

The Texas Doctor and the Texas Medical Board

Investigations: Changes are Needed

When accused of a crime, every United States Citizen has a constitutional 5th and 14th amendment right to not be deprived of life, liberty, or property without due process of law, as well as a 6th amendment right to face the witnesses against him; that is, unless he is a Texas Physician. The mere utterance of three separate benign words, in a particular sequence, festers into a malignant phrase that sends a spine-tingling chill throughout a physician's body, and that phrase is: "*Texas Medical Board*" (TMB).

On October 23, 2007, a special legislative hearing was held to examine if the TMB has been too aggressive in its oversight of Texas physicians. Physicians from all over Texas flocked to Austin for an opportunity to tell their horror stories of encounters with the TMB. The special legislative hearing lasted over eleven (11) hours with even more physicians aching to someday tell their story. One of the major gripes the physicians voiced at the hearing is the fact that the TMB accepts anonymous complaints which lead to unreasonable punishments.

In the years prior to tort reform, in Texas, the TMB was attacked for being too lax on monitoring physicians, and leaving the grunt work of disciplining physicians to the courts of the state. This allowed many unqualified physicians to slip through the woodwork and continue practicing; thus creating an inevitable threat to future patients. In response to the public backlash, the TMB appointed a new director, Donald Patrick, M.D., J.D., and implemented a decree that all anonymous complaints would be investigated in an effort to "protect and enhance the public's health, safety and welfare." The theory behind anonymous complaints was to encourage scared patients into reporting a shoddy physician. However, time has shown that if by *public*, the TMB meant *insurance companies*; then the TMB has continuously stood by their word.

The TMB has increasingly disciplined physicians who are waiting to receive large payouts from insurance companies for treating patients, but are still hesitant to combat the senile scalpel wheeling physicians who amputate the wrong leg and the philandering physicians who sexually assault patients. The legislative hearing in October addressed the

concern that the TMB was wielding a hot and heavy axe at the wrong physicians therefore creating a false sense of security without remedying the real problem.

When a physician is under an investigation, an *anonymous expert* is used by the TMB to discredit the physician's treatment method. Many of the TMB *experts* have never practiced medicine, and that one *anonymous expert's* decision, that usually benefits an insurance company, trumps any number of practicing physicians who believe the contrary. The heavy weight placed on the findings of the TMB *expert* inevitably means a physician's fate is predetermined before any futile attempts at a defense are made. After being under scrutiny for several months, the physician is forced to travel to Austin and admit to being an incompetent physician or else lose their license. Many times the punishment rendered forces an insurmountable number of restrictions on the physician to where it is similar to having their license revoked. A common punishment rendered in one board order for a physician is:

- the inability to write prescriptions;
- the inability to monitor nurses;
- a limit on the number of patients the physician is allowed to treat;
- the requirement that another physician shadows the physician under the order at all times when working;
- the requirement that detailed notes are kept on every patient ever seen while under the board order available for another physician to view at anytime; and
- the requirement that the physician obtains 50 more hours of CME credits per year than required.

The obligatory signing of the Board Order occurs during a meeting behind closed doors. The actuality that decades of sweat and tears contributed to building a thriving practice can be wiped away during a thirty (30) minute meeting because of an anonymous complaint and the word of a non-rebuttable anonymous expert.

Once under a Board Order, the physician's name is blasted on the internet, in a newsletter, and an additional letter is sent to all of the hospitals and insurance companies that work with the physician. The TMB is quick to advertise to the real public that they are doing their job on regulating physicians, but they are coy to advertise that it is many times for billing issues.

Several physicians disciplined are currently under a Board Order for improper treatment of a patient. Oddly enough, the improperly treated patient never complained about treatment they received, in fact, many referred new patients to the physician. The complaint that led to the Board Order came from an anonymous source, also known as the patient's insurance provider.

On December 20, 2007, the Association of American Physicians and Surgeons Inc. filed a civil lawsuit against the TMB. The Complaint contains allegations that Dr. Roberta Kalafut, president of the TMB, arranged for her husband to file anonymous complaints against her competitors and then she disciplined those physicians. There are also allegations that anonymous complaints were "orchestrated by a New York insurance company that did not want to reimburse patients for their expenses." Furthermore, the Complaint also contains allegations that a physician's Complaint was leaked on the *Houston Press* four days before his own attorney received notice. Another large portion of the Complaint focuses on Dr. Keith Miller, former Chairman of the TMB's Disciplinary Process Review Committee, with statements that Miller abused his power. On January 9, 2008, the TMB filed a motion to dismiss stating that they have Eleventh (11th) Amendment Immunity, the outcome is currently pending.

The TMB is comprised of nineteen (19) members who are all appointed by the governor. Twelve (12) members are physicians and seven (7) are lay members who are not involved in the medical field. These board members must re-evaluate the process of deciphering which complaints have merit and how to discipline those physicians. As it stands, the TMB is forcing premium physicians to enter into Board Orders that essentially restrict the quality of care that is afforded to patients in need. Allowing litigious claims for any complaint, anonymous or not, forces a physician to carefully select which patients receive treatment. At the rate the TMB is disciplining physicians for improper medical treatment; anyone who seeks medical advice will have to go through a screening process to determine if they can see a high-quality physician. By the time the TMB is finished with their mission to restrict the license of all the sought-after physicians, the public will have their choice of receiving mal medical care from the REAL unqualified physicians or homeopathic remedies.

For information regarding defending yourself against the TMB visit <http://www.bennettlawfirm.com>.

Copy of the Lawsuit retrieved from <http://www.aapsonline.org/tmb.php>:

Streaming video of the Legislative Hearing:

http://www.archive.org/download/TexasMedicalBoardHearingsTexasHouseofRepresentatives10232007/TexasMedicalBoardHearingsTexasHouseofRepresentatives10232007_64kb.m3u

Transcript of the Legislative Hearing: