

# Doctors Want Medical Board Reform

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When Khrushchev had finished his famous speech denouncing Stalin at the 20<sup>th</sup> Party congress in 1956, he asked for questions to be passed to the rostrum in writing. "Comrades," he said after receiving a batch of question slips, "I have received a question asking 'As Bolsheviks, how could you stand by and watch Stalin's atrocities without speaking out against them?' Who wrote this, Comrades?"

Silence.

"I ask you again, Comrades: Who asked this question?"

Silence.

"Comrades, are we Bolsheviks or are we cowardly old women? I say for the third and last time: Whoever asked this question, let him stand up like a man!"

Silence.

"You see, Comrades? That's exactly why we kept our mouths shut too..."<sup>1</sup>

When a doctor is investigated, or subjected to sham peer review, or prosecuted, or delicensed, the most common response by physicians is—silence. Others comment that "there are bad apples out there." And they tend to trust the process because physicians are involved in it.

When they came for Dr. J. Philip Smith, doctors might have said: "I didn't speak up because I don't run Medicare subacute care facilities."

When they came for Dr. Andy Wakefield, "I didn't speak up because I support the current process for mandating vaccines."

When they came for Dr. John Minarcik, "I didn't speak up because I don't have a problem with exclusive hospital contracts or my hospital administration."

When they came for Dr. Billy Hurwitz, "I didn't speak up because I don't treat chronic pain with high-dose opioids."

Do good doctors need to worry that the hospital, the medical board, or federal prosecutors might come for them? All doctors are under scrutiny by the medical board, which will probably be involved eventually in any kind of question about a doctor.

AAPS has received complaints about abusive procedures by medical boards nationwide. The worst seemed to occur in Texas, and therefore AAPS filed suit against the Texas Medical Board (*AAPS v TMB*), as well as working for legislative reform.

Applying lessons learned in Texas, the Arizona chapter of AAPS is looking at the Arizona Medical Board (see [www.arizonamedicalboardwatch.com](http://www.arizonamedicalboardwatch.com)), which is undergoing a 10-year sunset review. Like the Texas Medical Association (TMA),

which appears to be working behind the scenes to thwart reform,<sup>2</sup> the Arizona Medical Association (ArMA) has been generally supportive of the AMB. ArMA notes that there have been many improvements since a new executive director, Lisa Wynn, was appointed in 2008. Doctors hear "don't rock the boat" style warnings, plus admonitions about how the legislature can't be trusted, or that our licensure fees will go up if the AMB has to provide more due process.

In an attempt to determine whether physicians think there is a need for reform, AAPS mailed a survey to some 9,000 Arizona physicians. We received about 350 responses, more than twice as many as in an Arizona Medical Association (ArMA) survey about the AMA.<sup>3</sup> While not a scientific survey, it shows a significant level of concern about the AMB. Complete results are posted.<sup>4</sup>

On most questions, roughly one in three respondents had a "neutral" opinion or no knowledge. In Table 1, the first two columns represent the respondents who agree/strongly agree or disagree/strongly disagree as a percentage of those who answered the question. The last two columns give percentages of favorable or unfavorable responses as a percentage of those who had a non-neutral opinion.

While respondents are more or less evenly divided on the question of whether the AMB protects the public, 70% to 80% of those with a non-neutral opinion have a negative view on the AMB's fairness to physicians, and 90% believe that the AMB is not friendly to innovation.

Only about 7% of all respondents agreed with the statement that "if doctors have a problem with the AMB, they can rely on organized medicine to help through its relationship with AMB officials." About 12% agreed that AMB policies create a climate likely to attract excellent physicians to the state, and 11% agree that AMB's sanctions on physicians who treat chronic pain have improved patient care.

For suggested terms to describe the AMB (respondents could choose as many as they liked), responses were: lax, 2%; lenient, 4%; consistent, 10%; reasonable, 20%; well-informed, 5%; open, 5%; out-of-touch, 27%; tough, 20%; harsh, 34%; **arbitrary, 41%**; biased, 32%; politicized, 36%; secretive, 29%; rigid, 23%.

Of suggested terms for the way in which the AMB treats physicians, responses were: respect, 14%; professionalism, 21%; **condescension, 37%**; "it depends," 14%.

**Table 1.** Responses to Survey on AMB. SA=strongly agree, A=agree, D= disagree, SD=strongly disagree. Respondents could also check N for neutral or NK for no knowledge

Question		SA+A (%)	D+SD (%)	(SA+A)/(SA+A+D+SD) (%)	(D+SD)/(SA+A+D+SD) (%)
1.	The AMB does a good job of protecting the public.	34	29	54	46
2.	The AMB should simply be reauthorized, without change.	13	63	17	82
3.	If the AMB investigates me, I am confident the investigation will be fair.	20	57	26	74
4.	If doctors have a problem with the AMB, they can rely on organized medicine to help through its relationship with AMB officials.	7	68	10	90
5.	The policies of the AMB help to create a climate that is likely to attract excellent physicians to Arizona.	10	52	16	84
6.	AMB policies are friendly to innovation.	6	54	10	90
7.	Patient care in Arizona has been improved by AMB sanctions on physicians who treat chronic pain.	12	42	21	79
8.	The AMB should require electronic medical records as a condition of licensure.	7	80	8	92
9.	The AMB should require maintenance of certification by an AMA-approved specialty board as a condition of licensure.	28	56	33	67

Several questions permitted an open-ended response. About 14 physicians indicated that they felt the board was inconsistent or arbitrary in its decisions, and 15 commented that the board believed physicians were "guilty until proven innocent." Other comments were that the board uses unqualified consultants; that some members seem motivated to sanction as many physicians as possible so they can "justify their existence and look good in the public eye"; that much time is wasted on petty, frivolous complaints; that some "really bad actors" escape discipline, apparently because of political considerations; and that experts sometimes even "fabricate data." In addition, AMB was said to be "unwilling to correct its own mistakes" and displayed "an abhorrent lack of concern" about its actions. One respondent noted that "it's too easy for patients to submit frivolous complaints without fear of accountability." One accused the AMB of "abusing process to get the results its nonmedical staffers want."

One physician stated that he was treated very harshly although the complainant frequently changed her story. The physician also wrote that he could not find out what he was being accused of or exactly what the patient was alleging.

One physician suggested that a condition of licensure should be performance of a service resembling jury duty. Important complaints should be reviewed by three paid physicians (\$100 per hour for a maximum of \$300) of the same specialty from a different community. The jury member could vote yes, no, or undecided with one paragraph explaining why, with the final

determination to be made by the AMB. Another suggestion was for doctors to have the same standards as the legal community. "The Bar Association really protects its members to the point of stopping most complaints before they get started."

A strong majority of physicians in Arizona believe that the AMB should be reformed in some way.

Two questions concerned policies likely to be considered in the future at the instigation of the Federation of State Medical Boards (FSMB). Nearly 90% of respondents are opposed to requiring electronic medical records as a condition of licensure, and 67% oppose requiring maintenance of specialty-board certification as a condition of licensure. Only 15% of respondents were neutral on these questions.

As all physicians are utterly dependent on their licensure board's approval to practice their profession, in which they have invested at least a decade of their lives, they need to be very concerned about its rules and procedures. Because of the realistic threat of retaliation to individuals who speak out, physicians need to stand together to demand reform.

#### REFERENCES

- 1 Beckmann P. Demonstration. *Hammer and Tickle: Clandestine Laughter in the Soviet Empire*. Boulder, Colo.: Golem Press; 1980.
- 2 AAPS. Look who's opposing physician-led reform of medical board. AAPS Action Alert, Apr 16, 2011.
- 3 Person D. AMA: friend or foe? *AZMedicine* 2011;22(1):10-14.
- 4 Arizona State Chapter AAPS. Results of survey of Arizona physicians concerning Arizona Medical Board; 2011. Available at: <http://arizonamedicalboardwatch.com/survey/>. Accessed Apr 23, 2011.