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## No Oversight of the Texas Medical Board. Who is at fault?

10/25/18 - Texas Right To Know (TRTK), Brady, Texas: Who is at fault when the Texas Medical Board (TMB), one of Texas' most powerful agencies, is not required to have third party oversight and self-investigates complaints made against it? The public was first notified on July 2, 2018, that they could file complaints against the TMB when they published a link for [Registering and Processing of Complaints Against the Agency](#). Per open records requests by and email responses to Sheila Hemphill, CEO of TRTK, it was communicated that the 181 member Legislature is the official entity to provide oversight over the TMB. According to the Office of the Governor (OOG), *"There is not a formal complaint process administered by the OOG for complaints against the Texas Medical Board (the "Board")."*

Legislative oversight holds officials of executive agencies accountable. The TMB has great power over physicians and with that great power comes an even greater responsibility to hold itself accountable to the public. Without third-party oversight any government agency to review complaints against the agency, there is no integrity to the complaint process. The Texas Legislature is tasked with insuring state agencies are conducting themselves according to the law and the failure to actively oversee the actions of the TMB is a violation of every Texas citizen's trust. When a government agency can file a complaint against a physician, investigate the complaint and determine its validity, prosecute and sanction the physician without any third-party oversight, the Legislature has failed to protect physicians, patients and the public which is their primary mission.

During the October 19, 2018 TMB meeting, Mrs. Hemphill made recommendations to the board for the meetings to be video recorded, or in the interim, for the audio recordings to be posted on the website. Currently, TMB meeting audio recordings are only available by open records request. A TMB staff member stated that they had looked into video recording but were prohibited due to technology costs. Mrs. Hemphill pointed out that the TMB generated a \$12 million surplus that goes back to the state's general fund and yet the TMB claims they don't have money for video equipment? While addressing the TMB complaint policy, she stated, *"I'm sorry Mr. Carlton your reply that You thoroughly evaluate the file and You found that the TMB did not find anything wrong. Really? How can you expect any kind of integrity to come out when there's not third-party involvement in these complaints?"* TMB Executive Director Brint Carlton replied, *"The reason those are generally reviewed internally is because there's not another organization that does it, which I am more than happy to let somebody 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."* TMB President, Sherif Zaafran, added, *"...a lot of this can be advocated for at the legislature because again, as Mr. Carlton has indicated we can only do what the statute allows us to do."*

So, who is at fault for not providing oversight of the Texas Medical Board? We the people who elect Legislators who do not pass legislation to provide independent, third party oversight of the TMB.

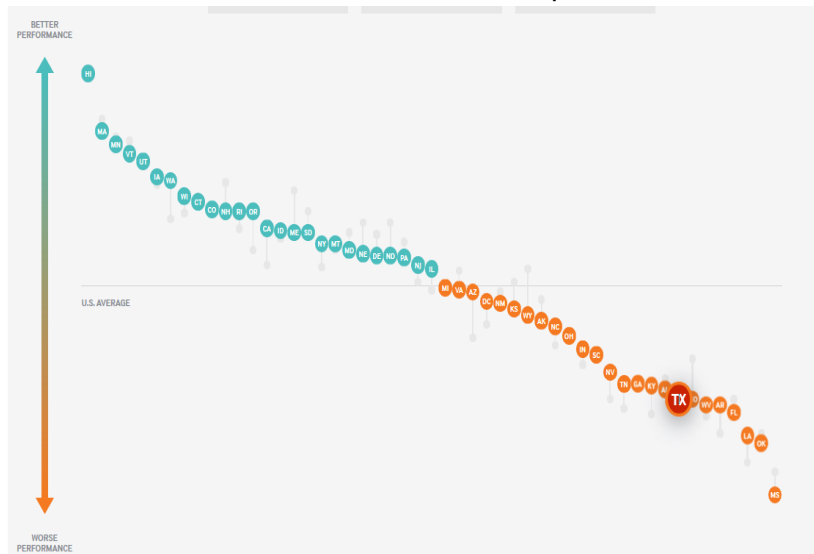


Without legislation in the upcoming legislative session, TMB administrative law processes may continue to subject physicians to:

- Prosecutions based on bad faith complaints
- Prosecutions resulting from retaliatory acts against physicians for reporting patient injury in hospital environments
- Violations of their 1<sup>st</sup> Amendment right not to speak, as they can be coerced through TMB fines and other threats
- Violations of their 4<sup>th</sup> Amendment right against unwarranted search and seizure of patient records where all files confiscated are scanned and kept forever without patient’s knowledge or consent which by law are to be made available to law enforcement
- Unethical conduct during the prosecution itself, with TMB pattern and practice of:
  - Removal or withholding evidence that is helpful to the physician
  - Misrepresentations of facts and law to the board and Administrative Law Judges
  - Using biased and or unqualified experts who often have not been provided all the medical records and evidence available

From 2007 to 2017, less than 1% of all State Office of Administrative hearings have ruled in favor of the physician. Years of lack of TMB overreach has been reported to be a major contributor for physician shortages in Texas. According to the 2017 State Physician Workforce data, **40% of Texas trained physicians are leaving Texas to practice medicine in other states and Texas is retiring experienced physicians at a faster rate than any other state.** According to the [2018 The Commonwealth Fund Scorecard on State Health System Performance](#), that evaluates all 50 states and DC that were assessed on more than 40 measures of access to health care, quality and efficiency in care delivery, health outcomes, and income-based health care disparities, Texas ranks 44<sup>th</sup> in the nation, 46<sup>th</sup> in Prevention and Treatment and 51<sup>st</sup> in Affordability and Access while costing the state of Texas 36% of the FY 2018 \$217 billion state budget or over \$78 billion annually.

Visit [www.texasrighttoknow.com](http://www.texasrighttoknow.com) to sign the “Keep Texas Physicians in Texas” petition to stop the potential physician shortage and learn more regarding claims of abuse of power and wrongful prosecutions by the TMB.



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