

APPENDIX

TMB COMPLAINT PROCESS DESCRIPTION & FLOWCHART

for

TEXAS MEDICAL BOARD OVERVIEW

Texas Medical Board –Complaint Process

Step 1 – A complaint is evaluated to determine if it is jurisdictional. The complainant may be contacted at this initial point for more information. If the complaint is jurisdictional, the licensee is given the opportunity to provide more information. The initial complaints that concern standard of care are evaluated by physicians, and they write an initial notice letter to the licensee. Currently this evaluation period is limited by statute to 45 days which begins the day the board receives the complaint. The licensee is given 28 of those days to make a response. If we receive a sufficient response from the licensee to show that no violation of law occurred, the complaint is closed at this point without ever being formally filed. Over 2,800 complaints were closed this way in FY 12.

Step 2 – If the complaint is filed after the 45 day period, the licensee receives a letter informing him of this. He is given the name of an investigator, and he can send any information to that investigator.

Step 2.5— If the investigation concerns a purely administrative issue, the licensee can opt out of this process by signing a non-disciplinary Remedial Plan. The Remedial Plans offered at this stage typically require the licensee to obtain continuing medical education in a given subject area. If the physician accepts the order it is presented to the full board for approval.

Step 3 – The assigned investigator will send the licensee another letter, this time generally asking for specific information. Again, the licensee may provide any information he chooses. For standard of care cases, the matter must be reviewed by at least two experts board certified in the same or similar area as the licensee, and the panel will issue a report concerning the care given in the case. Any information sent by the licensee at this point is given to the expert panel to consider in their review of the case. At the conclusion of the investigation, the matter is either referred to the board disciplinary process review committee to consider dismissal or it is referred to the Quality Assurance (QA) Panel (up to 5 board representatives) for evaluation. About 60-70% of cases are referred for dismissal at this point.

Step 3.5—There is another option for a licensee to resolve his case at this point. If a case goes to the QA Panel, a non-disciplinary Remedial Plan may be offered. This may be used in cases where the panel believes that there was a violation of the Act, but a restriction on the license of the physician is not needed to have an appropriate resolution of the issues. If the physician accepts the order it is presented to the full board for approval.

Step 4 – If the investigation indicates a violation occurred, and the QA Panel believes a restriction on the license might be needed, then the matter is referred to the legal division for prosecution the case is set for an informal settlement conference (ISC), which is an informal hearing before a board disciplinary panel. Once it has been referred, the licensee is notified of this fact and given the name of the assigned attorney to whom he can send additional information.

Step 5 -- Once a case has been set for an ISC, the licensee is provided all of the material that the board will use at the upcoming informal hearing 45 days prior to the hearing. This same material will be provided to the board panel. This is another point where the licensee may provide more information. If new information is received at this point, an effort is made to have the expert panel review the new evidence and determine if it changes their opinion. If it does, the case is referred for dismissal.

Step 6 – An informal hearing is held to give the licensee an opportunity to show that he is in compliance with the law, and he may bring counsel or witnesses to this hearing. The board is represented by a least one physician and one public member to hear the case. These hearings generally last an hour or longer. At the conclusion of this hearing, the panel may: recommend an agreed order, recommend a remedial plan, recommend dismissal, recommend additional investigation be completed, refer the case directly to SOAH, or refer the matter to a temporary suspension hearing. About 25% of cases are dismissed following the informal hearing. This step may be skipped altogether by the licensee when the licensee agrees to an order without seeking a hearing, as described by steps 2.5 and 3.5.

Step 7 – If an agreed order or a non-disciplinary remedial plan was recommended at the informal hearing, the staff attorney drafts the terms of the order and sends it to the licensee. The licensee may attempt to mediate the terms and/or language of the agreed order, but not a non-disciplinary remedial plan. All such offers are given to the board representatives who sat on the disciplinary panel that heard the case to consider. If agreement can be reached at this stage, the order is sent to the full board for approval.

Step 8 – If an agreed order cannot be reached, the case is filed at the State Office of Administrative Hearings (SOAH). This is the first public action in the case, unless there is a temporary suspension hearing. A SOAH filing happens in about 10% of cases where the informal hearing representatives recommended an agreed order. Following this filing, the licensee generally requests and is granted another opportunity to mediate his case using the SOAH mediation system. In some cases, such as when the board believes the only appropriate resolution is revocation, mediation is not conducted. That said, under the current system, a large portion of the cases at SOAH are mediated. Through the mediation process, the licensee and board may agree on the terms of a resolution, with final approval resting with the full board.

Step 9 – If there is still no agreed resolution, discovery is conducted and a full trial is held at SOAH. The licensee is generally represented by counsel, and may present evidence and cross examine the board witness including any experts.

Step 10 – The SOAH Administrative Law Judge (ALJ) issues a proposal for decision (PFD) that includes findings of fact and conclusions of law. The board may not change these finding and conclusions, but they may appeal them. The penalty is fully discretionary to the board. Once the PFD is issued, a hearing is set before the board. The licensee has the opportunity to present his position regarding the PFD to the full board, as does the board staff. At the conclusion of this hearing, the board will issue a final order.

Step 11 – If the licensee disagrees with the order of the board, he can request a rehearing of his case. The board votes on this request. If granted, Step 10 is repeated. If not, the order is considered final.

Step 12 – The licensee may appeal to district court, and this appeal must be accepted by the court.

Step 13 – Following this, the licensee may appeal to the Third Court of Appeals, and this appeal must be accepted by the court.

Step 14 – Next, the licensee may appeal to the Texas Supreme Court, and this appeal may or may not be granted by the court.

Step 15 – Next, the licensee may appeal to the U.S. Supreme Court, and this appeal may or may not be granted by the court.

Texas Medical Board Enforcement Flowchart

