the complaint. Only when this has been accomplished shall procedural hearings be convened. Further, if just cause for convening a hearing is determined, the procedural hearing shall be restricted to the complaint at hand and the hearing shall not be made overly broad and all-encompassing of the physician's medical practice without cause. Sanctions and penalties from a procedural hearing shall be limited to the facts of the complaint that are found to be non-compliant within specific articles in the medical code of conduct and practice. Currently, the use of overly broad and all-encompassing investigation are in effect a license to impose sanctions and penalties outside the parameters of a given complaint which many believe is a cloaked method of wrongful enrichment by the Medical Board at the expense of physicians caught in

a dragnet of investigations which magnify simple indiscretions into highly-penalized wrongdoing. Under this protocol, sanctions and penalties levied or issued to date, unrelated to the original complaint, shall be made null and void and shall be retracted. Publication of retraction of offense shall be made by public notice to restore dignity and standing with colleagues and the community that is served.

5. Final rulings by the Medical Board requires the signing of an agreement to cease and desist from whatever wrongful action a physician has been found to have been engaging. Sanctions and penalties are also assessed. In this agreement there is a "duress clause." Should the offending physician choose not to sign this agreement immediately after the ruling, the Medical Board can issue a threat of suspension and has the authority to levy per day fines until the individual concedes to the Medical Board's terms. This in effect constitutes duress. The offending physician finds himself between the hammer and the anvil. He is damned if he does and damned if he doesn't. The Medical Board shall cease this manner of proceeding. The offending physician shall have a legitimate option of refusal and of judicial review as authorized under Texas and United States Statutes.
6. Complaints of wrongdoing or misconduct by physicians to the Medical Board shall have attached to such complaints the name(s) of the individuals making the complaints that made basis for procedural hearing and sanctions. Common practice and custom in legal proceedings under the 6th Amendment of the U.S. Constitution guarantees a citizen accused of wrongdoing the right to confront his accuser. Barring this practice allows for hearsay to become proof of wrongdoing and does not protect against the possibility of slander. The State Bar of Texas is an example of a review board for attorneys wherein the Bar of Texas discloses those who make a complaint against an attorney about its members. Medicine and law are both professions. The medical profession must take the profession of law as a model of fairness, due process, and transparency.
7. The filing of frivolous or malicious complaints is sometimes made by people who have as their hidden agenda eliminating competition, retaliation against perceived wrongs or as a method of harassment. There are situations when individuals are approached by organizations or individuals with hidden negative agendas that motivate someone to initiate a grievance against a physician to promote retaliation, control competition, or harass a targeted physician. In the present, disposition of a complaint about a physician does not require disclosure of the complainant to the physician against whom a complaint has been lodged. In the interest of fairness, transparency, and a just outcome of a Medical Board hearing, a full disclosure of the persons or organizations who lodged the complaint must be made available to the respondent physician. This will assure all persons involved of the merit of the complaint and how best to prepare for a fair defense. This will also make it difficult for individuals or organizations with hidden agendas to use the Medical Board as an instrument of retaliation or harassment.
8. Attorney advisers to Medical Board members assigned to particular procedural hearings of physician misconduct must have a Doctorate in Medicine (MD) and a Doctorate in Jurisprudence (JD). Further, such attorney advisers must have practiced medicine in a clinical setting besides residency, for at least three (3) years. This will insure that the attorney advisers are aware and have personally experienced the unique stresses faced by physicians. Attorneys without this experience have an adversarial dynamic leaving out any sensitivity or extenuating evidence that may resolve the complaint in a truly fair and just manner. I cite *Hawkings v. McGee*, 1 1920 a case used in several law texts which direct and train attorneys to presume guilty or corruption a priori and therefore render those attorneys deaf to a physician's defense.
9. Final rulings made by the Medical Board which end in sanctions and/or penalties to a respondent physician shall be made within the guarantees of Texas statute laws and U.S. constitutional federal law. Currently, the Medical Board does not use established due process including the right to confront one's accuser or the safeguard of civil rights. This disregard of a usual and customary consideration of due process and protection of civil law allows for miscarriage of fair and just proceedings. Sanctions and penalties levied or issued to date, in violation of Texas statute laws and U.S. constitutional federal law, shall be made null and void and shall be retracted. Publication of retraction of offense shall be made by public notice to restore dignity and standing with colleagues and the community that is served.
10. A separate and distinct division of the Texas Medical Board shall be established to evaluate, judge and when needed, recommend disciplinary action for violations related to the alternative practices in medicine. Division members shall include physicians with expertise in Integrative, Holistic, Functional, Natural, and/or other forms of Alternative medical practices.
11. Because of the corruption that has occurred since the early 1990s, I would recommend the right to appeal allow for trial de novo that provides a fair path to District Court where constitutional rights and full disclosure of exculpatory evidence can provided.