

# Nation's Worst Medical Board Met Its Match at Extraordinary Hearing

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Andrew L. Schlafly, Esq.

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## Checks and Balances

Fundamental to the American political system is the concept of “checks and balances” on power. At the national level, examples include the presidential veto of legislation, and the option of a legislative override. Judicial review is another example.

At the state level, which must embody a republican form of government as guaranteed by Article IV of the U.S. Constitution, there are also checks and balances. The three branches, legislative, executive, and judicial, should check and balance each other in a way similar to the national government.

But are there any checks and balances on state medical boards? They function unrestrained in most states, confident that only a feckless state judiciary will ever review their decisions. Nine times out of ten, or even more often, state courts rubber stamp state medical board decisions. Moreover, the conduct of individuals running the state medical boards has *never* been scrutinized.

One AAPS member attempted to depose a high-ranking official at his state medical board to uncover and expose her malfeasance. But the state moved for a court ruling to quash the deposition, and the court did. That case went all the way to the Supreme Court of that state, and the state medical board official was never deposed.

State medical board officials have never had to explain their actions to anyone outside of their group. They have enjoyed immunity and expect never to be held accountable to anyone, regardless of how they abuse their power. They have increasingly subjected the medical profession to an abuse of power more commonly associated with a dictatorship or tyrannical form of government.

That is, until Oct 23, 2007. AAPS and our members sparked an extraordinary 11-hour hearing by a Texas legislative committee that has oversight over the Texas Medical Board (TMB). The worst in the nation in inflicting unjust, arbitrary punishments, often against free-market or conservative-appearing physicians, the TMB finally found itself on the hot seat answering questions under oath. The TMB will never be the same again.

The top disciplinarian on the TMB, Dr. Keith Miller, abruptly resigned as news of this hearing first spread in August, claiming that his reason for resigning was a new rule against a member serving as an expert witness in a malpractice case.<sup>1</sup> But Miller's name came up often at the October 23<sup>rd</sup> hearing anyway. TMB President Roberta Kalafut, D.O., testified along with all the other key board members and officers.

If they thought their show of force would allow them to take control of the hearing, they were dead wrong, as AAPS physicians and allies attended in even greater numbers. The room was filled, the atmosphere tense, and many watched from an overflow room. It was standing room only in the hearing room as a video broadcast the events live over the internet, where it can still be seen.<sup>2</sup>

I testified, as did many AAPS members.<sup>3</sup> The TMB officials sought to testify first, and they did not expect the questions asked of them.

## Anonymous Complaints and Other Abuses

At 1:35 into the hearing Rep. Corbin Van Arsdale asked the Board President, “Dr. Kalafut, do you know of any Board member, or Board member's family member that filed anonymous complaints against physicians?”

Under oath, Kalafut responded, “I do not.” But further interrogation at 3:44 into the hearing by Rep. Debbie Riddle revealed a different answer by Kalafut, one that confirmed her use of anonymous complaints:

Rep. Riddle: “Have you ever had your physician husband file an anonymous complaint for you?”

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

Rep. Riddle: “He has filed an anonymous complaint on his own. Were you aware of it?”

Roberta 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.”

Rep. 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.”

Rep. Riddle: “You cannot disclose that?”

Kalafut: “Yes, I'm told now ....”

Mari Robinson, the Board attorney, then raised an improper objection to stop the answers: “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 actually isn't even part of the form.”

Information received from the town in which the TMB President practices, Abilene, Texas, suggests that nine of her competitors have been subjected to anonymous complaints, likely from her and/or her husband. The TMB President may be the next to

resign, and she may even be prosecuted for her abuse of power. It seems unlikely that she acted alone on the TMB.

The Sixth Amendment to the U.S. Constitution protects citizens in all criminal proceedings against the use of anonymous witnesses. Known as the "Confrontation Clause," the Sixth Amendment ensures that in "all criminal prosecutions, the accused shall...be confronted with the witnesses against him." A loss of a medical license is, for many, even worse than a criminal proceeding. Most would rather be fined or even spend a few nights in jail than lose their entire livelihood and profession. Yet physicians are deprived of the ability to confront their accuser before some medical boards, including Texas.

The vice of anonymous complaints was aptly illustrated by the above testimony. The hearing included far more incriminating material as well. Our sources indicate that Dr. Miller served as an expert against physicians in about 50 malpractice cases, creating a pervasive conflict of interest, yet TMB President Kalafut testified that she was unaware until spring 2007 of his role as an expert witness. I remarked how implausible that lack of awareness is.

**A Pattern of Abuse**

The testimonies by the victims of the TMB's abuse of power that day were tragically compelling. The leftist mindset at the TMB

revealed its ideological pattern in its types of victims: a physician who does not take insurance, a veteran, a father dedicated to his family, and a physician persecuted for expressing a harmless but politically incorrect sexual joke to a female patient. The veteran was a fighter pilot who survived many missions for the United States over North Vietnam, only to be shot down and destroyed as a physician by the TMB.

**The Next Step**

The era of unaccountability for state medical boards is over. Already we have heard from other states seeking to duplicate the checks and balances achieved on Oct 23, 2007, in the Texas Capitol in Austin.

**Andrew L. Schlafly, Esq.**, is general counsel to AAPS. Contact: [Aschlafly@aol.com](mailto:Aschlafly@aol.com).

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