

Legislature to appoint an Inspector General to provide independent 3rd party review of complaints filed against healthcare agency board members and employees.

WHEREAS healthcare regulator agency boards are appointed by the Governor yet the Governor's office has no direct oversight of these boards hence the boards are considered sovereign and,

WHEREAS the Governor's office has no official complaint process to file a complaint against appointed board members or employees and¹,

WHEREAS per administrative law, agency boards members and prosecutors are entitled to sovereign absolute immunity and investigators are granted qualified immunity and²,

WHEREAS the complaint policy for the Texas Medical Board (TMB) was not developed until July 2, 2018 and the Board of Nursing (BON) established a link on their website to file complaints in the spring of 2019 and³,

WHEREAS these agencies' current policies equate to complaining to the agency, about the agency board members or employees, to be resolved by the agency with no legislative oversight and⁴,

WHEREAS in the Courtney R. Morgan v. Texas Medical Board February 2019 Travis County appeals court case where Judge Maya Guerra Gamble stated the following:

• Stated that that there was ample evidence to suggest that the police either knew about or requested the search, finding "that there were several contacts between the TMB and DPS with regard to using the information secured as a result of the subpoena(s) to charge the defendant with a crime. The fact that a regulatory agency and law enforcement agencies are contacting each other and sharing information to conduct and coordinate a warrantless 'administrative search' is a cause of concern for this Court."⁸

and,

WHEREAS several court cases reveal that the Texas Medical Board (TMB) and the Texas Board of Nursing (BON) staff have falsified evidence and committed perjury in administrative, state or federal court cases, which are defended by the Office of Attorney General at tax payers expense and,

WHEREAS all patients and healthcare licensees should be provided a means to report bad faith and unethical conduct and or complaints against licensing agency board members or employees in a confidential manner so,

THEREFORE BE IT RESOLVED that the Texas legislature shall establish an Inspector General to provide an independent, 3rd party review of complaints filed against healthcare licensing agency board members and or employees to render discipline, sanctions or dismissal of board members or employees as warranted.

Choose one:

Adopted by the _____ (Precinct _____) convention on March _____, 2021.

Adopted by the _____ (county/SD _____) convention on March _____, 2021.

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SOURCES:

1: Email dated May 16, 2018 *“There is not a formal complaint process administered by the OOG (Office of Governor) for complaints against the Texas Medical Board (the “Board”).* Kenny Moreland, Assistant General Counsel, Office of Governor Greg Abbott”

There is not one specific government office authorized to receive confidential complaints against the TMB or BON agencies or their boards. The only oversight of the TMB or BON is the 181-member Legislature which provides zero ability for any office to consolidate or track complaints to provide historical trends much less render discipline to the agency employees or board members.

2: December 9, 2017, *Zadeh vs West* order, pg 13 states:

“It is apparent from weighing the Butz factors that the Defendants who participated in ISC and SOAH proceedings are entitled to absolute immunity for quasi-prosecutorial and quasi-judicial functions performed therein.”

Therefore, when irrefutable mistakes or false allegations are made by staff or board members during an Informal Settlement Conferences or at a State Office of Administrative Hearing (SOAH) for licensees (ie medical boards, DPS for driver’s license, etc.) or alleged perpetrators (Family Protective Services – Child Protective Services / Adult Protective Services, etc.), there are no legal actions for recourse or discipline to the offending board member or staff given their absolute or qualified immunity status.

3: Complaint Processes:

TMB - [Registering and Processing of Complaints Against the Agency policy](http://www.tmb.state.tx.us/idl/D6BDC6DA-6788-B580-EA2D-8305A2E41BEB)
<http://www.tmb.state.tx.us/idl/D6BDC6DA-6788-B580-EA2D-8305A2E41BEB>

BON - https://www.bon.texas.gov/Registering_Complaint_Against_the_BON.asp

the TMB and BON has no legislative direction which establishes an independent oversight entity therefore complaints are resolved internally by the TMB and the BON. According to complaints received from patients and physicians, many of the complaints relate to actions of the employees or board members, therefore the current policy does not provide for independent third-party review.

4: During the October 2018 TMB meeting, TMB’s Executive Director Brint Carlton made the following statement regarding complaints against the agency or board being reviewed internally, *“the reason that those are reviewed internally is because there is not another organization that does it, cause I am more than happy to let someone else do that ...it's not the way the legislator has done it ... I would be more than happy for the legislature to set that up.”*