

**Association of American Physicians and Surgeons’
Rebuttal to the Texas Medical Board’s Response to
Dr. Hotze’s Editorial of July 31, 2007
September 19, 2007**

The following is a rebuttal by the **Association of American Physicians and Surgeons**, <http://www.aapsonline.org/>, to the response of the **Texas Medical Board (TMB)** to an editorial entitled, **Tyranny at the Texas Medical Board**, written by Steven F. Hotze, M.D. on July 31, 2007, published in the Houston Community Newspapers and distributed to 250,000 homes in the Greater Houston area. The editorial may be found at the end of this rebuttal. It elicited the following duplicitous responses from the TMB. **The Association of American Physicians and Surgeons (AAPS) rebuttals are highlighted in yellow.**

TMB: An editorial written and disseminated recently by Dr. Steven Hotze makes certain allegations against the Texas Medical Board. I would like to submit the following facts that will refute statements made by him with actual facts and statistics.

AAPS: None of the TMB’s responses actually refute Dr. Hotze’s statements; in fact many substantiate his allegations. Many of the TMB’s responses are false and misleading.

- **TMB:** Dr. Hotze stated: “The Texas Medical Board (TMB) is denying physicians their constitutional right of due process...”
- The complaint and investigation process provides *many* points of due process; for example,

AAPS: Five claims of due process are made by the TMB, but they are merely window dressing to obscure its denial of due process, as explained further below. Generally administrative law, under which the TMB operates, does not provide adequate due process as provided by the judicial system.

- **TMB:** during the first 30 days before an investigation is opened, the physician is given an opportunity to provide evidence that the complaint is invalid, and if so, the complaint is dismissed at that point.

AAPS: The TMB fails to dismiss many frivolous cases at this stage, preferring instead to force physicians to incur \$20,000 to \$150,000 in legal expenses, not including lost time, to defend themselves before two TMB members at an Informal Show Compliance and Settlement Conference (“ISC”).

This has occurred in numerous cases which have been investigated; the most outrageous is the case of Dr. Bill Rea. Dr. Rea is a board certified cardiovascular surgeon who established the Environmental Health Center in Dallas, Texas in 1974. Dr. Rea provides innovative treatment to patients plagued with environmental illnesses stemming from

exposure and adverse reactions to chemical toxins and environmental substances. He has published over 135 medical journal articles and has written the definitive textbook on chemical sensitivity. Since 1974 he has served over 30,000 patients from around the world.

On October 3, 2005 Dr. Rea was informed by the TMB that an anonymous complaint had been filed against him for his treatment of five patients, all living in Manhattan and all covered by Oxford Medical Insurance. It became obvious that Oxford, an out-of-state insurer, had filed the anonymous complaint in order to have the TMB discipline Dr. Rea so that the insurance company didn't have to reimburse his patients.

When the five (5) patients of Dr. Rea, named in the complaint, were informed about the anonymous complaint, they were appalled. Each wrote letters to the TMB praising Dr. Rea's treatment. Two of the patients credited him with saving their lives. The referring physicians in New York were equally gratified by Dr. Rea's care of these patients. As in other cases, the TMB completely disregarded the patients' testimonies.

Why did the TMB do the dirty work for a New York insurance company?

Dr. Rea presented written exoneration for his care of these patients from 18 physicians who practice environmental medicine. The TMB's anonymous "expert", who served as its paid hired gun and who was ignorant of environmental medicine, condemned Dr. Rea's treatment of these five patients. So here is the score: 18 experts for Dr. Rea and 1 anonymous non-expert, hired by the TMB, against him.

Sometimes the TMB indicates before the ISC that it does not matter what evidence the physician presents because, in the view of the TMB, "we're going to get his license." This was Dr. Rea's experience. At the ISC on January 19, 2007, lasting less than one hour, the notorious Dr. Keith Miller refused to consider Dr. Rea's extensive rebuttal documents and told him that he wanted Dr. Rea's license revoked. Miller acted as jury, judge and executioner as does each presiding TMB member at an ISC.

Dr. Rea's case has galvanized the commitment of the AAPS to make sure that the TMB is completely reformed and that it conducts itself by the rule of law rather than by its current arbitrary abuse of power.

- **TMB:** If an investigation is opened, the doctor will again be contacted and given an opportunity to respond. This response will be made part of the final investigative report and is sent to expert reviewers in standard of care cases.

AAPS: As in the case of Dr. Rea and the other physicians which were interviewed, the physician's response is usually ignored. The so called "expert" reviewers consist of the TMB's anonymous hired guns who write one-sided reports against the physician as desired by the TMB hierarchy. The TMB's abuse of power and its track record of ruining the careers of scores of good physicians bring into question its choice of so-called experts. Why should the TMB's hired gun's report take precedence over the opinion of other physicians who evaluate the case in favor the accused physician?

- **TMB:** There are built-in timelines mandated by the legislature to help resolve cases quickly.

AAPS: That is not due process, but instead it often results in swift **injustice**. In practice, many cases drag on and on for months and years.

- **TMB:** Physicians may choose to be represented by counsel.

AAPS: Legal counsel is very expensive and, in the cases of solo practitioners, often cost prohibitive. At the ISC, TMB members routinely refuse to allow defense attorneys for the physicians to fully state their case. Recordings of the ISC proceedings are prohibited so that the TMB members' deplorable behavior is never captured on tape or film. At one ISC, Dr. Roberta Kalafut even ordered a physician's aide to stop taking notes, which is a violation of the TMB's own rule.

- **TMB:** Physicians are given an opportunity for an informal meeting at which they can present their side of the case before any formal disciplinary action can be taken.

AAPS: The ISC is not at all informal. Although it was intended by the legislature to be informal, it is in fact a Star Chamber proceeding where the presiding TMB member acts as judge, jury and executioner. The ISC is often a sham review and intimidation session. The ISC lacks any accountability for the conduct of the TMB members. Recordings are prohibited and some TMB members, notably Drs. Miller and Kalafut, act in an arrogant and irrational way that is an embarrassment to the state of Texas and contrary to due process. During the ISC, some TMB members have been said to routinely cut off the physician as he attempts to explain his case; they expel his patient from the room without hearing how she was satisfied with the treatment; and they even order some attendees to stop taking notes. We know of no physician who has emerged from an ISC feeling that it was an "informal meeting." Rather, the physicians that were interviewed are outraged at the Star Chamber tactics that occur.

- **TMB:** About 90% of all disciplinary actions are in the form of agreed orders, which the physicians have had the opportunity to negotiate and have voluntarily agreed to the action taken.

AAPS: The "agreed orders" are coerced orders, imposed under threat of loss of license. It is absurd to pretend that a physician has "voluntarily agreed to the action taken" when it was imposed under the threat of career-ending sanctions by the TMB if the physician declines to accept the terms.

- **TMB:** If they do not voluntarily agree, they are provided with all of the due process rights specified by state law in the Administrative Procedure Act and the Rules of the State Office of Administrative Hearings (SOAH), the state entity designated by law to hear cases involving state agencies.

AAPS: The TMB can ignore the ruling of the SOAH, rendering this a costly and meaningless exercise. Moreover, the administrative law judges work with the TMB officials and almost always rule in their favor.

The following case of Dr. Chris Kuhne illustrates multiple failures of due process that disprove TMB claims to the contrary.

Dr. Chris Kuhne is an Ob/Gyn in the Dallas area. Last year he implemented a charge for copying charts. An attorney requested a copy of her records and she was billed \$81 based upon the fee charged by a local hospital. The chart was sent to her but she never paid him a dime. Instead, she filed a complaint with the TMB.

The notorious Dr. Keith Miller presided over Dr. Kuhne's hearing. Dr. Kuhne's two attorneys were not allowed to present his defense. Miller said he wanted to ask Dr. Kuhne some questions and proceeded to subject him to verbal abuse and disdainfully asked, "Son, don't you know who gives you your license? Why didn't you check and see how much we allow you to charge?" As it turns out, the TMB set a maximum charge of \$39 for the copying of charts, even though they have no legal authority to do so. The conference lasted 5 minutes. Miller demanded that Dr. Kuhne pay a \$1000 fine.

Dr. Kuhne refused to admit to any wrongdoing because it would be posted on the TMB website under the heading of "Convictions." This would cause him to be dropped by medical insurance companies and by the hospitals where he was on staff. He appealed the decision to the State Office of Administrative Hearings where his case was heard by Administrative Law Judge, Wendy Harvel. The TMB attorneys alleged that Dr. Kuhne's conduct was unprofessional and likely to be injurious to the public. Judge Harvel reversed Miller's decision, ruling that licensing agencies are prohibited from taking disciplinary actions against a physician for unknowing, isolated billing errors.

All this cost Dr. Kuhne \$80,000 in legal fees over a copying fee he never collected.

In an unprecedented act, Judge Harvel explained her decision to the full TMB at its quarterly meeting on Friday, August 24, 2007. Despite this, the TMB voted not to accept Judge Harvel's ruling and outrageously imposed a \$2000 fine and ordered Dr. Kuhne to attend a jurisprudence course. This is an egregious act of despotism.

This is one of many instances which demonstrate that the TMB's statement is wrong when it claims physicians have due process.

- **TMB:** Dr. Hotze claims, "The TMB allows complaints by insurance companies. These anonymous complaints target physicians who oppose the insurance companies' 'standards of care' which limit treatment options, deny claims and increase insurance company profits."

AAPS: The TMB allows anonymous complaints from any source including insurance companies, pharmaceutical companies, corporate hospitals, competitor physicians, attorneys, as well as patients. The TMB does not claim otherwise. The TMB misuses

statistics to support its actions, when in fact the TMB can terrorize all physicians by eliminating only a small percentage of them.

- **TMB:** The Medical Practice Act, 160.006(a) and 164.007(c) requires TMB to accept anonymous complaints from all sources.

AAPS: This TMB statement is utterly false.

No legislation exists which requires the TMB to accept anonymous complaints. The TMB adopted its own self-serving rule to allow itself to accept and prosecute anonymous complaints. (See **Texas Administrative Code, Title 25, Part 1, Chapter 123, Rule 123(c) (4).**) This was done so that the TMB could bolster the number of physicians it could investigate in order to justify the increased budget given to it by the Texas Legislature.

Section 160.006(a) ensures confidentiality **for the benefit of the accused physician**, not the person making the complaint. It implicitly permits disclosure to the physician of the identity of the complainant in connection with a disciplinary hearing.

Apparently the TMB does not abide by this confidentiality requirement anyway. In Dr. Rea's case, apparently someone at the TMB leaked its Complaint against Dr. Rea to the *Houston Press* by early August 24th, which then wrote and posted a smear piece against Dr. Rea based upon this one-sided TMB information at 12:45 pm on the same day. http://blogs.houstonpress.com/houstoned/2007/08/re_steven_hotze_and_william_re.php

Dr. Rea's own attorney did not receive notice of this Complaint until August 28th, **four days later**. It is highly likely that the TMB improperly alerted the *Houston Press* to this Complaint and provided it with a copy four days before even telling Dr. Rea's own attorney. So much for fairness and confidentiality by the TMB! There should be a full investigation into the TMB's abuse of power.

As to Section 164.007(c), it states that complaints shall be kept confidential with respect to discovery outside of a board proceeding. **It does not require acceptance of an anonymous complaint and does not prohibit disclosure to the accused physician.** The adverse expert reports are disclosed to the accused physician, for example, and the confidentiality for complaints is no greater.

- **TMB:** Only **3.9%** of all complaints are anonymous and
- Only **0.8%** are filed by insurance companies.

AAPS: The injustice is 100% for the physicians victimized by these anonymous complaints from insurance companies, which are large in number even if small in percentage. The insurance companies need to eliminate only one physician in order to intimidate 100 or 1000.

The issue commonly raised by the insurance companies relates to standard of care, which means the physician was looking after the interests of the patient rather than the insurance

company's interest, which is to limit expenses and increase profits. **Insurance companies do not provide health care, physicians do.**

Insurance companies are traded on the stock exchange. Their sole purpose is to generate profits and that is done by creating fear among the public to justify their exorbitant premiums and then to deny the care recommended by the physician and to deny claims submitted by their customers.

The legal cost to a physician and the time required to defend himself against a complaint is so exorbitantly high that the physician's career is often destroyed.

TMB's statement is unclear about the true nature of these anonymous complaints and how many of them lead to harsh sanctions. Furthermore, the TMB does not indicate who filed the other anonymous complaints.

The truth of anonymous complaints will not be known until the Texas House Appropriations Subcommittee on Regulatory Agencies and the Texas Senate Health and Human Services Committee organize their joint hearing to investigate the TMB and appoint an outside auditor to analyze the data. The joint committee hearing is planned for mid to late October.

- **TMB:** All complaints, from whatever source, are treated equally and evaluated to determine if there is a violation of the medical practice act.

AAPS: This claim is disproved by the TMB's own data below. On average, insurance company complaints are taken more seriously than other complaints. In discussing the cases of numerous physicians who suffered injustice at the hands of the tyrannical TMB, we know that the TMB targets high profile physicians to discipline in order to intimidate other physicians. None of the physicians who were interviewed were disciplined because of drug abuse, alcoholism or for being sexual predators but rather for the specious argument of standard of care which is both relative and ambiguous. Remember that at one time leeches were considered the standard of care.

- **TMB:** Of the 85 complaints filed by insurance companies,

AAPS: That number does not include complaints that insurance companies persuaded others to file for them, or that were filed anonymously at the urging of an insurance company. The TMB does not give any information on this or on what other business entities filed complaints, such as pharmaceutical companies, hospitals or competing physicians.

- **TMB:** 42 were closed within 30 days as a result of a review of the complaint and initial response from the physician.

AAPS: This means only 50% of insurance company complaints are dismissed, and some of those may have been duplicates against the same physician or practice group. This is a lower dismissal rate than average, illustrating the preference given to insurance companies.

- **TMB:** Of the 43 that were opened,

1. 22 are still being investigated,

AAPS: This means the physician is incurring huge legal expenses and intimidation from the TMB, simply because an insurance company does not like him.

2. **TMB:** 13 were dismissed on completion of the investigation, and

AAPS: This means that the insurance company filed a frivolous complaint but the physician was subjected to harassment by the TMB, huge legal expense, and loss of time to defend himself against a bogus complaint. Why should this be allowed to happen?

3. **TMB:** 8 were scheduled for an Informal Show Cause and Settlement Conference. Of those,

- a. 2 were dismissed and

AAPS: This demonstrates that the Complaint was baseless but the physician was forced to spend tens of thousands of dollars, and endless anxiety, defending himself against harassment. The message is clear: do what the insurance company wants or it will turn your life into a nightmare using the TMB.

- b. **TMB:** 6 are scheduled in the future.

AAPS: Physicians in these cases are continuing to be harassed by this unjust process. The TMB's data do not add up: it claims that no physician has been disciplined due to a complaint filed by an insurance company. But Dr. Rea faces license revocation from a complaint filed by an insurance company.

Another physician, Dr. Andrew Campbell, had nine anonymous complaints filed on nine of his patients. Dr. Campbell deduced that these were filed by two insurance companies because, as in Dr. Rea's case, these patients all had insurance with one of two insurance companies. The patients denied filing complaints and, in fact, several signed sworn affidavits emphasizing that the care they received was exemplary. One patient complained about having the TMB review her personal medical records without her consent. Rather than paying the patients' claims, the insurance companies simply filed anonymous complaints against Dr. Campbell with the TMB.

Dr. Roberta Kalafut, President of the TMB, presided over Dr. Campbell's ISC. She refused to let his attorney present his defense. As has been related by several other physicians who have dealt with her, Dr. Kalafut treated Dr. Campbell with disdain and indignation. She was not even conversant on Dr. Campbell's written rebuttal to the report of the TMB's anonymous hired gun, who had discredited Dr. Campbell.

As recommended by Dr. Kalafut, the TMB formally suspended Dr. Campbell's license in August 2007. Dr. Campbell has spent over \$200,000 defending himself from these malicious complaints.

On September 6, 2007, Dr. Campbell was granted a temporary injunction by a State District Judge in Austin which temporarily prevented the TMB from suspending his license.

What will happen to the tens of thousands of patients who have benefited from the care of Drs. Rea and Campbell and all the other physicians who have been terrorized by the TMB and driven out of practice?

There is an old adage, "The wheels of justice grind slowly, but they grind very fine." There is a more colloquial way of saying the same thing, "Every dog has his day." Those at the TMB who have perpetrated these premeditated injustices, and those who have been its accomplices, will find themselves defending themselves in a legislative hearing, and likely in a court of law.

- **TMB:** Regardless of the source of the complaint, our expert panelists look at each case in detail to determine if the standard of care is met, not whether the insurance company wants to deny certain treatment options.

AAPS: These so-called "expert" witnesses are anonymous to the doctor and are handpicked hired guns, often untrained in the specialty of the targeted physician. Responses by the targeted physician, and by his experts, are not even considered.

In the case of Dr. Rea, 18 experts in the field of Environmental Medicine evaluated his treatment and found his care exemplary. The TMB had one hired-gun expert, untrained in Environmental Medicine, who discredited his treatment and therapies. The TMB chose to side with its lone hired gun.

What was the motive for the TMB to investigate the insurance company's malicious complaints against Dr. Rea and Dr. Campbell to begin with and, much less, to have its ISC recommend that their licenses be revoked or suspended?

- **TMB:** Dr. Hotze claims: "Dr. Keith Miller, a member of the TMB's Executive, Finance and Public Information Committees, also served for Blue Cross-Blue Shield on the Texas Medical Advisory Committee, which is adversarial to physicians who care more about their patients than insurance company profits. This is clearly a conflict of interest."
- Dr. Miller's participation on the Blue Cross Blue Shield committee is advisory only and does not raise any conflict of interest issues.

AAPS: Of course it is a conflict of interest for Miller to have served Blue Cross-Blue Shield on the Texas Medical Advisory Committee while a member of the TMB, and an obvious conflict at that. BCBS attempts to force physicians into compliance with the goal of limiting expenses and increasing its profits. A TMB member cannot

simultaneously serve both an insurance company, which profits from limiting care, and patients, who need greater care. BCBS targets physicians who oppose the insurance company's 'standards of care' which limit treatment options, deny claims and increase insurance company profits. Frankly, it is as absurd for the TMB to claim this is not a conflict of interest as it would be for it to claim that it is not cold at the North Pole.

The TMB claims that Miller only serves BCBS in an advisory capacity. The TMB makes our point for us. Attorneys, for example, are always serving their clients in an "advisory" role and yet their profession prohibits conflicts of interest. Why does the TMB ignore this basic principle of fairness and due process?

On Friday, September 7, 2007, Miller abruptly resigned his position on the TMB.

Miller's resignation was due to the intense scrutiny of his abusive and tyrannical actions against physicians while on the TMB. It was perhaps also due to his relationship with Bridget Hughes, his Nurse Practitioner. Bridget Hughes, who was found to be a narcotics addict by the Texas Board of Nurse Examiners, continues to work as Miller's nurse practitioner at his office in Center, Texas. Hughes had her prescription writing ability suspended when she was disciplined by the Texas Board of Nurse Examiners (TBNE) on April 16, 2007 for stealing (50) triplicate prescriptions from her previous supervising physician employer and forging his name to obtain narcotics for her own use.

Inside sources stated that Ms. Hughes will be charged shortly with narcotic violations by the Drug Enforcement Agency (DEA) in Federal District Court in East Texas. Why has Dr. Miller continued to employ Bridget Hughes as his nurse practitioner? Why is Miller protecting her? What goods does Hughes have on Miller? Do not be surprised if Hughes points the finger at Miller if the Justice Department offers her a shortened sentence for coming clean about her relationship with him.

Miller gave as his reason for resigning his desire to pursue his career as an expert witness against physicians for plaintiff attorneys. Miller has testified in 41 medical malpractice cases against doctors over the past three years. **This is another obvious conflict of interest.** It appears that Miller may have used his position on the TMB to gain expert witness status for himself.

A comparison of the names of the physicians against whom Miller has testified with the names of physicians investigated by the TMB will be made to find out whether or not Miller was using his position on the board to fish for potential malpractice cases for plaintiff attorneys.

- **TMB:** It is simply an opportunity for a practicing physician to have an impact on the way Blue Cross Blue Shield does business.

AAPS: Rather it is an opportunity for a practicing physician to work with Blue Cross Blue Shield to control how physicians practice medicine. The TMB does not inform us if Miller was paid for his work while he served BCBS on the committee.

- **TMB:** In regards to a specific case, Dr. Hotze alleges "TMB's anonymous 'expert,' who served as its paid hired gun and who was ignorant of

environmental medicine, condemned Dr. Rea's treatment of these five patients."

- TMB is required by statute to have all standard of care cases reviewed by members of an Expert Physician Panel and the legislature established funding to pay review costs. Panelists are not "hired guns," but are used and paid by the board as established by the legislature.

AAPS: Experts are selected by the TMB to have a bias against targeted physician. For example, an expert biased against environmental medicine was used to evaluate the patients' charts of Dr. Rea, a leader in environmental medicine. If the TMB's paid experts do not do the bidding of Don Patrick, Executive Director of the TMB, or Mari Robinson, TMB Manager of Investigations, and discredit the physician chosen for discipline, then they are not rehired. This relationship is understood by anyone who does consulting work.

- **TMB:** TMB does not require any member of the Expert Physician Panel to render a specific opinion on any case one way or the other. The TMB submits the records to a panel member in the same or similar field of practice and requests a professional opinion. There is no relationship whatsoever between the board, its experts and insurance companies.

AAPS: The TMB will not rehire an expert who gives a report that the TMB does not like. When an expert witness exonerates a targeted physician, the TMB simply finds another physician to discredit the targeted physician. Nothing in its rules prevents this violation of due process.

- **TMB:** When an ISC panel hears a case, it listens to facts presented by both sides, and makes a determination of whether to find a violation of the Medical Practice Act based on the facts as they are presented. Nothing is "predetermined."

AAPS: The TMB manipulates who sits on these ISC panels, rather than using a random assignment system that is essential to due process. Frequently the pre-assigned TMB members serving on the two member ISC do not even consider the arguments of the accused physician or of his attorneys at the conference. That this is often the case is corroborated by numerous physicians with whom we have had discussions and who have appeared before an ISC.

The ISC is a sham review proceeding. Several TMB members, particularly Drs. Miller and Kalafut, typically interrupt the targeted physician or his legal counsel and do not allow them to present their case. In some egregious cases both the physician and his attorneys have been told by the presiding TMB member that he was not interested in what the accused physician or his attorneys had to say. No tape recordings are allowed so that the abusive behavior of certain TMB members presiding at the ISC remains hidden from the public. Even though, according to TMB rules, physicians are allowed to have notes taken during an ISC, even this was

prohibited in the case of a physician's aide. No record exists to support a challenge to the lawless behavior by ISC panel members.

The most deplorable behavior seems to have been exhibited by Drs. Miller and Kalafut, although others have been implicated by physicians with whom we have spoken. Drs. Miller and Kalafut are known henchmen for the board and seem to pride themselves and even delight in destroying members of their chosen profession.

- **TMB:** If an ISC panel recommends an agreed order that the physician disputes, the case goes to a contested case hearing at the State Office of Administrative Hearings—more due process—at which point the rules of evidence apply and the case is heard by an impartial administrative law judge with no ties or allegiance to the Texas Medical Board. If the physician is dissatisfied with the outcome of the SOAH case, he then has the recourse of appealing in District Court—yet more due process.

AAPS: This just confirms our point that there are no rules of evidence in the ISC.

The TMB simply ignores the fact that the Administrative Law Judge (ALJ) at the State Office of Administrative Hearings and the State District Court Judge almost never overturns the TMB. An affirmance rate of nearly 100% demonstrates a lack of due process.

A recent ruling by Administrative Law Judge Wendy Harvel actually did reverse a recommended discipline order which Dr. Miller had issued at the ISC of Dr. Chris Kuhne because Miller's order violated state law. In an unprecedented move, Judge Harvel appeared before the full TMB at its quarterly meeting to explain her ruling. The board listened and then promptly voted to negate Judge Harvel's decision in favor of Dr. Kuhne and promptly doubled the initial fine of \$1000 to \$2000 and required him to take a jurisprudence course. This was obviously meant to punish Dr. Kuhne for having the audacity to challenge the TMB. This action by the TMB, overturning Administrative Law Judge Wendy Harvel's decision, clearly demonstrates that the SOAH really does not provide due legal process for physicians.

- **TMB:** Dr. Hotze states: "The Texas Medical Board is made up of 19 unelected members who are appointed by the governor. Their activities are poorly monitored."
- The Board was created by the Legislature and the Medical Practice Act dictates its membership. Its members are appointed by the Governor, with the advice and consent of the Texas Senate.

AAPS: Notice that the TMB does **not** dispute that there is little monitoring of its activities by the Texas Legislature or the public. The TMB has downplayed or concealed its violations of due process and quietly undermines the patient/doctor relationship, while pursuing the agenda of insurance companies and other business interests.

- **TMB:** TMB is subject to oversight by the Texas Legislature and is thoroughly scrutinized during the regular Sunset review process, having most recently undergone that task two years ago.

AAPS: This oversight is long overdue. The TMB cannot defend its current actions; anonymous complaints from insurance companies, hospitals, pharmaceutical companies and competitors, anonymous "expert" witnesses, Star Chamber proceedings held in secret, prohibition of notes and recording in hearings, denial of due process to physicians, intimidation tactics, forced settlements and conflicts of interest of the TMB members. This has led the appropriate Texas House and Senate committees to plan extraordinary interim hearings to investigate the TMB in October 2007. The TMB should welcome this oversight by its own statement above, and cooperate fully in providing information and live sworn testimony by its members and officers.

The data provided by the TMB so far are woefully inadequate. Its numbers are incomplete and it provides insufficient detail on the anonymous complaints and complaints by insurance companies.

On August 13, 2007 a request for information, consisting of 89 questions, was presented to the TMB based upon the Open Records Act. **Incredibly enough, the TMB responded by notifying the party involved that it would cost an estimated \$314,479 and take six (6) months to produce the information. That's right, \$314,479.** The TMB obviously does not want anyone to scrutinize its activities.

- **TMB:** TMB is also the subject of review by courts when disciplinary proceedings are appealed. TMB has an excellent track record in court and no TMB disciplinary proceeding has been held to be unconstitutional, at least in the recent past.

AAPS: The "excellent track record in court" reflects an overly deferential review process rather than meaningful scrutiny. The abuses by the TMB are just now coming to light and the Texas Legislature is in a good position to investigate and determine how unethical the TMB has really been.

The TMB posts on its website its discipline of physicians and need not hide behind a phony confidentiality now that protects only itself rather than patients and physicians.

The TMB's mission is 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 through licensure, discipline, and education. When the TMB follows these mandates it is operating within its statutory bounds.

Rather than targeting physicians who focus on taking care of patients despite insurance company displeasure, the TMB should focus on removing the licenses of physicians who are known drug addicts, alcoholics or sexual predators.

But the TMB has strayed too far from its mission and is serving the interests of insurance companies, other business interests and disgruntled competitors of physicians, many of

whom file anonymous complaints. The TMB needs to be brought back to its purpose of serving patients. This can be accomplished by establishing transparency, accountability, legal due process and integrity in the TMB's actions and among the TMB members.

Unfortunately, the TMB has become like a sick patient. The infection has spread beyond the abuse of power by Dr. Keith Miller, who resigned his position September 7, 2007.

It should be noted that many TMB members are serving from good motives and are unaware of the hidden agendas of the leadership of the TMB. The legislative investigations of the TMB are focusing on a few rogue TMB members or officers who, like a rogue prosecutor, have been abusing their power. Dr. Keith Miller was one, but in the absence of real reform at the TMB, his resignation does not alone solve the problem.

The TMB is clearly on the defensive. We will continue to attack that which the TMB cannot defend: 1) anonymous complaints from insurance companies, hospitals, pharmaceutical companies, attorneys and competitors, 2) anonymous "expert" witnesses, 3) Star Chamber proceedings held in secret, 4) prohibition of notes and recording in hearings, 5) denial of due process to physicians, 6) intimidation tactics, 7) manipulation of assignments to the ISC panels rather than a fair system of random assignments, 8) forced settlements, and 9) conflicts of interest of the TMB members.

We will continue to defend that which cannot be attacked; 1) the sacredness of the patient/doctor relationship, 2) transparency of charges and proceedings, 3) accountability of TMB members for their actions, and 4) integrity of the board members in carrying out their responsibilities.

Intense investigations by numerous patients, physicians and legislators have uncovered the TMB's unhealthy condition.

AAPS is committed to working with key leaders across Texas to ensure that the TMB is restored to health.

Texans deserve better than they have received from the TMB.

The Texas Medical Board must be reformed.

About the Association of American Physicians and Surgeons

<http://www.aapsonline.org>

The **Association of American Physicians & Surgeons, Inc. (AAPS)** is a non-profit national organization consisting of thousands of physicians in all specialties, including many in Texas. Founded in 1943, **AAPS** is dedicated to defending the patient-physician relationship and the ethical practice of medicine. **AAPS** is one of the largest physician organizations funded virtually solely by its physician membership. This enables it to speak directly on behalf of the ethical service of patients who entrust their care to the

medical profession. The motto of **AAPS** is "*omnia pro aegroto*," or "all for the patient." **AAPS** files amicus briefs in cases of high importance to the medical profession. *See, e.g., Stenberg v. Carhart*, 530 U.S. 914 (2000) (citing **AAPS**'s submission); *Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006) (citing **AAPS**); *United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997) (reversal of a sentence as urged by an amicus brief submitted by **AAPS**).

Editorial for the Houston Community Newspapers

Tyranny at the Texas Medical Board

Steven F. Hotze, M.D.

July 31, 2007

The Texas Medical Board (TMB) is denying physicians the constitutional right of due process, destroying their lives and the lives of the patients who rely upon them for care.

Communist regimes intimidate and silence individuals by using Star Chamber tactics cloaked in secrecy. The accusers and witnesses are anonymous, and the decisions are predetermined. This is the way the TMB investigates physicians.

The TMB allows anonymous complaints by insurance companies. These anonymous complaints target physicians who oppose the insurance companies' "standards of care" which limit treatment options, deny claims and increase insurance company profits. The TMB then destroys the physicians whom the insurance companies have targeted. This is meant to teach a lesson to any physician who would dare challenge the insurance companies' policies on patient care. It is unconscionable that the TMB would be working to advance the insurance companies' agenda at the expense of the patient-doctor relationship.

Dr. Keith Miller, a member of the TMB's Executive, Finance and Public Information Committees, also served for Blue Cross-Blue Shield on the Texas Medical Advisory Committee, which is adversarial to physicians who care more about their patients than insurance company profits. This is clearly a conflict of interest.

Dr. Miller is described by physicians and attorneys who have appeared before him as arrogant, abusive and disdainful of the patients of the physicians over whom he sits in judgment. It was Dr. Miller who presided over the Informal Hearing Settlement of Dr. William Rea.

Dr. Rea is a board certified cardiovascular surgeon who established the Environmental Health Center in Dallas, Texas in 1974. Dr. Rea provides innovative treatment to patients plagued with environmental illnesses stemming from exposure and adverse reactions to chemical toxins and allergens. He has published over 135 medical journal articles and has written the definitive textbook on chemical sensitivity. Since 1974 he has served over 30,000 patients from around the world.

On October 3, 2005 Dr. Rea was informed by the TMB that an anonymous complaint had been filed against him for his treatment of five patients, all living in Manhattan and all covered by Oxford Medical Insurance. It became obvious that Oxford, an out-of-state insurer, filed the anonymous complaint to shut down Dr. Rea so that it didn't have to reimburse his patients.

When the patients were informed about the anonymous complaint, they were appalled. Each wrote letters to the TMB praising Dr. Rea's treatment. Two of the patients credited him with saving their lives. As in other cases, the TMB completely disregarded the patients' testimony.

Why is the TMB doing the dirty work for a New York insurance company?

Dr. Rea presented written exoneration for his care of these patients from 18 physicians in his field. The TMB's anonymous "expert", who served as its paid hired gun and who was ignorant of environmental medicine, condemned Dr. Rea's treatment of these five patients. That's 18 experts for Dr. Rea and 1 anonymous non-expert against him.

The TMB attorney, Mark Martyn, told Dr. Rea's attorney, Steve Coke, that it did not matter what evidence Dr. Rea presented in his own behalf, "we're going to get his license." At the Informal Settlement Conference hearing on January 19, 2007, lasting less than one hour, Dr. Miller refused to consider Dr. Rea's extensive rebuttal documents and told him that he would make sure that his license was revoked.

This is the typical insurance company justice that is executed by unelected officials at the TMB in their sham reviews of physicians. This creates an intimidating and oppressive atmosphere for physicians in Texas, discouraging medical innovation and fostering mediocrity in patient care. This is all paid for with your tax dollars.

Texans deserve better. It is time for the Texas Senate to investigate the undue influence which the insurance companies have on the Texas Medical Board's evaluation of physicians. Anonymous complaints, anonymous witnesses and sham reviews must be eliminated. The anonymous complaint against Dr. Rea should be dismissed.

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