

Texas Medical Board Update

Texas Academy of Family Physicians
San Antonio

Dan Ballard, JD
June 11, 2022

Texas Medical Liability Trust

Disclosure & Disclaimer

The speaker has no commercial affiliations/interests to disclose with any ineligible organization or commercial interest. TMLT staff, planners, and reviewers have no commercial affiliations/interests to disclose with any ineligible organization or commercial interest.

The information and opinions in this course and the supplemental materials should not be used or referred to as primary legal sources nor construed as establishing medical standards of care for the purposes of litigation, including expert testimony. The standard of care is dependent upon the particular facts and circumstances of each individual case and no generalization can be made that would apply to all cases. The information presented should be used as a resource, selected and adapted with the advice of your attorney. It is distributed with the understanding that neither Dan Ballard, Texas Medical Liability Trust nor Texas Medical Insurance Company is engaged in rendering legal services.

Learning 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.

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.

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?

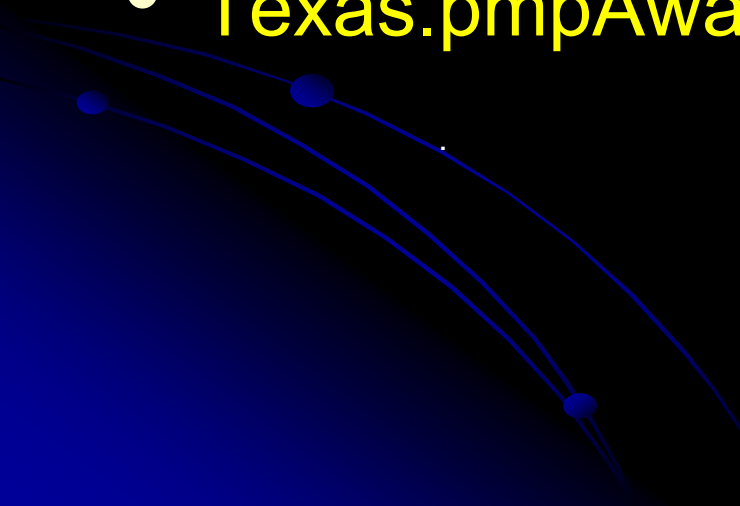
Are You Licensed in Another State?

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

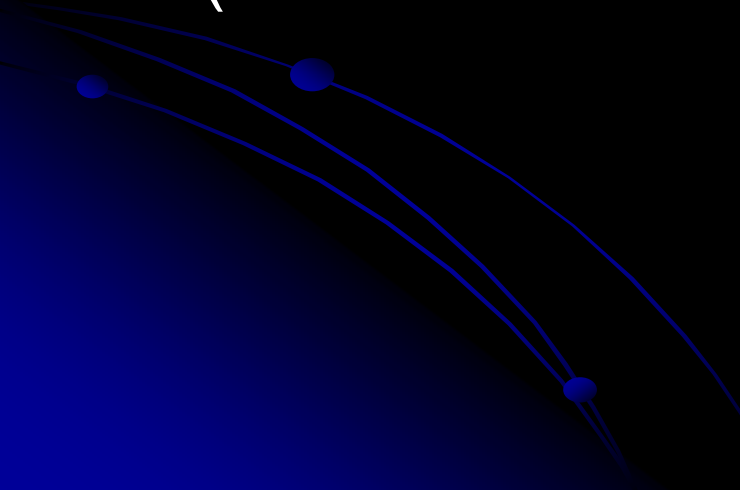
Supervising Midlevels

- 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".

“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
- 

Mandatory Querying of the PMP

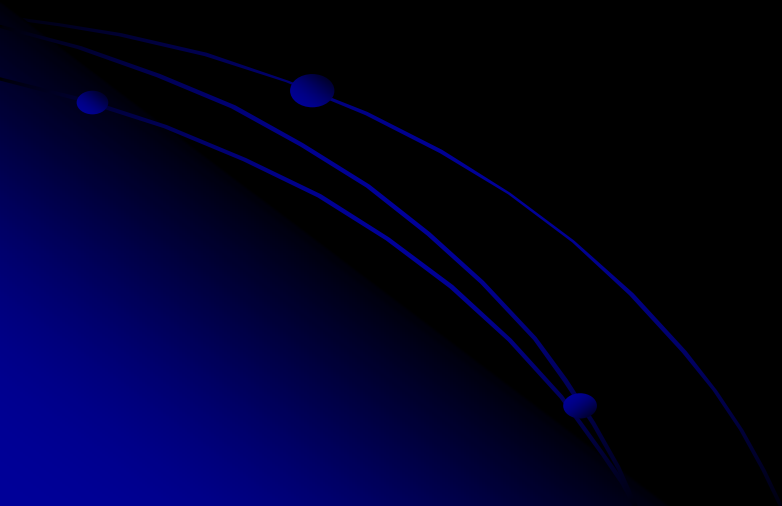
- You must query the database before prescribing any opioids, benzos, barbiturates, or carisoprodol.
 - Can your EMR “force” a query for these medications?
 - (Check the PMP on yourself as a prescriber.)
- 

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?

New 10-Day Limit on Opioids for Acute Pain

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



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>



Mandatory CME on Human Trafficking Prevention Training

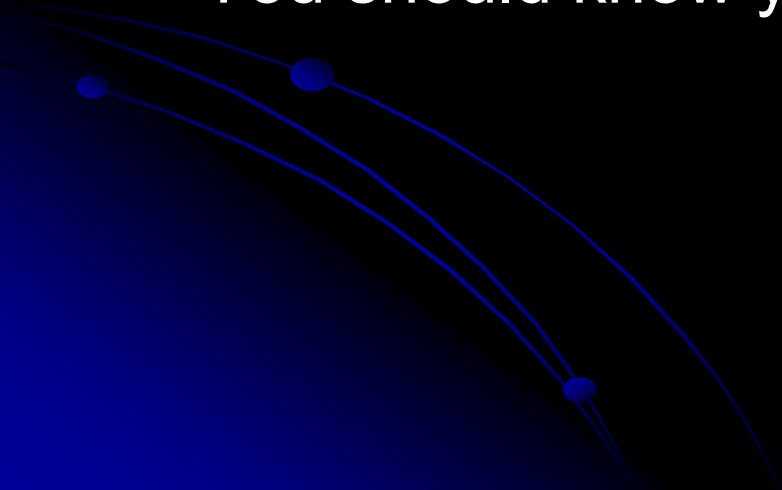
<https://hhs.texas.gov/services/safety/texas-human-trafficking-resource-center/health-care-practitioner-human-trafficking-training>



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).

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.
- 

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.

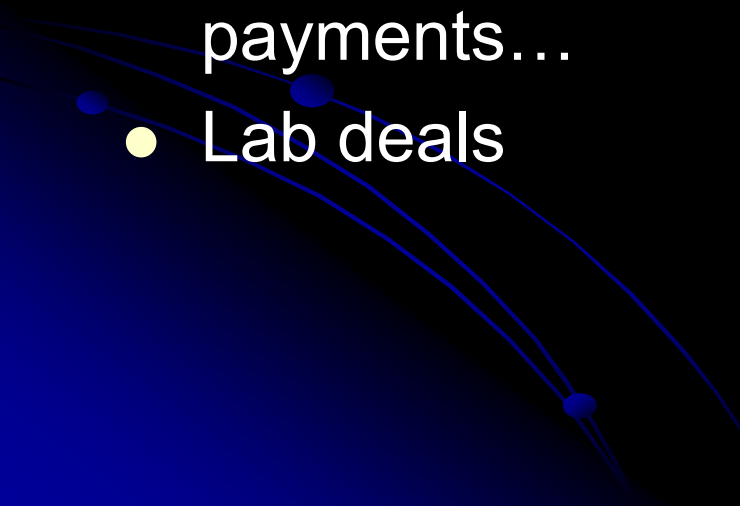
Deficiencies in Charting

- 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


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?

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
- 

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.
- 

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](https://www.texmed.org/TexasMedicineDetail.aspx?Pageid=46106&id=53012)



TEXAS

MEDICAL BOARD
PHYSICIAN ASSISTANT BOARD
STATE BOARD OF ACUPUNCTURE EXAMINERS

Safeguarding the public through professional accountability

- COVID-19
- Licensing
- Renewals
- Licensee Resources
- Forms
- Laws & Rules
- Publications
- Newsroom
- Public
- Agency
- FAQs



LATEST TMB BULLETIN

May 2020

COVID-19 Response, New Medical Board Member,
New TXPHP Member and Director,
COVID-related CME Opportunities & More!

[Click Here...](#)

LOOK UP A LICENSE



COMPLAINT PROCESS



Join Our E-Mail List

Email:

Join Now

Privacy by: [CFStateSubscriber™](#)

Customer Service

Hours: Mon - Fri 8am to 5pm

Phone: (In Texas): (800) 248-4062
(Outside Texas): (512) 305-7030

[E-mail Us](#)

Latest Updates

Due to the increased presence of COVID-19 in the state, TMB offices are closed to any visitors and the public until further notice. The Call Center will continue accepting calls each weekday from 8:30am to 4:30pm until further notice.

For TMB's latest COVID-19 news and resources, visit: tmb.state.tx.us/page/coronavirus

- > [TMB Updated Guidance on Requirements to Check the Prescription Monitoring Program](#)
- > [TMB Initial Guidance on New Opioid Continuing Medical Education \(CME\) Requirements](#)
- > [ALERT - Scam Targeting DEA Registrants & Other Health Professionals](#)
- > [ACTION ALERT - Prescription Monitoring Program Mandatory March 1st](#)
- > [TMB Initial Guidance on House Bill 2174 \(10-Day Opioid Limit\)](#)

Mission Statement

Our mission 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.

Quick Links

- Look Up a License
- Consumer/Public Resources
- Change Address
- Prescriptive Delegation System
- Order Prescription Pads (TSBP) - NEW FORM INFO
- Registration Information
- Name Change Request Form
- Forms
- Laws & Rules
- Newsroom
- TMB Bulletins
- Contact Us

Calendar

- > [Medical Board Calendar & Agendas](#)
- > [PA Board Calendar & Agendas](#)
- > [Acupuncture Board Calendar & Agendas](#)
- > [MRT Board Calendar & Agendas](#)
- > [RCP Board Calendar & Agendas](#)

Questions?

Dan Ballard

Cell 512-970-5706

danballard@ballardsimmons.com

