



March 6, 2020

Senate President pro Tempore Toni Atkins
Chair, Senate Rules Committee
State Capitol, Room 400
Sacramento, CA 95814

Dear Senator Atkins:

As a mother who lost her 20-year-old son to medical negligence and was denied justice for his death, I urge you to reject Dr. Richard Thorp's nomination to the Medical Board of California.

The Medical Board's job is patient protection. It is outrageous that a past president and member of the California Medical Association, a political organization with a long record of active opposition to reasonable physician oversight, is even being considered for this critical public safety post.

Dr. Thorp's nomination is doubly galling because a law enacted in 1975 prevents families like mine from seeking legal accountability when doctors kill our loved ones. The Medical Board was created as part of the same deal, with a promise that the legal deterrence being taken from patients would be replaced with regulatory enforcement to protect patients from harm.

That promise has been forgotten.

As head of the CMA, Dr. Thorp has overseen fundraising from physicians and physician groups across the state. He has asked favors and is owed favors. The Medical Board is supposed to be a nonpartisan and apolitical board, but Dr. Thorp's appointment further politicizes a Board that has been riddled with scandal, controversy and example after example of the Board weakening physician disciplinary action in the name of political expedience.

My son's case is a good example.

Alex's doctor ordered a toxic cocktail prescription and left him unmonitored during the night. No one was there to help him when those drugs caused an overdose. Medical Board investigatory staff and Attorney General prosecutors recommended revocation or suspension

of the doctor's license for repeated negligent acts. But the doctor cut a deal with the Board and was let off with a public reprimand. Not a single corrective or disciplinary action was ordered against his license to prevent the same thing from happening to someone else's child.

When I asked Dr. Thorp what he expects families like mine to do when we are denied justice for a child's death, he said that's what the Medical Board is for. But the Medical Board let my son down.

Dr. Thorp is not only a voice for the status quo, but an apologist for the medical establishment and opponent of common sense ideas to improve physician discipline.

For example, Dr. Thorp opposed requiring drug and alcohol testing of a doctor within 12 hours of notification of an "adverse event." Adverse events are defined by California law and include surgery performed on the wrong patient or body part, a medical device left in a patient during surgery, serious disability or death as a result of infection, a wrong drug or dose prescribed and other medical errors and hospital "never events." Dr. Thorp said on KQED Forum on September 22, 2014 that physicians shouldn't be called back from home for testing after an adverse event because it interrupts their "off-duty" time.

In other words, even after a patient faced serious disability or injury due to a preventable medical error, Dr. Thorp believes doctors shouldn't be bothered with a test to determine whether they were under the influence of drugs or alcohol at the time. This is hardly an appropriate position for a physician appointed to oversee and dispense discipline for physicians in California.

In addition, the Medical Association under Dr. Thorp was unwilling to compromise in the legislature and with former Senate pro Tem Darrell Steinberg on one of three central questions of 2014's Proposition 46: how California's medical negligence compensation cap has not been adjusted since 1975 and is the lowest in the nation. Steinberg believed he had a compromise for adjusting the cap, but was rebuffed by the Medical Association led by Thorp at the time, reportedly even after a tentative agreement was made. In March 25, 2014 reporting in the Daily News and San Bernardino Sun, Thorp took the hard line for the Association against any adjustment to the cap, even though 33 other states have no cap or allow exemptions to their cap in the case of permanent disability or death.

Dr. Thorp should be questioned about these stands and his nomination should be rejected or withdrawn.

Families like mine need a Medical Board they can trust to prioritize patient safety over physician protection. The past-president of an organization that has actively campaigned for decades against any improvement in patient safety laws, or legal accountability that works, is not that person.

The California Medical Association's long history of opposition to meaningful patient safety reform also includes:

- Opposing mandatory use of the CURES database to more safely prescribe opioids.
- Opposing requiring doctors to disclose to patients when they are on placed on probation.
- Opposing requiring hospitals to report accusations of sexual misconduct by a doctor against a patient to the Medical Board.
- Opposing streamlining Medical Board investigations of doctors through vertical enforcement.
- Opposing requiring doctors to undergo implicit bias training.
- Opposing requiring doctors give young women a factsheet before their first gynecological visit to explain appropriate, and inappropriate, behavior during an exam.
- Opposing the Medical Board's death certificate project that identifies doctors whose dangerous overprescribing has caused patient overdose deaths.
- Opposing rules requiring uniform testing for doctors in substance abuse treatment who continue to see patients.

These positions do not reflect the Medical Board's mission of patient protection.

You are also considering the nomination of a Jerry Brown appointee to the Board, another past president of the California Medical Association, Dr. Dev GnanaDev. Dr. GnanaDev has already used his position on the Board to press the Medical Association's political, anti-patient agenda. For example, he spoke out against requiring doctors to disclose to their patients when they are on probation. "If I go to a doctor ... and if the person says to me, 'Oh by the way, I'm on probation,' there goes whatever trust I had – completely gone," as reported by NBC Bay Area on May 14, 2017.

Patients deserve new members of the Board who will commit to doing better. Drs. Thorp and GnanaDev will advocate more of the same. Forwarding their nominations would put the brakes on change and move the Board in reverse.

We urge the committee to reject Dr. Thorp's and Dr. GnanaDev's nominations.

Sincerely,

A handwritten signature in black ink that reads "Tammy Smick". The signature is written in a cursive, flowing style.

Tammy Smick
Consumer Watchdog, Board of Directors

CC: Governor Gavin Newsom

