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**INTERNATIONAL**  
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March 10, 2014

**Re:** Public Workshop, "Examining Health Care Competition" ("Health Care Workshop") Project No. P13-1207.

To Whom It May Concern:

In response to the FTC request, the Alliance for Natural Health-USA (ANH-USA) hereby submits the following comment regarding the above-referenced workshop.<sup>1</sup>

ANH-USA is a membership-based organization consisting of healthcare professionals and over 230,000 natural health consumers and patient advocates. ANH-USA promotes access to an integrative approach to health and healing, which starts with the least invasive approach, including healthy foods, dietary supplements, and lifestyle modifications, and utilizes drugs only where absolutely required.

An integral part of ANH-USA's mission is to ensure a transparent, open, and fair healthcare marketplace that allows patient access to a wide variety of healthcare options. We also seek to create a level playing field for, and protect the rights of, integrative healthcare professionals. For example, we oppose nutrition practice laws that create monopolies for registered dietitians to the exclusion of better qualified nutrition professionals; have helped pass legislation in North Carolina that provides due process protection for integrative doctors; and fought for integrative medicine practitioner representation in the Patient Centered Outcomes Research Institute (created by the Affordable Care Act).

Access to a wide variety of healthcare practitioners is crucial to address bio-individuality, varying preferences, and public health needs. In many states, State Medical Boards discriminate against integrative physicians by disproportionately disciplining them, as compared to doctors who use a conventional approach. This proves true despite no actual proof of harm, and even when improved patient health is the outcome. In order to foster medical innovation and promote health, State Medical Boards must not discriminate against integrative practitioners.

**Comment**

ANH-USA would like to submit comment in the context of the *Professional Regulation of Health Care Providers* component of the workshop.

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<sup>1</sup>: <https://ftcpublic.commentworks.com/ftc/healthcareworkshop>

It has come to our attention that the Washington State Medical Board, known as the Medical Quality Assurance Commission (MQAC), has established a pattern of bias against integrative doctors (in comparison to MQAC's treatment of conventional doctors). Arguably, MQAC is disproportionately targeting integrative practitioners to protect the monopoly of conventional doctors, in violation of The Sherman Act.

ANH-USA has compiled evidence of integrative practitioners facing disproportionate penalties, including steep fines and license suspension, for practicing within their modality and without patient harm. It is worth further consideration that these formal penalties do not factor in the high cost of legal fees, as well as the taxing personal and professional ramifications of disproportionate and inappropriate MQAC actions.

The unfair treatment of integrative doctors is apparent in the following examples:

- Dr. Bradford Weeks was accused by MQAC of “unprofessional conduct” and his license was suspended for three years for the “theoretical” harm to the public for prescribing low dose human growth hormone (HGH) off-label as an anti-aging remedy.<sup>2</sup> The only explicitly prohibited use of HGH is for performance enhancement, which is not at issue in Dr. Weeks’ case. The complaint against Dr. Weeks was “self-generated” by MQAC. In fact, Dr. Weeks prescribed the HGH for a specific medical condition, no patients complained, no patients were injured, and all patients declared under oath and in written testimony that Dr. Weeks’ treatment of their illness was superior to the care received under conventional doctors.<sup>3</sup>
- Dr. Geoff Ames was charged with unprofessional conduct for his diagnosis and treatment of an egg allergy. Dr. Ames had noted that his patient had a positive antibody test (IgG4 RAST) for egg white and egg yolk. Dr. Ames explained treatment options for this problem, including not eating eggs at all, and desensitization to eggs. To achieve desensitization, Dr. Ames sometimes used a combination of kinesiology and a device called the Life Information System Ten (LISTEN), which is a non-invasive electronic device (EAV). Although no treatment was actually given, and no harm was done, the patient subsequently wrote a letter to MQAC complaining about the EAV device. MQAC originally charged Dr. Ames with “moral turpitude,” violations of interstate commerce (which fall under federal not state jurisdiction) and intrastate commerce, and unprofessional conduct. Although the charges of “moral turpitude,” and interstate and intrastate commerce were later dropped (after being made public), and no patient was harmed, the Board still punished Dr. Ames with a 30-day suspension (with the potential of a five-year license suspension) on the condition that he use only MQAC-approved techniques, that every three months he submit a signed affidavit that he isn’t using the technique he personally judged best, and that he meet with MQAC and be interrogated every six months in a room over three hours away. He was also fined \$5,000.<sup>4</sup>
- Dr. Stephen Smith was accused of unprofessional conduct for using the Mediport device (a small port inserted under the skin with a catheter that connects the port to a vein) to infuse patients

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<sup>2</sup> [https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail\\_1.aspx?CredentialIdnt=399617](https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail_1.aspx?CredentialIdnt=399617)

<sup>3</sup> Weeks, Bradford. "Washington State Medical Quality Assurance Commission Suspends Brad Weeks." *Townsend Letter*. Townsend Letter, 1 Oct. 2013. Web. 3 Mar. 2014.

<sup>4</sup> [https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail\\_1.aspx?CredentialIdnt=376072](https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail_1.aspx?CredentialIdnt=376072)

with hydrogen peroxide and micronutrients as treatment for heavy metal toxicity. Lab tests confirmed the diagnosis. Even though MQAC did not pass judgment on Dr. Smith's treatment plan, the Board still charged Dr. Smith for his use of the device. Dr. Smith was fined \$5,000. Again, no harm caused to his patients.<sup>5</sup>

- Dr. William Correll was sanctioned for unprofessional conduct for the off-label use of the Eclon Biofeedback device to test for allergens. The Biofeedback device is FDA approved, but not for the specific purpose of testing for allergens. Dr. Correll was placed on probation for five years and was fined \$2,500, even though no patients were physically harmed by his treatment.<sup>6</sup> Furthermore, "Off-label" use is legal, FDA-recognized, and performed by many physicians in the US.
- Dr. Jonathan Wright was charged with "aiding and abetting the unlicensed practice of medicine" because one of his clinic's doctors was, unbeknownst to him, practicing medicine with a revoked out-of-state license. However, Dr. Wright, in accordance with state law, had employed this doctor under the condition that he apply for and obtain a Washington State medical license. The doctor's Washington license was listed on the MQAC website as "pending," indicating that Dr. Wright's request was being satisfied, even though at least four MQAC staff members admitted they knew from the beginning that the doctor's out-of-state license had been revoked, and that they had failed to inform Dr. Wright. MQAC staff further failed to update the MQAC website. When MQAC handed down its decision, Dr. Wright was found guilty of an infraction he hadn't been charged with: failure to follow a statute governing the practice of an out-of-state doctor whose license is pending. In its decision, MQAC suspended Dr. Wright's license for ninety days, after which he will be on probation for thirty days. Dr. Wright's case is currently being appealed.

In evaluating the treatment of Dr. Weeks, it is instructive to compare it with the treatment of Dr. Howard G. Maron, another Washington State doctor charged by MQAC. Dr. Maron, a conventional doctor, also prescribed HGH off-label, but unlike Dr. Weeks, he did not prescribe it for an illness: he prescribed it to help his stepson grow taller (his stepson was 5' 9" tall, and weighed 152 pounds, normal for a person his age). Furthermore, Dr. Maron prescribed the HGH without any record keeping. Despite his infractions, Dr. Maron only received a reprimand and a \$5,000 fine, whereas Dr. Week's license was suspended for five years. Five of the six charges were dropped against Dr. Maron, because there was no harm to the patient, a leniency not offered the integrative doctors cited above.

MQAC is not new to controversy. In 2006, the *Seattle Times* found that in the previous decade, state regulators dismissed almost a third of all sexual-misconduct complaints without any investigation.<sup>7</sup> Even when charges were investigated and found valid, there were no consistent guidelines for discipline, and sexual misconduct was treated as a medical error or routinely dismissed and forgiven. This prompted Governor Christine Gregoire to request a State Auditor performance audit of MQAC in 2006, which confirmed deficiencies in the disciplinary legal process that led to inconsistent discipline of

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<sup>5</sup> [https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail\\_1.aspx?CredentialIdnt=378646](https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail_1.aspx?CredentialIdnt=378646)

<sup>6</sup> [https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail\\_1.aspx?CredentialIdnt=390528](https://fortress.wa.gov/doh/providercredentialsearch/ProviderDetail_1.aspx?CredentialIdnt=390528)

<sup>7</sup> [http://seattletimes.com/html/licensetoharm/2002947769\\_fancher23.html](http://seattletimes.com/html/licensetoharm/2002947769_fancher23.html)

practitioners.<sup>8</sup> By way of comparison, the Auditor report highlights some of the lenient penalties handed to “mainstream” physicians involved in actual cases of injury to a patient or even death:

- doctor failed to appropriately treat sickle cell crisis, resulting in significant and permanent neurologic injury to the patient. MQAC sanctioned the doctor by requiring that the doctor submit a paper of no less than 1,000 words, with references, regarding current recommendations for prevention and treatment of stroke in pediatric sickle cell patients, as well as reimbursement of cost to MQAC in the amount of \$1000, within 90 days. The Auditor report noted that per the sanction guidelines for practice below the standard with significant patient injury, the range is suspension for 5 years to indefinite suspension or permanent revocation.
- doctor performed laparoscopic oophorectomy on patient. The procedure resulted in a perforation of the small bowel. This is a rare but recognized complication, which the doctor was not aware of and did not detect in the post-operative hours in time to effect life-saving repair surgery. The sanction imposed on the doctor by MQAC was the requirement to submit a paper of no less than 100 words within 90 days on trocar injuries related to endoscopic procedures and response systems for bowel, ureteral, or bladder injury, as well as a fine of \$1000. The Auditor report noted that according to the actual penalty guidelines the actual penalty should have been suspension for 2-7 years, and possible license revocation.

The discrepancy between a 1,000 word essay and \$1,000 fine for causing significant and permanent neurologic injury to a patient, versus interrogations every six months and a \$5,000 fine for offering the full spectrum of options for allergy desensitization, including a non-invasive electronic device, where no treatment was actually given, starkly contrast and clearly demonstrate a bias toward integrative treatments and physicians.

### **Conclusion**

We applaud the FTC for taking into consideration the professional regulation of health care providers, and the ways in which these regulatory tools may affect competition and consumers.

In order to preserve broad access to qualified integrative practitioners and life saving treatment modalities, the FTC should investigate the disciplinary actions of MQAC against integrative physicians as compared to those deemed more conventional. If indeed MQAC is singling out integrative doctors for disciplinary action not because of the quality of treatment (within the confines of state law), but because their treatment approach does not fit the model of mainstream medicine, then in effect MQAC is promoting anticompetitive behavior and protecting the monopoly of conventional doctors in violation of the Sherman Act.

Each example of MQAC’s unfair treatment of integrative doctors has a cumulative chilling effect on the availability of integrative modalities to patients, and we therefore strongly encourage the FTC to investigate MQAC and take strong action to curb anticompetitive behavior by the Board.

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<sup>8</sup> Washington State. Washington State Auditor. *Performance Audit Report: Department of Health: Health Professions Quality Assurance*. Aug 21, 2007, Rpt. No. 1000002

Sincerely,

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