TEXAS RIGHT TO KNOW COMMENTS AND RECOMMENDATIONS REGARDING TEXAS SUNSET COMMISSION REPORTS FOR THE 2018 – 2019 REVIEW OF THE TEXAS MEDICAL BOARD

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Preface:

Texas Right To Know(TRTK) is a coalition of various citizen advocates and lobbies on many different issues. One of the TRTK's activities is the Texas Medical Freedom Initiative. This report is a compilation of opinions and recommendations from several physicians who have been subject to Texas Medical Board(TMB) Informal Settlement Conferences (ISC) and State Office of Administrative Hearings (SOAH).

The TRTK coalition has been following the activities of the board closely for many years and has read the board's self-report and the 2016 Sunset Commission's findings. After consideration of these reports and activities, and after witnessing Sunset hearing and participating in testimony on December 9, 2016, the TRTK coalition has some recommendations for improving the transparency and fairness of the physician compliance process while lowering the costs for both government regulation, improving physician compliance and patient care outcomes.

After hearing physician complaints, it appears that TMB has colluded to squelch the progress in medicine by investigating integrative practitioners at an alarming rate. This would be anti-trust and should be corrected by providing transparency in the complaint and investigative process as well as by inclusion of integrative physicians on the medical board going forward.

Many of the complaints we have heard echoes the first three of the four issues identified in the 2016-2017 Texas Medical Association survey feedback they received from their members which included: "*1) the treatment of expert reports and competitor complaints in hearings before the TMB; 2) the applicability of due process or fair process standards; 3) issues with remedial plans and seemingly insignificant marks remaining on physician's public records; and 4) problems relating to the licensing process."*

Additional complaints state that the TMB has:
1. accused healthcare providers of "implied claims of superiority" or "false, misleading or deceptive advertising" for telling the truth about successful medical treatments,
2. refused to consider if complaints were made in "bad-faith" from a competitor, insurance company or as a means of retaliation for reporting medical errors resulting in patient endangerment,
3. denied an individual's right to due process to present oral and written materials to defend against allegations at informal settlement conferences ("ISC"),
4. withheld evidentiary documentation favorable to defendants or other evidence that would prove the accused's innocence, etc.

When inquiring to a TMB customer service representative as to who complaints against the TMB are to be submitted, their answer was the Legislature. The Texas Legislature only meets once every two years which offers little to none means of recourse and does not provide for prompt response and correction to the TMB when physicians or the public have received unjust treatment. Until there is an Ombudsman appointed to provide oversight of the TMB, we ask for the TMB to receive a four-year Sunset since the Sunset hearings are currently the only forum for the public to make complaints against the TMB other than citizens comments at TMB meetings or as individual complaints to legislators that has not been expedient or productive.

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1. DEFINITIONS:

1.1 **Complementary and Alternative Medicine (CAM)-** is defined to be those health care methods of diagnosis, treatment, or interventions that are not acknowledged to be conventional. These may include but are not limited to nutrition, chelation, immune support, supplement support, acupuncture, detoxification, and hyper oxygenation, etc.

1.2 **Conventional Medicine (CM) -** is defined to be those health care methods of diagnosis, treatment, or interventions that are offered by most licensed physicians as generally accepted methods of routine. These may include but are not limited to surgery, radiation and drug therapies.

1.3 **Integrative medicine -** is the use of all medical modalities to help restore health that includes complementary, alternative and conventional.

1.4 **Standard of Care (SOC) -** is the based upon Conventional Medicine practices established by professional societies such as the American Medical Association (AMA), Texas Medical Association (TMA), Infectious Disease Society of America (IDSA), Lyme and Associated Diseases Society (ILADS).

1.5 **ISC** – Informal Settlement Conference aka Informal Show Compliant.

1.6 **SOAH** – State Office of Administrative Hearings.

1.7 **Texas Medical Board (TMB)–**state agency tasked to regulate the practice of medicine.

1.8 **Chapter 200 CAM Physicians –** Physicians who practice under

TITLE 22	EXAMINING BOARDS
PART 9	TEXAS MEDICAL BOARD
CHAPTER 200	STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE
RULE §200.1	Purpose

The purpose of this chapter is to recognize that physicians should be allowed a reasonable and responsible degree of latitude in the kinds of therapies they offer their patients. The Board also recognizes that patients have a right to seek complementary and alternative therapies.

Note: Unless indicated otherwise, all chapter references pertain to Title 22 Part 9 of the Texas Administrative Code.

With proper patient informed consent, physicians practicing under Chapter 200 should be exempted from violating "standard of care" when by definition, an alternative is intended to be a treatment option other than "standard of care". When physicians cite scientific studies presenting efficacy of treatment, they should be exempted from violating "implied claims of superiority" or "false, misleading or deceptive advertising", for reporting the truth of efficacy of alternative therapies. Additional complaints have been that CAM physicians do receive review from peer expert panelist who are familiar with alternative therapies in question.

2. OBJECTIONS TO THE 2016 SUNSET EXECUTIVE SUMMARY ON THE TMB:

2.1 **"…the Medical Board provided a consistent level of enforcement over those years" –** According to testimony of various physicians, the TMB has been conducting frivolous litigation prejudiced against Chapter 200 CAM physicians and conventional physicians as demonstrated by the increased cases of litigation that is not substantiated by the resulting disciplinary actions.

	FY 2007	FY 2013	Change
Complaints	6923	6857	**0.1% lower**
Informal Settlement Conferences (ISC) Supposedly Informal litigation but since TMB's attorneys are involved, physician's "lawyer up" as well, may cost $12,000 in one ISC.	482	752	56% higher
State Office of Administrative Hearings (SOAH) cases (Formal hearing before administrative judge)	48	77	60% higher
Disciplinary Action	311	330	6% higher
Source: http://www.tmb.state.tx.us/showdoc/statistics			

ISC's and SOAH complaints filed are at least 50 percent higher since 2007, despite fewer complaints. Actual disciplinary actions stayed about even suggesting a substantial increase in frivolous proceedings against physicians. Frivolous litigation has been proven to increase healthcare costs while providing no societal benefit:
(Litigation) reform reduces health care expenditures (and) had no impact on mortality
http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1522105/

According to the 2017 Commonwealth Fund "*Aiming Higher*" report that evaluates states and DC healthcare systems, Texas ranks 41st in the nation, 44th in Prevention and Treatment and 51st in Affordability and Access. In many instances "standard of care" offers outdated therapies. For example, only "standard of care" options of care for cancer are chemo, radiation or surgery. Strict adherence to "standard of care" will continue Texas in a downward spiral regarding quality of healthcare that also results in escalating costs. With informed consent of the patient, innovation of treatment options should be encouraged to provide better treatment for disease conditions similar to therapies that are available in other states and countries. Texas should not be losing millions of dollars to individuals leaving the state to seek innovative, integrated medicine that includes conventional, alternative and complementary treatment options.
http://www.commonwealthfund.org/interactives/2017/mar/state-scorecard/

"The TMB (works) from a presumption of guilt. TMB experts do not consult applicable medical guidelines or references at ISCs. These proceedings result in significant legal fees for physicians…the TMB knows this and tries to take advantage of it.
Baylor University Medical Center Proceedings. 2010 Jan; 23(1): 83–85."
http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804500/

TMB has aggressively waged far more ISCs since 2007, despite fewer complaints; "Now even the most (minor) picayune complaints result in an ISC. For example, one matter sent to ISC involved a complaint by a nurse that a physician yelled at her. The documented objective facts were contrary to the complaint made. Baylor University Medical Center Proceedings. 2010 Jan; 23(1): 83–85

PROPOSED SOLUTION: Replace the ISC with an independent three physician panel similar to the Indiana Model. Establish an independent three physician review panels to replace Informal Settlement Conferences patterned after Indiana's time-tested model.

INCAP (Indiana medical review panel legislation), created as a balance of competing public policy agendas…has met the test of public need (since 1976). Indiana State Medical Association White Paper (2003)

1. Fair, inexpensive, successful in Indiana since 1975
2. Efficiently weeds out frivolous cases, encourages settlements in legitimate cases

RULES: the panel is composed of three health care professionals and one attorney who serves as chairman with no vote. Each side chooses one expert health care provider; these two providers choose a third. The panel's findings are:

1. admissible in disciplinary cases or court;
2. not legally binding; and
3. as a practical matter, rarely overturned by a judge.
   http://www.ismanet.org/pdf/legal/RolesMedicalReview.pdf

For more information see: http://www.ismanet.org/pdf/legal/RolesMedicalReview.pdf

2.1 "…Sunset staff did not detect any obvious indications of bias in favor or against any type of practitioner."

The Sunset Commission Report on Texas Medical Board (TMB) was evaluated by statistical analysis and did not evaluate individual cases. The statement that the Sunset Staff did not find a *"bias in favor or against any type of practitioner"* does not reflect the reports coming from the Chapter 200 CAM physician community based upon personal knowledge of the physicians who make up this community.

Background: From the Sunset Executive Summary, *"In addition, after conducting a more detailed analysis of various Medical Board datasets and multiple years of case files,* ***Sunset staff did not detect any obvious indications of bias in favor or against any type of practitioner****. In other words, the Medical Board has come a long way and generally is a solid model for licensure and enforcement of occupations. That does not mean that people do not have complaints about or disagree with decisions and actions of the board. However, Sunset cannot and does not re-evaluate individual decisions of a board."*

Problem: According to the Sunset Executive Summary, Texas has 78,575 physicians. It is estimated that the number of physicians who practice Chapter 200 CAM medicine is very small,

perhaps as few as 500 or less. **If there was 100% bias against all 500, Chapter 200 CAM physicians, this would reflect .006 or 0.6% bias and would not be deemed statically significant.** Chapter 200 CAM medicine is sought by patients who do not want conventional treatment, may not tolerate conventional treatment or have failed "Standard of Care" practices. These Chapter 200 CAM physicians are highly sought after but few are free to practice in the hostile environment created by the Texas Medical Board.

Perhaps a reason that Sunset staff could not discern bias against integrative practitioners is that when any complaint is filed against an integrative physician, they are not cited for breaking chapter 200 rules, but rather for not practicing the standard of care, or in some instances for false and misleading advertising about their services or certifications. It appears that many times violations against Chapter 200 CAM physician's results from conflicting rules such as CHAPTER 190 DISCIPLINARY GUIDELINES, SUBCHAPTER B VIOLATION GUIDELINES Rule § 190.8 *(A) failure to treat a patient according to the generally accepted standard of care and* CHAPTER 164 PHYSICIAN ADVERTISING RULE Rule § 164.3 *Misleading or Deceptive Advertising - (8) contains a testimonial that includes false, deceptive, or misleading statements,...* When Chapter 200 CAM physicians provide treatment compliant to Chapter 200, they can be cited under Rule § 190.8 for not following "Standard of Care". When Chapter 200 CAM physicians describe the therapies they offer in flyers or websites, they can be cited under Rule § 164.3 for misleading and deceptive advertising since the information they are communicating is not the "Standard of Care."

More importantly, integrative physicians who have come under scrutiny report the following:

1. ISC panels are overtly hostile to CAM and Integrative practitioners
2. ISC panels assume complainant are guilty until proven innocent.
3. ISC panels appear to be ignorant of the details of the case. Often there are voluminous records sent by the respondents and it is highly likely that these records are not inspected by the ISC panel. Therefore what good does it do to have a panel who is not familiar with details of the case? The ISC is not efficient if the panelists do not read the case files. Therefore it must be abolished and replaced with a more efficient mechanism. We are recommending the Indiana Compensation Plan for Patients (INCAP) model as discussed below.

If TMB panels are depending on an expert panel report, this has additional problems. ISC physicians and expert panelists who review the medical records are supposed to be in the same specialty as the respondent, but this has not been the case in the ISCs we have seen. As a matter of fact, not only are there no integrative practitioners on the medical board, but at least one public member interviewed recently indicated he was unfamiliar with the term integrative practitioner. Yet Title 22, Part 9, chapter 200 which has been effective since November 22, 1998 (over 18 years) describes in great detail the conditions that must be met when a physician and patient agree to embark on a course of diagnosis and treatment that may vary from current conventional standards.

Solution: Instruct the Sunset Commission to investigate the number of investigations and the high-level sanctions delivered by the Texas Medical Board against Chapter 200 CAM physicians. This inquiry will yield information to the effect that since 2006, almost every CAM

doctor has been investigated and most were either fined or sanctioned with few, if any genuine findings of fact.

The types of investigations opened against integrative practitioners are typically not filed by patients but by insurance companies and competitors. If these complaints were transparent and physicians were allowed to know their accusers, there would be far fewer complaints and the ones that were filed would be deemed bogus. When one looks closely at this population of physicians, they usually have a stellar medical liability record. In many cases the only claims paid out by malpractice carriers are for these unfair attacks and administrative actions.

Conclusion: Physician who are required to defend themselves in an administrative action come up against a government agency with seemingly endless resources to pay for litigation expenses which drives up both the cost of government and the cost of healthcare.

Regarding standard of care, the legal history of this term actually dates back to 1932 and relates to a non-medical situation. http://escholarship.org/uc/item/14z5w33g. Suffice it to say that one of the conclusions drawn in the article is that, "if there is a practice that is reasonable but not universally "customary" it may still be used as a measure of the standard of care." If this is true, then conventional physicians should be including alternative CAM options in their consenting process just as integrative physicians are required to discuss the risks and complications of mainstream, conventional options.

3. "… the Medical Board has come a long way and generally is a solid model for licensure and enforcement of occupations."

Problem: In the October 13, 2015, ruling from the 24th District Court located in Victoria, Texas, in the State of Texas v. Courtney Ricardo Morgan case, the court issued a clear reprimand to the TMB for their *"bad faith actions."* The ruling stated, *"The Court finds that the TMB acted in bad faith partnering up with law enforcement to conduct the search of the defendant's business. The Court finds that the TMB's interest in serving the subpoenas upon the defendant was not a legitimate pursuit of the administrative authority but an exercise to circumvent both the Texas and US Constitutions' requirement for a warrant. Because the Court finds that the TMB was acting as agents of law enforcement, defendants Motion to Suppress is GRANTED."*

Problem: The TMB asserts that they are not subject to Health Insurance Privacy and Portability Act (HIPPA) and are exempt State Patient Privacy Laws.

Problem: A U.S. Judge "Easily" Determines *Patients Have No Reasonable Expectation of Privacy in Their Medical Records.* Recommendation Allows Law Enforcement to Perform Widespread Warrantless Searches of Medical Records for the Purpose of Investigating Patients.

> *In* U.S. v Zadeh, *the DEA obtained the records of 35 patient files without showing probable cause or obtaining a warrant issued by a judge. Citing New Deal-era case law, Judge Reed O'Connor noted that "[t]he Supreme Court has refused to require that [a federal] agency have probable cause to justify issuance of an administrative subpoena," and that they may be issued "merely on suspicion that the law is being violated,* or even just because it wants assurance that it is not."

"Dr. Zadeh has filed an appeal. Conservative activist Andy Schlafly, the lawyer for the Association of American Physicians & Surgeons, has filed an amicus brief stating, "[w]ithout a warrant and without initially identifying themselves, federal agents searched patient medical records . . . based merely on a state administrative subpoena. A month later the [DEA] sought enforcement . . . [and n]one of the checks and balances against overreaching by one branch of government existed for this warrantless demand for medical records."... "Administrative subpoenas issued unilaterally by bureaucrats and without probable cause directly violate the Fourth Amendment."

A private conversation between a patient and a physician may be a thing of the past. A U.S. Magistrate Judge in Fort Worth, Texas ruled in favor of enforcing a Drug Enforcement Administration (DEA) administrative subpoena which forces a local physician to turn over the medical records of 67 patients. The judge "easily" decided that patients have no reasonable expectation of privacy in their medical records and therefore a warrant was not required for law enforcement to obtain them. (Administrative subpoenas, which are not reviewed by a judge and do not require probable cause, can only be used to obtain records which are not considered private.) If upheld on appeal, the decision will effectively strip medical records of any meaningful privacy protection.

The physician argued in court that the government has explicitly promised patients that their medical records are private ("Only you or your personal representative has the right to access your medical records" is noted prominently of the U.S. Department of Health and Human Services website.) The physician also pointed out that patients withhold important sensitive information when they have privacy concerns, leading to missed diagnoses and harm to the public's health, and offered to turn over the records if they could be used only to investigate himself, the physician, but not his patients. The DEA refused the offer, indicating that they intended to use the medical records for the criminal investigation of patients.

The judge brushed aside privacy concerns in favor of the DEA: Both (patients and physicians) have a reduced expectation of privacy in the medical records…The government has a compelling interest in identifying illegal activity and in deterring future misconduct.

http://www.americanthinker.com/articles/2015/07/feds_get_the_power_to_seize_medical_records_on_fishing_expedition_investigations_with_no_subpoena_from_a_judge.html and http://www.leagle.com/decision/In%20FDCO%2020150203F05/U.S.%20v.%20ZADEH

Problem:

Upon interviewing numerous physicians who have been investigated by the TMB, there was a consistency that the abuses primarily started in 2006. There are numerous complaints by physicians who have been investigated who stated that the TMB investigators made false statements regarding the contents of patient medical records and there are no current means of recourse available to the physicians to file a complaint nor any measure of penalty for the TMB staffers.

4. OPPOSITIONS:

4.1 Issue 1 – Key Recommendation 2, to "Direct the Medical Board to use Prescription Monitoring Program data, along with other factors, to establish a risk-based approach to scheduling pain management clinic inspections."

Assessing the distribution of pain medications based upon numbers of distributed pills recorded in a database does not provide for proper patient assessment. When analyzing patients for pain medicine distribution, three types of patients are possible; acute physical pain patients, patients addicted to narcotics and bad actors who acquire prescriptions for illegal sale. Rather than investigating pain clinics purely on database numbers, several technologies exist that detect and measure the autonomic nervous system to detect patients experiencing acute pain. If it is detected that the patient is not experiencing acute physical pain, then evaluation can be made to determine if the patient is an addict or a bad actor. For patients who are discovered to be addicts, referrals can be made to the appropriate care for that patient. For patients who are discovered to be bad actors, those patients should be turned over to law enforcement to follow legal due process for investigating and prosecuting these cases. We do not believe that the Texas Medical Board should be used as a police law enforcement agency. There are already many other law enforcement agencies that have jurisdiction in this area of criminal prosecution.

The current methodology for PMP is profiling based on the prescription database and is grossly inappropriate. What safeguards are going to be put into place that this profiling is not being done on race, national creed, age or addresses?

In an exchange with Representative Bill Zedler, Mari Robinson, former executive director of the TMB stated under oath, *"If you see five people all living at the same address, with the same last name, all getting hydrocodone, soma and xanax, that implies that those people are getting those drugs to sell them, not for their own personal use. And so, if we get complaints like that, where we believe that there is crime being committed, we will expand that investigation to include other patient records."* How can anyone state that Ms. Robinson is acting from a presumption of innocence until proven guilty? How can anyone say with a straight face that the TMB is not criminally investigating patients after a statement like that? This is overreaching by the TMB. This is not a power expressly granted to them.

Another problem is the use of "drag net" approach to investigations. The inclusion of nonrelated patients is used as a means to safeguard the confidentiality of a patient complainant such that other patients are included in the investigation purely to conceal who issued the complaint against a given provider.

There is the issue of the TMB criminally investigating patients without proper due process afforded by sworn, law enforcement officers but rather by TMB investigators.

The TMB can issue a subpoena for any patient's chart any time it wishes to. If a provider does not wish to provide that patient's chart, the TMB can go to a judge and attempt to enforce the subpoena. The current method would ensure that the TMB follows state law and the Constitution and gets rid of this grossly inappropriate presumption of guilt.

RECOMMENDATION: Require pain clinics to utilize technology that measures the autonomic nerve response to record the level of acute pain and confirms the necessity and dosage of pain medicine. Genetic testing can also help the physician know whether the patient is an average, slow or fast metabolizer of any given drug, which the doctor can then use to justify and adjust dosages. This will help the physician to know if a patient is lying about being in pain. This type of technology also serves to tailor treatments given to patients.

4.2 Issue 1 – Key Recommendation 3, to *"Authorize the Medical Board to seek court enforcement of its administrative subpoenas."*

With SB 315, the TMB is in essence receiving the power to use administrative subpoenas, which often contain criminal accusations against providers, for searches without probable cause and without the signature of a neutral magistrate, which is unconstitutional.

A subpoena is supposed be written by the person given the ability by law to write and sign it. That person has to sign a sworn affidavit that the facts in the subpoena are true. The subpoena is given to another party who serves it. The person to whom the subpoena is issued can agree to the terms of the subpoena and comply with the request or make the body issuing the subpoena go to court to compel enforcement. If the party receiving the subpoena elects to not comply with it, the issuing agency, in this case the TMB, could then choose to involve the Attorney General's office and go to court to enforce compliance with the subpoena.

The way the TMB issues subpoenas is an unconstitutional process given that the TMB often serves its own subpoenas. Their subpoenas often are not accompanied by sworn affidavits. These subpoenas are often written instanter (which requires immediate compliance) and without affording providers the right for judicial review. TMB investigators have harassed and intimidated the office staffs of providers telling them that not immediately complying with a subpoena may result in the physician being fined or having his license suspended.

It is illegal for TMB subpoenas to be issued for the criminal investigation of patients, but there is zero oversight on this issue. In fact, the TMB frequently identifies patients engaging in criminal activity with their subpoenas. The TMB has then published said activities along with patient prescribing information which makes it easy for law enforcement to use the PDMP database to identify said patients.

And perhaps worst of all, TMB subpoenas have been signed with forged signatures. In a recent deposition, Mari Robinson, former executive director of the TMB, admitted that she delegated her signature on subpoenas to one of her subordinates. So the TMB technically believes that anyone in their agency, even someone who is illiterate, can affix the executive director's signature to a subpoena.

A federal judge has already ruled that the way the TMB is issuing subpoenas is illegal. This proposal would shockingly make the way the TMB issues subpoenas even more illegal and unconstitutional than they already are.

4.3 Issue 1 – Key Recommendation 4, to "Clarify statute to authorize the Medical Board to inspect an unregistered pain management clinic."

Before the Texas Medical Board expands its power to do profiling of pain clinics, it must establish what a pain clinic is. This exception to pain clinic registration is particularly problematic: a clinic owned or operated by a physician who treats patients with the physician's area of specialty who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of patients.

The board will not officially define what "other forms of treatment" are. What the definition of "other forms of treatment" SHOULD be is any form of treatment the government already pays for with regards to pain management or the use of controlled substances.

The Sunset Report states other forms of treatment have to be offered. At various other times, the board has stated that other forms of treatment have to be performed and then stated at a different time that other forms of treatment have to be performed on a majority of patients.
The board says that it cannot give out advice on whether a doctor should register as a pain clinic as that would constitute legal advice. This fact alone dictates that registering as a pain clinic is more about legal opinion than following the law. There should be clear parameters on what determines a pain clinic and not based upon legal opinion.

At the current time, the board can currently generate its own complaint, issue its own subpoena and inspect as many charts in a doctor's office as it wishes. What Federal Judge, Robert Pitman, objected to and declared illegal was not that the board investigated whether Dr. Joseph Zadeh ran an unregistered pain clinic but how the board went about its inspection. It was the board's use of a subpoena instanter, intimidating office staff in a fashion that there was no opportunity to have the subpoena reviewed by a judge, the inclusion of unannounced DEA investigators as part of the inspection, the lack of any attempt showing Dr. Zadeh met an exemption to pain clinic registration, and the inappropriate requesting of billing records to be received instanter.

It should be pointed out that the DEA sets a quota on the number of controlled substances that are allowed to be prescribed per year, and the amount of opioids is going to be massively reduced by 25% to 33% in 2017. It appears that the restriction of prescription pain drugs is being replaced with illicit distribution of fentanyl mixed with heroin.
The Associated press published on October 28, 2017 stated, "About 56 percent of all opioid deaths in the 10 states surveyed involved fentanyl."
http://wspa.com/2017/10/28/fentanyl-in-more-than-half-of-opioid-deaths-in-10-states/

RECOMMENDATIONS:

1. The Executive Director and Board Chairman are to practicing physicians.
2. Sunset review every four years to provide for better oversight and serve as an avenue for patient and physician grievances against the TMB.
3. Release of patient's records shall require a court warrant or patient consent.
4. The identities of the expert panelist to be disclosed to defendant.
5. Only complaints from patients or cases of patient harm may be considered confidential.
6. TMB required to provide assistance to physicians when guidance is requested in an attempt to be complaint with rules. No more, "We don't provide legal advice" from the TMB.
7. TMB to provide clarity for compliance with rules. When asked what was specifically considered, *"false, misleading or deceptive"* in an ad, the TMB's response was, "We don't get that specific."
8. Require transparency regarding Freedom of Information Act. The TMB sued the Texas Attorney General's office and Representative Bill Zedler to prevent the release of information regarding communications between Zedler and the TMB that the AG had cleared for release.
9. Replace Informal Settlement Conference with proper peer review using Indiana Compensation Act for Patients (INCAP) model.
10. Six of the physician board seats to be filled by physicians practicing integrative medicine.
11. State Office of Administrative Hearing (SOAH) decision should not be eligible for over rule by TMB.
12. Removal of the restriction to serve on board purely based upon investigative review when no fault was determined.
13. Support the TMA recommendations except for statement "*Ensure that the board does not provide any information directly or indirectly identifying the expert physician reviewer to the physician who is the subject of the review. TMA says revealing a reviewer's identity could discourage physician participation, which the board relies upon heavily."*
14. Oppose Interstate Licensing Compact.

4.4 SAMPLES OF ABUSE –

Example 1:

The only eligible complaints triggering investigations should come from patients or family members who have been harmed. Insurance companies should not have standing to file a complaint. Additionally, if a competitor files a complaint that is clearly malicious, the board should file a complaint against the competitor for unprofessional and anti-competitive behavior. The complainant should have to bear the cost of defense incurred by the subject of the investigation.
Quackwatch – Stephen Barrett and Robert Barratz – serial complaintives
Quackbusters Barrett and Barratz, who have been shown to have malicious intent against CAM practitioners and have lost numerous lawsuits in court, should ABSOLUTELY NOT have standing to file complaints or be expert panelists. (See Quackwatch link below.)
http://r.search.yahoo.com/_ylt=AwrTccaqfVFYu7MA.eQnnIlQ;_ylu=X3oDMTE0cXRuNzI2BGNvbG8DZ3ExBHBvcwM3BHZ0aWQDRkZVSTNDMl8xBHNlYwNzcg--/RV=2/RE=1481764395/RO=10/RU=http%3a%2f%2fquackwatch.org%2f/RK=0/RS=TSAsqIDcJOsxC3vtisk1vXKPVk8-
Nor should either of them EVER be used as an expert witness as Baratz was in the case outlined below. See highlights on page 4 in attachment titled:

HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-10-3509.MD
LICENSE NO. F-8432

These people have been using government resources to persecute CAM doctors while the Texas Medical Board (especially Mari Robinson) has knowingly cooperated in these sham investigations. A Perfect example is evident in the attached letter which was written to the medical board by Stephen Barrett, MD (who has no medical license). In this "complaint" dated 12-22-2008 (attached), he accuses Dr. Jesus Caquias of:

- Advertising of a nonaccredited degree
- Advertising of nonrecognized credentials
- False advertising
- Implied claims of superiority
- Inappropriate diagnosis of heavy metal toxicity
- Inappropriate use of chelation therapy to treat autism
- Insurance fraud

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Dr. Caquias was medical director of Care Clinics in Austin, TX, a clinic that specialized in the biomedical treatment of autism. This complaint resulted in a several years-long investigation which pulled in the FBI and IRS and other agencies. The federal agencies involved confiscated all of Care Clinic's records to investigate them for insurance and tax fraud as Barrett had accused, and effectively the clinic had to be closed. Several years after the ordeal began, and over a million dollars in defense costs, Care Clinics were found guilty of nothing. The question remains, what did this malicious attack cost the taxpayers? In the attached document titled Dr. Caquias was found innocent on all these trumped up charges. (See highlights on pages 12-13.)

Complaints against physicians are often resolved at an Informal Settlement Conference (ISC). Unfortunately, these ISCs commonly do not give physicians a fair and transparent forum to defend themselves:

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