



1601 N. Tucson Blvd. Suite 9
Tucson, AZ 85716-3450
(800) 635-1196 or (520) 327-4885
FAX (520) 326-3529 or 325-4230
www.aapsonline.org

Association of American Physicians and Surgeons, Inc.
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May 30, 2006

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Lawrence R. Huntoon, M.D., Ph.D.
Editor-In-Chief

Honorable Rick Perry
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

BY CERTIFIED MAIL: 7004 2510 0005 1782 5425

Dear Governor Perry:

The Association of American Physicians and Surgeons (AAPS) is deeply troubled by a position that the Texas Medical Board has taken which appears to sanction what we believe to be unethical and unprofessional physician conduct endangering the public.

We note that "Health and Safety" are listed among "Priorities" on your website. We are concerned that the position that the Texas Medical Board has taken is not only contrary to your priority for promoting health and safety, but is also contrary to the Texas Medical Board's own mission statement. Moreover, we believe that the Texas Medical Board's position, which appears to sanction and support sham peer review, itself represents a continuing threat to the public welfare and does not serve the public's interest.

Peer review that is done in bad faith with malicious intent to harm another physician (sham peer review) cannot be supported by ethical physicians and should not be tolerated by the Texas Medical Board whose mission is to "...protect and enhance the public's health, safety and welfare..."

When a medical board effectively condones the practice of sham peer review, by informing complainants that "An investigation was not filed because the initial review provided for in Sec. 154.068 does not indicate that the actions referenced in your complaint fall below the acceptable standard of care," the Board's failure to take appropriate action does not enhance the public's health, safety, and welfare. It does the opposite. Allowing physicians to engage in sham peer review with impunity cannot

possibly serve the board's mission of "...maintaining standards of excellence in regulating the practice of medicine and ensuring quality care for the citizens of Texas..." Ensuring quality care and protecting the citizens of Texas requires that the medical board appropriately discipline those physicians who deceive and injure the public by engaging in bad faith and malicious peer review.

In March of this year, AAPS filed a formal complaint against three physicians licensed to practice medicine in the state of Texas. The Texas Medical Board's file reference numbers are 06-2249, 06-2250 and 06-2251. The evidence in support of that complaint was taken directly from a Texas jury's unanimous verdict, and a judge subsequently upheld the evidentiary findings in that case.

In response to the complaint, the Texas Medical Board informed us that "An investigation was not filed because the initial review provided for in Sec. 154.068 does not indicate that the actions referenced in your complaint fall below the acceptable standard of care." We believe that the Texas Medical Board has avoided accountability to the citizens of Texas via its failure to recognize that unethical physician conduct and unprofessional physician conduct harm quality care for citizens of the state of Texas, and constitute a "continuing threat to the public welfare" (Sec. 154.057 (b)).

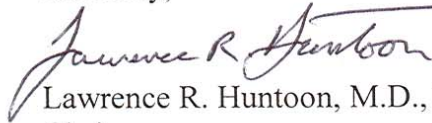
We believe that the Texas Medical Board not only has the authority but the responsibility to investigate physician conduct deemed to be unprofessional, unethical and dishonorable. Indeed, under the Occupations Code Sec. 164.052 Prohibited Practices by Physician or License Applicant, Sec. 164.052(5) states: "Commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public as provided by Section 164.053, or injure the public." There is no evidence that the examples listed under Section 164.053 represent an all inclusive list. We believe that a physician, who engages in sham peer review with bad faith and malice, is deceiving and defrauding the public and injuring the public via false and defamatory declarations made against another physician with respect to that physician's ability to provide safe and competent care. In the instant case, the message to the public was that the accused physician posed an imminent danger to patients and that the physician's privileges should be suspended so as to protect the public. But after a full trial on the facts, a federal court found that the three physicians "had acted maliciously and without justification or privilege" against the victim. Yet the Texas Medical Board will not take action against the wrongdoers.

We believe that a physician who deceives the public in this manner using sham peer review is, in fact, injuring the public. Sham peer review injures the trust that patients place in physicians and the medical profession to provide for legitimate, good faith peer review so as to protect and further quality care and patient safety for all citizens. We believe it is entirely unprofessional and dishonorable to deceive patients and injure their trust in physicians and the medical profession via sham peer review. The public is further injured by virtue of the fact that when sham peer review goes unpunished by the medical board, it has a chilling effect on the willingness of physician whistleblowers to report quality care problems and patient safety problems that occur in hospitals.

On the Texas Medical Board website (www.tmg.state.tx.us), it states: “*Safeguarding the public through professional accountability.*” In the case of the formal complaint filed by AAPS, we believe that the Texas Medical Board has avoided professional accountability and has failed to safeguard the public.

Inasmuch as Your Honor appoints the members of the Texas Medical Board, we trust that you will recognize that sham peer review should not be deemed to be within the “acceptable standard of care” for the state of Texas nor any other state. The citizens of Texas deserve a medical board that upholds accepted standards of professional integrity and ethics in medicine, and which protects the public against injury via the deceptive practice of sham peer review.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence R. Huntoon". The signature is written in black ink and is positioned above the typed name.

Lawrence R. Huntoon, M.D., Ph.D., F.A.A.N.

Chairman

AAPS Committee to Combat Sham Peer Review