

TEXAS MEDICAL BOARD OVERVIEW

PRESENTATION TO THE HOUSE PUBLIC HEALTH COMMITTEE

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TMB MISSION AND OVERVIEW

Mission

The mission of the Texas Medical Board is to protect and enhance the public's health, safety and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education.

Overview

- TMB staff support three separate boards, all three are charged with protecting the public through licensure and disciplinary oversight of the professions they regulate.
 - Texas Medical Board – total of 19 members, comprised of 12 physicians and 7 public members. This board meets five times per year.
 - Texas Physician Assistant Board – total of 9 members, comprised of 3 PAs, 3 physicians, and 3 public members. This board meets three times per year.
 - Texas State Board of Acupuncture Examiners – total of 9 members, comprised of 4 acupuncturists, 2 physicians, and 3 public members. This board meets three times per year.
- TMB currently regulates approx. 76,000 physicians; 6,000 physician assistants; 1,000 acupuncturists; and 340 surgical assistants, in addition to 10 other types of licenses, permits, and registrations.
- TMB receives approx. 7,500 complaints per year on the licensees it regulates, and a majority of these pertain to standard of care (medical treatment) issues.
- TMB's annual appropriation totals approx. \$11.3 million in combined GR and GR-Dedicated funds with an FTE cap of 162.5. This includes funding (\$403,000/yr) and FTEs (7) dedicated to the Texas Physician Health Program (TXPHP) which is administratively attached to TMB but has its own staff and governing board.

TMB MAJOR FUNCTIONS

ENFORCEMENT

TMB has four departments that comprise the Enforcement Division: Enforcement Support, Investigations, Litigation, and Compliance.

The Enforcement Support Department is located at the headquarters/Austin office and receives and processes complaints and provides administrative support for investigative work.

The Investigations Department is comprised of:

- Investigative staff completing an initial review of complaints to determine if an investigation should be opened. These include physician-investigators who review standard of care complaints and an attorney-investigator who reviews non-standard of care complaints.
- Field investigators located throughout the state to investigate complaints - a majority of these staff are registered nurses or have a nursing background.

The Litigation Department includes attorneys, legal assistants and administrative support staff. This department prepares and presents cases, that have been investigated and referred to Litigation based on possible statutory/rule violations, for a hearing by either an Informal Settlement Conference (ISC) panel, a Show Compliance panel, or a Temporary Suspension panel. This group is also responsible for litigating cases not settled through ISCs that have been referred for formal hearings by the State Office of Administrative Hearings.

If there is a disciplinary action instituted by the board following the hearings mentioned above, it is the responsibility of the Compliance Department to ensure that the licensee complies with the terms of the board action.

LICENSURE

The Licensure Division is composed of the Pre-Licensure, Registration and Consumer Services (PRC) Department and the Licensing Department. The PRC Department has three functions: 1) assisting applicants in pre-licensure; 2) registration (renewal) of licenses and permits; and 3) providing information to consumers.

TMB MAJOR FUNCTIONS, continued

The Licensing Department is responsible for processing applications for licenses for physicians, physician assistants, acupuncturists, and surgical assistants, as well as for permits for physicians in training and various others. Licensure analysts examine the application content and documentation to determine whether applicants meet requirements of all applicable statutes and rules.

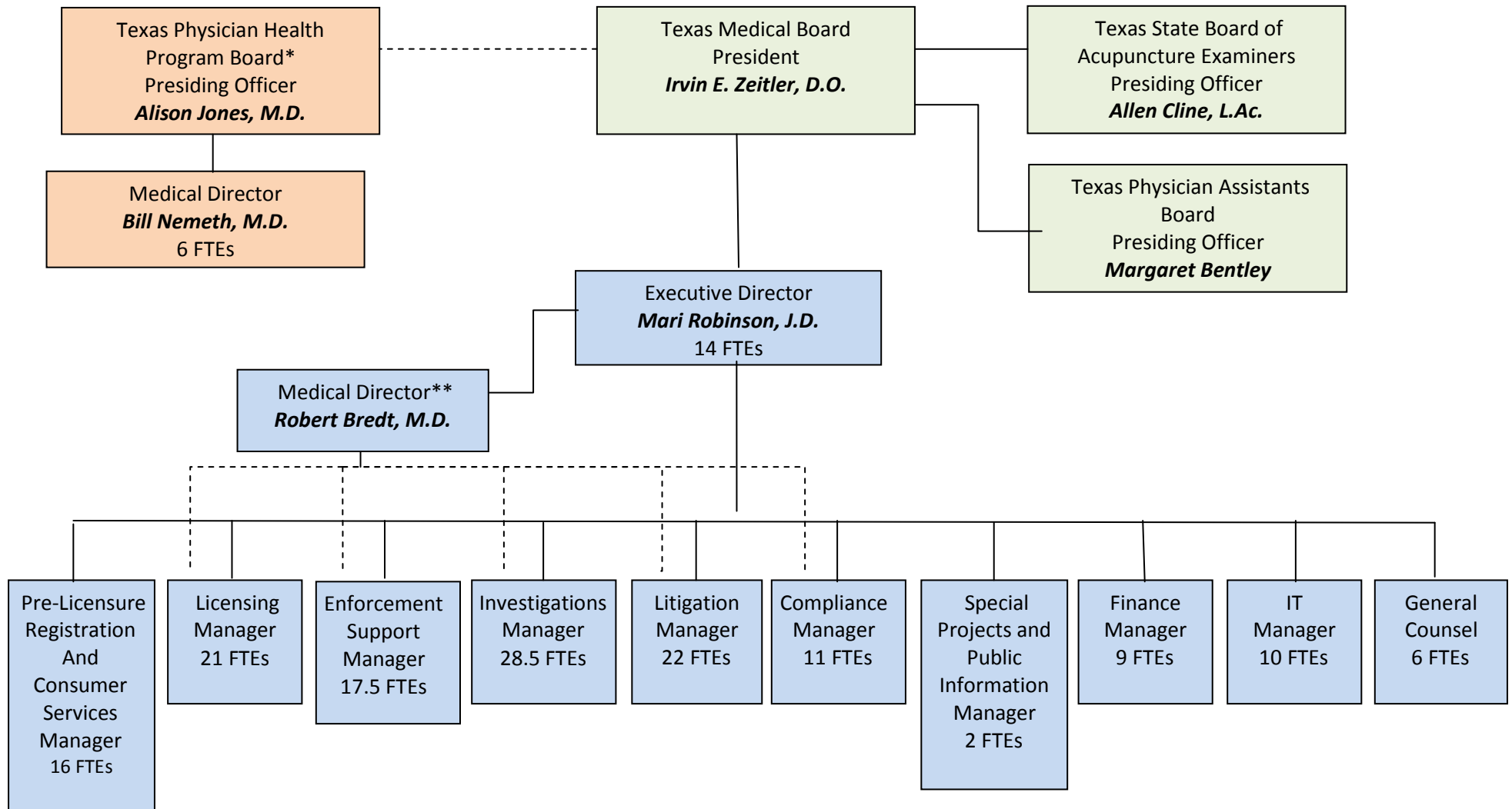
ADMINISTRATION

In addition to the agency's Executive Office, comprised of the Executive Director, Medical Director, and key support staff, there are four departments in the administrative function. The General Counsel's office provides legal counsel to all three boards and staff, serves as hearings counsel in board disciplinary hearings, drafts rules, and responds to open records requests. The Special Projects/Public Information Department responds to media and legislative requests, coordinates outreach presentations for licensees, and prepares routine and special reports required by oversight agencies. The Finance Department provides all administrative functions pertaining to accounting, property management, and mail distribution. And the IT Department maintains the agency's information management and electronic document management systems, as well as provides technical support to agency staff and board members.

TEXAS PHYSICIAN HEALTH PROGRAM (TXPHP)

TXPHP was established by SB 292 (2009) and began operating in 2010. The program is structured to assist TMB licensees (physicians, physician assistants, acupuncturists, surgical assistants) by evaluating and monitoring those licensees with potentially impairing health conditions. TXPHP was established to be completely self-funded through participant fees. To date, the program has had a total of 837 referrals and has current participant agreements with approximately 371 licensees. The program is projected to have a total of more than 470 participants by the end of FY 13.

Texas Medical Board Organizational Chart



* The Texas Physician Health Program, which is administratively attached to the TMB, has a governing board appointed by the president of the Medical Board

** The Medical Director has quality oversight on standard or care issues within these departments.

KEY LEGISLATION & STATUTORY CHANGES: 2003 – 2011

Bill # & Effective Date	Key Provisions & Requirements
HB 680 (2011)	Enforcement Process Changes: <ul style="list-style-type: none"> - eliminates anonymous complaints and requires TMB to provide licensee with name and address of complainant who is an insurance or pharmaceutical company; - extends preliminary investigation timeline from 30 to 45 days; - authorizes new process for remedial plans as non-disciplinary actions for minor infractions; - extends informal settlement conference (ISC) notice requirement to licensee from 30 to 45 days and increases licensee rebuttal deadline from 5 days to 15 days prior to ISC; and - requires TMB to record an information settlement conference (ISC) proceeding upon request of licensee.
SB 292 & SB 911 (2009)	SB 292 - creation of Texas Physician Health Program; and SB 911 – establish a pain management clinic certification process and prohibit a clinic from operating in Texas unless the clinic is certified.
HB 1973 (2007)	Requires board to process an application for a physician's license within an average time of 51 days.

KEY LEGISLATION & STATUTORY CHANGES: 2003 - 2011

Bill # & Effective Date	Key Provisions & Requirements
SB 419 (2005)	<p>Sunset Bill:</p> <ul style="list-style-type: none"> - ensures opportunities for early involvement of stakeholders in the rulemaking process; - updates the board's licensing process and authorizes issuance of certain limited and temporary licenses; - provides further improvements to investigation processes (including requiring use of at least two expert physician reviewers for each standard of care investigation) to better protect the public; and - defines clear roles, responsibilities, and authority for the informal hearings process.
SB 104 (2003)	<p>Enforcement Process Changes - strengthens the board's enforcement authority and enhances public protection while assuring a fair process for physician licensees:</p> <ul style="list-style-type: none"> - creates an expert physician panel to review standard of care cases; - increases the board's enforcement staff by 20 FTEs; - sets new deadlines for complaint investigations and litigation; and - creates a new GR-Dedicated account for an \$80 surcharge on physician license registration to ensure funding for enhanced enforcement and expert panel.

LICENSURE DATA & REVENUE COLLECTIONS

Physician Licensure Statistics, FY 07 - FY 12

FY	Average # of Days to Issue License	Applications Received	Licenses Issued	Total Licensees
FY 07	81	4,041	3,324	60,209
FY 08	62	4,023	3,621	62,693
FY 09	39	4,094	3,129	64,134
FY 10	35	4,218	3,522	65,477
FY 11	42	4,181	3,436	74,133
FY 12	31	4,253	3,630	76,407

As shown below, TMB typically generates two-thirds more in revenue per year than is appropriated to the agency.

TMB Appropriations Compared to Revenue Collections, FY 11 – FY 13			
	FY 11	FY 12	FY 13, est.
Revenue Collections (fees, fines, and \$200 occupations tax)	\$36,152,785	\$38,263,795	\$39,203,158
Appropriations (per GAA)	\$11,392,824	\$11,354,329	\$11,354,328
Appropriations as % of Revenue	31.5%	29.7%	29.0%

ENFORCEMENT DATA, FY 09 - FY 12

Enforcement Activity	FY 12	FY 11	FY 10	FY 09
1. Complaints & Investigations				
Complaints Received	7,550	8,182	6,849	6,968
Complaints processed as follows:				
Investigations Opened	1,844	2,122	2,661	2,873
Jurisdictional Not Filed Complaints	2,857	2,390	2,160	2,405
Non-Jurisdictional Complaints	2,849	3,670	2,028	1,690
2. Disciplinary Hearings & Activity				
Informal Settlement Conference (ISC) or Show Compliance Proceeding	755	683	645	775
Temporary Suspensions	14	40	8	12
SOAH Formal Complaints	85	71	141	82
SOAH Hearings	36	12	12	11
3. Final Disciplinary Action by Board				
Revocations/Surrenders	44	57	57	34
Suspensions	17	14	16	11
Public Reprimands	30	32	38	43
Restrictions	186	307	251	196
Admin. Penalties	30	108	181	114
Cease and Desist	18	3	8	3
Licensed with Conditions	18	N/A	N/A	N/A
Total Decisions	343	521	551	401

Enf. Activity	FY 12	FY 11	FY 10	FY 09
4. Compliance				
Current probationers	917	742	803	820
5. Non-Disciplinary Action				
Remedial Plans	395	N/A	N/A	N/A
Remedial Plans – Licensure	43	N/A	N/A	N/A

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

