

From the President

Medical Board Investigations and Lawfare: Abuse of Power by Design

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Administrative law permits quasi-judicial agencies to govern by executive or judicial authority. This power, used to oversee professional licensing, has been delegated by state legislatures to their executive branches to create rules and regulations that have the force of law. It is fundamentally unconstitutional and denies justice to the people it purports to serve.

State medical boards are agencies appointed by governors, and have authority delegated by the legislature. Their stated mission is to protect the public from harmful medical practices. However, they abuse their power routinely. They use paid “expert” witnesses who are kept anonymous, withhold exculpatory information, impose excessive fines, and harass physicians with prolonged unreasonable investigations. The physician is not given the right to face the accuser, and paid anonymous expert witnesses prop up the accusations. The boards conduct themselves as judge, jury, and executioner. The system of administrative law is quasi-judicial and has very little accountability to the people it seeks to control or protect.

State bar associations are governed by the state supreme courts in most states and claim to support the administration of the legal system, ensuring that people have access to justice and to ethical lawyers.¹ The phrase “member of the bar” means “a person licensed to practice law.” The State Bar of Texas, one of the largest state bars, describes itself as a public corporation and an administrative agency of the judicial department of the Texas government, and claims to have more than 100,000 members.² Mandatory membership was ended in Texas by the U.S. Court of Appeals for the Fifth Circuit and was not taken up on appeal to the U.S. Supreme Court.^{3,4}

Entities overseeing professional licenses invest taxpayer money on insignificant or even fictitious violations of rules rather than staying focused on truly dangerous professionals. Our legal system is supposed to guarantee basic rights of due process, but under state governments, licensed medical and legal professionals are ruled by kangaroo courts set up by administrative law.

The Medical Board’s Pattern of Behavior During the Opioid Crisis

The medical boards have a reputation of pursuing easy prosecutions, as if harassing physicians for irrelevant violations were a kind of sport. At times, however, it appears that a specific end is in mind. This became evident years ago, when the opioid crisis was getting media attention. Punitive new laws and regulations were passed that adversely affected prescribing practices. After years of being told that pain was to be treated like a vital sign, and after being threatened with punishment for failing to treat pain, doctors were told they need to drastically reduce prescribing or face punishment. The concept of a registered pain clinic was devised to keep practices under tight

control. Patients suffering from pain and withdrawal found fewer places to get help, even for short-term pain. Pain management became more centralized as independent doctors couldn’t risk being accused of running an unregistered pain clinic, and patients were being funneled to highly profitable specialty clinics that made a livelihood solely from pain management.⁵

Targeting Independent Doctors Removes Competition

The board rules defining requirements for registering as a pain clinic are vague and difficult to discern. In fact, the rules exempt academic facilities, hospital-based and cancer clinics, and nearly all types of corporate settings, as if the rules were made only for private practices. The primary targets for unjust prosecution have been independent private practices.⁶

Investigative staff used board rules to conduct aggressive unwarranted searches of smaller clinics, striking fear into the hearts of physicians in similar settings and driving the “business” of treating pain to experts who then acquired a monopoly. As a result, many physicians are no longer willing to take the risk of prescribing pain medicines.

The cases described below include private practitioners who were accused of operating unregistered pain clinics. These are Texas cases, but there are examples in many states of medical boards’ violating due process and constitutional rights. The clinics that were searched did not have the identifying characteristics typical of “pill mills,” but they were smaller practices that could have unknowingly fallen into the definition of pain clinic, depending on how the rules were applied and when. In some cases, rules were expanded in ways that did not fit the legal definition and could not have been known to the physicians who were targeted by the board.

Courtney Morgan v. Mary Chapman and John Kopacz

Dr. Courtney Morgan of Victoria, Texas, was subjected to a warrantless search and seizure of records in his clinic. The board investigator demanded immediate compliance with the subpoena, giving no opportunity for precompliance judicial review. She searched through medical records, putting together a collection for an accusation of operating an unregistered pain clinic. She may have excluded evidence that Dr. Morgan met an exemption to the certification requirement and bypassed the warrant requirement of the Fourth Amendment.

The board’s conduct was appealed to the U.S. Court of Appeals for the Fifth Circuit. The argument was that the intent behind the warrantless search and seizure was not to further the board’s regulatory scheme, but to pursue criminal charges. As the Court stated, “A state district court largely agreed” that a Medical Board investigator used “illegally obtained files to fabricate evidence and get [Dr. Morgan] indicted on trumped-

up charges of running a pill mill." That court suppressed the illegally obtained evidence and dismissed the indictment.⁷

Zadeh v. Robinson

Dr. Joseph Zadeh was also subjected to a "subpoena instanter" by the Texas Medical Board (TMB), which conducted a warrantless search of his office in clear violation of the Fourth Amendment. His practice did not meet the criteria of a suspected pill mill. In this case, the investigator sought a warrant using information from the illegal search, carelessly exposing personal information of a patient in a public record. Not only was the Fourth Amendment violated, but the confidentiality of the patient-physician relationship was broken by the careless behavior of the investigator.

Circuit Judge Don R. Willett stated:

The court is right about Dr. Zadeh's rights: They were violated.

To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the *first* to behave badly. Merely proving a constitutional deprivation doesn't cut it; plaintiffs must cite functionally identical precedent that places the legal question "beyond debate" to "every" reasonable officer. Put differently, it's immaterial that someone acts unconstitutionally if no prior case held such misconduct unlawful.⁸

In an amicus brief filed by AAPS supporting a Petition for Writ of Certiorari to the U.S. Supreme Court to appeal the Fifth Circuit's decision, the use of a "subpoena instanter" was explained as "occasionally used to obtain documents or testimony needed immediately during a trial, but is without justification in doing broad searches of patient medical records in a physician's office."⁹ The Petition was denied, and the board's qualified immunity remains intact.

Cotropia v. Chapman

In *Cotropia vs Chapman*, which was also heard before the Fifth Circuit in August 2018, a judge challenged the TMB regarding its belief that unconstitutional practices were considered acceptable and routine for the investigators.

During the recorded hearing (minute 18:30), the judge replying to the attorney for TMB asked: "Your brief is saying that the Texas Medical Board believes it can go in with an administrative subpoena and just seize things. Is that correct?"

Later, the judge asked (minute 36:00): "The TMB is continuing this practice in an ongoing manner? ...against other people?"

The TMB attorney said: "We believe our administrative inspection process is constitutional."

When asked again whether this process is continued in an ongoing manner, the Board attorney replied "yes."¹⁰

TMB v. Van Boven

Dr. Robert Van Boven's case is extraordinary because it illustrates the extent to which collusion between hospital

administration and policing agencies can result in gross injustice, a natural consequence of the unconstitutional design of the TMB.

The hospital retaliated after Dr. Van Boven reported serious hospital safety violations to the regulatory authorities, which later substantiated his report. The hospital then filed a complaint with the TMB against the doctor, using the very cases he had reported for safety violations!

The medical board proceeded to prosecute Dr. Van Boven aggressively. He fought back and won against them multiple times. Exculpatory evidence was withheld, and false charges were made against him related to 15 patient cases that had already been reviewed and dismissed by local hospital leadership. He was subjected to 3 years of investigation and prosecutorial effort by the TMB, described by Texas Supreme Court Judge Nathan Hecht as "surrogate retaliation" for his safety reports against the hospital, which were sustained by the State Department of Health Services. After all of the initial cases were dismissed, the final case involving an unsubstantiated charge of sexual boundary violations was dismissed by the State Office of Administrative Hearings (SOAH) judge in the final order of the TMB. The judge was subsequently fired for siding with the physician instead of granting the board a win.¹¹

However, the TMB then refused to clear the report on the national database, leaving the impression that Dr. Van Boven was guilty. Dr. Van Boven pressed on in what ended as a 7-year fight against the board, displaying courage and persistence rarely seen in the medical profession. His appeals brought him before the Supreme Court of Texas, where he prevailed.^{12,13} It is interesting to note that he replaced his lawyers and represented himself before the court. His experience taught him that attorneys may not always be fully on his side, and his extensive understanding of the law gave him the confidence that he was better off representing himself in the end.

Thoughts on Reform of State Medical Boards

State medical boards must be held to well-established law on collection of evidence, use of expert witnesses, and providing a fair, objective, unbiased review by a qualified court. The panels used by the medical board are given judicial powers but lack the appropriate qualifications. They are nonetheless given authority to determine violation of law and subsequently deprive the licensee of livelihood and property.

The foundation of a just and fair system is well-established law of due process. Physicians must be allowed to know why they are being investigated and to see the relevant documentation, including the un-redacted copy of the complaint and expert reports.

Reform of the medical board could include giving physicians the opportunity to a trial de novo, which would have a jury and would be ruled by a real judge. An additional safeguard would be to employ an arbitrator licensed by the state court, offsetting the high potential for injustice before a panel of individuals unqualified to act as judges.

Conflicts of interest in Board Appointees

Medical boards are appointed by state governors and may be campaign donors. They have no direct accountability to

the people affected by their decisions and enjoy prosecutorial immunity. In Texas, hundreds of thousands of dollars were donated to Gov. Greg Abbott by members of the board.¹⁴ Some medical board appointees may also have some questionable business interests in medically related companies and telemedicine. By having a seat on the board, they gain insider influence that might result in business being steered to their companies.

What motive could there be for the medical board to make rules that result in damage to patient care instead of improvement? What if there are board members who have business connections to companies that profit from medical practices such as pain control and addiction? It would be easy to put down competition and create highly profitable monopoly companies by using board power to terrorize a specific profile of independent practicing physicians who typically have fewer resources with which to defend themselves. A brief review of the posted biographies of state medical boards is informative, revealing members' multiple potential conflicts of interest in their business connections.

Lawfare, Bar Associations, and Secret Societies

Like abusive medical boards, the state bars conduct investigations in which a person can be found guilty without a hearing on the merits and without the association's having to produce evidence of wrongdoing.

Politically motivated attorneys are allowed to wage unchecked lawfare against other lawyers. Both medical boards and bar associations have taken occasion to unleash excessive punitive attacks on a targeted individual, attempting to remove the practitioner's license and publicly shame, humiliate, and bankrupt him. This makes an example of the licensee, making it easier to control the whole profession.

The state supreme courts enjoy exclusive authority to oversee licensed attorneys in the states. As most of our lawmakers are attorneys, it isn't surprising that the legislators cannot find it in themselves to make real reforms to attorney disciplinary procedures. They face similar politically oriented threats to their own licensing and reputations if they don't walk in lockstep with the bar leadership. In some ways, a small group of attorneys functions like a club of elite overseers.

Emblematic of kangaroo courts, the 65 Project¹⁵ has openly declared its intention to target any lawyer who challenged the 2020 election and has targeted supporters of President Trump, such as attorneys John Eastman, Harry McDougald, and Lin Wood among others.¹⁶ The 65 Project lawyers work in cooperation with judges to achieve their goal. Specifically, attorney Lin Wood has faced relentless lawfare from the 65 Project, the 65 Project lawyers, the Georgia bar association, and several law firms. His reputation for taking down giants like CBS in defense of innocent victims has obviously made him a few powerful enemies.¹⁷ Interestingly, no client has ever filed a complaint against him.

The lawfare against Wood illustrates the bar association abuse and the threat it poses to all who seek justice in our courts. The Georgia Bar Association has accused him of an ethical violation that would discredit him and provide a reason to revoke his license. The bar association is the complainant,

prosecutor, judge, jury, and executioner, leaving little chance for justice. In this case, there was even a special master appointed. Special Master Tom Cauthorn (who recommended penalties to be imposed) was selected and formally appointed by the Georgia Supreme Court.

The bar investigation of Lin Wood started in December 2020, based on two Georgia cases filed in Wood's name contending that the 2020 election was unlawful because the state legislature did not adopt the changes in election procedure. The changes had been made in a consent settlement between Georgia Secretary of State Brad Raffensperger and the Democratic Party. These were dismissed for the stated reason that a voter does not have standing before the court.

The cases were based on solid law, however, and were quickly abandoned as a basis for the complaint by the bar. Instead, it used four cases filed by Sidney Powell claiming election fraud in the 2020 election. It was undisputed that Wood did not draft, prepare, or file those complaints. His name was added by Sidney Powell but not as a filing attorney, as she admitted in court.¹⁸

The complaint, which is posted in an article in *Law and Crime*,¹⁹ details the numerous complaints, many of which appear to be unfounded, and some of which had to be amended because of actions by other courts that exonerated Wood. For example, an order entered against him by a trial judge in Delaware was later unanimously reversed by the Supreme Court of Delaware, and recently vacated.²⁰ The Georgia Bar had to amend its complaint related to the Delaware case.

The Georgia Court of Appeals recently ruled that voters do have standing to sue related to elections, and this should have an impact on the cases filed by Wood.²¹

A Texas ruling declared that the four cases that Powell filed did not break any rules. Nevertheless, the bar association continues its persecution of Mr. Wood based on those cases even though the filing attorney is exonerated.²²

An action that demonstrates a complete lack of respect for due process or fairness was the special master's ordering Wood to turn over all his electronic devices, including computers and cell phones, for a forensic search, and to provide his social media account and email passwords. These contain decades of private communications with his clients. **This violation of attorney client privilege sets a dangerous precedent.**

Many of the elected or appointed officials involved in the case against Wood are said to be members of the all-male Gridiron Secret Society of the University of Georgia, as is Gov. Brian Kemp, who appointed four of the Georgia Supreme Court justices. Gridiron has been recognized as one of the world's top 10 secret members' clubs. It is claimed that known members include every governor and U.S. senator from Georgia since the 1930s.²³ It is claimed that Society members take an oath to defend each other above all other commitments. The public has a right to know whether any of its governing officials have taken such an oath, as it poses a serious conflict of interest and threatens to deprive the people of a fair and just system of law.

Consequences

If a lawyer such as Lin Wood loses his battle with the state bar, politically persecuted or wrongfully charged persons can

expect great difficulty in finding an honest attorney to represent them. Wood has a long and respected history as a defamation attorney who defended innocent people against powerful entities, as exemplified in his defense of Richard Jewell, even years after Jewell's death, who was wrongfully accused by the FBI in the Atlanta bombing.²⁴

Similarly, patients experience increasing difficulty finding physicians who are more concerned about the patient's welfare rather than approval by hospital administrators or pharmaceutical companies.

For many years, efforts to reform medical boards and restore constitutional rights to citizens have met with resistance at many levels of government. Efforts such as the physician's bill of rights authored by Louisiana State Sen. John Milkovich²⁵ seem to be overwhelmed by the enormous powers that have a stronghold on medical and legal practices.

Conclusion

The discouraging rejection of many appeals for justice brings to mind these words in the Declaration of Independence, "Our repeated petitions have been answered only by repeated injury." We can continue to chip away at the injustices, hoping to someday achieve significant change, but it will likely take a greater disruption in the status quo, and more powerful resistance to the ruling elite, to turn around the trajectory of unjust rule. Perhaps the people of this country will turn their faces to God, who may in His mercy deliver us from the evil that has afflicted our nation. Pray for our nation and for future generations to have the opportunity to live in a country that exemplifies the fair and just rule of law.

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