

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Texas Medical Board PHP Lack of Due Process Protection and Accountability
Date: Tuesday, December 06, 2016 8:10:48 AM

From: Brian James
Sent: Monday, December 05, 2016 6:27 PM
To: Sunset Advisory Commission
Subject: Texas Medical Board PHP Lack of Due Process Protection and Accountability

To whom it may concern:

My name is Dr. Brian James and I am currently participating in the PHP monitoring program because of sleep apnea. I have been evaluated by five physicians and two psychotherapists at this point, and all of them have agreed that I do not have an actual impairment, nor was I impaired at any time according to the documentation possessed by the Texas Medical Board.

In spite of the utter lack of documentation or support of any kind of impairment or any evidence of any type of patient harm or "near miss", I am told I need to participate for three years (and pay \$1200 each year). Furthermore, the duration for which I am supposed to be involved in this program is entirely arbitrary and there are no objective criteria established with which to determine that an individual no longer needs monitoring. It took me nearly four months to obtain an appointment with one of the required specialists and I am supposed to submit a quarterly report.

There is essentially no way to request review or appeal, short of going to the State Office of Administrative Hearings, which is prohibitively expensive and inconvenient.

It is all the more inconvenient since I am serving as Medical Director of Pain Management in Ohio for a VA medical center that is located in a rural, medically under-served area. Obviously, if I were impaired to any significant extent, it would quickly become apparent and I would be dismissed, as I am still within the two-year provisional period for physicians. Currently, I have no doubt that the Chief of Staff of my facility would unequivocally back me up and vouch for my performance, as I am currently doing the work of at least two providers and attempting to reduce excessive prescription opiate dosages in this at-risk population.

It seems that any reasonable person with a basic understanding of the state and federal constitutional law would find that there is an obvious and egregious lack of due process protections and accountability.

I have nothing to hide and gladly welcome scrutiny of my case- with an increasing number of evaluations that unequivocally deny that I have or ever had an impairment, it becomes increasingly contentious and ethically questionable to continue to require my participation. If there were any feasible or available avenue for this type of complaint available within the Texas Medical Board or PHP's infrastructure I would do so via that channel. There is not one that I know of, thus I am left with no option to be heard other than this.

Please advise as to whether this issue is of concern to the Sunset Committee. If it is, I will be glad to cooperate with any investigation. If it is not (or I do not get a response within two

weeks), I will forward this email to the Texas Attorney General's office, as well as the United States Department of Justice Civil Rights Division.

Respectfully,
Dr. Brian James