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Office of Governor Rick Perry
P.O. Box 12428
Austin, TX 78711-2428

Dear Governor Perry:

The attached report documents why you need to initiate immediate action to improve the performance of the Texas Medical Board (hereafter referred to as “Medical Board”) and thereby protect patients in Texas from physicians who should have been, but were not, disciplined.

The report contains three sections (summarized below, with specific references to pages in the full report where the points are discussed in more detail):

- A. Evidence of dangerously inadequate discipline by the Texas Medical Board**
- B. Causes of dangerously inadequate discipline by the Texas Medical Board**
- C. Recommendations for a More Effective Texas Medical Board**

A. Evidence of dangerously inadequate discipline by the Texas medical board (Report pp. 4-11)

1. **459 physicians with Texas clinical privilege sanctions—75% by hospitals- but not disciplined by the Texas Medical Board**

The reasons for these sanctions included immediate threat to health or safety of patients, incompetence/negligence/malpractice, substandard care, sexual misconduct, and inability to practice safely/alcohol/substance abuse/physical impairment.

The seriousness of the actions taken for the above offenses includes summary/emergency suspension of clinical privileges, summary/emergency limitation/restriction/reduction of clinical privileges, revocation of clinical privileges, suspension of clinical privileges, and denial of clinical privileges for a large proportion of these physicians.

Malpractice payouts against these physicians. Almost one-half (47 percent) of these physicians (216 physicians) had one or more malpractice payouts for a total of 473 payouts, an average of more than two for each of these 216 physicians, one of whom had 22 malpractice payouts.

2. Recent worsening of the rate of serious state medical board disciplinary actions in Texas compared to that of other states (Report p. 9)

Each year, Public Citizen ranks state medical boards based on their rate of serious disciplinary actions per 1,000 physicians. Texas had initially, in our 1995 and 1996 rankings, stood among the top one-half of states, at numbers 25 and 23, respectively. Since 1997, however, Texas has consistently been among the bottom one-half of states in the rate of seriously disciplining doctors.

B. Causes of dangerously inadequate discipline by the Texas Medical Board (Report pp. 11-16)

1. Serious funding and staffing problems

Currently, the Medical Board brings in about \$60 million from licensing and renewal fees over a two-year budget period. Because of a state legislature policy decision, the Medical Board gets to keep only one-third, \$20 million, of the licensing and renewal fees over the two-year period, while two thirds, or \$ 40 million, is turned over to the state general revenue fund. (Report p. 12)

From 2006 to 2011, there has been a 57 percent increase in the number of complaints to the board. But during this interval, the board's budget, adjusted for inflation, increased only 12 percent, and the number of staff increased by only 16 percent. (Report p. 12)

2. Predictable backlog of complaints because of staffing shortages

As of August 31, 2011, 454 physician investigations in the agency had been open for at least one year, including cases going back as far as 2007, 2006, and 2005. Moreover, the Medical Board resolves only about one-third of documented complaints within the 180-day statutory time frame for resolving complaints. Furthermore, the Medical Board acknowledges that because of staff shortages, it has not been able to do complete investigations on 87 doctors who have been sanctioned by hospital or managed care peer review committees. (Report page 14-15)

3. Adverse impact of backlog and staffing deficiencies on board actions and Texas patients' risks

Fourteen percent of complaints that originate with the Medical Board itself include the statutory requirement to review the medical competency of a physician against whom three or more malpractice suits have been filed within five years. (Report p. 15)

Given the length of time it is taking to complete complaint investigations, many Texans should be concerned that they may be at risk for substandard care in cases involving quality concerns about doctors who should have been but were not disciplined by the board. (Report p. 15)

In response to our inquiry of the board about inaction concerning doctors with clinical privilege actions but no board action against them (discussed in section A. 1. of this letter), we were told that the Medical Board does not have the resources to determine why it could find no record of its own action for 59 percent (87) of doctors with hospital peer review reports, or why the Medical Board never received the hospital report. (Report p. 15-16)

C. Recommendations for a more effective Texas Medical Board (Report pp. 16-17)

1. Allow the Medical Board to keep a greater share than the current one-third, ideally all, of the revenue it generates. (Report p. 16)
2. Appoint an independent Medical Board enforcement monitor, similar to that used to address problems involving the Medical Board of California's performance. The monitor could (a) advocate for the Medical Board; (b) review the impaired physician program to ensure that impaired practitioners are properly monitored, tested, counseled, etc.; (c) monitor enforcement policies and practices to ensure that disciplinary actions and consent orders are commensurate with violations of the Texas Medical Practice Act; (d) and oversee investigation caseloads to ensure that investigations lasting for long periods of time do not compromise the safety of Texas patients. (Report p. 16)
3. Consider instituting random practice audits of physicians as a proactive quality assurance mechanism. The Office of Inspector General (OIG), U.S. Department of Health and Human Services, has highlighted the use of random practice audits. The OIG has also noted the College of Physicians and Surgeons of Ontario experience in making the most extensive use of random practice audits. (Report p. 17)

In summary, this report provides evidence concerning the inadequate capacity of the Texas Medical Board to protect Texas patients from preventable medical harm. We hope that you will take these findings and suggestions seriously and implement the proposed changes as soon as possible.

Sincerely,

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Director
Public Citizen's Health Research Group