

August 6, 2010

To the members of the Texas Medical Board,

After complying with all the previous requests of the Texas Medical Board to provide the necessary information to establish my ability to practice medicine in the State of Texas, I must, with all respect, formally appeal the Texas Medical Board's decision to require my participation in the Texas Physician Health Program (TPHP). When considering my appeal, I petition the Medical Board to consider the following questions:

**Questions for the Texas Medical Board's Consideration:**

- (1) Whether an individual with a **non-self inflicted inherent medical disability** (i.e. Young Onset Parkinson's Disease in my case) should be automatically mandated to participate in a program whose original intent was to monitor those individuals with **self-inflicted and self-destructive behaviors** (i.e. substance abuse and addiction issues)?

If the Texas Medical Board answers YES to the above referenced question, then I petition the Texas Medical Board to consider the second question:

- (2) Whether the Texas Medical Board feels that by broadly and indiscriminately mandating the TPHP and thus **automatically imposing its fees (\$1200 annually)** it is effectively punishing and discriminating against those individuals who have non-self inflicted inherent medical disability?

If the Texas Medical Board answers NO to the above referenced question, then I petition the Texas Medical Board to consider this final question:

- (3) Whether the Texas Medical Board truly maintains the right (as defined by the Occupations Code) to waive the TPHP participation fees for certain individuals or cases which may seem appropriate?

If The Medical Board answers YES to this question, then I would hope to convince the board that there is not a more appropriate situation than to waive the TPHP fees for those individuals, such as myself, who have been diagnosed with a non-self inflicted inherent medical disability.

**Discussion**

I do not question the Texas Medical Board's mission to "protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of

excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas.”

I do question, however, the intent and the goals of the Texas Physician Health Program and especially how it pertains to my individual situation. To reference the Texas Occupation code itself:

Sec. 167.005. TEXAS PHYSICIAN HEALTH PROGRAM. (a) The Texas Physician Health Program is established to promote:

- (1) physician and physician assistant wellness; and
- (2) treatment of all health conditions that have the potential to compromise the physician's or physician assistant's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

Perhaps the TPHP can promote wellness and treatment to those with “mental health issues, substance abuse issues, and addiction issues”. I assume it has long-standing resources in place for these conditions, but I fail to see how this should apply to me personally. I contend that this program does not promote wellness or treatment of my personal disease. In my opinion, it is not the TPHP’s duty to promote these goals for my personal situation and for my personal diagnosis. It should be clearly understood by the board, that my wellness and treatment is truly promoted solely by my treating physicians and me. I am not a case of mental health issues, substance abuse issues, and addiction issues. Openly, I do understand the need of the Texas Medical Board to have disclosure of my ongoing health status in establishing my ability to practice medicine in the State of Texas, but I certainly must disagree with the choice to require enrollment to the TPHP to do so, at the very least based on this stated intent of the program.

Based on the verbiage of the Occupations Code and also through my personal interaction with the TPHP medical director, Dr. Lloyd Garland, and his personal statements to me, I can more than infer that this program was likely not originally intended for persons in my situation. As it is stated verbatim in the code on numerous occasions, it is easy to see that it was intended for those providers with “mental health issues, substance abuse issues, and addiction issues.” I am disturbed by how this code is being applied to my own personal situation. I feel that it is being applied broadly out of context and more out of convenience and as a self-serving means of gate-keeping for the Board. Clearly, the Occupations Code is obviously less clear whether it was ever intended to apply to those persons with my own personal situation. I think that it should be addressed to the board that if it feels that this broad application of the Occupations Code and its referrals to the TPHP is rightfully inclusive to those persons like me, with an inherent non-self-inflicted disability and no cognitive, behavioral or psychiatric issues, then it clearly raises the question of blatant discrimination.

Aside from my disagreement about how the Occupations Code is wrongly being applied to my specific case, I have equal disapproval of how the program is currently being managed with regard to its policies and rules. Without clearly established guidelines for the management of all cases to be applied under this code, the board is effectively violating basic rights of the individuals that fall under this code for fair and individualized management of their cases. It violates my rights to reasonably know the expectations from this program, how it is applied to the included persons and if it is correctly applied.

As clearly defined by subsection 167.006 (referenced below), the board must establish some sort of validity to the TPHP by establishing rules and policies:

*Sec. 167.006. RULES. The board, with the advice of and in consultation with the governing board, committee, and Texas-based professional associations of physicians and physician assistants, shall:*

- (1) adopt rules and policies as necessary to implement the program, including:
  - (A) policies for assessments under the program and guidelines for the validity of a referral to the program;*
  - (B) policies and guidelines for initial contacts used to determine if there is a need for a physician or physician assistant to complete a clinically appropriate evaluation or to enter treatment, including policies and guidelines for arrangements for that evaluation or treatment; and*
  - (C) policies and guidelines for interventions conducted under the program; and**
- (2) define applicable guidelines for the management of substance abuse disorders, psychiatric disorders, and physical illnesses and impairments.*

These are, by the Occupation Code's own verbiage, "necessary" for implementation. As can be verified by the Texas Medical Board staff, my many requests to obtain a written copy/verification of these rules and policies have been unsuccessful. If the board cannot provide this simple request, it is clearly unacceptable for anyone to be subject to this process.

Furthermore, by the above stated subsection there are to be "policies for assessments under the program and guidelines for the validity of a referral to the program." I can attest first hand that no such policies have been in place. They have been requested and your administration has failed to provide them, stating that they are not formally in place. If this situation has been changed and these policies are now available, then I would once again formally request a copy be made available so that I can have my legal counsel review these new, belated policies. Additionally, my contacts at Advocacy Inc., an organization originally established by the State of Texas to protect and advance the rights of those with disabilities, would like to see the same.

In compliance with the board's request for an initial 'screen' for necessity of participation in the TPHP (and despite the boards failure to provide basic rules and

policies), I did meet with the medical director, Dr. Lloyd Garland. Because of the board's repeated failures to provide requested information regarding TPHP and the policies underlying my referral, I felt it was necessary to establish my own knowledge of the basis for this program and to help me decide if I felt this program should apply to me personally. From my meeting with Dr. Garland I can state very simply that I was only left with a number of concerns and unmistakable reasons for opposition. They include the following:

**1) *The medical director did not establish himself as having the expertise/professionalism to make the appropriate decision regarding my fitness to practice.***

In fact, the first statement with which Dr. Garland initiated our conversation was "What does Young Onset Parkinson's mean?" I must express to the board how truly insulted I was by this comment. As a representative of your organization, he unfortunately represented himself as truly unprofessional. I certainly had limited resources, but I was able to investigate Dr. Garland's background prior to our meeting. I know for fact that he had complete disclosure of my Texas Medical Board Application (including detailed information regarding my existing diagnosis) and he himself out of basic professional and personal courtesy should have done the same research. I do not feel it is asking a lot for the person (designated with "expertise" according to the Occupations Code) who potentially will decide/monitor my "fitness for practice" to know very clearly the basis of my disease. Anyone in my situation would feel extremely uncomfortable assuming that this person would interpret appropriate decisions on their behalf.

**2) *There was no intent to make a decision as to whether this may be an appropriate program for me.***

It was very clear from my conversation that inclusion in this program was a **mandate** rather than a determination of "appropriateness" for my personal situation. Dr. Garland repeatedly expressed in a subjective and generalized manner "potential risks" and "potential harms" to patients that might result from my disability. He did not choose to interpret my personal situation in a more objective manner, based on the opinions of my physicians. The same physicians who I feel carry **true expertise** and who have supported me positively as a patient and a physician while practicing for more than five years with this disease. Simply, once again, I do not feel he took the time to know my situation to even attempt to make what should be a well thought out determination. Would anyone on the board expect less in matters regarding their own ability to practice, and as such their livelihood? I would guess not.

He did however choose to express his opinion that one of his concerns was how I might be **perceived** by patients, and how this might somehow prompt patients to contact the board with complaints about me based on my physical appearance. It truly embarrasses me on behalf of Dr. Garland to even state this. If the board,

through its representative, chooses to accept these determinations premised on the basis of “perceptions” and “physical appearance” this is obviously a disgrace to the mission of the board itself. I should not have to state this, but in 5 years of practice, in 2 different states, and with obvious symptoms, I did not once receive a complaint or concern from a patient or colleague regarding my mental competence or physical ability.

**3) *There is an obvious conflict of interest to have Dr Garland to decide as to the appropriateness/necessity (and potentially waiver) of fees.***

Referring once again to my meeting with Dr. Garland, I asked him specifically what situations merited possible “waiver of fees” (as allowed in the Texas Occupations Code). His reply was, put more elegantly: “This program would cease to exist if I waived any fees.” No explanation was provided me as to how I might petition a waiver. It is obvious by his statement and demeanor that Dr. Garland made no effort to address my question. He presumably had a preconceived notion as to the intent and management of this program, which is obviously far from what I would interpret and expect based on the Occupations Code statement of intent. It assumes that the only intent was to force someone into agreeing to pay into a system that is discriminating to all persons with disability. It also highlighted the fact that he has an obvious conflict of interest and should not be making this determination.

As is stated specifically in the Occupations Code chapter 167.011 “the (Texas Medical) board,” as defined by the Occupations Code’s definitions, may grant the waiver of the fee imposed. Additionally, the “Texas Medical Board” shall adopt rules relating to the issuance of a waiver under this subsection of the code. Legally, it does **not** specify the “governing board” as designate for this duty. Moreover, this does not designate Dr. Garland as the decision maker regarding these issues. If the “Texas Medical Board” has formally delegated these duties in whole to the “medical director” Dr. Garland, then I would request the formal amendments to the Occupations Code that specifies this action. Otherwise, I would request that the Texas Medical Board formally provide me with the adopted ‘rules relating to the issuance of waiver’ of fees imposed.

If the Board cannot provide the requested adopted ‘rules relating to the issuance of waiver’ of fees imposed, then I formally request that the Texas Medical Board itself determine these on my individual basis. I do not think that the code would specify waivers if such did not exist. Clearly, I see my personal situation as an appropriate situation that it may apply.

Finally, by referring me to an entity that assesses an additional fee for obtaining my medical license above and beyond that of other applicants solely on the basis of my disability, the Texas Medical Board is violating it’s own rules (22 Texas Administrative Code 161.12) to “ensure non-discrimination in all policies, procedures, and practices as required under state and federal laws relating to race, color, disability, religion, sex, national origin, or age.” Additionally, by condoning

this fee imposed by the TPHP, the board in turn violates the Americans with Disabilities Act.

By what I have presented above, I hope that this board can recognize that my objection to this process is made in principle. The board must understand that in my case and potentially for others, **the process is inherently discriminatory and its fees serve only to act as a penalty for having a disease or any medical disability that is beyond one's control.** It is an insult to all those with inherent non-self-inflicted disability. I do feel strongly that the board has the opportunity to set the correct precedent for establishing some guidelines for how it will apply the Occupation Code to those with disabilities from inherent non-self-inflicted medical conditions. I would like to ask the board to reconsider my referral to the TPHP and to grant me a medical license. I would be happy to work with the board to find a solution to any concerns it may have, but I cannot agree to practices that discriminate against me and my condition. I hope you will understand.

Sincerely,

Mary Parker, M.D.