

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

THE ASSOCIATION OF AMERICAN)	
PHYSICIANS & SURGEONS, INC.,)	
Plaintiff,)	Civil Action
)	
v.)	No. 1:08-cv-675-LY
)	
THE TEXAS MEDICAL BOARD, <i>et al.</i> ,)	
Defendants.)	

**DECLARATION OF ANDREW L. SCHLAFLY IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL DEFENDANT TEXAS MEDICAL
BOARD TO COMPLY WITH PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

I, Andrew Schlafly, hereby declare and state as follows:

1. I am over the age of 18, and I reside in Chester Township, New Jersey.
2. I am an attorney representing Plaintiff The Association of American Physicians & Surgeons, Inc., in the above-captioned action.
3. Attached as Exhibit A is a true copy of the Defendants the Texas Medical Board, et al., Objections and Responses to Plaintiff's First Request for Production of Documents and Things, which is the subject of the accompanying Motion to Compel by Plaintiff.
4. Attached as Exhibit B is a true copy of the contents of the letter written by Norman J. Dozier, M.D. to Texas State Senator Kyle Janek dated October 30, 2007, as it was publicly released (and publicly viewable as of September 22, 2008) at: <http://www.txppr.org/newsletter.cfm?NewsletterID=28&CategoryID=0> .
5. Attached as Exhibit C is a true copy of the contents of the letter written by Daniel Munton, M.D. to Texas Governor Rick Perry, as it was publicly released (and publicly viewable as of September 22, 2008) at: <http://txppr.com/editorial.cfm?EditorialID=27&CategoryID=0> .

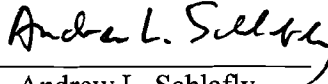
6. Attached as Exhibit D is a true copy of a letter sent by Debbie Crawford, D.O., to the Travis County District Attorney dated January 9, 2008.

7. Attached as Exhibit E is a true copy of an excerpt from the transcript of the sworn testimony before the Texas House Appropriations Subcommittee on October 23, 2007, which is publicly available in its full transcript form at <http://www.aapsonline.org/tmb/tmb-transcript.pdf>.

8. Attached as Exhibit F is a true copy of an excerpt from the deposition of Ed Brandecker.

9. I have personal knowledge of the foregoing and am competent to testify to it at trial.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 22nd day of September, 2008.



Andrew L. Schlafly

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

THE ASSOCIATION OF AMERICAN PHYSICIANS & SURGEONS, INC.,)	
Plaintiff,)	Civil Action
v.)	No. 5:07-cv-191-DF-CMC
THE TEXAS MEDICAL BOARD, <i>et al.</i> ,)	
Defendants.)	

**DEFENDANTS THE TEXAS MEDICAL BOARD, ET AL., OBJECTIONS AND
RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS**

TO: The Association of American Physicians & Surgeons, Inc., by and through their attorneys of record, Andrew L. Schlafly Attorney at Law 939 Old Chester Rd., Far Hills, NJ 07931 and Karen B. Tripp, Attorney at Law, 2245 Shakespeare Road, Houston, Texas 77030.

Defendant The Texas Medical Board, et al., by and through its attorney of record, The Office of the Attorney General of the State of Texas, herein presents its Objections and Responses to Plaintiff's First Request for Production of Documents and Things.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT O'KEEFE
Chief, General Litigation Division



NANCY K. JUREN
Texas Bar No. 11059300
ERIC L. VINSON
Texas Bar No. 24003115
Assistant Attorneys General
General Litigation Division
Post Office Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 (Telephone)
(512) 320-0667 (Facsimile)
Nancy.Juren@oag.state.tx.us
Eric.Vinson@oag.state.tx.us
Attorneys for Defendants

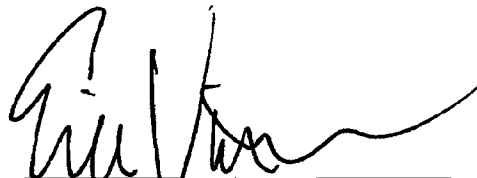
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Defendants The Texas Medical Board, et al., Objections and Responses to Plaintiffs' First Request for Production of Documents and Things* has been sent via facsimile on this the 25th day of August, 2008, to:

Andrew L. Schlafly
Attorney at Law
939 Old Chester Rd.
Far Hills, NJ 07931
Fax: (908) 934-9207

Karen Tripp
Attorney at Law
P.O. Box 1301
Houston, TX 77251
Fax: (713) 658-9410

Counsel for Plaintiff



ERIC L. VINSON
Assistant Attorney General

REQUESTS FOR PRODUCTION

REQUEST NO 1. Any and all complaints filed with Defendant TMB against any and all of the following practitioners, virtually all of whom have practiced or served patients residing within 100 miles of Abilene, Texas, where TMB President Roberta Kalafut DO and her husband, Ed Brandecker MD practice, and which were filed at any time during the service of President Kalafut on the TMB (from 2002 to the present):

Eric S. Bennos MD
Debbie A. Crawford DO
Norman J. Dozier MD
Luis E. Duarte MD
Stephen T. Faehnle MD
Kevin W. Finley DO
Ryan D. Ford MD
Gary L. Heath MD
Steven K. Johnson MD
Terry C. Johnson MD
Bubba Klosterman PT
Kirk E. LeBlanc MD
Mark S. Maxwell DO
Daniel L. Munton, MD
Gaylon L. Nepper DO
Kenneth W. O'Neal MD
William J. Rea, MD
William F. Shudde MD
Vincent A. Viola PA

RESPONSE: TMB objects to this request because it asks for information about complaints made to TMB that is protected by law and not subject to disclosure by Tex. Occ. Code § 164.007(c), which reads:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

TMB further objects because the request contains information concerning where the named practitioners have allegedly practiced or served patients allegedly residing within 100 miles of Abilene which is neither relevant nor in evidence in this case, and therefore it seeks documents that are neither relevant nor likely calculated to lead to the discovery of admissible evidence.

REQUEST NO 2. All requests and assignments by Defendant TMB of medical expert reviewers for any and all of the complaints responsive to Request No. 1 above, and documents reflecting who was retained to review each complaint and/or the practitioner's care.

RESPONSE: TMB objects to this request because it seeks documents protected from disclosure by Tex. Occ. Code § 164.007(c).

REQUEST NO 3. All requests for medical records or subpoenas (showing dates) served by or on behalf of the Defendant TMB concerning complaints filed against Debbie A. Crawford DO - who competes with Ed Brandecker MD, the husband of TMB President Roberta Kalafut - during the time period 2005 through 2007, with patient names redacted.

RESPONSE: TMB objects to this request because it asks for information about complaints made to TMB protected from disclosure by Tex. Occ. Code § 164.007(c). TMB further objects because the request contains a conclusory opinion that "Debbie A. Crawford DO competes with Ed Brandecker MD," a proposition not in evidence.

Subject to, and without waving these objections, TMB states: none.

REQUEST NO 4. All documents, including without limitation correspondence and e-mail communications, addressed to or from Defendant TMB President Roberta Kalafut DO or Ed Brandecker MD concerning any and all of the complaints or investigations referenced in Request No. 1 above, from 2002 to the present.

RESPONSE: TMB objects to this request to the extent it asks for information about complaints made to TMB protected from disclosure by Tex. Occ. Code § 164.007(c).

REQUEST NO 5. All documents, including without limitation correspondence and e-mail communications, concerning conflicts of interests and potential conflicts of interest of any board member of the Texas Medical Board, from 2002 to the present.

RESPONSE: TMB objects to this request as vague with respect to the phrase "conflicts and potential conflicts of interest." TMB also objects to this request as overly broad and seeks information that is not relevant to any party's claim or defense. TMB also objects to this request to the extent it asks for information about complaints made to TMB protected from disclosure by Tex. Occ. Code § 164.007(c). Finally, TMB objects to this request as placing an undue burden on TMB that outweighs its likely benefit per FRCP 26(b)(2)(C)(iii) and 26(b)(2)(B). TMB utilizes Microsoft Outlook for electronic mail. The history of emails is only searchable by user account, and there are currently over 130 active email accounts. Since 2002, there have been over 200 email accounts. Those emails are archived on backup tape and are not indexed, organized or susceptible to electronic searching.

REQUEST NO 6. All documents relating to the activities of former TMB member Keith Miller as an expert witness or consultant to third parties, including without limitation insurance companies and litigation attorneys, from 2002 to the present.

RESPONSE: TMB objects to this request as overly broad and seeks information that is not relevant to any party's claim or defense. TMB also objects to this request to the extent it asks for information about complaints made to TMB protected from disclosure by Tex. Occ. Code § 164.007(c). Finally, TMB objects to this request as placing an undue burden on TMB that outweighs its likely benefit per FRCP 26(b)(2)(C)(iii) and 26(b)(2)(B). TMB utilizes Microsoft Outlook for electronic mail. The history of emails is only searchable by user account, and there are currently over 130 active email accounts. Since 2002, there have been over 200 email accounts. Those emails are archived on backup tape and are not indexed, organized or susceptible to electronic searching.

Subject to these objections, and without waiving same, TMB will produce relevant, non-privileged documents responsive to this request, if any, at a mutually convenient date and time.

REQUEST NO. 7. All documents relating to the email and document retention policies of the Defendant TMB from 2002 to the present.

RESPONSE: TMB is producing documents responsive to this request at a mutually convenient date and time.

REQUEST NO 8. All documents that describe TMB's policies and practices in handling complaints against persons licensed by the TMB during the service of Defendant Kalafut on the TMB (from 2002 to the present) and any and all documents that indicate any changes in such policies and/or practices during that time period.

RESPONSE: TMB objects to the term "handling complaints" as vague and to the extent that it seeks publicly available information equally available to both parties. Subject to this objection, and without waiving same, TMB refers to Texas Administrative Code, Title 22, Part 9, Chapters 178, 179 and 187.

The entirety of current TAC rules governing the TMB is available online at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac view=3&ti=22&pt=9](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac view=3&ti=22&pt=9).

A list of the changes to the TAC rules governing the TMB since 1997 is available online at <http://www.tmb.state.tx.us/rules/changes/changes.php>

Subject to the above objections, and without waiving same, TMB is producing documents responsive to this request, specifically Policies 6.1.1 and 6.1.2.

EXHIBIT B

Norman J. Dozier, M.D.

October 30, 2007

Kyle-

Great talking to you today. The doctor I mentioned today is Dan Munton, a PMR physician who was Kalafut and Brandecker's partner for several years. He left them, went to St Louis for a year to get out of the restrictive covenant, then came back to town about a year ago. Within 6 months, he had his first anonymous complaint before TMB and has two more since. He, as well as Hendrick Medical Center, have hired Mac Stewart, an attorney in Dallas to represent him. Mac has been out to Abilene multiple times and has garnered "a wealth of very interesting information", but so far has not done much with it. The individual Medical Executive Committee members have not been down to Austin yet, so he may be waiting to deliver the bombshells then.

Anyway, Dan overheard multiple conversations between Ed, Roberta, and multiple members of TMB while he was a partner with them where she influenced other TMB members to investigate and sanction doctors Roberta viewed as competition to her. Also, Dan's office manager, Vicki Myers, is one of many disgruntled ex-employees of Drs Kalafut and Brandecker, who has overheard many conversations, etc. to the same effect. Most damning would probably be concerning Eric Bennos, a neuroradiologist in DFW area who used to read MRI's by tele here in Abilene. He was called before the Board on a case involving a metastasis to the spine that Ed later saw in consultation, and had Bennos called because Ed felt the metastasis was possibly visible on an earlier MRI that Bennos had read.

Bennos was exonerated after much to do, but Dr Munton overheard Dr Kalafut screaming at other Board members over the phone to not exonerate Dr Bennos because he represented competition to her since he was reading MRI's from a competitor's office.

Personally, I am the only doctor left in a 150 mile radius that is involved in Pain Management in any form or fashion that has not been sanctioned by TMB one way or another, but God knows she has been trying.

I have had 2 charts subpoenaed by the Board that were anonymous complaints, one of which was the same case I discussed with Bennos. In both cases, the only common thread was that the patients has later been seen by Dr Brandecker. The TMB would not return my phone calls about why the charts were subpoenaed. I talked with both patients and families, and neither of them knew anything about TMB inquiry, much less having filed a complaint themselves. I have documented patient statements where Dr Kalafut has made desparaging remarks about me, and have documented at least one Physician office note where the patient told her internist that Dr Kalafut told the patient that if I kept seeing and treating her once a month, then I should "come to Austin to discuss my medical care before the TMB".

I could go on forever, but suffice it to say that I am 100% sure that Dr Kalafut is clearly using her position for the purpose of trying to benefit herself professionally, and I am sick and tired of it. I was elated to see in the Texas legislature meeting Oct 23rd that other people around the state are beginning to figure her out, but it has been a long time coming and only the tip of the iceberg has been seen yet.

Thanks for your help, and call me anytime.

Sincerely,

Norman J. Dozier, M.D.

EXHIBIT C

Dear Governor Perry,

My name is Dr. Dan Munton, I am the former partner of Roberta Kalafut D.O. and her husband Ed Brandecker M.D. I voluntarily for ethical reasons resigned from their practice in 2004. I left Abilene to serve out a contractual non compete. Upon hearing of my planned return to Abilene, Ed Brandecker sent me a threatening letter stating that if I had stayed away they would have "let bygones be bygones". I shortly thereafter received my first of two "anonymous" complaints from the Texas Medical Board where Roberta sits as President. Then Vince Viola, my physician assistant, who previously worked for them, was also turned into the board "anonymously". I don't feel this was all just coincidence. It has cost me countless hours and thousands of dollars to defend myself from these fraudulent complaints.

It is very concerning to now hear that after first denying, then admitting her husband has turned in physicians anonymously to the Medical Board with her knowledge. I think this is an extreme abuse of power. I am asking you to ask for her resignation. From the hearings you can now see the countless united physicians across Texas that would agree with this position.

Sincerely,
Dan Munton M.D.

EXHIBIT D

Debbie Crawford D.O.
3804 HWY 377 S.
Brownwood, TX 76801
325-646-1195(wk)
325-938-5478(hm)
mesotx@verizon.net email

01-09-08
Travis County District Attorney
Lt. Matt Langon
RE: Investigation

Dear Matt,

I am writing this letter to you to provide information that I have concerning your investigation. We spoke on the phone last week. I am a competitor of both Dr. Kalafut and Dr. Brandecker. The two doctors I believe are married to each other. I have not knowingly ever met or conversed with either physician. I realized at some point in about May of 2005 that there was an apparent personal bias against me by Dr. Brandecker. I realized this after reading a report where he commented in an adverse way about my medical decisions concerning a patient. I obviously was outraged by him putting an opinion such as this in what would become part of the patient's permanent medical record. I consulted my attorney about the issue, however I never contacted Dr. Brandecker. I strongly disagreed with his opinion. The apparant personal bias as I was about to find out would increase greatly in scope as time went on.

In December of 2005 two of my patients were sent for ordered exams to Dr. Brandecker and Dr. Kalafut. These two patients were Workers Comp Patients. I believe that the Texas Department Of Insurance ordered both exams. I know for a fact that the patient Dr. Kalafut saw was a Texas Department Of Insurance ordered Designated Doctor Exam. The patient Dr. Brandecker saw was a

Required Medical Exam. The scope of both of these exams was not to provide treatment of any kind. In fact a Designated Doctor is barred by Texas Department Of Insurance rules from becoming the treating doctor on the injury they are seeing the patient for. The scope of both exams would be to provide medical opinions. Shortly after each patient was seen I received a complaint from the Texas Medical Board naming both patients. When I received the complaint I was not given information on who filed the complaint. This complaint did not involve any harm being done to any patient. I was very quickly able to narrow the field concerning the source of the complaint. The complaint was written in a manor to where I strongly believe that the source of the complaint was a person who had both patient medical records. Absent the medical records, it would have been virtually impossible to file the complaint. The complaint was also written in wording consistent with a high degree of medical training. There is no indication that either patient knew each other, they don't even live in the same town. More importantly, I continue to see both of these patients in my practice. In fact I have seen both in about the last 30 days. I was able to exclude the insurance company of each patient, as they both had a different insurance company. When I read Dr. Kalafut's Designated Doctor Report on the patient she saw, I realized that her report contained wording that was a near match to the complaint filed against me with the Texas Medical Board.

The Designated Doctor Report of Dr. Kalafut's stood out, as I don't ever recall reading a report quite like it. One of the central roles of the Designated Doctor is to provide an unbiased opinion. This is a main reason that these exams are ordered by a third party, the Texas Department Of Insurance. TDI-DWC Rule 130.6 (b) states as follows. ("The designated doctor shall address the issue(s) in question and any issues the Division may request the designated doctor to consider and confine the report only to those issues.") I believe that Dr. Kalafut clearly exceeded her role as the Designated Doctor. I find it to be crucial for you to be able to

obtain a copy of this report. Contained in Dr. Kalafut's report underlined is the following. "Interestingly, Dr. [REDACTED] is in Florida, practices in Florida, and does not hold a Texas license and admits to not physically performing the examination."

This complaint has cost me thousands of dollars, and numerous amounts of lost time. I did attend an Informal Show Compliance and Settlement Conference. I attended this on 10/16/06 in Austin, Texas. If I thought that matters could not get worse I was wrong. A second complaint naming a third patient was filed against me. I received a letter dated 12/12/06 informing me of yet another formal investigation by the Texas Medical Board. This complaint was similar in wording to the first complaint. The third patient named in the second complaint apparently moved to the Abilene area, and changed treating doctors to Dr. Trifilo. I have documentation from the Texas Department Of Insurance approving the change of treating doctor from me to Dr. Trifilo. Interestingly, Dr. Trifilo practiced at the same address as Dr. Kalafut and Dr. Brandecker. These three doctors would have gained the medical records on the patient that they saw by me and or the insurance company. Again on the second complaint I was not given the identity of the complaint source.

On the first complaint the Texas Medical Board wrote a letter informing me Dr. Kalafut was not the complainant in that case. What I believe happened is that spouses shared confidential patient information for potential financial gain. I believe that the sharing resulted in me being reported to the Texas Medical Board. I want to discuss what the potential financial gain might be. Where I work in Brown County currently there are only two doctors on a list that can perform Designated Doctor Exams. I am one and Dr. Brandecker is the other. If I am not able to stay on the list due to adverse action taken by the Texas Medical Board, then it would reason that Dr. Brandecker could get a lot more assignments. These exams are lucrative, with pay ranging usually from \$350.00-\$1,000.00 per exam. I pulled a report which looks to be from 10/10/06, and at that point in 2006 I had been assigned 55

Designated Doctor Appointments. I will send you a copy showing my name and his on the listing. Most doctors in Texas do not accept Work Comp. When a doctor that is accepting W/C patients can no longer see patients, due to licensure issues it creates more for the other doctors that that are left accepting W/C. If Dr. Kalfut is so worried about the public welfare as her Designated Doctor Report suggests to me, then would she not have reported the other doctor she is naming in her report? I have spoken to the other doctor named in Dr. Kalafut's report, there is no indication that he has been reported to any board. He does not appear to be a competitor in any way with Dr. Kalafut or Dr. Brandecker. I however, as above mentioned am a competitor. By not reporting the other named doctor does this not just allow him to continue to do what Dr. kalafut seems so worried for the public about?

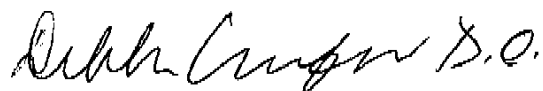
I believe that doctor Kalafut likely lied under oath during her October 23, 2007 hearing. I have found no logical way to explain how two patients can be named on one complaint without the sharing of records. My records indicate that the first two patients were seen one day apart by Dr. Kalafut and Dr. Brandecker. In my belief there is no other way this complaint could have been filed without the involvement of Dr. Brandecker and Dr. Kalafut working together.

In conclusion, I have explained about being reported to the Texas Medical Board naming three patients that I have seen. My records indicate one patient saw Dr. Kalafut, one saw Dr. Brandecker, and the third saw Dr. Trifilo. These three patients were combined into a total of two complaints filed with the Texas Medical Board. I believe that Dr. Kalafut uses her position at the board to influence outcomes of complaints, that she was involved to some degree in initiating for apparent financial gain. I can see someone explaining away one patient, but three patients each seen by a different physician at the same address? I just barely finished going to my first hearing to attempt unsuccessfully to resolve the first complaint, when I was hit with a similar formal second complaint. Before this starting happening to me I had no idea of

the devastating impact. My practice has changed greatly since, I have reduced the amount of Work Comp patients that I accept greatly. I have lived in constant fear of losing my livelihood just because the president of the Texas Medical Board in my belief demonstrates great personal bias against me for apparent financial gain. I currently have a SOAH Hearing set for September on the first complaint, thus leaving the disposition still open. The second complaint as well is still open however, I am not aware of any upcoming hearings on this. I am going on the third year of trying to clear my name, so that I may focus on my practice. Until some resolution comes, I anticipate the devastating impact will continue. I received a cost estimate of well into the tens of thousands in legal fees, this not to mention the many thousands that I have already spent. I really feel as though you need to get a copy of Dr. Kalafut's Designated Doctor Report. In my belief this report is vital in connecting the pieces of what likely transpired. My attorney has advised me that for my protection a subpoena for the record is the best way to get it to you. Again, I want to emphasize that neither of the two complaints involve any patient harm. From a legal standpoint my attorney is vigorously defending both cases with merit being a central issue. I did not come forward earlier, because I felt I was the only one raising these types of allegations. I would be happy to meet with you in person if you desire. I am Board Certified in Family Practice, and have been a physician since 1994. Prior to the above-described incidents I have never been subject to any type of Texas Medical Board Hearing concerning disciplinary action. The ISC hearing that I attended in October of 2006 left me nearly speechless. The Board in my belief did not even care about legality issues raised by my attorney. The board made it clear to me that they really were not concerned much with the words of my attorney. I have asked the Texas Department Of Insurance not to schedule any of my patients for Designated Doctor Exams with Dr. Brandecker or Dr. Kalafut due to personal bias. I do believe they have complied with my request. Of final note, I have read comments of people who claim to be former

employees of Dr. kalafut. These comments were found on the Abilene Reporter-News website. At least one person who claims to be a former employee had information I found very interesting in terms of what discussion she stated took place in the office concerning board issues. Of course I don't know the validity of any such comments. If I may be of any further assistance please do not hesitate to contact me. My two case numbers active with the Texas Medical Board are 1) File# 06-1359 and 2) File# 07-1105.

Sincerely,



Debbie Crawford D.O.

CC: William Maxwell P.C.

EXHIBIT E

Texas Legislative Hearing, Subcommittee on Regulatory,
in Oversight of the Texas Medical Board (TMB)
October 23, 2007

(Draft 12/14/07, all rights reserved to make any corrections against the audio)

- Chairman: ... (inaudible) ... Subcommittee on Regulatory will now come to order and will the clerk please call the roll?
- Clerk: Brown?
- Brown: Here.
- Clerk: Menendez?
- Menendez: Here.
- Clerk: Taylor? Darby?
- Darby: Here.
- Clerk: Lucio?
- Lucio: Here.
- Chairman: There is a quorum. I'd like to introduce some of our special guests today. Chairman Don Davis, chair of the health and human services subcommittee of appropriation. It's good to have you here. Chairman Bill Callegari, Chairman of the regulatory, good to have you here. Corbin Van Arsdale, good to have you. [Inaudible, audio issues.] Debbie Riddle (inaudible)
- Chairman: Let the record show that Representative Taylor is here. And we just got a call folks from one of the golf courses wondering where all of their doctors were today. [Laughter] There is an overflow room right across the hall if any of you would like to sit out. Members, this subcommittee is meeting today to discuss fiscal matters relating to the Texas Medical Board. Let me begin by thanking everyone for being here today. Thank you to the members of the Texas Medical Board and their staff for their attendance. We appreciate your service to the citizens of this state. Thank you to the members of the public for your participation today.

As chairman of this subcommittee I take my oversight role very seriously. And to ensure the prudent use of funds of state agencies it is necessary for us to stay informed of agency operations. This is the purpose of this hearing today members. Aside from contingency appropriations and appropriations in the system benefit fund, the Texas Medical Board

Robinson: In all honesty I would like to point out that even if that were the case it would be statutorily confidential and she would not be able to say it orally in this hearing and we would have to get...

Van Arsdale: [Inaudible 94:38]. I'm not asking for who – I'm not asking you for who filed it. I'm asking you if someone's aware. I don't think that's affected by confidentiality.

Robinson: Sure. I'm just clarifying in case you were seeking out names.

Van Arsdale: Do you know of any – Dr. Kalafut, do you know of any board member or board member's family member that's filed an anonymous complaint against physicians?

Kalafut: I do not.

Van Arsdale: Tell me about Mr. Miller, Dr. Miller I guess. When did he go off the board?

Kalafut: Dr. Miller went off the board, don't quote me exactly, but I think in August...

Van Arsdale: August, that's enough. What was his position?

Kalafut: He was a board member but he was also Chairman of Licensure at that time...

Van Arsdale: Okay.

Kalafut: ...of his resignation.

Van Arsdale: Remind me – he was – it sort of was a deal where he was involved in some – I guess being an expert witness or something. What was he doing that was a problem?

Kalafut: It came to my attention in the spring that he was an – he was testifying as an expert witness in cases. That was his issue. I did not know that prior to that.

Van Arsdale: Did any of the members of the TMB staff know that?

Kalafut: No. Then when it came to my attention I contacted him to ask him for more information. He told me about the case. I told him that I felt this was a conflict of interest and that I would not support it. Immediately we took action. Within a week I had a stakeholders' group formed to look at

I just wanted some kind of response to that, because I found the letter quite disturbing in its nature. To finish up, I kind of had three facts here, they're things that I wanted to go to and notes that I've been taking. Dr. Kalafut, have you ever filed an anonymous complaint?

Kalafut: No ma'am.

Riddle: Have you ever had your physician husband file an anonymous complaint for you?

Kalafut: (pause) Yes. Not for me, but he has filed one on his own.

Riddle: He has filed an anonymous complaint...

Kalafut: Yes.

Riddle: ...on his own. Were you aware of it?

Kalafut: Yes. And it was dismissed. And it was dismissed in the 30 days. But I don't have the right I'm told to disclose that.

[Inaudible discussion off mic 202:17]

Riddle: Have you asked your husband or any other person to file an anonymous complaint against Dr. Dan Munton, your former partner?

Kalafut: I don't have the right to, I don't - have the right to disclose that.

Riddle: You cannot disclose that?

Kalafut: Yes, I'm told now

Robinson: No, she - we cannot disclose the name of anyone who complains. The complaint identity is confidential. We certainly can if we get a legislative form, actually, that isn't even part of the form.

[Inaudible discussion off mic 202:51.]

Riddle: Okay, did you doctor, file an anonymous complaint against or have you filed an anonymous complaint against any physicians or staff at Hendricks Medical Hospital in Avaline? I'm not asking for specifics...

Kalafut: I have not.

Riddle: You have not?

Kalafut: I have not.

Riddle: Have you asked your husband or any other person to file an anonymous complaint against any physician or staff at Hendricks Medical Hospital in Avaline?

Kalafut: I have not, nor do I need to - my right to disclose that.

Riddle: Have you ever, doctor, discussed physician cases which were before the TMB with any members of your staff or with your employees?

Kalafut: Only after it has become public.

Chairman: Representative Riddle, I think we need to move on.

Riddle: Okay

Chairman: We've got a lot of people to testify.

Riddle: Okay, thank you very much, doctor. I appreciate your answers.

Chairman: Representative Lucio.

Lucio: Thank you Mr. Chairman. I have a question. During Dr. Fuentes' testimony she said that she had contacted Senator Janick's office, you know just to clarify what was going on with her case, to see if he could help, which many of us, you know get those legislative inquiries. People come into our office. They elect us, you know some of them work on our campaigns and when they have an issue dealing with state government, they come to us.

She said that she initially went to Senator Janick's office, Senator Janick's staff called you and that the Texas Medical Board told Senator Janick's staff that if she continued to inquire into this case it's considered an ethical violation and we will file an ethical violation complaint against you. Is that practice? So if I were to call next week to the Texas Medical Board and say I have a doctor in my district, just want to know what's going on, could I possibly...

Garanflo: This is Jaime Garanflo, I'm the Director of Licensure and Customer Affairs. I have never heard of that happening. I have never instructed anybody to say anything like that. We do our best to accommodate inquiries from legislators and that is just so out of this world I can't even imagine it happening. I can't.

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ASSOCIATION OF AMERICAN)	
PHYSICIANS & SURGEONS,)	
)	
PLAINTIFF,)	
)	
VS.)	CIVIL ACTION
)	
THE TEXAS MEDICAL BOARD,)	NO.: 5:07cv191
ET AL,)	
)	
DEFENDANTS.)	

ORAL AND VIDEOTAPED DEPOSITION OF
EDWARD BRANDECKER
July 18, 2008
Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF EDWARD BRANDECKER, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 18th of July 2008, from 1:29 p.m. to 4:39 p.m., before Ms. Shirlee Manly, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Hanna Law Firm, 302 Chestnut, Abilene, Taylor County, Texas, pursuant to the Federal Rules of 24 Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Andrew L. Schlafly
939 Old Chester Road,
Far Hills, New Jersey 07931
Ms. Karen Tripp
P.O. Box 1301
Houston, Texas 77251-1301

FOR THE DEFENDANT TEXAS MEDICAL BOARD:

Mr. Eric Vinson
Assistant Attorney General
General Litigation Division
P. O. Box 12548
Austin, Texas 78711
Ms. Nancy K. Juren
Assistant Attorney General
General Litigation Division
P. O. Box 12548
Austin, Texas 78711
Mr. Robert Simpson
General Counsel
Texas Medical Board
MC-901
P. O. Box 2018
Austin, Texas 78768-2018

FOR THE WITNESS:

Mr. Sam Moore
318 Chestnut Street
Abilene, Texas 79602

ALSO PRESENT: Peter Hale, videographer

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Exhibit 7 was marked in the Sealed and Confidential
Transcript.

THE VIDEOGRAPHER: The time is 1:29 p.m., July 18, 2008. Beginning Tape 1, we are on the record.

MR. SCHLAFLY: Andrew Schlafly representing Plaintiff Association of American Physicians & Surgeons.

MR. VINSON: Eric Vinson with the Attorney General's office representing the Texas Medical Board.

MS. JUREN: Nancy Juren with the Attorney General's office representing the Texas Medical Board.

MR. SIMPSON: I am Robert Simpson. I am general counsel of the Texas Medical Board.

MR. MOORE: Sam Moore, I represent Dr. Brandecker.

MS. TRIPP: Karen Tripp, I represent the plaintiff.

MR. MOORE: Eric, do you want to ask Mr. Schlafly what we were talking about about the objections?

MR. VINSON: Yeah. Andrew, is it all right if we just do one objection by one is good for all?

MR. SCHLAFLY: That is fine.

MR. VINSON: All right.

MR. SCHLAFLY: The caption is the Association of American Physicians & Surgeons vs. Texas Medical Board, et al, Case No. 5:07cv191 in the Eastern District of Texas, Texarkana Division. Could the witness be sworn in?

EDWARD BRANDECKER,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. SCHLAFLY:

(Time: 1:31 p.m.)

Q. Dr. Brandecker, have you ever given a deposition before?

A. Yes.

Q. How many depositions have you given in the past?

A. Probably less than ten.

Q. Do you understand the procedure, that I will be asking you questions and then you will be providing answers under oath to those questions?

A. Yes.

Q. Did you prepare for this deposition?

A. I did meet with my attorney.

Q. And about how long did you meet with your attorney?

Smith, Kim Munden, Amy Waterwall, Jory Lee. Anyone on that list you didn't recognize except for the one you just identified?

MR. VINSON: Same form objection.

A. I recognize those names.

Q. (By Mr. Schlafly) You recognize them as having worked with you?

A. Yes, except for the one.

Q. Were any of those not competent?

A. In their specific role, I believe they were competent.

Q. Do any of them still work with you?

A. No.

Q. How many employees do you have now?

A. Roughly 17 or so.

Q. Who is your office manager?

A. Heather Smith.

Q. Who are your competitors?

A. I -- I think our practice is unique.

Q. All right. Are you saying you don't have any competitors?

A. I think the focus of our practice is unique and therefore distinguishes us from what other people do.

Q. But surely you have competitors, don't you?

A. I think you need to define what you mean.

Q. By competitor I mean an individual who has business that could go your way if that individual was not there?

A. So can you repeat your question?

Q. Do you have any competitors?

A. There are some physicians who provide some similar services.

Q. I would like to introduce as Exhibit 1 a health care provider summary of designated doctors in Brown County.

(Brandecker Exhibit 1 marked.)

Q. After looking at Exhibit 1, would you agree that Debbie Crawford is a competitor of yours?

A. I disagree.

Q. And why is that?

A. Because a designated doctor makes up probably less than 5 percent of my practice. Secondly, I have a consultation practice and she does not, so I don't think our comparisons are at all competitive.

Q. The exhibit says there are only two doctors who are designated doctors in Brown County --

MR. VINSON: Object to the form.