

TEXAS PHYSICIAN LICENSE DEFENSE

PROTECTING YOUR
LIVELIHOOD, YOUR CAREER
AND YOUR REPUTATION



BERTOLINO LLP
A LAW FIRM OF ATTORNEYS AND COUNSELORS

Texas Physician License Defense: Protecting Your Livelihood, Your Career and Your Reputation

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Chapter 1: Introduction: The Foundation of Your Career in Texas

1.1 The Privilege of Practicing Medicine

As a dedicated physician, you have invested years of rigorous study, training, and hard work to earn your patients' trust and the right to practice medicine. In Texas, the ability to practice medicine is considered a **privilege**, not an inherent right. Because people rely on medical professionals to preserve their lives, the practice of medicine is designated as a responsibility of the highest order. Protecting your medical license is essential to safeguarding your livelihood, reputation, and entire professional future.

1.2 Understanding the Texas Medical Board (TMB)

The **Texas Medical Board (TMB)** is the state agency responsible for licensing, regulating, and monitoring physicians and other medical professionals throughout Texas. The TMB ensures that these professionals adhere to state and federal laws governing their profession, including the Texas Medical Practice Act.

The TMB has the authority and resources to investigate potential violations and enforce adherence to licensure requirements and professional standards. The TMB receives approximately 7,000 complaints annually from various sources, including patients, family members, colleagues, and employers. Every complaint is taken seriously, and the consequences for physicians facing investigation can be significant.

1.3 Overview of the TMB Disciplinary Process

When a complaint is filed, the TMB initiates a formal process to determine its merits. This process involves several distinct stages:

1. **Initial Evaluation and Investigation:** The TMB first reviews the complaint to determine whether it has jurisdiction and whether sufficient evidence exists to suggest a violation of the Texas Medical Practice Act. If the TMB decides to proceed, the physician is notified via letter, which initiates the investigative phase.
2. **Health and Quality Review:** The process may involve assessing the physician's health (especially regarding mental or physical impairment) and conducting a quality assurance panel review.
3. **Resolution:** The case may be resolved through an **Informal Settlement Conference (ISC)**, which seeks an informal agreement, or through formal adjudication before the **State Office of Administrative Hearings (SOAH)**.
4. **Imposition of Sanctions:** If a violation is found, the TMB can impose disciplinary actions, ranging from a public reprimand and fines to license suspension or permanent revocation.

Because the TMB is tasked with protecting the public's interest, it maintains broad discretion in making licensure and disciplinary determinations. Seeking legal counsel immediately upon receiving notice of a complaint is critical, as early intervention can significantly impact the outcome.

Chapter 2: Securing and Maintaining Your Texas License

The path to obtaining a Texas medical license is rigorous, and maintaining your license requires ongoing vigilance regarding regulatory requirements.

2.1 Applying for Licensure: Initial Requirements

The Texas Medical Board (TMB) carefully examines all aspects of an applicant's personal and professional life to determine fitness for licensure. Key requirements typically include:

- **Examination:** Having passed a board-recognized examination within the required number of attempts.
- **Background Check:** Submitting necessary information for a background check, including a copy of fingerprints.

- **Criminal History:** Not having a criminal history deemed "unacceptable" by the TMB.
- **Prior Licensure Status:** Not holding a license that has been suspended, revoked, or is currently subject to a restriction or disciplinary order in another state or Canadian province.
- **Professional Character:** Applicants must be of "good professional character," a phrase that is open to interpretation and gives the TMB significant discretion during the review process.

2.2 Navigating Potential Roadblocks in the Application Process

Applying for a medical license can be difficult due to strict requirements and extensive documentation. Licensing complications, such as a **criminal record** or past disciplinary actions, can put an application at risk.

The TMB thoroughly reviews all applicants, and any criminal history—misdemeanor or felony—can raise questions about character and fitness. However, a criminal record does not automatically preclude licensure. When facing questions about past issues, the TMB requires honest and accurate disclosure of a criminal record. Legal counsel can assist in reviewing criminal history, drafting detailed explanations of circumstances, and highlighting evidence of rehabilitation and good conduct to minimize the impact on your career.

2.3 Options for Provisional Licensure

In certain circumstances, a medical professional may consider applying for a provisional license. This type of license is temporary, allowing practice while the full application is pending, but it comes with limitations.

A provisional medical license is valid for **270 days** and cannot be extended. It also restricts where a physician may practice: employment must be secured in a medically underserved area (MUA) or a health professional shortage area (HPSA).

To apply for a provisional license, you must:

- Submit a full application for the standard medical license and pay all necessary fees (including a \$107 provisional license fee).
- Be licensed in good standing in another state.
- Receive sponsorship from a Texas-licensed physician with whom you plan to work.
- Show proof that the intended area of practice is an HPSA or MUA, which can be confirmed through the Texas Department of State Health Services.

Physicians holding a provisional license are strongly advised to continue diligently working on their full medical license application, as the process involves completing many forms and

supplements. Failure to complete the full application before the 270-day provisional license expires requires the physician to stop practicing until the full license is approved.

2.4 Challenging the Denial of a Medical License

The denial of a license application can be frustrating, but it is not necessarily the end of your medical career. Common reasons for denial include criminal convictions, previous disciplinary actions in other states, failing to meet eligibility requirements, or providing falsified information.

You have the right to challenge a denial. The challenge process involves several steps:

1. **Review by the Licensure Committee:** If the TMB Executive Director deems you ineligible, you must request a review of that decision by the Licensure Committee within 20 days of receiving written notice of the denial.
2. **Conditional License Offer:** The Executive Director, with Board approval, may recommend that a medical license be granted, subject to restrictions or a remedial plan. If this agreed order is unacceptable, you can also request a TMB review within 20 days.
3. **Adjudication at SOAH:** If the TMB still refuses to grant an unrestricted license, you have the right to have the denial adjudicated by the State Office of Administrative Hearings (SOAH). An Administrative Law Judge (ALJ) hears the case and submits a proposed decision to the TMB, which then issues the final order.
4. **Judicial Appeal:** If the TMB's final order is unfavorable, you have the right under Texas law to appeal the decision to the Travis County District Court in Austin.

2.5 The Critical Importance of Timely License Renewal

Once licensed, physicians must renew their licenses every 2 years and complete 48 hours of continuing medical education (CME) during that period.

It is crucial to ensure redundancy in license renewal systems, as practicing medicine for even a single day without an active license is considered a new criminal event daily and naturally entails the loss of the license to practice medicine.

Chapter 3: The Texas Medical Board Disciplinary Process: From Complaint to Conclusion

When a complaint is leveled against you, whether for wrongdoing, an investigation by the TMB, or concerns regarding peer review, a specific process unfolds. Knowing these steps is essential for mounting an effective defense.

3.1 Receiving a Complaint: Initial Evaluation and Notice

The TMB's complaint investigation process is generally formal and requires due process, including providing notice to the licensee.

1. **Initial TMB Assessment:** Upon receipt, the TMB first confirms jurisdiction over the allegations.
2. **Review for Investigation:** A cursory review determines if there is sufficient evidence that the Medical Practices Act may have been violated to warrant a full investigation.
3. **Complaint Letter:** If the TMB proceeds, you will receive a formal complaint letter or notice, typically alleging violations of the Texas Medical Practice Act. This letter requests that you respond to questions regarding the allegations within a specified timeframe.

3.2 Immediate Steps to Take When Your License Is Under Review

If you receive a complaint notice, your immediate actions are paramount to protecting your professional standing.

- **Do Not Respond Alone:** While you may feel compelled to immediately respond to the letter and deny wrongdoing, anything you say or write could be used against you. Many licensed professionals inadvertently admit to actions that the TMB considers violations when they attempt to respond on their own.
- **Consult an Attorney Immediately:** This is the critical first step. An experienced medical license defense lawyer is familiar with TMB rules and can help draft a professional, compelling, and legally sufficient response, ensuring you avoid damaging admissions and narrow the issues in the investigation.
- **Acknowledge and Gather Evidence:** Acknowledge receipt of the complaint. Work with your attorney to investigate the allegations, gather facts, and search for evidence proving responsible and ethical conduct. This includes collecting relevant medical records (patient charts, test results, treatment plans) and supporting documentation (CME evidence, letters of recommendation).
- **Cooperate Professionally:** Demonstrate professionalism and transparency by cooperating with the TMB. This means responding promptly, providing clear information, and maintaining a respectful demeanor.

3.3 Understanding the Role of the TMB Investigator

The TMB complaint letter provides contact information for the investigator managing the investigation. It is essential to understand that you cannot rely on the investigator for advice. Their job is to find any possible violations in your practice, which often makes their interests directly adverse to yours. Hiring an attorney ensures that the investigator cannot contact you directly without your attorney's consent, safeguarding your case.

3.4 The Informal Settlement Conference (ISC)

Near the conclusion of the investigative phase, an informal conference, known as the Informal Settlement Conference (ISC), is often scheduled. This hearing is an attempt to resolve the matter outside of formal court proceedings.

- **The Hearing:** The physician and their lawyer meet with a TMB review panel. TMB staff presents evidence of a violation of the Act, and the physician (with their attorney's assistance) presents evidence of compliance.
- **Resolution Options:** Following the ISC, the review panel determines if a violation occurred. The TMB may propose a resolution through an Agreed Order or, in cases involving minor administrative violations, a Remedial Plan.
- **Contesting the Proposal:** If you do not accept the TMB's proposed order, the case is likely to proceed to the State Office of Administrative Hearings (SOAH).

3.5 The Contested Case Hearing (SOAH)

If a settlement is not reached, the case will be heard by the State Office of Administrative Hearings (SOAH). This is a more formal process heard before an Administrative Law Judge (ALJ) in an administrative court.

- **Formal Procedure:** SOAH proceedings require strict adherence to specific procedural rules. An attorney specializing in TMB cases is critical here, as unfamiliarity with SOAH rules can lead to mistakes, such as missing the 20-day discovery request deadline (compared to 30 days in Texas district courts).
- **Discovery:** Attorneys use discovery tools like Requests for Disclosure, Production, and Admissions, Written Interrogatories, and Oral Depositions to gather information and assess the TMB's case strength.
- **Trial and Decision:** If mediation or settlement negotiations fail, the case proceeds to trial before the ALJ. The ALJ drafts a Proposal for Decision (PFD) that lays out the findings of fact and recommended discipline. The TMB reviews the PFD and issues a final order that may accept or modify the ALJ's recommended decision.
- **Appeals:** The TMB's final order can be appealed to a Texas district court, and further appeals may be taken to the Court of Appeals and Texas Supreme Court if necessary.

3.6 Temporary Suspension: Immediate Action Without Notice

While due process generally requires notice, Texas law permits the TMB to temporarily suspend or restrict a physician's license without prior notice in specific situations.

- **Grounds for Suspension:** A three-member disciplinary panel convenes to determine whether the physician's continued practice constitutes a "continuing threat to the public welfare." This finding must be based on actual actions or failures to act, and may include an arrest for certain crimes.
 - **Procedure:** If a temporary suspension or restriction is imposed without notice, the TMB must immediately provide notice of the action to the license holder and schedule a hearing on the action as soon as possible, with the hearing taking place at least ten days after the notice is given.
 - **Continued Investigation:** A temporary suspension or restriction is ancillary to the underlying disciplinary proceeding, meaning the TMB's full investigation and enforcement process continues unabated against the licensee.
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Chapter 4: Threats to Your License: Common Allegations and Misconduct

Physicians face a wide array of potential allegations that can put their licenses at risk, ranging from patient care deficiencies to administrative and personal conduct violations.

4.1 Professional Misconduct and Standard of Care Violations

Violations related to patient care and professional judgment often form the basis of complaints. Examples of allegations that frequently put a medical license at risk include:

- Allegations of professional misconduct or gross medical negligence.
- Failure to treat a patient according to the generally accepted standard of care.
- Failure to use proper diligence in professional practice or to safeguard against potential complications.
- Practicing medicine under the influence of drugs or alcohol.
- Unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public.

Furthermore, the TMB regulates conduct aimed at maintaining the dignity of the medical profession. Actions categorized as "unprofessional and dishonorable conduct" that may lead to discipline include:

- Engaging in sexually inappropriate behavior or comments toward a patient.
- Behaving in an abusive or assaultive manner toward a patient or their family that interferes with care.
- Discrimination based on sex, race, or religion.
- False, misleading, or deceptive advertising.

4.2 Criminal Charges and Reporting Obligations

An arrest, charge, or conviction for a crime, especially a felony, can lead to disciplinary action against your professional license. The TMB may take action if they determine you are a threat to the public or not of good character.

Arrests and Convictions

The TMB has the authority to suspend or revoke a license regardless of whether there has been a conviction, deferred adjudication, community supervision, or deferred disposition for certain offenses.

Serious offenses that constitute unprofessional and dishonorable conduct include, but are not limited to, any felony, any offense involving assault or battery, substance abuse, bribery, burglary, child molestation, or any misdemeanor involving moral turpitude.

Reporting Requirements

When applying for or renewing your medical license (which occurs every two years), you are required to disclose all convictions, arrests, or pending criminal cases, whether misdemeanor or felony.

Physicians also have specific **self-reporting** obligations:

- **Felonies:** If you are arrested for any felony or a specific serious offense listed in the TMB rules, self-reporting is likely in your best interest and may be considered a mitigating factor in subsequent disciplinary proceedings.
- **Misdemeanors:** Generally, misdemeanor arrests do not require immediate self-reporting unless they involve moral turpitude (dishonesty, fraud, violence) or directly relate to the practice of medicine (e.g., arising out of practice location, involving a patient, or involving drug prescribing/billing). Determining if a misdemeanor meets these criteria can be complex, making legal consultation advisable.

- **Failure to Report:** Failure to report incidents when required by the Texas Medical Practice Act or TMB rules can be considered a violation in itself and an aggravating factor that justifies harsher penalties.

4.3 Impairment and Substance Abuse Issues

Substance abuse, mental health issues, or physical conditions that render a person unable to practice medicine with reasonable skill and safety can jeopardize a license. Illicit drug use is cited as a top reason doctors lose their licenses.

The **Texas Physician Health Program (TXPHP)** is an independent, confidential program that serves TMB applicants and licensees affected by substance use disorders, physical illness, and psychiatric conditions. Participation in the program, when managed correctly, may allow a physician to avoid having their license revoked.

4.4 Violations of Patient Confidentiality (HIPAA and TMRPA)

Physicians must strictly adhere to laws governing patient privacy, including the federal **Health Insurance Portability and Accountability Act (HIPAA)** and the state **Texas Medical Records Privacy Act (TMRPA)**. Violating these laws can lead to severe penalties, including license suspension or revocation.

Common Confidentiality Violations

Violations frequently occur during the ordinary course of practice:

- Failing to secure patient information or records.
- Discussing or communicating patient information to unauthorized individuals, including posting it on social media.
- Using personal email accounts or computers to access protected health information (PHI).
- Allowing employees to access unauthorized patient information or share logins.

Sanctions

Sanctions for breach of confidentiality (which is deemed unprofessional and dishonorable conduct likely to injure the public) range from a remedial plan requiring risk management CME to public reprimands, fines, and license revocation for serious or recurring violations.

HIPAA violations can result in substantial civil fines assessed by the U.S. Department of Health and Human Services, Office of Civil Rights (OCR). For willful neglect that is not corrected, fines

can range from a minimum of \$50,000 per violation to an annual maximum of \$1.5 million (Tier 4).

4.5 Medical Records Documentation and Maintenance

The TMB requires physicians to maintain adequate, complete, contemporaneous, and legible medical records for each patient. Specific rules govern what must be contained in a patient's medical record (22 Tex. Admin. Code §165.1(a)), including:

- Documentation of each encounter (reason, history, diagnosis, and plan for care).
- Past and present diagnoses.
- The rationale for and results of diagnostic services.
- The patient's progress, including response to treatment and noncompliance.
- All non-biographical populated fields in electronic records must contain accurate information.
- Amendments or corrections must be specifically documented with the date and time, labeled as such if not contemporaneous with the act or observation.

Maintenance and Retention: Physicians must maintain a patient's medical records for at least seven years from the date of the last treatment. If the patient was under 18, records must be kept until the patient reaches age 21 or seven years from the last treatment date, whichever is longer.

Releasing Records: Upon a patient's written request and payment of reasonable fees, records must generally be provided within 15 business days. Physicians may not withhold records due to past-due medical bills. Records may be denied only if the doctor determines release would harm the patient's physical, mental, or emotional health, in which case a written denial with the reason must be provided within 15 days.

4.6 Medical Malpractice Claims and Required Reporting

While medical malpractice allegations may lead to civil or insurance claims, they also directly interact with TMB disciplinary actions.

A physician has a definitive duty to report a medical malpractice claim to the TMB if the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal (22 Tex. Admin. Code §173.3(7)). Offers to settle the claim do not need to be reported under this rule.

Additionally, "repeated or recurring meritorious health care liability claims" are explicitly deemed unprofessional and dishonorable conduct, violating the Texas Medical Practice Act. A claim is "recurring" if there are three or more claims in any five-year period.

4.7 The “Corporate Practice of Medicine” Doctrine

The "corporate practice of medicine" doctrine concerns corporations' ability to engage in the practice of medicine, either directly or by employing physicians. Texas generally prohibits the corporate practice of medicine, with specific exceptions.

This prohibition stems from a public policy concern that, when a corporation hires a physician as an employee, the physician's independent medical judgment might be compromised by the employer's values, such as the profit motive, thereby negatively impacting the patient-physician relationship.

An important exception allows specific hospital districts and particular hospitals (starting in 2011) to hire physicians directly. However, these entities must adopt and enforce policies ensuring that employed physicians exercise their independent medical judgment in providing patient care.

Chapter 5: Navigating Peer Review and Hospital Investigations

For practicing physicians, adverse actions stemming from hospital peer review activities represent a significant and rapid threat to professional licensure and privileges.

5.1 What Peer Review Means for Texas Physicians

Hospitals utilize peer review to evaluate a physician's competence, conduct, and quality of care. These proceedings, however, can quickly become adversarial and lead to long-term professional damage.

In Texas, an adverse finding in a peer review process often serves as a trigger, requiring mandatory reporting to the TMB. This action can initiate a formal TMB investigation and disciplinary process that may affect your ability to practice statewide and jeopardize your career.

5.2 Common Triggers for Peer Review Action

Peer review committees investigate issues ranging from genuine performance concerns to those driven by internal politics or retaliation. Common triggers include:

- Surgical complications or concerning outcomes.
- Disputes with staff or complaints regarding patient communication.
- Allegations of inappropriate or disruptive behavior.

- Improper charting or incomplete medical records.
- Allegations of substance use or impairment.
- Patient privacy violations or HIPAA concerns.

5.3 The Consequence of Adverse Peer Review: NPDB Reporting

One of the most damaging potential outcomes of peer review is reporting to the National Practitioner Data Bank (NPDB). The NPDB is a national repository containing information on disciplinary actions against medical professionals.

Hospitals must report certain adverse actions to the NPDB, including suspensions longer than 30 days. Even a short-term privilege restriction can sometimes result in an NPDB report. Once reported, this record becomes visible to licensing boards across the country, insurance companies, and future employers, potentially following you for years and hindering credentialing.

5.4 Your Rights in a Peer Review Hearing

Peer review procedures must comply with the facility's bylaws, which define timelines and notice requirements. If a hospital fails to follow its established process, you may have legal grounds to challenge the review.

As a physician facing peer review, you generally have the right to:

- Review the allegations in full.
- Respond in writing and appear in person.
- **Bring an attorney to the hearing.**
- Receive proper notice of decisions and next steps.
- Appeal or request further review if allowed by the bylaws.

It is strongly advised not to delay involving legal counsel. An attorney can intervene early, help prepare written responses, guide you on what to say (and what to avoid saying) in a hearing, and challenge unfair procedures before the situation escalates or an adverse action is reported to the NPDB.

Chapter 6: Defending Your License: Strategies and Legal Advocacy

Facing an investigation or disciplinary proceedings by the TMB is stressful and complex. Having a clear strategy and legal guidance is essential to protecting your license, your livelihood, and your future.

6.1 Immediate Steps to Take When Your License Is Under Review

When you are notified that your medical license is under review or investigation, stay calm and take informed, proactive steps immediately:

1. **Understand the Process:** Familiarize yourself with the TMB review process, which involves examining patient interactions, medical records, and interviews.
2. **Gather Documents:** Collect all relevant documents supporting your case, including patient medical records, evidence of ongoing education/training, and testimonials. Organize these documents clearly.
3. **Hire Legal Counsel:** Engage a medical license defense lawyer at the earliest possible stage. Early intervention allows your attorney to gather crucial evidence, ensure proper procedures are followed, and negotiate effectively.
4. **Cooperate Professionally:** Respond promptly to the TMB's requests for information, provide clear and concise details, and maintain a professional demeanor throughout interactions.

6.2 The Value of Specialized Legal Counsel

A dedicated medical license defense attorney provides invaluable support throughout the entire TMB process. Their role is to be your dedicated advocate, understanding the regulatory complexities and fighting to protect your ability to practice.

- **Strategic Defense:** Your lawyer draws on extensive knowledge of TMB rules and precedents to develop a robust defense strategy, gathering evidence and preparing arguments to challenge the allegations.
- **Negotiation:** An attorney can negotiate with TMB licensing authorities to reach a favorable resolution, such as agreeing to specific conditions or a lighter penalty, to avoid severe consequences, such as revocation.
- **Formal Representation:** Whether appearing at an Informal Settlement Conference (ISC) or representing you at a formal SOAH hearing, your attorney presents your defense, cross-examines witnesses, and argues on your behalf.
- **Mitigation:** Legal counsel assists in mitigating collateral consequences, such as reputational harm, loss of hospital privileges, and credentialing issues.

6.3 Addressing TMB Allegations and Avoiding Pitfalls

Successfully navigating the investigation often depends on anticipating and responding strategically to the TMB's approach.

- **Responding to Allegations:** If a complaint seems minor, the TMB may still seek serious penalties. TMB staff attorneys often seek to "ratchet up" disciplinary penalties by identifying multiple violations, often relying on broad categories such as "unprofessional or dishonorable conduct". Your attorney can challenge these blanket allegations to narrow the charges and secure a lighter penalty.
 - **Patient Harm is Not Required:** The TMB can seek discipline regardless of whether actual patient harm resulted, as their mission includes maintaining the dignity and standards of the profession. Patient harm is typically considered an "aggravating factor" that justifies harsher penalties.
 - **Ignoring the Complaint:** If you plan to practice in another state, ignoring the Texas complaint is not advisable. A failure to answer can lead to a "default judgment" resulting in a public order with uncontested, damaging findings. This order will follow you, as medical boards in other states often give weight to disciplinary actions taken by the TMB.
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Chapter 7: Understanding Disciplinary Outcomes and Pathways to Reinstatement

The outcome of a license defense case can determine the trajectory of your entire career. Understanding the range of potential sanctions and recovery pathways is essential.

7.1 The Range of Potential Sanctions

Disciplinary actions vary significantly based on the severity and nature of the allegations. Potential penalties you may face if the TMB finds allegations valid include:

- **License Retention or Reinstatement:** The most favorable outcome, allowing you to practice without restrictions, provided you meet any minor TMB requirements.
- **Public Reprimand:** A public announcement of the violation.
- **Administrative Fines:** Penalties may include administrative fines of up to **\$5,000 per violation**, and each day a violation continues may be considered a separate violation.
- **Probation or Conditional License:** Requires close monitoring, adherence to specific terms, completion of additional training, or practice under supervision.
- **Practice Restrictions:** Limitations placed on your practice, such as restrictions on prescribing narcotics, treating certain patient types, or excluding specific medical activities.
- **License Suspension:** A temporary prohibition from practicing medicine.

- **License Revocation:** The permanent end of your ability to practice medicine in Texas, typically reserved for egregious violations, such as gross negligence, patient harm, or felony convictions related to practice.
- **Criminal Penalties:** Depending on the violation, you may face simultaneous criminal charges resulting in fines, probation, or incarceration.

7.2 Remedial Plans: Corrective Action vs. Discipline

A **remedial plan** is one of the lesser sanctions offered by the TMB to resolve a disciplinary complaint, typically before or after an ISC.

- **Corrective Nature:** The TMB classifies a remedial plan as a corrective action rather than a disciplinary sanction.
- **Confidentiality:** The TMB does **not** report the imposition of a remedial plan to the National Practitioner Data Bank (NPDB) or include it in their disciplinary newsletter.
- **Public Record:** Remedial plans remain publicly available on the medical professional's TMB profile.
- **Limitations:** Remedial plans are only appropriate for minor administrative violations (e.g., minor confidentiality breaches, record-keeping errors, or attendance issues). A remedial plan cannot be used if the complaint involves a patient's death, a felony, inappropriate sexual conduct, or if the appropriate remedy requires restricting how the physician practices medicine.

If you accept a remedial plan, you must comply with its terms, and the complaint will be dismissed. Failure to comply, however, constitutes an independent violation of the Act and may result in further disciplinary action.

7.3 Aggravating and Mitigating Factors in Sanction Determination

When deciding on sanctions, the TMB must consider a predefined list of aggravating and mitigating factors to promote consistency.

Aggravating Factors (Leading to Harsher Sanctions)

Harm to one or more patients, or severity of harm.

Multiple violations or violations involving more than one patient.

Mitigating Factors (Leading to Lighter Sanctions)

Self-reported and voluntary admission of violations.

Implementation of remedial measures to correct harm.

Attempted concealment of the violation.	Acknowledgment of wrongdoing and willingness to cooperate (e.g., accepting an Agreed Order).
Intentional, premeditated, knowing, or grossly negligent acts.	Rehabilitative potential.
Prior similar violations or previous disciplinary action by the Board.	Prior community service and present value to the community.
Violation of a current board order.	Other relevant circumstances reduce the seriousness of the misconduct.

Self-reporting a potential violation, even if not strictly required, can sometimes lead the TMB to impose a lighter penalty, as it may be considered a mitigating factor. Conversely, failing to report when mandatory is an aggravating factor.

7.4 The Texas Physician Health Program (TXPHP)

The Texas Physician Health Program (TXPHP) is an independent and confidential resource that supports TMB licensees and applicants dealing with substance use disorders, physical illness, or psychiatric conditions.

- **Purpose:** The TXPHP provides assistance in diagnosis and treatment through an individualized recovery program. Its mission is to protect the public while promoting medical excellence, helping practitioners recover and return to practice safely.
- **Confidentiality:** A participant's TXPHP file is confidential and not available to the TMB, provided the participant remains in compliance with their agreement. The TXPHP accepts self-referrals and referrals from various sources, and these referrals are kept confidential.
- **TMB Interaction:** Participation in the TXPHP alone is generally not considered to be under a TMB Board Order. However, TXPHP participation does not provide immunity from issues within TMB's jurisdiction. If asked about impairment conditions on a TMB form, a participant should answer "Yes" and state they are participating in the TXPHP, which the program can confirm to the TMB, but only with written permission can they release additional information.

7.5 Reinstatement of a Suspended or Revoked License

Losing your license means you immediately lose the legal right to practice medicine. However, license revocation or suspension is not always permanent, and the TMB allows physicians to apply for reinstatement if they are eligible.

- **Suspension:** For license suspension, a physician may submit a written request to the TMB's Compliance Division one full year after the suspension's effective date,

demonstrating evidence that every stipulation required by the probation of the suspension has been met.

- **Revocation:** If a license has been revoked, the physician must submit a full application for reissuance, pay the required fee, and demonstrate full compliance with the current licensure eligibility requirements (not those from their initial licensure period). Reinstatement following revocation due to criminal behavior may be exceedingly difficult. Physicians whose license was revoked or suspended for certain felony drug-abuse convictions under the Health and Safety Code may not seek reinstatement.
- **Reactivation:** If a physician seeks to reactivate their license after retirement status, they must submit a written request and obtain Board approval. If the retirement status lasted for more than 2 years, the request must be reviewed by the Licensure Committee.

In both suspension and revocation cases, the re-applicant must usually attend a proceeding before the Board committee, where a determination is made on the reissuance of the license.

Chapter 8: About Bertolino LLP

Bertolino LLP is a professional license defense firm dedicated to protecting the careers and reputations of licensed professionals, including physicians, across the entire State of Texas. Our experienced medical license defense attorneys are prepared to fight aggressively on behalf of your license and reputation.

For over 20 years, our firm has successfully supported medical professionals through every stage of the licensing and disciplinary process. We understand the high stakes involved when facing the Texas Medical Board (TMB). We provide tailored legal representation to navigate complex issues, including license application denials, peer review investigations, TMB complaints, and formal administrative hearings at the State Office of Administrative Hearings (SOAH).

Our commitment is to guide physicians through the complaint process, develop a strong defense strategy, gather necessary evidence, and work diligently to minimize the negative effects of allegations on your career. We are ready to assist with any legal hearing or proceeding, including Temporary Suspension Hearings, Informal Settlement Conferences (ISC), and Show Compliance Proceedings.

Do not delay taking action if your medical license is under attack. We offer a no-cost, risk-free consultation to discuss your case and begin working toward securing your professional future.

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