

December 3, 2020

To the Honorable Sunset Advisory Commission Members:

Thank you for your 4-year review of the Texas Board of Veterinary Medical Examiners (TBVME).

While I recognize that you cannot act as ombudsmen, please allow me to provide context regarding my concerns. In July 2013, a renowned private practice veterinary orthopedist diagnosed my then 3-year-old dog, Lightning, with a cruciate tear and recommended a “minimally invasive arthroscopic cruciate repair” that he said he averaged performing 15 times per week. Despite the surgeon’s acclaim and stated caseload, and my attention to careful recovery, Lightning never fared well. He required increasing pain medication and eventually went abruptly and severely lame on that limb in February 2016, necessitating urgent radiographs. Unexpected findings prompted me to return to the specialist. The consultation reinforced my sense that something had always seemed off, so I obtained the medical records. It turned out, Lightning had been treated in 2013 on a ‘TPLO Study’ but with a new bone cutting surgery that the surgeon and a colleague were researching and developing at the time called CORA-based leveling osteotomy, or CBLO—definitely not a minimally invasive arthroscopic cruciate repair... and definitely not with proper consent for research purposes (at least as I knew it).

Confident in the evidence and aiming to mitigate risk of a similar fate to others, I promptly filed a complaint with the TBVME in March of 2016. The rest would have been history if only the TBVME had issued disciplinary action as it should have. (After the case was dismissed [during the brief early 2017 period when the TBVME was more cooperative and transparent], I learned through an open records request that even the independent specialist opinion obtained by the TBVME as part of the complaint investigation was strongly in my favor.)

Certain that the TBVME would eventually uphold its duty to protect the public, I filed repeated complaints, yet the dismissals piled up (dismissed to “no violation,” dismissed to “voluntary compliance,” dismissed, in part, “because the licensee claimed that at specialty practices such as his they collect data on *all* patients”) as did the TBVME apologies for mishandling. My most recent complaint for withholding material evidence from the TBVME during an investigation was dismissed after not one but two informal conferences. During a November 2019 informal conference, violations were found, and a board order was issued. The licensee rejected the board order and requested the special dispensation the TBVME astonishingly offered him of a second informal conference. In July 2020, he escaped reprimand by claiming that he did not intend to not provide full records and was unable to rectify the situation because the records had since been lost during a natural disaster. The TBVME used this absurd rationale in its case dismissal letter. Because I unequivocally proved in my complaint that all records were not lost and so the investigator’s findings would not change, I am prevented from filing an appeal.

Given my frustrations with little to no obvious veterinary regulation, including but not limited to where ‘innovation’ in companion animals is concerned, I have reached out to representatives of the TBVME, the Texas Sunset Commission, State and Federal Senators, State and Federal Representatives, the Office of the Texas Governor, the Texas Office of the Attorney General, the Texas State Auditor, the Food & Drug Administration, the Federal Trade Commission, implant manufacturers, the AO Foundation, the American College of Veterinary Surgeons, the American Veterinary Medical Association, Texas A&M College of Veterinary Medicine, and more. Many have empathized, indicated that they lack regulatory authority, and encouraged me to register concerns with my state veterinary board as the principal regulator of veterinary healthcare.

I have also interacted with a number of supportive veterinary and other professionals, including journal Editors. One erratum regarding undeclared conflicts of interest has been published thus far, as have two perspective pieces regarding my experience: Ware JR. In favor of standards of care. J Am Vet Med Assoc. 2018 Aug 1;253(3):264. (<https://avmajournals.avma.org/doi/abs/10.2460/javma.253.3.264>) and Ware J. Veterinary trials and tribulations. Vet Rec. 2018 Aug 18;183(7):228. (<https://veterinaryrecord.bmj.com/content/vetrec/183/7/228.full.pdf>), the latter with a companion article: Innes J. A call for better regulation of veterinary medical devices. Vet Rec. 2018 Aug 18;183(7):229. (<https://veterinaryrecord.bmj.com/content/vetrec/183/7/229.full.pdf>).

Determined to leave no stone unturned, I looked forward to the 2020 Sunset Commission review as an opportunity to help hold the TBVME accountable for not holding its licensees accountable. I have submitted copious evidence underlining the lack of TBVME reform since the 2016 review (and, in my opinion, worsening, which I didn't think possible). I was extremely disappointed to read the brief November 2020 Sunset Staff Report and recommendation for an 8-year TBVME renewal. Regrettably, I did not realize that the scope of the review would be limited to only seven statutory recommendations that required TBVME action—with no substantive regard to the nearly 20 management/non-statutory recommendations. I suppose I should have known given how badly the TBVME has behaved toward the public during the past 4 years... while on a performance improvement plan of sorts, no less.

Given what I understand to be constraints imposed on the Sunset Commission staff but greater authority of its members, I hereby submit more focused feedback on the staff report (please see my annotations on the report itself: <https://www.dropbox.com/s/20cltz8ohd8mb2m/2020-12-03%20Public%20Input%20to%20Sunset%20Commission%20re%20TBVME%20%28Jodi%20Ware%20Annotated%20Staff%20Report%29.pdf?dl=0>). I ask that members please take remedial action (eg, abolish the TBVME and transfer licensing and regulation to the Texas Department of Licensing and Regulation [and potentially inspections to the Texas Board of Pharmacy], sweep TBVME board members/staff, and/or renew the TBVME for only 2 years with specific *statutory* recommendations and a dedicated monitor to closely oversee and help guarantee compliance).

Thank you for your time and consideration. I trust you will agree that alarming and frankly indefensible issues persist, 4 years after the scathing 2016 Sunset Commission review... and that Texas pets and their people cannot continue to bear the brunt of the resulting risk for another 8 years.

Thank you,
Jodi Ware

The February 2016 radiograph (the first time I recalled seeing a post-operative x-ray of Lightning's right knee)

