



THE BRAIN & BODY
HEALTH INSTITUTE P.A.

December 5, 2016

Director Ken Levine
Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711-1300

Via e-mail to sunset@sunset.texas.gov

Re: The 2016 Sunset Staff Report of the Texas Medical Board

Dear Director Levine:

I am a board-certified neurologist practicing in Texas and stakeholder in ensuring quality health care for the citizens of Texas. In their report of the Texas Medical Board ("TMB"), The Sunset Advisory Commission correctly identified areas in which the TMB can improve monitoring and "better curb prescription drug abuse and misuse," a major public health threat. Likewise, the Sunset Commission noted that improved coordination between the TMB and Texas Physician Health Program, and increased support for recovery of impaired physicians is in the public interest.

However, I wish to underscore apparent "blind-spots" in the Sunset review, i.e. major deficiencies in due process of TMB's enforcement activities, injustices that do not escape the notice of the Texas Medical Association.¹ Alas, I too have personally witnessed improprieties of the *process*: non-adherence to Texas Law, TMB Rules, and rights of defense at TMB-run disciplinary hearings. Indeed, the Sunset report acknowledged "longstanding legislative interest in the Medical Board stemming from the board's past struggles with *major deficiencies in licensing and enforcement..*"

Ironically, the Sunset report acknowledged that their study of "seven years of complaint and disciplinary data, reveal fluctuations among the [alleged] violations that *received disciplinary actions.*" Yet in a non-sequitur the Sunset report concluded that the TMB exacted a "consistent level of enforcement over those years." I propose that there is an *inconsistent adherence* to the Laws and Rules contributing to fluctuations in disciplinary actions, as well as a "consistently" high level of

¹https://www.texmed.org/Template.aspx?id=43835&mobile=true&utm_source=Informz&utm_medium=Email&utm_campaign=ACTION; <https://www.texmed.org/Template.aspx?id=43691>;
[https://www.texmed.org/uploadedFiles/Current/2016 Practice Help/Licensure/CommentsTMB %20PropRule187-18.pdf](https://www.texmed.org/uploadedFiles/Current/2016%20Practice%20Help/Licensure/CommentsTMB%20PropRule187-18.pdf); <https://www.texmed.org/Template.aspx?id=43691>

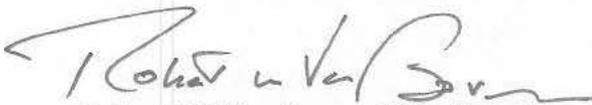
enforcement overall, *disproportionate* to the number of complaints compared to years past.²

Overzealous investigation and prosecution triggered by bad-faith, anonymous reporting to the TMB was an egregious reality until recent past; prompting the 2011 session of the Texas Legislature to disallow such complaints and thwart this tactic to use a state agency for personal vendettas, financial, or other improper motives.³ Yet glaring “loopholes” for bad-faith reporting remain, and TMB does not consider for bad-faith motives, despite the prohibition by law.⁴ This maladministration sets the stage for an exhaustive, expensive, and destructive end of a physician’s career and disservice to the public.⁵

I have also discovered the lack of any official appointed to investigate complaints of maladministration by public officials and staff at the TMB. Indeed, the *lack of any active supervision* of the TMB has been recognized by a recent U.S. 5th Circuit Court decision, and a corollary concern of accountability in government was also absent in the Sunset Report despite *national* media attention to this Achille’s heel for the TMB.⁶

I fully recognize and appreciate that the Sunset cannot and does not re-evaluate individual decisions of a board. However, I beseech the Commission and Legislature establish an Ombudsman office or official in similar capacity⁷ to receive and investigate for alleged improprieties by TMB officials, staff, and/or members. A mechanism of independent supervision, scrutiny, and accountability should exist to preserve integrity in government so that this agency is faithful to the law, its own rules, and the public it serves.

Sincerely,



Robert W. Van Boven, M.D., D.D.S.

² <https://www.ncbi.nlm.nih.gov/pubmed/22321519>

³ <https://www.texmed.org/Template.aspx?id=21912>

⁴ Texas Medical Board Rule 160.013 states,

“If a court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician’s or applicant’s individual historical record.”

⁵ Systematic and diligent review for bad-faith reporting should be performed and considered in all complaints. Expedited resolution of temporary suspensions or restrictions should also be afforded- See November 16, 2016 letter by the TMA on the TMB Sunset Review.

⁶ <http://www.modernhealthcare.com/article/20151214/NEWS/151219924>;

<http://www.modernhealthcare.com/article/20161018/NEWS/161019900>;

⁷ For example, an Office of Inspector General serves this purpose for other governmental agencies.