

# Doctors Face Texas Medical Board's watchful eye

July 7, 2006

Houston Business Journal

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More doctors are being called before the Texas Medical Board, and there has been a dramatic jump in disciplinary decisions.

The number of investigations increased from 1,775 in 2003 to 2,131 in 2005. The number of disciplinary decisions rose from 187 in 2002 to 304 in 2005, according to online statistics provided by the board. The increase in investigations and medical board disciplinary decisions have come despite the fact the board basically receives the same number of complaints per year.

“This is a serious issue. I represent doctors with pristine reputations who never envisioned being before the board and would not be there under different circumstances,” says Sofia Adroque, an attorney with Looper, Reed & McGraw PC, who handles peer review and Texas Medical Board proceedings in the health care arena. “Unlike a civil complaint, there is no statute of limitations,” she adds. “A person can wait four years to make a complaint to the board.

“A lot of doctors are probably asking, ‘Has the pendulum swung too far?’”

## Tort reform

The new scenario had its beginnings in 2003.

As the 78th session of the Texas Legislature approached, the price of medical malpractice liability insurance was going through the roof, and there was mass concern about lawsuit abuse. The lack of discipline being handed out by the Texas Medical Board toward bad doctors was the subject of scathing attacks in the press. The Legislature took action in 2003 concerning both malpractice lawsuits and the board, passing tort reform resulting in, among other things, a cap on health care liability damages. The changes in the law help curtail the cost of practicing medicine in Texas, bringing smiles to the faces of many doctors.

However, the Legislature also passed Senate Bill 104, which increased financial resources for enforcement of standard of care violations, funded through an \$80 increase on physician's license renewal fees.

“We got the message loud and clear in 2003 from the Legislature and the Dallas Morning News, which had written a series of articles about the failure of this board,” says the Texas Medical Board's Jane McFarland, director of budget and policy. “The expectations of the Legislature, to us, were very clear that we need to do a better job of regulating the practice of medicine. We took that charge very seriously.”

With an increase in funding and a mandate to better enforce any possible violations of the Texas Occupations Code (formerly known as the Medical Practice Act), the board has been able to launch more investigations and hand down more decisions against physicians who receive complaints.

“We now have the statutory strength and the resources to be able to deal with more complicated cases and successfully litigate those cases,” says McFarland. “We now have a panel of expert physician consultants and usually two or three of those will review a case. When you have that kind of expert review of a case, we get good facts to work with and when we do move forward with a case, we can successfully litigate the cases.”

## Reputations at stake

Any complaint sent to the board that falls under its jurisdiction is investigated. This is a good vehicle that empowers the patient, Adrogue says. However, many doctors have come away flabbergasted after facing the board, believing being brought before the board was for the truly bad doctors.

Physicians who never before received any disciplinary action from the board are now getting disciplined. “These complaints can cause vocational damage,” Adrogue says. “There may be less fear of a malpractice case, but now many professional reputations are readily at stake. Today, a physician is more likely to be scrutinized by the board.”

It may, however, also be more likely for a doctor to have a case dismissed before an investigation is ever opened. The board has created a 30-day initial review, during which time the physician who has received a complaint as well as the complainant is given the chance to provide any information about the complaint.

“During that initial 30-day review, there are some complaints that we don’t have to open now because we got some information up front,” McFarland said. “So in that sense, the physician has a little bit more due process.” Dr. Donald W. Patrick, executive director of the Texas Medical Board, says there is a simple reason for the increased scrutiny of doctors. With more investigators employed by the board, they can look into more complaints. Thus, the increase in investigations has led to an increase of cases found to violate the established standard of care. However, Patrick also believes the number of orders issued by the board is relatively small.

“There are about 60,000 doctors who have a Texas license. We get just over 12,000 complaints or so per year, and about 300 get an order per year from the board. So that is a small percentage that is actually getting orders,” he says.

“Some are upset about the number of orders received in this state,” Patrick says. “Others are very nice about it and say, ‘Look, it is time we show the public we take our profession seriously.’ So I am very popular with some groups and unpopular in other areas.”

A big concern doctors have about being investigated is how it will affect their ability to renew privileges at hospitals and other health entities. While the public only learns of an investigation against a doctor when the physician receives an order, it is mandatory for the board to notify a hospital if a doctor is undergoing an open investigation. So even if the case is eventually dismissed, a physician will have a black mark against him during the inquiry.

“This is part of the process and why this is a serious issue that can be so damaging to a doctor,” Adrogue says.

“Unless a complaint is dismissed from the outset, it (the complaint) can be a very public process.”

If an investigation is opened and the case is eventually dismissed, there is no information ever provided to the public or anyone that there had been an investigation, both Patrick and McFarland stress. It is only while an investigation is open that the health care entity has a right to know that there is possibly something pending. Even then, the fact a health entity is notified shouldn’t have much of an effect on a doctor unless there is a history of investigations against that doctor, Patrick says.

“My name was sitting on a hospital’s role as having an investigation open by the board and it didn’t keep me from getting privileges,” Patrick says. “But what if I had 20 of them? Even if a doctor makes a mistake and gets an order from us, whether or not privileges are extended depends on the facts of the case.”

“There are plenty of doctors who get orders from us who are fine doctors,” he says. “They just made a mistake, and that is going to happen with doctors. In the course of practice, you make a mistake.”

### **Protecting the public**

Perhaps the biggest mistake doctors make, says Patrick, is the belief that the role of the Texas Medical Board is to protect physicians. In fact, the role of the board is to make sure the public is protected.

“It is our statute. That is what we are here to do, protect the people of Texas ,” he says. “Who would look after the people if we don’t? It is in the best interest of everyone to make sure there are steps in place for people to place a grievance. Without that, there would be chaos.

“We want accountability. A lot of physicians grew up without much accountability, but now I think we have their attention.”