Submitted on behalf of the
AAPS Texas Chapter by
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**Statement from Texas Chapter of the
Association of American Physicians and Surgeons**

April 25, 2018

To: Texas Sunset Advisory Commission public hearing on Texas Medical Board Sunset Review

Dear Chair Birdwell, Vice Chair Paddie, and Distinguished Members of the Sunset Advisory Commission:

The following are recommendations that could make positive changes to the way the Texas Medical Board functions and prevent abusive practices that create a poor image of the board's integrity.

1) Physicians sanctioned by the TMB should have the right to a "trial de novo" in court ***in the jurisdiction of the physician.*** Current law limits judicial review of TMB actions to Travis County where the TMB has substantial influence. The law currently also restrains the court's review of facts as decided by the TMB.

2) Physicians should have a right to see a copy of any complaint, as in a court of law, and as done by the TMB for complaints by insurance companies. Texas physicians have faced expensive and career-limiting actions by the TMB without knowing who filed the complaint and without the right to see the full complaint that was filed. They also are subjected to review by paid expert witnesses that are not revealed for cross examination.

3) A legislative inquiry is needed to investigate alleged retaliatory action taken by the Texas Medical Board because it disagreed with the decision-making of an administrative law judge employed by the State Office of Administrative Hearings (SOAH). SOAH is responsible for the adjudication of disciplinary actions brought by the TMB.

In a recent case, Dr. Robert Van Boven was cleared by a SOAH judge of wrongdoing in an 80-page ruling. If the TMB disagreed with this action, the appropriate venue to appeal the decision would be to Texas district court. Instead, according to media reports, the TMB improperly aired its grievances against the judge in a letter to the chief SOAH judge, resulting in the judge's forced resignation.

The Sunset Commission should consider asking the legislature to investigate this alleged retaliation by the TMB. Reforms need to be recommended to prevent such retaliation in the future. This is important if the TMB is expected to have a reputation of integrity in the public view.

4) A court-approved search warrant should be issued before seizure of any patient records by the medical board. AAPS filed an amicus brief in support of a Texas physician's suit against TMB officials in the U.S. Court of Appeals for the Fifth Circuit. AAPS is asking the court to hold the TMB accountable for violation of the Fourth Amendment in seizing patient records without a

warrant. The Sunset commission should consider legislative changes to prevent the TMB from continuing this practice.

5) The Texas Legislature should not adopt the Interstate Medical Licensing Compact. There are multiple reasons that this compact should be rejected.

a. The Compact creates a new layer of bureaucracy, the Interstate Commission, that is not accountable to the public and the people affected by its rule. The Commission will be determining fees that the state is obligated to pay but which are yet to be determined. The Compact is not necessary to address the delays physicians encounter in applying for a Texas license. The TMB can address these delays internally instead of relying on an out-of-state commission, housed in DC, to handle licensure.

b. The Compact redefines the physician as one who is keeping "current board certification", which is at odds with the definition of all state medical boards, and contrary to the recently passed SB1148, prohibiting discrimination against physicians based on participation in "Maintenance of Certification" programs.

c. The Compact offers an alternative pathway to licensure for physicians outside of the state of Texas, potentially allowing them to bypass Texas medical jurisprudence exam which is required for Texas licensure.

Additional Concerns Regarding Recommendation #5: **Interstate Medical Licensure Compact**

My name is Sheila Page, DO and I represent the Association of American Physicians and Surgeons and am president of the Texas Chapter.

1. This interstate compact creates a new agency, an Interstate Commission, that is given power to write rules binding as law on the state, and which supersedes state law. (sec 2 m, and 24 b) It circumvents all branches of the state government, and makes them subject to the rule of the agency. (sect 16, all branches of the state government shall enforce the compact)

2. The Compact requires that subpoenas issued in one state are enforceable in all states. (sec 9)

3. The Compact creates 2 new definitions. The physician must be board certified (at variance with all state medical boards) and the location of the practice of medicine, defined to fit the use of telemedicine in multiple states, is given as the location of the patient at the time of service.

4. The Compact provides an alternative pathway to licensing in a state, potentially allowing the applicant to bypass requirements of some states. The applicant need only meet requirements of the original state of licensure and of the compact. For example, currently all applicants for a Texas license are required to take a medical jurisprudence exam. Under the compact, a physician from another state must be issued a Texas license when the Commission approves him, negating the need for the jurisprudence exam. (Sec 5 d)

5. The people affected by this agency have no way of holding the agency accountable. It will be a law-making body influencing the practice of medicine through licensing. Rules yet to be written are binding on the states as law.

6. When the compact finally engulfs all 50 states, and the commission houses itself in DC, which is where they expect to litigate and defend legal challenges, it will look very much like a federal bureaucracy, and will be accountable to no one—Their rules are binding on the state as law.

7. The Commission will collect license renewal fees from physicians, and will also levy and collect an annual assessment from each member state to cover the cost of operations (section 13 a). The cost of operations includes establishing multiple offices, hiring personnel, purchasing insurance and bonds, salaries determined by themselves, buying properties, and employing an executive director. (section 12)

8. The Interstate Commission will be able to hold closed meetings for reasons listed, including trade secrets, privileged financial information, accusing a person of a crime, and discussing records for law enforcement. (Sect 11, p25) Related to this, the Commission recently requested access to FBI fingerprinting data, and was denied. As explained by the Pennsylvania Medical Society, referencing Medscape, the FBI objected to authorizing the Commission to have access to the fingerprinting files. There is no statutory authority to share that information with the new Commission, which is actually a private organization, and not recognized as an interstate agency.

9. The Commission may accept unlimited donations and grants. Sect 12

10. Challenges to the laws created by the Commission are expected to be made in the Federal district court in DC.

11. The Interstate Commission may initiate legal action in the US District court in DC to enforce compliance against a state in default. (sec 17b)

12. The state must appeal to the US District court in DC if it can't meet its obligation to the Commission. (sec 18)

13. Withdrawal from the compact requires repeal of the law and is not effective for a year after repeal, during which time the state is obligated to pay whatever the Commission requires of it. Sect 21.

14. The compact creates conflicts between state medical boards where certain practices are restricted, such as assisted suicide and abortion. The resolution of those conflicts will be determined by the rules yet to be written by the Commission. For example, the Texas Medical Board must grant a Texas license to a physician in Colorado who is practicing assisted suicide.

15. The Compact is not necessary to grant expedited licenses. Reciprocation is all that is necessary, which is what the Commission will be doing anyway.

16. How many physicians really want to practice in 17 or more states? How can a physician safely manage cases in numerous locations when most physicians are overwhelmingly busy caring for the people in their own community?

17. This law really makes more sense when viewed from the perspective of corporate medicine. Large medical practices can export their specialists to other areas through hospital or insurance contracts, monopolizing the market in those areas. Patients may have only a telehealth service available to them because there is no opportunity for a local specialist to compete with a large out-of-state group.

18. Consider the perspective of the patient, who is critically ill, and whose options are limited to telemedicine services from a physician who may never follow up with the patient and will obviously not be able to physically examine the patient.

19. A good example of corporate-style telemedicine is Blue Sky Neurology, a group based in Denver, CO, that has physicians who obtained Texas licenses and are practicing telemedicine in over 30 hospitals in Texas. These are not just small hospitals. Austin's St. David's is one of the hospitals using their services. Most of the services are for evaluation of stroke. Are these distant physicians making life-or-death decisions for stroke patients? Can they sign DNR papers or refer to hospice? If they are part of the compact, and the commission writes rules permitting it, could they recommend lethal doses of medicine to patients who don't want to live after having a stroke? Our laws would be superseded by the Commission's law.