

**From:** [Sunset Advisory Commission](#)  
**To:** [Janet Wood](#)  
**Subject:** FW: Testimony Re: TMB Review  
**Date:** Wednesday, December 14, 2016 9:38:43 AM

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**From:** texaslyme mom  
**Sent:** Wednesday, December 14, 2016 9:33 AM  
**To:** Sunset Advisory Commission  
**Cc:** Bill Zedler  
**Subject:** Testimony Re: TMB Review

Elizabeth Naugle

Hello. My name is Elizabeth Naugle from College Station. I am Co-Moderator of our TxLyme internet discussion forum with over 500 members. Additionally, there are at least two, maybe three, Lyme FaceBook groups in our state, for a combined membership of probably a couple of thousand members. Most of our members are late-stage, chronic Lyme patients, whose numbers are never represented in the Texas Department of Health (TDH) statistics for Lyme disease, because TDH is assigned to report only just early-stage cases of Lyme disease.

In spite of passing protective legislation for our Lyme specialists back in 2011, nothing has changed in the last five years since then. Lyme patients are still having an extremely difficult time finding Lyme-literate doctors capable of diagnosing and willing to treat them. Why? It's primarily because of the perception that they will be prosecuted/persecuted (take your choice) by the Texas Medical Board (TMB) if they accept chronic, late-stage Lyme patients into their practices. Something needs to be done to reassure doctors that it is OK and safe for them to treat Lyme disease, without fear of unfair prosecution by TMB.

This situation is inexcusable, especially when we consider that our 150-yr Texas Constitution (Art. 16, Sec. 31) guarantees that the state medical board cannot discriminate against different "schools of medical thought". (Upheld in case law by Halsted, et al in 1944) That Constitutional clause was the very basis of our protective legislation for Lyme specialists when HB 1360 was passed back in 2011.

Nevertheless, our Lyme doctors look around them and see that other doctors who specialize in Complementary Alternative Medicine (CAM) are still being unjustly persecuted by our TMB. This persecution of CAM doctors occurs frequently, in spite of Chapter 200 of the Medical Practice Act (MPA) which was originally designed to protect CAM doctors in Texas – all to no avail though because of extraneous legalese written into Sec. 190.8 of the MPA, which subverted the original intent of that law.

It seems to me that the majority of members of our TMB hold a paternalistic attitude towards Texas citizens, as if we need protection from "medical charlatans" because we are not smart enough to discern for ourselves what is best for us concerning our own health care needs. This overly protective attitude is ridiculous because patients today have access to the internet, including authoritative websites such as PubMed and Medscape, to do our own research on medical topics. We do not need Big Brother looking after us by discouraging doctors from

practicing medicine in innovative ways. Texas patients should be assured of exercising their right to “informed consent” without worrying that their favorite CAM doctors will be run out of business, or out of Texas, by an overly zealous medical board.

#### My Recommendations:

My first recommendation to the Sunset Commission therefore is for you to ask the Governor that when vacancies arise on the TMB that he appoint new TMB members who are knowledgeable about and supportive of late-stage, chronic Lyme disease and also about complementary/alternative medicine, in order to create a better balance of medical viewpoints among the TMB itself. Likewise, whenever Expert Panels are called upon to review complaints against CAM doctors or Lyme-friendly doctors, then these experts should be selected from among those same schools of medical thought, instead of being restricted only to practitioners of mainstream allopathic medicine who are unacquainted with the tenants of CAM.

(It is important to be aware that lawyers with our TMB frequently refer to “Standard of Care” which is outdated medical terminology. The correct new term for this basic concept is “Practice Guidelines” according to the Institute of Medicine and to the National Clearing House for Guidelines (NCG). “Standard of care” implies something very legalistic and rigid; whereas, Practice Guidelines implies broader flexibility because guidelines change frequently, as new medical research emerges. That’s why the NCG requires that Practice Guidelines be up-dated frequently, on a regular schedule, to insure they are sufficiently current to qualify as valid for being posted there.)

Furthermore, please review Chapter 200, Sect. 190.8 of the MPA and fix it so that it is unambiguous that CAM physicians are welcome to practice freely here in Texas, according to the tenants of their various CAM associations’ practice guidelines, without fear of unjust persecution by an over-reaching TMB.

I concur whole-heartedly with what Rep. Bill Zedler said in his testimony. I would like to see us go back to the earlier composition of the TMB when an MD was the Chief Medical Director of the TMB, who supervises the legal team which must answer to the Medical Director in the chain of command. “Why?” you ask. That’s because MDs have all taken the Hippocratic Oath about “First, do no harm.” It’s an entirely different mindset altogether! TMB lawyers, on the other hand, should lend their legal expertise by insuring “fair due process” to physicians whenever they must defend themselves during informal settlement conference (ISC) hearings.

I also want to reiterate Rep. Zedler’s astute comment about the importance of getting rid of the current “confidential” (effectively, “anonymous”) complaint process – with rare exceptions of course, such as when hospital nurse whistleblowers fear reprisal for filing a legitimate complaint against a bad doctor or when a patient is embarrassed by an unwanted sexual advance by a physician.

The reason for this important revision is that surrogates of the insurance industry, who do not want to pay for treating complex chronic health conditions, can too easily take advantage of the confidentiality clause by filing frivolous complaints against CAM doctors, which then allow the TMB to go on “fishing expeditions” by seizing patient records -- without those patients’ knowledge or express consent -- to use their records against their own doctors whom they trust and depend upon.

Similarly, doctors who desire an open public ISC hearing should be allowed to request it, as is done in other states across the country. Instead, what we have now is secret “kangaroo court” proceedings, behind closed doors, without any expectation whatsoever of fair due process for our physicians. This has a very intimidating and chilling effect on the readiness of all doctors to dare to treat chronically ill patients, including Lyme patients, for fear that insurance companies will turn them in for practicing outside some antiquated “standard of care.”

The Texas Legislature has already gone a long way with tort reform in 2003, but now the pendulum has swung too far in the wrong direction, by empowering the TMB with too much authority over doctors, but without assuring doctors of their right to fair due process in defense of their medical licenses and without assuring patients of their right to “informed consent” in their choice of complementary/alternative medical care by harassing their favorite CAM doctors and running CAM doctors out of our state.

I have one other suggestion about the role of the TMB in upholding their mission statement regarding physician education, but I plan to work directly with the TMB on that concern. Besides, others in our TxLyme (aka: TxLDA) group will be addressing that issue. (Also, it simply won't fit on this page.)

All of these proposed changes will go a long way toward making Texas one of the very best states in the entire country for receiving first class medical care. Thank you.

*Elizabeth Naugle*

In spite of passing protective legislation for our Lyme specialists 5 years ago, nothing has changed since then. Lyme patients are still having a very difficult time finding Lyme-literate doctors in Texas capable of diagnosing and willing to treat them because of the perception that they will be persecuted by the TMB if they accept chronic, late-stage Lyme patients into their practices. Something needs to be done to reassure doctors that it is safe for them to treat Lyme disease without fear of persecution by the Texas Medical Board (TMB).

For example, I know personally of three such cases of early Lyme disease in young Boy Scouts who got tick bites with rashes at Boy Scout camp – classic cases of early Lyme which should have been easy to recognize and diagnose. Their lives have been devastated as a result of their failure to receive a timely diagnosis and treatment before their cases became chronic and more difficult to treat.

What's even worse is that in two of these cases, their astute parents filed complaints with the TMB, - valid complaints which were dismissed as "non-jurisdictional"! What's going on here? This situation is inexcusable – especially when we consider that our Texas Constitution (Article 16, Sect. 31) guarantees that the state medical board cannot discriminate against different schools of medical thought. That Constitutional clause was the basis of our protective legislation for Lyme specialists when it was passed back in 2011.

Perhaps a partial answer to this riddle is that other doctors who specialize in Complementary Alternative Medicine (CAM) are still being unfairly persecuted by our TMB, despite Chapter 200 of the Medical Practice Act (MPA) which was originally designed to protect CAM doctors in Texas – all to no avail though because of extraneous legalese written into the MPA which subverted the original intent of that law.

It seems that a majority of members of our TMB hold a paternalistic attitude towards Texas citizens, as if we need protection from charlatans because we are not smart enough to discern for ourselves what is best for us concerning our own health needs. This overly-protective attitude is ridiculous because patients today have access to the internet, including free public access to PubMed and to Medscape among other valuable resources, to do our own research on medical topics. We do not need Big Brother looking after us by discouraging doctors from practicing medicine in innovative ways.

My first recommendation would be to ask the Governor to appoint new TMB members whenever vacancies arise who are knowledgeable about and supportive of late-stage, chronic Lyme disease and/or about CAM in order to create a better balance of viewpoints among the TMB itself. Furthermore, please review Chapter 200, Sect. 190.8 of the MPA and fix it so that it is unambiguous that CAM physicians are welcome to practice freely here in Texas, according to the tenants of their various CAM association guidelines without fear of unjust persecution by an over-reaching TMB.

Elizabeth Naugle,

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