

Texas Medical Board Disciplinary Process

By: Robert S. Bennett

COMPLAINTS BEFORE THE TEXAS MEDICAL BOARD

If you are the subject to a disciplinary proceeding before the Texas Medical Board (“TMB” or “Board”), this article contains information on what to expect and what avenues may be taken against you. For more information on the TMB, visit their [website](#).

A proceeding against a physician is initiated by the Complainant filing a complaint with the TMB. The action the Complainant is filing about has to be no more than seven (7) years old, unless the care was given to a minor – in which case the minor cannot now be 21 years old nor can it be more than seven (7) years after the date of the care – whichever is later. [T. Occ. Code § 154.051\(d\)](#).

The TMB determines if they have jurisdiction or if they need to refer the complaint to another Board.

PLEMINIARY INVESTIGATION

A Preliminary Investigation is conducted within 45 days the complaint is received. [T. Occ. Code § 154.057\(b\)](#). The TMB may contact both complainant and licensee. Complaints involving administrative duties – such as record keeping – are reviewed by a TMB attorney-investigator. Complaints involving medical care are reviewed by a TMB physician-investigator. The investigator determines if an investigation should be opened or not.

If an investigation is opened, the Respondent is notified and asked to provide additional information unless, for rare circumstances, notifying the physician would jeopardize the investigation. [T. Occ. Code § 154.053\(a\)](#). If standard-of-care or treatment violations are alleged, all relevant information, including medical records, is reviewed by at least two members of the

TMB Expert Panel. TMB Expert Panel members are board-certified in the same or similar medical specialty as the Respondent. [T. Occ. Code § 154.058\(b\)](#). The panel may dismiss the case or if the panel finds the complaint legitimate, the case is sent to the Litigation Section. For alleged administrative violations, information is gathered from any relevant sources and reviewed by the attorney-investigator.

Once the investigation is complete, there are different avenues the case could go to. One option is the Board's disciplinary process review committee ("DPRC"). The committee reviews the investigator's report and determines if the complaint should be dismissed.

Another option is to offer the licensee a remedial plan, which is a corrective action taken by the board that is considered non-disciplinary. [T. Occ. Code §164.0015](#). The remedial plan may not revoke, suspend, limit or restrict the respondent. The respondent may not enter into a remedial plan if they entered into the remedial plan on a previous, different complaint.

A third option is the Quality Assurance Panel, consisting of up to five board representatives. The panel may:

1. request for addition investigation;
2. refer the case to the Litigation Department;
3. refer the case to the DPRC for dismissal; or
4. offer a remedial plan;

INFORMAL CONFERENCE

If the case is sent to the Litigation Department, it is assigned to a staff attorney and scheduled for an informal conference/show compliance proceeding. More than 90 percent of all disciplinary actions are resolved through this process. An informal hearing must be held within 180 days after the start of the preliminary investigation. [T. Occ. R. §164.003\(b\)\(1\)](#) unless the Board shows good cause on why it cannot be held within that time. The respondent must be given at least 45 days' notice of the hearing. [T. Occ. Code §164.003\(2\)](#). The respondent must

provide a copy of his/her rebuttal at least 15 business days before the date of the informal hearing to be considered at the hearing. [T. Occ. Code § 164.003\(f\)](#). The informal conference is before a panel composed of two representatives of the appropriate board and always includes one physician and one public member, unless the respondent waives the requirement. The Complainant may or may not attend. The Respondent may ask for a recording of the hearing, at the Respondent's own cost. [T. Occ. Code § 164.003\(i\)](#). At the conference, the Respondent has the opportunity to show the panel how and why they are in compliance and why the complaint should be dismissed.

If the panel finds no violation, they refer the case to the DPRC for consideration of dismissal. If the panel finds a violation, they may offer an Agreed Order which would contain sanctions and terms imposed on the Respondent. If the violation is minor, the panel may offer a remedial plan.

FORMAL HEARING

If an agreement cannot be reached through the Agreed Order or remedial plan, a formal complaint is made. This means the case is sent to the State Office of Administrative Hearings ("SOAH").

A formal hearing is held before an Administrative Law Judge ("ALJ"). The ALJ hears the arguments and witnesses and presents a Proposal for Decision to the Board. The Board will then issue an order or dismiss the case.

RIGHT TO AN APPEAL

If the Respondent does not agree with the Board's Order, the Respondent may appeal to a Travis County District Court within 30 days of the Board's final decision. [T. Occ. Code §](#)

[164.009](#). In rare circumstances, the Board may appeal as well. The respondent may not practice medicine while the matter is being appealed. [T. Occ. Code § 164.011](#).

LICENSE SUSPENSION

If the TMB feels a physician needs to be removed from practice for public safety, they may hold a temporary suspension hearing without notice to the physician, followed afterwards by another hearing with notice. [T. Occ. Code § 164.059](#). To permanently remove a licensee from practice, the TMB must either file a case with SOAH or the Respondent voluntarily surrenders his/her license. A Respondent who is sanctioned must be in compliance with the final Order of the Board, or the Board may seek further disciplinary action, including suspension or revocation of the license. [T. Occ. Code § 164.010](#).

Sanctions, under [T. Occ. Code § 164.001](#) may include license suspension or revocation, probation, counseling, continuing education, public service or fines. A suspension is required for any physician who was convicted of offenses listed under [T. Occ. Code § 164.057](#), which include felonies and registration as a sex offender.

Reasons for license denial or disciplinary actions are laid out in [T. Occ. Code § 164.051](#), [164.052](#) and [164.053](#).

ATTORNEYS DEDICATED TO PROFESSIONAL LICENSE ISSUES CAN HELP

Bob Bennett & Associates provides compassionate and principled representation to medical professionals and medical students facing disciplinary and licensure issues. We offer free initial consultations, flexible hours and a convenient office location in the historic district of downtown Houston with readily-available access to parking and public transportation. Contact our office at (855) 973-3906 or online to schedule an appointment to discuss your licensure issue with a compassionate and trustworthy attorney. Mr. Bennett had represented medical professionals

throughout Texas. You may also want to see what other medical and legal professionals have said about Mr. Bennett at <http://www.avvo.com/attorneys/77002-tx-robert-bennett-110674.html>