

February 10, 2014

The Honorable Paul Harris
Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600

RE: Substitute House Bill 2139, Nondisciplinary resolution to physician complaints

Dear Representative Harris,

Consumers Union and the Washington Advocates for Patient Safety **oppose SBH 2139 unless it is amended** to make the “nondisciplinary resolution” of complaints and physician problems a part of the public record at the state and national level.

This bill creates a new “quality improvement program” that “seeks to educate and improve practitioner proficiency with regard to quality of care, professional standards, ethical guidelines and other practice standard issues.” It exempts the most egregious cases from this option but clearly allows quality of care or behavior issues - issues that are important to patients - to be handled through this process. These nondisciplinary resolutions would not be included in a physician’s online profile, requiring a Public Records Act request to obtain, and would not be reported to the national repository of the history of physicians’ problems.

There is a long history of secrecy in the licensing and regulation of physicians in the US, which included hiding serious problems behind “informal” agreed-upon actions. This made it impossible for consumers to check their doctor’s licensing record and history of problems, if they existed. But in recent decades, transparency of medical board actions in response to complaints from patients and others has become the standard, including posting information about these actions on state websites. This transparency is the check and balance necessary to ensure accountability in the regulation of physicians.

The move through SBH 2139 to create a secret informal process, which would lead to a secret disposition, is a slippery slope to a system that fails to be responsible for results or consequences.

We support giving MQAC the tools to address issues of incompetency by requiring education and skill building. But the agency already has the authority to enter into informal non-disciplinary actions that include requiring physicians to take educational classes through “stipulations to informal dispositions.” The standard language in these legal stipulations indicates that they are “not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.” These are likely to include cases where the Commission cannot meet the stringent standard of proof necessary for a formal disciplinary action. They are very similar to the “nondisciplinary resolutions” set forth in SBH 2139, with one exception – the proposed new disposition will not be easily accessible to the public.

We appreciate that the House Committee substitute bill removed the filed bill's exemption to the Public Records Act, and we have been told by MQAC staff that information about a physician's nondisciplinary resolution would be available through a formal PRA request. But we believe these actions should be posted on the Department of Health's Provider Credential Search website. This is where people go to seek information about the status of doctors' licenses, enabling them to make more informed health care choices. If a complaint about a doctor indicates the need for further education, we believe that doctor's patients have a right to know about it.

According to testimony by MQAC at the Senate Health Committee, these resolutions also will not be reportable to the National Practitioner Data Bank, a resource for hospitals, health plans and entities that employ physicians or give them staff privileges. Today, many physicians are licensed in numerous states, making it easier for some to move around and hide their history from unsuspecting patients. The Data Bank is a critical national resource for medical boards and others to check on disciplinary actions and other issues in a physician's record from all of the states.

Currently, a significant number of MQAC actions reported to the Data Bank are informal stipulations (see attached figure). Our fear is that if SBH 2139 passes without transparency amendments, many of these stipulations will be moved into this new "nondisciplinary" action category, thus hiding most of the MQAC's actions from public and professional accountability.

Patients have to trust their physicians and they trust that state regulators will ensure that dangerous and incompetent physicians are dealt with appropriately. The health care system works best when consumers are well informed and that includes checking the records of doctors from whom they seek treatment. The patient has a right to know if a doctor has been disciplined or has done something that warrants the MQAC to recommend any kind of action, including remedial education.

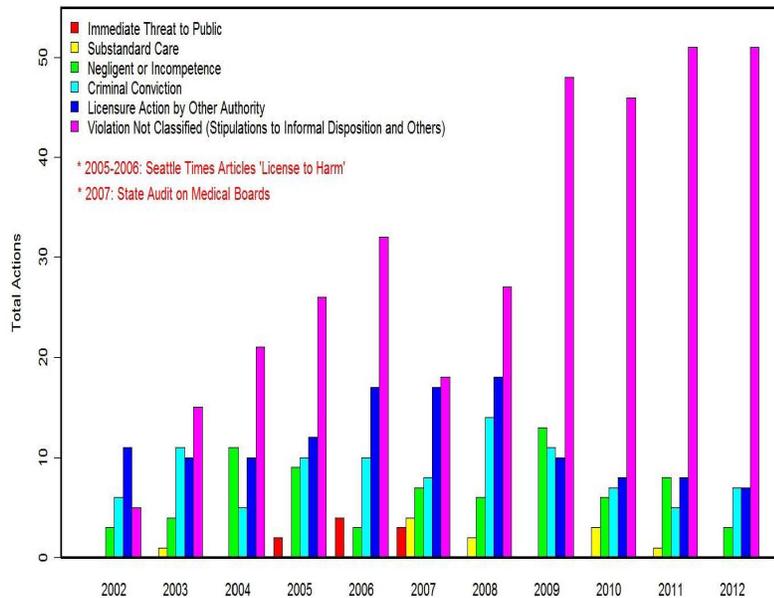
We are asking for two transparency amendments:

- ***Require that these actions be posted in the physician's profile on the Department of Health's Provider Credential Search website; and***
- ***Require that these actions be reported to the National Practitioners Data Bank.***

At present, complaints against physicians are kept secret, the MQAC meetings to discuss the disposition of complaints are held in secret, and the one thing the public gets to know is the disposition of a case. This bill will jeopardize access to that information, most likely for a majority of MQAC cases.

We urge you to amend SBH 2139 to address these disclosure issues and would welcome the opportunity to work with you to amend the bill. If you have any questions, please contact Lisa McGiffert, lmcgiffert@consumer.org; 512-651-2915 or Yanling Yu, mydadmatters@gmail.com

Annual Serious Violations Resulting in Actions by Medical Quality Assurance Commission



This figure shows serious violations by Washington State physicians who were sanctioned by Medical Quality Assurance Commission between 2002 and 2012. Serious violations are identified according to the definitions by Public Citizen¹.

For comparison, unclassified violations including Stipulations to Informal Disposition² are shown in purple.

Note that, in 2005 and 2006, Seattle Times published a series of articles, “License to harm”.³ As a result, in 2007, the Washington State auditor Brian Sonntag audited state medical commissions and boards at the request of then-Governor, Christine Gregoire.⁴ There is an apparent association between these events and the sanction pattern.

The plot was created with data from the National Practitioner Data Bank. This figure was prepared by Yanling Yu, Ph. D (Washington Advocates for Patient Safety⁵).

¹ Levine, A., R. Oshel, and S. Wolfe, State medical boards fail to discipline doctors with hospital actions against them, Public Citizen, 2011 (<http://www.citizen.org/hrg1937>).

² Stipulation to Informal Disposition (STID) is an informal enforcement action to resolve a complaint against a healthcare professional. If the healthcare professional agrees to sign the STID, he or she does not admit to unprofessional conduct, but does agree to corrective action. Additional training is an example of corrective action. Under the current law, STIDs are reportable to national data banks and are posted on [Provider Credential Search](http://www.doh.wa.gov) after being accepted by the disciplinary authority. The document is accompanied by a Statement of Allegations. (<http://www.doh.wa.gov>)

³ Seattle Times, License to harm, 2006 (<http://seattletimes.com/news/local/licensetoharm/index.html>).

⁴ Performance Audit Report, Department of Health, Health Professions Quality Assurance, Executive Summary, Report No. 1000002, Washington State Auditor Brian Sonntag, August 21, 2007.

⁵ <http://www.washingtonadvocatesforpatientsafety.org/>