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Troy Kelley
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504

RE: Medical Quality Assurance Commission (MQAC) Performance Audit

Dear Mr. Kelley:

On behalf of the Alliance for Natural Health USA (ANH-USA), I am writing to express deep concerns with the practices of the Washington State Medical Quality Assurance Commission (MQAC), particularly discrimination against integrative physicians. We are encouraged by your decision to conduct a Performance Audit on MQAC and we hope your office will consider this information when examining the Commission's investigations, decisions, and sanctions. We would also like to call your attention to the implications of the recent U.S. Supreme Court ruling in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S.Ct. 1101 (2015) which may require reforms to the Commission.

ANH-USA is a non-profit dedicated to preserving consumer access to natural health remedies and protecting choice in healthcare. ANH-USA has almost 500,000 consumer-members nationwide and over 26,000 members in Washington State. In addition, several million people regularly use our website to find news and information on natural health issues.

We work with many integrative physicians throughout the country and potential discriminatory behavior by MQAC was brought to our attention by a variety of residents of Washington State.

I. Disparate Treatment of Integrative Physicians by MQAC:

Over the past several years, ANH-USA has documented a pattern of bias by MQAC against integrative physicians. Although MQAC does not keep most of its records in a form easily accessible to the public, ANH has devoted the resources necessary to pull together a great deal of information. In reviewing these records, ANH-USA has discovered a clear disparity between MQAC's treatment of conventional physicians and integrative physicians. The

treatment takes two forms: severe penalties for integrative physicians often without clear cause and lenient treatment of conventional physicians, sometimes for the same alleged infraction. Below are some examples of integrative practitioners targeted by MQAC:

MD1: Investigated by MQAC for making a diagnosis of mercury toxicity in a teenager whose symptoms matched those listed for mercury toxicity in a standard toxicology textbook. Lab tests confirmed the diagnosis. (The teenager had been eating large quantities of canned tuna). The case was closed by MQAC after the doctor spent a large sum in legal defense fees.

MD2: MD1 referred the above mercury toxicity patient to MD2 for treatment. The patient and her parents insisted that no harm had been done, and that her health had significantly improved after MD2's treatment, yet MD1 was found to be at fault for not referring the patient to enough specialists (even though patient had previously seen three, including two neurologists, prior to seeing MD2, and MD2 had referred her to three more, for a total of six). MD2 was also found to be at fault for agreeing with MD1's diagnosis of mercury toxicity. The "expert" upon whom MQAC relied during the disciplinary proceedings had not practiced medicine in seven years, and admitted when questioned that he had miscalculated by a hundredfold the dose of the treatment material in an IV given by MD2.

MD3: In the only case stemming from a patient report, a patient allegedly complained about a holistic medicine procedure, which MD3 discussed, but did not use, with the patient. MD3 was also charged with diagnosing lead toxicity based on blood, urine, and hair specimens. MQAC charges included violations of interstate and intrastate commerce, unprofessional conduct, and "moral turpitude." Even though MQAC found that no harm was done, and even though the complaining patient testified that he was not harmed, MQAC suspended MD3's medical license for five years, staying the suspension on condition that he use only MQAC-approved techniques from now on, that every three months he submit a signed affidavit that he is not using the technique he personally judged best, and that he meet with MQAC every six months in a town over three hours away. His legal costs at the time of our investigation exceeded $250,000.

MD4: MQAC's investigation concerned the use of intravenously administered vitamins and minerals. MQAC demanded to know if MD4 had diagnosed a vitamin and mineral deficiency before giving such IVs—even though less than a year earlier, National Institute of Health (NIH) researchers found that high-dose IV vitamin C might kill cancer cells but did so without diagnosing scurvy (vitamin C deficiency). In fact, of the sixteen physicians who use IV nutritional therapy in Washington, eleven have been charged by MQAC. IV nutritional therapy is a standard integrative medical technique used throughout the United States.

MD5: Investigated by MQAC for "off-label" prescriptions of human growth hormone (HGH)—a natural substance and an FDA-approved medication—to four patients. "Off-label" prescribing of medications is 100% legal, FDA-recognized, and done by every licensed physician in the US. Even though it was prescribed for a specific medical condition, all patients reported improved health, there was informed consent, and none of the patients reported any harm, MQAC suspended his license for three years and fined him $5,000.

MD6: Another integrative doctor targeted for prescribing HGH; MQAC decided that there was not enough medical justification (as defined by MQAC) that the patient required HGH. He was placed on probation for five years and was forced to undergo a two-day ethics course and submit semi-annual practice reviews, and was fined $10,000.

Now consider MQAC's treatment of a doctor practicing conventionally. The conventional doctor also prescribed HGH off-label, as did MD5. However, he prescribed it for a family member (his stepson) without any recordkeeping, and did so not to treat an illness, but rather to help his stepson grow taller, even though his stepson was 5'9" tall and weighed 152 pounds, which is normal for a young person his age. Under Washington law, HGH can only be used for the treatment of a disease or medical condition. The conventional physician was merely given a reprimand and a $5,000 fine. In fact, five out of six charges against him were dropped because of "mitigating circumstances," namely, no actual harm to the patient. MQAC charged two other conventional doctors for prescribing HGH, and they also received much lighter penalties than their integrative counterparts. One was placed on two-year probation and fined $3,000, the other was placed on four-year probation and fined $8,000. Neither one had their license suspended or was required to submit performance reviews.

The instances of lenient treatment for conventional physicians or truly harmful events are numerous. A conventional physician failed to appropriately treat a patient's sickle cell crisis which led to permanent neurologic injury. The physician was asked to write a 1,000 word paper and pay a $1,000 fine. Another physician's system of follow up contact with the patient during the first post-operative hours was insufficient to learn of the patient's signs of distress in time to effect life-saving repair surgery. This physician was also asked to write a 1,000 word paper and pay a $1,000 fine, in addition to creating a new plan for post-operative follow-up.

Even in cases of sexual abuse by conventional physicians, penalties have been light compared to those handed out to integrative physicians who were not engaged in sexual misbehavior and for whom there was no patient harm. 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. 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.

II. The Case of Dr. Jonathan Wright MD:

Jonathan Wright MD is a graduate of Harvard University and the University of Michigan Medical School. He lectures widely to other integrative physicians, has pioneered treatments used by other doctors across the U.S. during his long career, and has written books, both for professionals and patients, which have sold widely. Despite Dr. Wright's notable qualifications, MQAC has accused Dr. Wright of multiple baseless infractions over the years, including having a phone system that is not responsive to patients. The phone system charge was eventually dropped after much cost in legal fees incurred by Dr. Wright. An additional charge stemmed from the failure of MQAC to properly maintain an up-to-date website listing physician licensure status.

A medical doctor joined Dr. Wright's Tahoma Clinic in September 2007. Tahoma Clinic employees consulted the MQAC website, which listed the MD's Washington State medical license as "pending." An attorney for the Tahoma Clinic informed Dr. Wright that it is legal for a medical doctor with a pending license in Washington State to work with patients if he or she is supervised by another physician licensed in Washington. Dr. Wright supervised him very closely, reviewing every one of his patient visits from September 2007 through January 2008. After that, Dr. Wright met with the MD once a week, and weekly reviews of patient records continued until the MD left the Tahoma Clinic (and the state of Washington) in April of 2009. Tahoma Clinic employees continued to check the MQAC website every month while the MD was at the Tahoma Clinic and his medical license was always listed as "pending."

Despite supervised practice being completely legal, MQAC charged Dr. Wright with "aiding and abetting the unlicensed practice of medicine' and legal proceedings followed. During the deposition of an MQAC official by Dr. Wright's attorney, the official admitted that MQAC staff knew that this MD's medical license (outside of Washington State) had been revoked, but this information was never posted on MQAC's website for Tahoma Clinic employees or the public to see. MQAC's website continually listed the MD's license status as "pending" the entire time he was in Washington State. This appears to us to have been a deliberate effort at entrapment of Dr. Wright.

Had MQAC at any time informed Dr. Wright of what MQAC knew all along—that this MD's medical license had been revoked in another state—Tahoma Clinic and Dr. Wright would have stopped the MD from seeing patients immediately. But MQAC did not inform anyone, either directly or by changing the website information available to the public—for the entire time the MD was in Washington State. Instead, it continued to say that the MD's Washington license was "pending."

Despite making every attempt to comply with State law and relying on MQAC as a resource on licensure, Dr. Wright was punished harshly. Dr. Wright ultimately received a 90-day license suspension followed by 30-months of probation. In addition, Dr. Wright was forced to pay a $7,500 fine, submit to annual appearances before MQAC to report on any new NDs or MDs his clinic has hired, and to write a paper to the Commission describing the importance of proper licensure that would meet the Commission's approval. This last step arguably violated the free speech protection of the U.S. Constitution, and is a common MQAC requirement.

When MQAC finally handed down its decision, it did not sanction Dr. Wright for the initially alleged violation. Instead, they found him guilty of a new infraction, which had never even been raised in MQAC's charging documents: failure to follow a statute that governs the practice of an out-of-state doctor whose license is pending. According to the statute, an out-of-state doctor must not solicit or take on patients in his own name, and must not open his own office. Dr. Wright followed this statute to the letter and MQAC sanctioned him for a charge that was not even made in the first place.

As an organization dedicated to protecting consumer choice and access to a broad spectrum of healthcare options, we are gravely concerned that MQAC's actions are having a chilling effect on the practice of integrative medicine in Washington State. We fear that a

Commission comprised of a majority of conventional physicians who offer conventional treatments and therapies are using their power to eliminate competition. This kind of problem is not unheard of in medicine. In the past, chiropractors sued the American Medical Association for similar attempted restraint of trade. The case went to the Supreme Court where the chiropractors won.

III. Implications of U.S. Supreme Court Ruling in *North Carolina*:

ANH-USA questions the legality of the Commission's makeup given the U.S. Supreme Court's ruling in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S.Ct. 1101 (2015). In this case, the U.S. Supreme Court found that "active market participants cannot be allowed to regulate their own market free from antitrust accountability." 135 S.Ct. at 1111.

In *North Carolina*, the Supreme Court found that state licensing bodies may be held liable for anticompetitive actions under the Sherman Antitrust Act when they are comprised of active market participants who use the power of the state to force out competition and protect their own financial interest. 135 S.Ct. 1101. MQAC is controlled by members of the very trade it purports to regulate and thus is vulnerable to federal felony prosecution and civil damages. Accordingly, the composition of the Commission must be converted to a majority of non-conflicted members or all actions of the Commission must be subject to active state supervision.

If the composition of the Commission is not altered to include a majority of non-conflicted members, state supervision must "provide 'realistic assurance' that a nonsovereign actor's anticompetitive conduct 'promotes safe policy, rather than merely the party's individual interests.'" *Id*. at 1116 (*quoting Patrick v. Burget*, 486 U.S. 94, 100-101 (1988)). The Court in *North Carolina* explicitly explains that this supervision must be actual and not theoretical or peripheral, stating "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the mere potential for state supervision is not an adequate substitute for a decision by the State." 135 S.Ct. at 1116 (omitting internal citations and quotation).

ANH-USA strongly encourages the Washington State Auditor's office to closely examine investigations, decisions, and sanctions by MQAC against integrative physicians as part of its ongoing Performance Audit. We also encourage the Auditor's office to consider the implications of *N.C. State Bd. of Dental Exam'rs v. FTC* and whether reforms to MQAC are necessary, including inclusion of integrative physicians, at least when integrative physicians are being reviewed.

Thank you for your consideration of this information. Please feel free to contact me if any further information is needed. We look forward to engaging with your office on this important issue.

Sincerely,

Gretchen DuBeau, Esq.
Legal and Executive Director

CC: Chuck Pfeil, CPA
Director of State and Performance Audit

Thomas Furgeson
Principal Performance Auditor