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COMPLAINT AND REQUEST FOR INVESTIGATION AND PROSECUTION OF OREGON MEDICAL BOARD

I. Introduction

I, Eric Dover, MD, your aggrieved and injured complainant appearing before you, pursuant to 28 USC 1654, hereby file my complaint together with my request for a federal investigation of the Oregon Medical Board (OMB). Following, I will submit evidence and affidavits which will show that OMB is violating not only the Federal Trade Commission Act (15 USC 45) but also other regulatory statutes of the antitrust legislation. I also have reason to believe that the OMB has been violating the U.S. antitrust laws, including the FTC Act, for many years and too many physicians have been unlawfully restrained from enjoying their right to participate in the free market economy of our nation.

To be sure, in the recent adjudicated case North Carolina State Board of Dental Examiners v. FTC 574 U. S. ____ (2015), the U.S. Supreme Court ruled that states must put their house in order when it comes to immunity from antitrust legislation. Specifically, the OMB runs amuck in the state by keeping judges and prosecutors who collect high fees from physicians who fall prey to OMB's scheme. The OMB, prosecutors and judges collect approximately between $20,000 to $160,000 plus from each physician restrained under the OMB scheme. The entire scheme depends upon running the physician to the ground with legal fees, the above high fines on their head and by violating their due process rights, meaning that if OMB judges and prosecutors don't get the high fines they won't start the case (pecuniary interest in the outcome of the case).

The OMB scheme is defiant to the federal antitrust legislation and the requirements imposed by the FTC Act and as of late circumventing the requirements imposed by the U.S. Supreme Court in the case North Carolina State Board of Dental Examiners v. FTC 574 U. S. ____ (2015). Moreover, I have reason to believe that the OMB is violating the antitrust law with respect to Section 1 of Title 15 USC.

II. Background

I am a Doctor of Medicine and graduated with this distinguished degree from University of California Los Angeles (UCLA) in 1985 (**Exhibit A**). I am a multi-task trained physician, and I can perform many medical procedures in the fields of Emergency Medicine, Urgent Care, Family Practice, Pediatrics, and Hospice. All my qualifications stated above are of no significance to OMB regulators. Instead they rely on their own power presumably with acquiescence of state DOJ representative and Ad Law Judge which have a pecuniary interest in the outcome of the case and work in cahoots with the former for high fees.

I have informed Oregon politicians about the foregoing violations rampant in this state by the OMB, and no one has addressed this in any meaningful manner.

III. My Areas of Doctor of Medicine Qualifications and Experience

The following is a very brief summary of my qualifications and experience as a Doctor of Medicine, to which OMB is restraining me since January 2011, to partake in the free market economy of the United States.

1. Graduate of UCLA School of Medicine
2. Family Practice Residency - Harbor-UCLA County Medical Center
3. Family Practice Chief Resident - Harbor-UCLA County Medical Center
4. Twenty-five years of Clinical, Urgent Care, Hospice, and Emergency Room practice
5. Three years Cancer Immunology Research – UC Riverside

IV. The Complaint

As I stated above, I am qualified to work in five areas of modern medicine, namely Emergency Medicine, Urgent Care, Family Practice, Pediatrics, and Hospice. The OMB is restraining me from all these qualifications to put to use in our free market economy. And that is not all, the OMB restrains many physicians like me who are similarly situated every year. (**Exhibit B, C, D**)

My restraining process by OMB started on January 6, 2011. All this restraining translates into sending me to the unemployment rolls of the state and reporting me to the National Practitioner Data Bank (NPDB). Not only that, but the OMB prosecutes its cases by trickery and deceit to its victim, namely the victim is informed about a hearing and the hearing is converted into a one to seven day intense trial run by the two state representatives who clearly have a pecuniary interest in the outcome of the case.

The OMB regulators are physicians as myself who have their own private practice, and as noted by U.S. Supreme Court in the North Carolina case, the actions of these OMB physicians is deemed to be not the action of the state itself. Private doctors in the OMB "private trade organization" have restrained many qualified and experienced Doctor of Medicine, including myself, and rendered us permanently unemployable

These OMB private doctors continue without interruption to restrain doctors in a manner that violates the antitrust laws of the United States, including the Federal Trade Commission Act (15 USC 45). To this day the

OMB continues unimpeded, and with impunity, to violate antitrust laws on bizarre legal theories of “absolute immunity”.

V. Discussion

As Parker teaches, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful. . . ." 317 U.S., at 351 . The OMB is not cloaked with Parker immunity because they are a nonsovereign actor, nothing more than a trade organization controlled by active market participants without State oversight or supervision. Beginning with Parker v. Brown, 317 U. S. 341, the U.S. Supreme Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. “The Board’s actions are not cloaked with Parker immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys Parker immunity only if ‘the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,’ and . . . ‘the policy . . . [is] actively supervised by the State.’ FTC v. Phoebe Putney Health System, Inc., 568 U. S. ___, (2013) (quoting California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U. S. 97, 105)” North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. ____ (2015)

First, "the challenged restraint must be `one clearly articulated and affirmatively expressed as state policy.'" Id., at 105, quoting Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of BRENNAN, J.). Second, the anticompetitive conduct "must be `actively supervised' by the State itself." California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., supra, at 105, quoting Lafayette v. Louisiana Power & Light Co., supra, at 410 (opinion of BRENNAN, J.). Only if an anticompetitive act of a private party meets both of these requirements is it fairly attributable to the State. The active supervision requirement stems from the recognition that "[w]here a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State." Hallie v. Eau Claire, 471 U.S. 34, 47 (1985); see id., at 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf"). “The requirement is designed to ensure that the state-action doctrine will shelter only the particular anticompetitive acts of private parties that, in the judgment of the State, actually further state regulatory policies. Id., at 46-47 ‘To accomplish this purpose, the active supervision requirement mandates that the State exercise ultimate control over the challenged anticompetitive conduct.’ Cf. Southern Motor Carriers Rate Conference, Inc. v. United States, supra, at 51. ‘The mere presence of some state involvement or monitoring does not suffice.’ See *324* Liquor Corp. v. Duffy, 479 U.S. 335, 345, n. 7 (1987). ‘The active supervision prong of the Midcal test requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy. Absent such a program of supervision, there is no realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests.’” Patrick v Burget 486 U.S. 94 (1988).

The OMB has no meaningful oversight of its anticompetitive conduct and completely ignores any antitrust law as well as constitutional rights. All levels of Oregon State government, elected or unelected, refuse to acknowledge and address the State’s noncompliance with the North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. ____ (2015) U.S. Supreme Court decision, falsely representing that they are in full compliance with the foregoing decision. (**Exhibit E**)

Other States and jurisdictions have recognized and acknowledged State noncompliance with the North

Carolina State Bd. of Dental Examiners v. FTC 2015 U.S. Supreme Court decision. (**Exhibit F, G, H, I)**

- The OMB trade association, under pretenses concocted by them, restrains many physicians to participate in the free market economy, as Congress intended in the antitrust laws. One of the OMB favorite tactics employed in the restraining process is to compel and intimidate their victims to acquiesce to wave their rights to a "hearing" and any appeal therefrom. Another example of intimidation prior to the restraining is to allow an attorney to be present with victim doctor, but to prohibit the victim's attorney to talk or give legal advice. One of the most outrageous tactics employed by the OMB acting as a Star Chamber prior to the restraining process, is to deny the victim doctor to defend by written evidence, or otherwise, bona fide evidence in their possession, such as records and Sixth Amendment material, as well as any exculpatory materials.

The OMB private doctors' and actors' restraining scheme operates within a "closed circuit system" where they act as investigators, judges, jury and executioners, with no meaningful oversight -- the entire process being severely rigged.

Some other outrageous pretenses and tactics employed by OMB private doctors and actors before the restraining are to:

- employ secret complaints and record keeping that cannot be subpoenaed,
- deny discovery (sixth Amendment material);
- deny access to case related medical records or other documents;
- deny expert witnesses to testify on behalf of the victim doctor;
- intimidate the victim doctor witnesses;
- deny depositions and interrogatories as part of the Sixth Amendment;
- allow and encourage perjured testimony;
- allow and encourage the use of hearsay during sham hearings;
- deny cross examination of witnesses.

To be sure, the OMB private actors (including DOJ and ALJ employees) and private doctors go to great lengths to accomplish the foregoing and strive to accomplish the restraining process through the aforesaid means, which produces a substantial amount of money for themselves.

The OMB and its conspirators' aforesaid practice a facade of justice, the Constitution and Due Process rights be damned. The victim doctors are being warned that they will not be afforded due process rights or any other constitutional rights. In this way the rate of restraining increases dramatically and more doctors are being sent to the State's welfare rolls – some authorities brag that over 5,000 physicians a year have been restrained to date. The foregoing processes of OMB result in loss of physicians' property and infliction of long-term financial hardship, bankruptcy and economic ruination. All these evils practiced by OMB are disguised as "bill of costs", which can be anywhere from $20,000 and reach as much as $160,000 per restrained physician. The end result is to suppress victim doctor competition and restrain physicians for any conceived reason.

One more outrageous tactic that OMB uses prior to restraining is to deny patient choice of health treatment(s) for the purposes to inflict more damage on its victim doctor and accomplish the restraint solid

rock.

Another outrageous practice by OMB and their conspirators is that they collect 10's of millions of dollars in order to stay afloat, yet they violate the antitrust law with impunity as per North Carolina Dental Board decision.

This complete economic and psychological destruction and ruin is accomplished under a veil of official oppression and as noted above appears to implicate federal money subsidies from the U.S. Treasury to various State actors who support OMB operations (e.g. Court of Appeals, Oregon Department of Justice, Oregon Administrative Offices of Courts) and the OMB itself. All Oregon legal jurisdictions tacitly turn a blind eye and actively allow OMB's outrageous, debilitating, ruinous and unlawful restraint effort to continue and prosper for decades.

Lawyers who routinely deal with the OMB tell their victim doctor clients:

- to simply acquiesce and take full responsibility for all charges and accusations the OMB levels against them,
- not to stand up for their Constitutional and Due Process rights,
- not to try to "explain" themselves or their medical care to the OMB private doctors or actors,
- not to question or resist any "remedies" the OMB concocts for their victim doctor,

otherwise, the victim doctor will be labeled as "arrogant" by OMB private doctors and actors and "attacked" even more aggressively culminating in license revocation.

Private doctors in the OMB knew, or should have known, that I have accrued considerable years of experience in the practice and art of Medicine, and that an outrageous restraint on me, and thousands of doctors at a nationwide level, will not only render me/them permanently unemployable, but also will deprive me/them of our federal right to partake in the free market economy of the United States. (**Exhibit B, C, D**)

The OMB and its conspirators' aforesaid practice a facade of justice, whereas they unjustly restrain doctors across the United States in violation of the antitrust laws from participating in our free market economy.

The OMB and its State conspirators typically violate the **Equal Protection Clause** of the Fourteenth Amendment to the United States Constitution. Here is a small sampling from a large pool of egregious examples of OMB favored licensees receiving preferential treatment from the OMB private doctors and actors.

- **Keith White, MD** was a private doctor member of OMB who himself came under investigation by the OMB in 2014 for problems prescribing opiates and boundary issues. The OMB had **Dr. White** sign a Corrective Order (CO) instead of a Stipulated Order (SO); therefore, no specifics of the incident are publicly available on the OMB website or elsewhere. His CO was sent to the National Practitioner Data Bank (NPDB) and the Federation of State Medical Boards (FSMB), but a CO has no significant adverse effect on a licensee, whereas a SO has a substantial adverse effect. **Dr. White's** license was left intact as was his practice. **Dr. White** can still contract with health insurers, purchase malpractice insurance, apply for hospital privileges, etc. Also, **Dr. Keith White** was never required to attend a program to

assess his medical knowledge and skills nor was he required to attend a Physician Health Program. The OMB private actors and doctors only required he take a course on opiate prescribing and another on patient boundaries, along with some CME (Continuing Medical Education) which he is required to maintain anyways. (**Exhibit J**)

Dr. Jim Gallant and **Dr. Roy Blackburn** were chronic pain specialists who weren't nearly as "lucky" with OMB private actors and private doctors as **Dr. Keith White** was. Neither of them was an "insider" like **Dr. White**. After dealing with OMB harassment for over 10 years, **Dr. Gallant** took an "early retirement" in 2017 no longer able to deal with the OMB psychological abuse and financial costs. **Dr. Blackburn** has had his license restricted regarding opiate prescribing for 3 plus years based upon an anonymous complaint. **Dr. Blackburn**, his lawyer and Jane Orient, MD, President of AAPS (American Academy of Physicians and Surgeons), have not been allowed to know the nature of the complaint. The OMB private actors claim he has broken a law, but they won't say which law, nor has he been charged with any crime. He is unable to get any medically related job because of the opiate restriction and his SO archived for eternity at the NPDB. Insurance companies will not contract with him nor will hospitals give him privileges. Neither **Dr. Gallant** nor **Dr. Blackburn** have had any patient morbidity or mortality as a result of their medical care. The irony of **Dr. Gallant's** and **Dr. Blackburn's** cases is that **Dr. White** voted as an OMB private doctor regarding discipline for both of them when he obviously had a significant conflict of interest as a competitor to these two physicians.

- **James Calvert, MD** was director of the Oregon Health Sciences University (OHSU) Rural Medicine program located in Klamath Falls, OR where he also had a private practice. On behalf of the OMB he acted as an "expert" in chart review, chronic pain and rheumatology and testified at my "sham hearing", and probably other licensee's "sham hearings".

  In late 2010/early 2011, complaints were submitted to the OMB regarding at least one of his patients dying because of his medical care and at least one other who almost died. He misdiagnosed and mistreated these patients for rheumatological disease they did not have. He ignored a rheumatology specialist's consult regarding one patient. He ignored lab test results that were negative for autoimmune disease. Additional **Dr. Calvert** charts reviewed by OMB showed a serious pattern of inferior and unsafe patient care, yet **Dr. Calvert** had full reinstatement of his license within one month of signing his SO without any remediation (**Exhibit K**).

  With OMB actor's assistance, **Dr. Calvert** now makes life and death decisions for Oregon Health Plan patients in the Klamath Falls District for the Oregon Health Authority (OHA). He was never required to attend a program to assess his medical knowledge and skills nor was he required to attend a Physician Health Program. His only requirements were to complete a course in treatment of chronic pain and rheumatologic disorders within one year.

  Dr. Calvert's "expert witness review and testimony" in my case was not questioned and was allowed to stand. I was never informed of his situation even though he was clearly a danger to public safety and clearly lacked the medical expertise and knowledge to be involved in any OMB case, let alone patient

care. **Dr. James Calvert** was a paid accomplice of the OMB private actors and private doctors to facilitate the revocation of my private property medical license.

- **Darryl George, D.O.** was investigated and disciplined by the OMB for being a serial sexual predator of his female patients. He preyed on women with issues such as depression and PTSD who'd also had drug and alcohol problems in the past. **Dr. George** would invite these women to his residence, give them marijuana and alcohol and then engaged in sexual relations with them. He then tried to coerce at least one woman into not cooperating with the OMB investigation into his criminal behaviors once they had been reported. **Dr. George** was/is also a known cocaine abuser which was reported to the OMB by two women, one of which had worked with him for a few years, but the OMB refused to investigate these complaints. **Dr. Darryl George** acted covertly on behalf of the OMB to destroy other physician's careers, families and finances, including mine, to maintain his license. Why he was not sent to prison as a sexual predator, but instead allowed by the OMB private actors and doctors to continue to treat patients, is beyond comprehension. (**Exhibit L**)

- **K. Dean Gubler, D.O., M.P.H., F.A.C.S.** is currently the private doctor Chairman of the OMB and is well known within the Portland surgical and anesthesia community as a very poor surgeon with a caustic personality. (**Exhibit M**). **Dr. Seth Izenberg** is a surgical partner within the same group as **Dr. Gubler** in Portland Oregon. **Dr. Izenberg** signed a CO on October 29, 2015 as noted in an OMB Meeting transcript found online (**Exhibit N**). Otherwise, all mention of his CO has been expunged from the OMB website (**Exhibit O**). **Dr. Seth Izenberg** is known to have at least two restraining orders against him for stalking nurses. It is also reported that he "requested" (demanded) a Resident change her dictation, but when she refused, he pulled back his jacket and exposed his handgun to intimidate her. She supposedly reported this to the OHSU residency program director. It is obvious that **Dr. Dean Gubler** and the OMB private doctors and actors are using their positions of power, and to date immunity, to protect not only **Dr. Seth Izenberg**, but also **Dr. K. Dean Gubler**. The Oregon Medical Practice Act explicitly states that if an OMB licensee is aware of any other licensee that is involved in prohibited, illegal and/or other questionable behaviors they are to report the offender to the OMB. **Dr. Gubler** has failed to do this so as to protect his business partner, but also to prevent any possible review of his own dreadful care and behaviors.

  Dr. Izenberg is currently no longer with Pacific Surgical, P.C. 501 N. Graham Street, Suite 580 Portland, OR 97227 (503) 528-0704. They are unsure when he will, if ever, return. He was recently terminated from Emanuel Legacy Hospital in Portland which should have been reported to the OMB, but seemingly has not occurred. **Dr. Izenberg** is not currently practicing medicine. Why are the OMB private actors and private doctors not interested in what occurred at Pacific Surgical Group and Emanuel Hospital? It is most likely because **Dr. Dean Gubler**, with his position of power within the OMB "trade association", is instrumental in protecting **Dr. Seth Izenberg and himself**.

  Contrast this with **Dr. Robert Read** and how he was treated. **Dr. Read** was a trauma surgeon in Corvallis, OR who in 2012 treated a woman with an IUP (intrauterine pregnancy) who had developed appendicitis making her a very high-risk case. When **Dr. Read** operated there was an adverse outcome. He was forced to sign a SO and is now unemployable as a physician. (**Exhibit P**)

The foregoing examples illustrate how OMB private doctors and actors comport in relation to the antitrust laws of the United States.

The OMB has restrained and continues to restrain physicians under pretenses in order to evade detection by the FTC law enforcement. The following are just a few examples of OMB evading detection by the FTC law enforcement of pretenses used to restrain and accomplish restraining of the medical profession across the United States:

- The OMB private doctor's and actor's propensity to remove competitors is clearly illustrated and documented in Federal Court documents related to **Dr. Timothy Patrick**. Beginning in the late 1970s, **Dr. Patrick** was attacked via Columbia Hospital's Executive Physician Committee in Astoria, OR and the OMB, both of which had representative private doctors from Astoria Clinic. **Dr. Patrick** became an "unwanted" competitor when he decided not to join the Astoria Clinic after one year, and instead decided upon private practice in Astoria. (see Patrick v. Burget, 486 U.S. 94 (1988)).

- The OMB private actors' and private doctors' propensity to attack and destroy licensees who practice Integrative Medicine is clearly illustrated in Dr. John E Gambee v. Dr. J. Bruce Williams; et al, 971 F.Supp. 474 (1997).

- The OMB private actor's and private doctor's propensity to attack and destroy licensees who request their Constitutional and Due Process rights is fully detailed in Eric A. Dover v. Kathleen Haley; et al, Case No.: 3:13-cv-01360-BR in U.S. District Court in Portland and Eric A. Dover v. Kathleen Haley; et al, No. 13-36183, D.C. No. 3:13-cv-01360-BR in Ninth Circuit Court of Appeals.

OMB private actors and doctors most likely are colluding with other Oregon State actors and have structured their schemes in such a way as to avoid detection by FTC law enforcement with regard to their activities which are counter to antitrust laws.

OMB private doctors and actors most likely act in tandem [collude] with other actors in the 50 States, the Federation of State Medical Boards (FSMB) and National Practitioner Data Bank (NPDB) and is coordinating with all U.S. Medical Boards to suppress competition, to repeal any competition arising from legitimate medical activity and to restrain victim doctors permanently from participating in our free market economy. For example, the Healthcare Quality Improvement Act (HCQIA) of 1986 requires that physician disciplinary decisions be submitted to the NPDB, but there is nothing in HCQIA about sending this information to the FSMB. In addition, the OMB private doctors and their staff have unlawfully inflicted permanent stigma on me and thousands of other physicians across the United States, thus rendering me and thousands of physicians unemployable for life. The OMB has literally destroyed my medical career and the careers of thousands of other physicians across the United States.

It is shocking to observe the OMB, it's associates and partners and how they harm physicians across the United States. I am deeply aggrieved and harmed by the intentional gross indifference and tacit acquiescence of governors, state political representatives and judiciary at the State and Federal levels perpetuating the unlawful restraint and deprivation of victim doctors' livelihood whom are entitled by the Constitution and

Federal law to participate in the free market economy on the entire territory of United States. I am describing here clear evidence of antitrust violations aided and abetted by the unsupervised private actors and doctors in the OMB who are tacitly permitted to inflict grave economic harm upon me by the above grossly indifferent and oppressive officials.

The organized restraint by OMB and enforced by the private doctors in the OMB manifests to the detriment of all physicians in society and defies the antitrust laws.

The OMB private actors and doctors ignore rules and laws put in place by the federal government and courts to protect against anti-competitive behavior. OMB private trade association refuses to address the supervision requirements as emphasized by North Carolina State Bd. of Dental Examiners v. FTC decision. In fact, the OMB, and all other boards, are far removed from any adherence to the United State Supreme Court decision rendered in the North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. ____ (2015) decision.

Beginning with Parker v. Brown, 317 U. S. 341, the United States Supreme Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity, which is not the case with OMB. The OMB's actions are not cloaked with Parker immunity, because they are a nonsovereign actor, basically a trade organization, controlled by active market participants. The OMB would enjoy Parker immunity only if "'the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,' and . . . 'the policy . . . [is] actively supervised by the State." FTC v. Phoebe Putney Health System, Inc., 568 U. S. ___, ___ (quoting California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U. S. 97, 105). The US Supreme Court articulated the Parker immunity this way: "An entity may not invoke Parker immunity unless its actions are an exercise of the State's sovereign power." See Columbia v. Omni Outdoor Advertising, Inc., 499 U. S. 365, 374 (1991). Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls." North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. ____ (2015). In Phoebe Putney the U.S. Supreme Court observed that Midcal's active supervision requirement is an essential condition of state-action immunity when a nonsovereign actor has "an incentive to pursue [its] own self-interest under the guise of implementing state policies." 568 U. S., at ___ (slip op., at 8) (quoting Hallie, supra, at 46–47). The lesson is clear: Midcal's active supervision test is an essential prerequisite of Parker immunity for any nonsovereign entity—public or private—controlled by active market participants.

Furthermore, the U.S. Supreme Court applied this reasoning to a state agency in Goldfarb v. Virginia State Bar, 421 U. S. 773 (1975). There, the High Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had "joined in what is essentially a private anticompetitive activity" for "the benefit of its members." Goldfarb v. Virginia State Bar, 421 U. S. 773, at 791, 792 (1975). This emphasis on the Bar's private interests explains why Goldfarb, though it predates Midcal, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity.

This unprecedented ruinous and destructive private conduct of OMB private doctors and actors, actively or previously engaged in their gigantic protection racket and operating with impunity, manifesting secretly and destructively, and under the veil and eyes of the indifferent Oregon State Governors, State Attorney Generals,

Secretaries of State, State Senators and Representatives and the Judicial System, and with incredible indifference and harm toward professional doctors of medicine, such as myself, must be severely scrutinized and investigated thoroughly by the FTC before even more thousands of doctors of medicine will be restrained and permanently stigmatized and their livelihood laid in ruin by OMB. The OMB scheme operated against the antitrust laws must be forever curbed and the legitimate participation of physicians in the free market economy of the United States must be secured under antitrust laws. The OMB and its sister rackets across the United States must be suppressed by the force and power of antitrust law. The OMB must be restrained and brought under the control of the state within the meaning of the antitrust law before it continues with its unprecedented devastation, restriction and exclusion ever visited upon the medical profession in Oregon.

VI. The Antitrust laws have established….

1. "Antitrust laws, like blue sky laws, are not aimed at natural gas companies in particular, but rather all businesses in the marketplace." Oneok, Inc. et al. v. Learjet, Inc. et al.., Docket No. 13-271 (April. 2015) [U.S.__, p. 13 (2015)].

2. "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."** Chicago Board of Trade v. United States, 246 U.S. 231, 244 (1918).

3. Federal antitrust law is a central safeguard for the Nation's free market structures and is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." United States v. Topco Associates, Inc., 405 U. S. 596, 610 (1972).

4. Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, e.g., Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U. S. 492, 501 (1988); Hoover, supra, at 584. North Carolina Board of Dental Examiners v. Federal Trade Commission, 574 US___, (2015);

VII. The Federal Trade Commission Act has established…

1. The Federal Trade Commission Act has established, that "*Unfair* methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." [15 U.S.C. 45(a)]

2. "No order of the Commission, or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts." [15 U.S.C. 45(e)]

VIII. The Federal Trade Commission has established…

1. "The leading antitrust treatise concurs. It recommends that courts "presum[e]***as 'private' [for state action purposes] any organization in which a decisive coalition (usually a majority) is made up of participants in the regulated market."" 1A Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law, Ch. 227b, at 226 (4th ed. 2013). North Carolina Board of Dental Examiners v. Federal Trade Commission, Brief of FTC, p.15, Sup. Ct., Docket No.13-534 (Jan. 2014).

2. "…the presumption of private action 'become virtually conclusive where the organization's members making the challenged decision are in direct competition with the [affected rival] and stand to gain from the [rival's] discipline or exclusion.'" North Carolina Board of Dental Examiners v. Federal Trade Commission, Brief of FTC, p.15 Sup. Ct. Docket No.13-534 (Jan. 2014).

3. "Thus, with respect to the substantive characteristics that are crucial to the state action doctrine, petitioner is more closely analogous to a typical private trade association than to a municipality or traditional state regulatory agency. A dominant group of petitioner's members are economically self-interested private actors – dentists competing in the same market they regulate. And, like the board members of a private trade association that may govern its members' conduct to some extent, petitioner's members are largely accountable to their fellow market participants rather than to the State." North Carolina Board of Dental Examiners v. Federal Trade Commission, F.T.C. Brief, p.16, Sup. Ct., No.13-534 (Jan. 2014).

There are 13 private individuals on the OMB, 11 of which are private doctors:

- 7 of 13 are Medical Doctors (MD) that must be selected, per the Oregon Medical Practice Act (OMPA), from and by the Oregon Medical Association (OMA). The OMA is strictly a trade association. These selections are sent to the Director of Executive Appointments in the Office of the Governor. In 2015, only 54% of Oregon physicians belonged to the Oregon Medical Association (OMA).

- 2 of 13 are Doctors of Osteopathy (DO) who function no differently than MDs and are considered equivalent to an MD. They must be selected, per the OMPA, from the Osteopathic Physicians and Surgeons of Oregon, Inc., which is strictly a trade association. These selections are sent to the Director of Executive Appointments in the Office of the Governor.

- 1 of 13 is a Doctor of Podiatry who must be selected by the Oregon Podiatric Medical Association, which is strictly a trade organization. These selections are sent to the Director of Executive Appointments in the Office of the Governor.

- 1 of 13 is a Physician's Assistant (PA) who must be selected, per the OMPA, from the Oregon Society of Physician Assistants, which is strictly a trade organization. PAs are only allowed to work under the

supervision of an MD or DO. These selections are sent to the Director of Executive Appointments in the Office of the Governor.

- 2 of 13 are considered public positions. The OMPA states: "A public member, or the spouse, domestic partner, child, parent or sibling of a public member, may not be employed as a health professional." Public members have typically been associated with or employed by large medical facilities. Applicants are selected by the Director of Executive Appointments in the Office of the Governor.

- Therefore, 11 of 13 members are "doctors" chosen from trade associations that are strictly medical in nature. The two Public Members typically have very close associations with healthcare.

- The OMB chairperson selects at least one, but no more than three, former board members to serve as emeritus board members – "fill ins" for any absent board member. They also are involved in licensee case analysis and supervision of disciplined victim doctors. These have all been MDs to date.

- Oregon has 270 boards and commissions. Positions on these boards are processed by the Director of Executive Appointments in the Office of the Governor who "recommends" candidates for the Governor's selection and "guides" appointments through the Senate confirmation process. There are only two individuals involved with this department - Mary Moller, Director of Executive Appointments and Kristina Rice-Whitlow, Executive Appointments Manager. They perform no board oversight duties – they are simply involved only with appointments.

IX. The U.S. Supreme Court has established…

1. "State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing Midcal's supervision requirement was created to address, see, Areeda & Hovencamp 227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals." See Patrick, 486 U.S., at 100-101. North Carolina Board of Dental Examiners v. Federal Trade Commission, 574 US___, p.13 (2015); N.C. State Bd. Of Dental Exam's v. FTC, 717 F, 3d 359 (4th Cir. 2013).

2. Midcal's "two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State.

    - The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing.
    - The second Midcal requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. The clear lesson of precedent is that Midcal's active supervision test is an essential prerequisite of Parker immunity for any nonsovereign entity—public or private— controlled by active market participants…"

3. "The Board's argument that entities designated by the States as agencies are exempt from Midcal's second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing Midcal's supervision requirement was created to address. See Goldfarb v. Virginia State Bar, 421 U. S. 773, 791." North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. ____ (2015).

4. "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm." Allied Tube, 486 U. S., at 500. For that reason, those associations must satisfy Midcal's active supervision standard. See Midcal, 445 U. S., at 105–106.

5. 'The similarities between agencies controlled by active market participants and such [trade] associations are not eliminated simply because the former is given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules.' North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. (2015) (See Hallie, supra, at 39). When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus, the Court holds today that a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy Midcal's active supervision requirement in order to invoke state-action antitrust immunity." Pp. 12–14.

6. "Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure Parker immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking Parker immunity must be rejected, see Patrick v. Burget, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16." North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. (2015).

7. "The question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." Patrick, 486 U. S., 100–101." North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. (2015).

8. "The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see id., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see ibid.; and the "mere potential for state supervision is

not an adequate substitute for a decision by the State," Ticor, supra, at 638. Further, the state supervisor may not itself be an active market participant." North Carolina State Bd. of Dental Examiners v. FTC 574 U.S. (2015).

9. Just as in the case of the North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. (2015), the OMB private actors wrongly argue and assume that its members are invested by the power of the State and that, as a result, the Board's actions are cloaked with Parker immunity. As stated in the U.S. Supreme Court NCDB decision this argument fails. A nonsovereign actor controlled by active market participants—such as the OMB—enjoys Parker immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" FTC v. Phoebe Putney Health System, Inc., 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U. S. 97, 105 (1980)). The OMB satisfies neither requirement and in fact, ignores affirmatively expressed Oregon and Federal law with impunity, simply because of no meaningful oversight.

10. "Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability." See Midcal, supra, at 106.

11. "When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See, Areeda & Hovencamp 227, at 226. The Court holds today that a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy Midcal's active supervision requirement in order to invoke state-action antitrust immunity." North Carolina Board of Dental Examiners v. Federal trade Commission, 574 US___, p.14 (Feb. 2015); N.C. State Bd. Of Dental Exam's v. FTC, 717 F.3d 359 (4th Cir., 2013).

X. Conclusion

In light of all the foregoing, I respectfully request that FTC initiate the appropriate steps of an antitrust investigation under Section 45 of the FTC Act as it has been done successfully in the North Carolina Board of Medical Examiners and prosecution of OMB and its antitrust violator associates, referenced in this document [North Carolina State Bd. of Dental Examiners v. FTC 574 U. S. (2015)].

There are thousands upon thousands of physicians across the United States who are suffering and endure economic ruin because the States have allowed these highly sophisticated schemes to operate largely unsupervised and basically to suppress competition and the rule of law with regard to the equal protection

afforded to physicians by the free market economy.

For these and many other reasons stated in this document the FTC should investigate this OMB anomaly operating against the antitrust laws of the United States and prosecute the offenders I have described in this document.

Request for Investigation of Oregon Board
Of Medical Examiners (OMB) by the F.T.C.

In light of all of the above, I respectfully demand the FTC to investigate the OMB, in regard to violations of the federal antitrust laws, as alluded above, thoroughly and effectively, together with the OMB's private persons and other unknown officials and individuals, who destroyed my livelihood, my liberty interests and my human dignity, in a way that my property, liberty and dignity will be fully restored, along with many thousands of doctors of medicine who are languishing in ruin, unemployed, severely stigmatized and with their dignity destroyed.

DATED this ___ day of December 2018.

Respectfully submitted,

_____
ERIC A. DOVER, M.D.
[Complainant-Injured U.S. Citizen]

……

Affidavit of Eric A. Dover M.D.

State of Oregon)
) ss:
Clackamas County)

Eric A. Dover, M.D., hereby certify and declare that I am the complainant-injured U.S. citizen, and that the complaint is true and correct, as I verily believe.

_____
ERIC A. DOVER, M.D.

Subscribed and affirmed to before me:_____, a Notary Public, in and for the State of Oregon, in the County of Clackamas, on this ___ day of February, 2020.

Notary Public Signature:_____

My Commission expires:_____