

Ethics – Texas Medical Board Update

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Educational Objectives

By completing this educational activity, the participant should be better able to:

1. Discuss Texas Medical Board (TMB) rules related to supervision of mid-levels and other medical staff; documentation; proper billing practices; explain the TMB investigative process; use of the DPS controlled substance database; prescribing for chronic pain patients; office-based anesthesia; death certificate requirements; and leaving a medical practice
2. Identify practices and complaints that have led to investigations by the TMB.
3. Explain TMB investigative process.

Speaker Disclosure

Mr. Ballard disclosed that he has no financial relationships with any ineligible organizations or commercial interests.

Texas Medical Board Update

Texas Academy of Family Physicians
San Antonio

Dan Ballard, JD
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Texas Medical Liability Trust

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Learning Objectives

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Lawsuits vs. Medical Board Complaints

- TMB does not require injury or damages in order to sanction you for harmless errors.
- TMB investigation is not restricted to the complaint that was filed.
- All TMB sanctions are public.
- TMB complaint takes 5 minutes to file, it's free, and the complainant's identity is anonymous to you.

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Managing a Board Complaint

- Don't say "This complaint is ridiculous!"
- Your first response is your best chance.
- If TMB investigates you and dismisses it, you must still report it on credentialing applications.
- Make your response understandable to a non-PCP.
- If you're hiking through the jungle, would you want a guide?

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Are You Licensed in Another State?

- What will happen if you get sanctioned by the Texas Medical Board?
- Consider "surrendering" those other licenses ahead of time.

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Supervising Midlevels

- Prescriptive Authority Agreements
- Written protocols
- PAA QA Plan: *Monthly QA meetings will be held between physician and Nurse Practitioner or Physician Assistant for discussion of medical quality issues identified by either party. Issues identified from chart review by physician will be addressed. Follow-up on issues identified and addressed at recent prior meetings will be conducted. Physician will monitor prescribing patterns, referral and consultation patterns, whether any trends in ordered tests or lab work need to be addressed or adjusted, and whether any improvements in NP's or PA's interactions with patients, peers, or staff can be made. NP or PA will be encouraged to proactively raise issues/concerns in an atmosphere of openness and collegiality in an effort to put each patient's health and safety as our top priority.*
- Nametags on all care providers
- Nurse practitioner's "specialization".

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"PMP": Pharmacy Board Controlled Substance Database

- Use it for suspicious patients or for new ones for whom you are going to Rx Controlled Substances
- Texas.pmpAware.net

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Mandatory Querying of the PMP

- You must query the database before prescribing any opioids, benzos, barbiturates, or carisoprodol.
- Can your EMR "force" a query for these medications?
- (Check the PMP on yourself as a prescriber.)

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Prescribing Controlled Substances to Family or Friends

- Do not prescribe controlled substances to yourself, family, or other close personal relationships.
- Hydrocodone, Alprazolam, Zolpidem, Adderall
- Is it OK if you are "refilling" a prescription by another physician?

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New 10-Day Limit on Opioids for Acute Pain

To "renew" the prescription, you must see the patient in-person.

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Pain Management CME is Required for License Renewal

2 hours per license cycle

<https://www.tmb.state.tx.us/page/resources-cme-for-md-dos>

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Mandatory CME on Human Trafficking Prevention Training

<https://hhs.texas.gov/services/safety/texas-human-trafficking-resource-center/health-care-practitioner-human-trafficking-training>

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Billing High Complexity Codes

- "But my exhaustive Review of Systems or my >40-minute note supports it".
- If you actually did a full body exam of the patient for their sore finger complaint, why are you doing it?
- Was your exam medically appropriate to the patient's complaints?
- Non-face-to-face time spent that same day counts (including charting, reviewing, consulting, ordering tests that same day).

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Benchmarks

- What % your bills are "high complexity" or "comprehensive" or Level 4 or 5?
- You will be compared to your peers.
- You should know your own stats.

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Patients' Perceptions

- Is there a good reason to bill at 5x the reimbursement amount?
- Will patients be offended by it?
- Patient perceptions about "add-ons".
- Use written advance notice of extras.

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Deficiencies in Charting

- Not charting a standard discussion re how to wean off of this drug
- Not charting that you cautioned patient to watch for a specific complication
- Details about a pain complaint
- Relying on a list of templated normals or "charting by exception" when ruling out a potential diagnosis

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Utilizing Tests on Unclear Cases

- Can you defend not doing the test? (Patient has new symptoms and insurance.)
- Have you charted your thoughts about when and why you will do it?
- Have you charted your consideration of the various differential diagnostic possibilities?
- What if they never return to see you?

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Don't Participate in Referral Fees

- If you send a patient to another entity to be seen, treated, or tested, and you make money because of it, it's probably illegal.
- Fee sharing, gifts, profit-sharing, dividends, cash payments...
- Lab deals

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Standard of Care for Telemedicine

- A health professional providing a telemedicine medical service is subject to the same standard of care that would apply to the provision of the same health care service in an in-person setting.
- This rule is often ignored by physicians.

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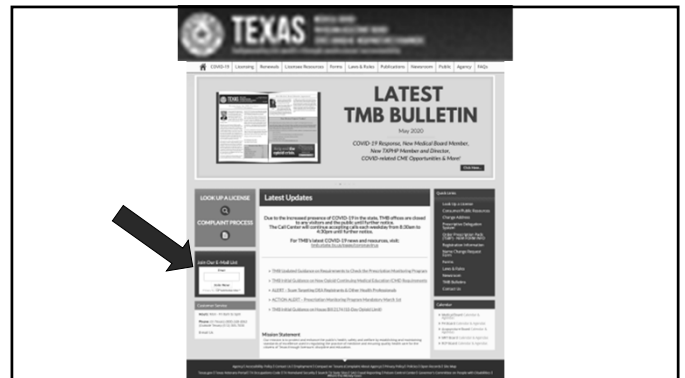
Telemedicine Protocols Rule 174.3

Telemedicine Complaint Notice Rules 174.4(3) and 178.3

Telemedicine Privacy Notices Rule 174.4 & 174.6

TMA has resources at
<https://www.texmed.org/TexasMedicineDetail.aspx?Pageid=46106&id=53012>

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Questions?

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