

Applicable Sections of the Occupations Code of Texas – RE: Complaint against 3 physicians in Texas for unprofessional conduct.

Occupations Code Subtitle B. Physicians Chapter 151 General Provisions Subchapter A. General Provisions Sec. 151.001 Short Title **Medical Practice Act**

Sec. 151.002 Definitions

(2) “Continuing threat to the public welfare” means a real danger to the health of a physician’s patients or to the public from the acts or omissions of the physician cause through the physician’s lack of competence, impaired status, or failure to care adequately for the physician’s patients, as determined by:

- (A) the board;
- (B) a medical peer review committee in this state;
- (C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;
- (D) a physician engaged in graduate education or training; or
- (E) a medical student

[The medical board itself has the authority to determine if a physician’s conduct represents a continuing threat to the public welfare. A physician who uses sham peer review to wrongfully attack another physician represents a continuing threat to the public welfare as it destroys the trust the public places in physicians to conduct legitimate, good-faith peer review in the interest of further quality care and patient safety. According to Sec. 151.003, the medical board has an obligation to protect the public interest as a matter of public policy. When the board fails to take appropriate action against physicians engaged in professional misconduct, it fails to meet its obligation to protect the public from the consequences of deceptive peer review (sham peer review)]

Sec. 151.003 Legislative Findings. The legislature finds that:

(1) the practice of medicine is a privilege and not a natural right or individuals and as a matter of public policy it is necessary to protect the public interest through enactment of this subtitle to regulate the granting of that privilege and its subsequent use and control; and

(2) the board should remain the primary means of licensing, regulating, and disciplining physicians. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.056. General Rules Regarding Complaint Investigation; Disposition.

(a)...The rules adopted under this section must:

- (1) distinguish among categories of complaints and give priority to complaints that involve sexual misconduct, quality of care, and impaired physician issues;
- (2) ensure that a complaint is not dismissed without appropriate consideration

[The complaint filed by AAPS against 3 physicians licensed to practice medicine in Texas concerned a priority issue – “quality of care.” Quality of care is threatened when sham peer review occurs. Sham peer review harms the public by subverting the true purpose of good-faith peer review, which is to evaluate medical care for the purpose of improving quality care. Sham peer review often wrongfully deprives the public of the services of a competent physician. And, sham peer review destroys the trust the public places in all physicians to act in the public’s best interest by performing peer review only for the purpose of furthering quality care.]

Sec. 164.001. Disciplinary Authority of the Board

(c) Notwithstanding Subsection (b), the board shall revoke, suspend, or deny a physician’s license if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

[Peer review is part of the practice of medicine – it is done by peers who are physicians. When physicians perform peer review they are impacting the public welfare by evaluating quality care and patient safety issues. The medical board has the authority and the obligation to ensure that the public is not harmed by bad-faith peer review (sham peer review)]

Subchapter B. License Denials and Disciplinary Actions

Sec. 164.051 Grounds for Denial or Disciplinary Action

(a) The board may refuse to admit a person to its examination or refuse to issue a license to practice medicine and may take disciplinary action against a person if the person:

(6) fails to practice medicine in an acceptable professional manner consistent with public health and welfare;

[Peer review is part of the practice of medicine – it is done by peers who are physicians. When a physician performs a bad faith peer review, with malicious intent, that physician is not practicing medicine in an acceptable professional manner consistent with public health and welfare. We believe that physicians who engage in sham peer review are committing professional misconduct.]

Sec. 164.052. Prohibited Practices By Physicians or License Applicant.

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public.

Sec. 164.053. Unprofessional Or Dishonorable Conduct. (a) For purposes of Section 164.052 (a)(5), unprofessional or dishonorable conduct likely to deceive or defraud the public includes conduct in which a physician:

(1) commits an act that violates any state or federal law if the act is connected with the physician's practice of medicine;

[There are laws pertaining to defamation, business disparagement, tortious interference with a contract. A jury found that the 3 physicians committed defamation, tortious interference with a contract and business disparagement]

Sec. 164.053(a)(9)(b) states: "A complaint, indictment, or conviction of a violation of law is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of medicine is sufficient for the board's action."

CONCLUSION:

The Texas Medical Board has the authority and discretion to sanction physicians who engage in unprofessional conduct – i.e. sham peer review. Such action is fully consistent with the medical board's legislative mandate to protect the public's interest.