

Garza/Gonzalez & Associates

CERTIFIED PUBLIC ACCOUNTANTS

TEXAS MEDICAL BOARD Austin, Texas

ANNUAL INTERNAL AUDIT REPORT

Fiscal Year 2019

TEXAS MEDICAL BOARD
Austin, Texas

Annual Internal Audit Report
Fiscal Year 2019

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Board Members and
Executive Committee
Texas Medical Board
Austin, Texas

We performed tests of management's assertion about the effectiveness and efficiency of the internal control structure over the Investigations and Related Enforcement Support Functions – Complaint Initial Reviews Area (the Area) of the Texas Medical Board (TMB); and, its compliance with the Texas Occupations Code, Texas Administrative Code, and established policies and procedures, as applicable to the Area, for the seven months ended March 31, 2019.

The results of our tests disclosed that TMB's internal control structure over the Area was adequate and no instances of noncompliance with the applicable laws and regulations or its established policies and procedures were noted.

We also performed a follow-up of certain findings and recommendations that were presented in the prior year annual internal audit report. This report reflects the implementation status of those matters; and, includes all information required for compliance with the State of Texas Internal Audit Annual Report requirements.

We have discussed the implementation status from the follow-up performed with various TMB personnel and will be pleased to discuss them in further detail; or, to perform an additional study of these matters.



May 1, 2019

TEXAS MEDICAL BOARD
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INTRODUCTION

The Texas Medical Board (TMB), formerly the Texas State Board of Medical Examiners, is an agency statutorily empowered to regulate the practice of medicine in Texas in order to protect the public's safety and welfare. TMB carries out the duty primarily through the licensure and discipline of physicians and other allied health care providers as mandated by law. The Texas Occupations Code (TOC) Title 3, Subtitle B, also known as the Medical Practice Act, includes enabling statutes for TMB as the primary means of licensing, regulating, and disciplining physicians. TMB also provides oversight and support for the following four other boards and two advisory committees:

- Texas Physician Assistant Board
- Texas State Board of Acupuncture Examiners
- Texas Board of Medical Radiologic Technology
- Texas Board of Respiratory Care
- Medical Physicist Licensure Advisory Committee
- Perfusionist Licensure Advisory Committee

TMB's governing board (the board) consists of 19 members that serve staggered 6 year terms and who are appointed by the Texas Governor (the Governor) with the advice and consent of the Texas Senate. The board consists of 9 physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least 3 years; 3 physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for 3 years; and, 7 members who represent the public. The Governor designates a member of the board to serve as the President of the board. The Medical Board is statutorily required to meet at least 4 times a year, although it currently meets 5 times a year. Many of the board's duties are carried out in committee; recommendations made in committee are then accepted, modified, or rejected by the full board.

2019 Internal Audit Plan

Following is the internal audit and other functions performed, as identified in TMB's 2019 Internal Audit Plan, dated January 25, 2019 and approved by the Executive Committee on February 28, 2019:

- Investigations and Related Enforcement Support Functions – Complaint Initial Reviews
- Follow-up of Prior Year Internal Audits
- Other Tasks

This report contains the results of our audit of the Investigations and Related Enforcement Support Functions – Complaint Initial Reviews Area; reflects the results of the follow-up procedures performed in the current year of certain findings and recommendations that were presented in the prior year annual internal audit report; and, meets the State of Texas Internal Audit Annual Report requirements.

INTERNAL AUDIT OBJECTIVES

In accordance with the **International Standards for the Professional Practice of Internal Auditing**, the audit scope encompassed the examination and evaluation of the adequacy and effectiveness of TMB's system of internal control and the quality of performance in carrying out assigned responsibilities. The audit scope included the following objectives:

- **Reliability and Integrity of Financial and Operational Information** – Review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.
- **Compliance with Policies, Procedures, Laws, Regulations and Contracts** – Review the systems established to ensure compliance with those policies, procedures, laws, regulations, and contracts which could have a significant impact on operations and reports, and determine whether the organization is in compliance.
- **Safeguarding of Assets** – Review the means of safeguarding assets and, as appropriate, verify the existence of such assets.
- **Effectiveness and Efficiency of Operations and Programs** – Appraise the effectiveness and efficiency with which resources are employed.
- **Achievement of the Organization's Strategic Objectives** – Review operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

I. Compliance with Texas Government Code 2102: Required Posting of Internal Audit Information

To comply with the provisions of Texas Government Code 2102.015 and the State Auditor's Office, within 30 days of approval by TMB's Board, TMB will post the following information on its website:

- An approved fiscal year 2020 audit plan, as provided by Texas Government Code, Section 2102.008.
- A fiscal year 2019 internal audit annual report, as required by Texas Government Code, Section 2102.009.

The internal audit annual report includes any weaknesses, deficiencies, wrongdoings, or other concerns raised by internal audits and other functions performed by the internal auditor as well as the summary of the action taken by TMB to address such concerns.

II. Consulting and Nonaudit Services Completed

The internal auditor did not perform any consulting services, as defined in the Institute of Internal Audit Auditors' *International Standards for the Professional Practice of Internal Auditing* or any non-audit services, as defined in the *Government Auditing Standards*, December 2011 Revision, Sections 3.33 – 3.58.

III. External Quality Assurance Review

The internal audit department's most recent *System Review Report*, dated November 16, 2018, indicates that its system of quality control has been suitably designed and conforms to applicable professional standards in all material respects.

IV. Internal Audit Plan for Fiscal Year 2019

The approved Internal Audit Plan (Plan) included one audit to be performed during the 2019 fiscal year. The Plan also included a follow-up of certain prior year internal audit recommendations, other tasks as may be assigned by the Executive Committee or Board members, and preparation of the Annual Internal Audit Report for fiscal year 2019.

Risk Assessment

Utilizing information obtained through the inquiries and background information reviewed, 21 audit areas were identified as the potential audit topics. A risk analysis utilizing our 8 risk factors was completed for each individual audit topic and then compiled to develop an overall risk assessment.

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Following are the results of the risk assessment performed for the 21 potential audit topics identified:

HIGH RISK	MODERATE RISK	LOW RISK
Licensing – Physicians	Human Resources & Payroll	Financial Reporting and Budgeting
Texas Physician Health Program	Litigation (includes related Enforcement Support)	Fixed Asset Management
Investigations (includes related Enforcement Support)	Licensing – Respiratory Care Practitioners	Travel
Licensing – Medical Radiologic Technologists	Executive Support	Records Management
Information Resources	Mail & Cash Receipts Processing	Governmental Affairs & Communications
	Purchasing/Procurement/Cash Disbursements	Compliance (includes related Enforcement Support)
	Licensing - Acupuncturists	Performance Measures
	Licensing – Other Types	
	Licensing – Physician Assistants	

In the prior 3 years, the following internal audits and other functions were performed:

Fiscal Year 2018:

- Texas Physician Health Program
- Follow-Up on Prior Year Internal Audits

Fiscal Year 2017:

- Litigation
- Follow-Up on Prior Year Internal Audits

Fiscal Year 2016:

- Compliance
- Follow-Up on Post-Payment Audit Dated October 13, 2015
- Follow-Up on Prior Year Internal Audits

The internal audit and other tasks performed for fiscal year 2019 were as follows:

Report No.	Audits/Report Titles	Report Date
1.	Investigations and Related Enforcement Support Functions – Complaint Initial Reviews <i>Objective:</i> To assess the effectiveness and efficiency of the internal controls, policies and procedures, and processes in place for the Complaint Initial Reviews Area (Area); and, to determine compliance with applicable state requirements.	5/1/2019
1.	Annual Internal Audit Report – Follow-Up of Certain Prior Year Internal Audits	5/1/2019
-	Other Tasks Assigned by the Executive Committee/Board	None

V. Executive Summary

Investigations and Related Enforcement Support Functions – Complaint Initial Reviews Area (the Area)

Background

Under the authority of the Texas Occupations Code (OC) Sec. 154.051, TMB is tasked with establishing rules to be used by the public and other sources when placing a complaint against a licensed physician/practitioner, and on directing such complaints to TMB. TMB has developed public notification statements that it and its licensees use, which include the name, mailing address, telephone number, and website address, for the purpose of directing complaints to TMB.

In accordance with the OC Sec. 154.057, TMB must complete a preliminary investigation of a complaint no later than the 45th day after the date of receiving the complaint. Upon completion of the preliminary investigation, TMB will determine whether to officially proceed on the complaint. TMB may receive complaints from a number of sources; such as, the general public, patients, friends and family members of patients, government agencies, and healthcare providers. TMB may also open complaints based on Continuing Medical Education audit findings, information reported during the licensee registration (renewal) process, and news/media sources, etc. Both, the Enforcement Support and the Investigations Departments, are responsible for complaint initial reviews. The 45-day preliminary investigation begins upon receipt of the complaint, where it is screened by the Enforcement Support Department to determine whether the complaint is jurisdictional. A complaint is jurisdictional if it is made against a TMB licensee, over matters for which TMB has authority. Jurisdictional complaints are then reviewed by the Investigations Department, to determine whether to proceed in filing a formal investigation.

Organizational Structure

The following Organizational Chart reflects the personnel involved in the functions performed by the Area.

Organizational Chart



Initial Screening

The Enforcement Support Department receives complaints submitted to TMB via mail; phone; e-mail; or, online form, available on TMB's website, and auto e-mailed to TMB's "Complaint" group inbox. The identity of the complainant is protected and complaints are considered confidential, and TMB does not accept anonymous complaints. Complaints received by mail are date-stamped when received; TMB staff denotes the date phone complaints are received; while, the e-mail dates for complaints received by e-mail and online form submission are used as the received date. Within 24 hours of each complaint being received, it is screened by the Complaint Analyst (CA), who completes a Complaint Screening Form to document the determination and explanation of whether the complaint is or is not jurisdictional.

The Support Staff enters complaint information into the SQL Tracer database and scans all documentation into the Laserfiche document manager. For non-jurisdictional (NJ) complaints, the Support Staff prepares an NJ packet, which is comprised of the initial complaint, the Complaint Screening Form, and any additional documents that may have been received. Upon completion of the packet, the Support Staff generates an NJ Closure letter, which is mailed to the complainant; and, if the proper oversight/jurisdictional agency is identified, a referral letter will be sent to them. A cover sheet is then prepared and retained in Laserfiche. The cover sheet summarizes the screening results on one page, as entered to the SQL Tracer database; to include, dates, subject, log number, etc.

Preliminary Review

Complaints determined to be jurisdictional are classified as *Pending Determination* (PDD) in the SQL Tracer database for the Reviewers of the Investigations Department to determine whether to proceed with filing a formal investigation. In the Complaint Screening Form, these complaints are identified as either *Standard of Care* or *Non-Standard of Care*. *Standard of Care* complaints are assigned to a Physician Complaint Reviewer; while, *Non-Standard of Care* complaints are assigned to an Attorney Complaint Reviewer. Reviewers review the "PDD Packet" scanned in Laserfiche, which consists of the original complaint, documentation submitted by the complainant, the Complaint Screening Form, and a Point System Packet (PSP) Report. The PSP Report includes detailed information about the licensee; such as, mailing address, practice address, and history of previous complaints.

If it is determined, by the assigned reviewer, that additional pertinent information is required from the complainant, the CA will contact the complainant to request the information; and, if from the licensee, the Enforcement Support Administrative Assistant will generate and mail a Subject Notice Letter to the licensee to request such information. To ensure TMB is compliant with the 45-day requirement, the licensee is provided 28 days to respond to the Subject Notice Letter. If upon completion of the review, the reviewer determines that no violation of the Medical Practice Act took place, the reviewer will close the complaint. The reviewer will classify the complaint as *Jurisdictional Not Filed* in the SQL Tracer database and the Support Staff will generate and mail proper closure letters to all parties. If the reviewer identifies a violation either by review of the PDD Packet or additional information obtained from the complainant and/or licensee, or a response to the Subject Notice Letter is not received, the reviewer classifies the complaint as *Jurisdictional* in the SQL Tracer database and a formal investigation is opened by the Investigations Department. To ensure timely completion of the preliminary investigation, as the 45-day deadline is approaching, the SQL Tracer sends an automated reminder email to the Investigations Manager and the reviewers.

During the period from September 1, 2018 to March 31, 2019 (audit period), TMB received 4,871 complaints, which were classified as follows at March 31, 2019:

Complaint Status	Number of Complaints
Non-jurisdictional	1,625
Jurisdictional – Not Filed	1,765
Jurisdictional – Formally Filed for Investigation	1,067
Pending Determination	414

Of the 414 complaints with a *Pending Determination* status, 64 have exceeded the 45-day requirement from 7 to 155 days, since they were referred to the Texas Physician Health Program (TXPHP), and are pending resolution from TXPHP. The 64 complaints referred to TXPHP and pending resolution are only those for the audit period; the number may be greater for complaints referred to TXPHP prior to the audit period and still pending resolution from TXPHP.

Audit Objective, Scope, and Methodology

Objective

The objective of our audit was to assess the effectiveness and efficiency of the internal controls, policies and procedures, and processes in place for the Investigations and Related Enforcement Support Functions – Complaint Initial Reviews Area (Area); and, to determine compliance with applicable state requirements.

Scope

The scope of the audit was to review TMB’s established policies and procedures; and, review and test the processes and controls in place over the Area, for the 7-month period from September 1, 2018 through March 31, 2019 (audit period).

Methodology

The audit methodology included a review of laws and regulations; TMB’s established policies and procedures; and other internal and external documentation; and, interviews and correspondence with selected TMB employees.

We obtained and/or reviewed the following information:

- a. The Texas Occupations Code and the Texas Administrative Code, as applicable to the Area.
- b. TMB’s policies and procedures.
 - i. Complaints Processing Procedures
 - ii. Processing New Complaints Procedures
 - iii. PHP Complaint Processing Procedures
 - iv. Newspaper Clippings & News Articles Procedures
 - v. Complaint Reviewer Assignments
 - vi. The Investigative Process

- c. TMB's organizational chart.
- d. Fiscal Year 2018 Annual Report of Non-Financial Data.
- e. A listing of all complaints received during the audit period.

We performed various procedures to achieve the objective of our audit; to include, the following:

1. Obtained and reviewed the Texas Occupations Code (TOC) Chapter 154, Subchapter B. Complaint Procedures, and Title 22 of the Texas Administrative Code (TAC) Chapter 178, Complaints.
2. Obtained and reviewed TMB's established policies and procedures, collected and tested various documentation, and conducted interviews with certain TMB employees.
3. Obtained and reviewed the FY18 Annual Non-Financial Data and agreed the number of complaints reported in the report to supporting documentation.
4. Selected a sample of 20 complaints received during the audit period to test for the following attributes, as considered applicable, to assess compliance with state requirements and to determine whether TMB's internal controls over the Area are operating effectively:
 - a. Complaint File was complete with inclusion of the following supporting documentation, as applicable:
 - i. Complaint Screening Form
 - ii. Subject Notice Letters
 - iii. PSP Report
 - iv. Non-Jurisdictional Coversheet
 - v. Closure Letters
 - b. Appropriate (Physician vs. Attorney) reviewer was assigned to the complaint.
 - c. The complainant was notified if the complaint was determined to be Non-Jurisdictional or Jurisdictional-Not-Filed.
 - d. The complaint initial review was completed within 45 days.
 - e. *Standard of Care* complaints received were within 7 years of the alleged incident, unless the care was provided to a minor, in which case there is no statute of limitation.

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VI. Observations/Findings and Recommendations

Report No.	Report Date	Name of Report	Observations/ Findings and Recommendations	Current Status (Fully Implemented, Substantially Implemented, Incomplete/Ongoing, or Not Implemented)	Fiscal Impact/Other Impact
1	5/1/2019	Investigations and Related Enforcement Support Functions – Complaint Initial Reviews	None. The results of our tests disclosed that TMB’s internal control structure over the Area was adequate and no instances of noncompliance with the applicable laws and regulations or its established policies and procedures were noted.		
1	May 25, 2018	2019 Follow-Up	<p><u>Follow-Up of Certain Prior Year Internal Audits</u></p> <p>Following is the status of the recommendations made during fiscal year 2017 that had not been fully implemented.</p> <p>Litigation</p> <p>1. Notice Regarding Certain Complaints/ Annual Reporting</p> <p>Establish and implement procedures to ensure compliance with all requirements of OC Sec. 164.0036 regarding notice to all parties to a complaint that includes an explanation of the reason why the informal meeting has not been scheduled before the 180th day after the official investigation of the complaint is commenced. In addition, the board include in its annual report to the legislature information about any complaint for which notice is required, including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided in the annual report must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.</p> <p>2019 Follow-Up</p> <p>TMB reported the required information in the fiscal year 2018 Annual Nonfinancial Report. However, TMB has not yet implemented a procedure for notifying all parties to the complaint if informal meetings have not taken place before the 180th day after the official investigation of the complaint is commenced.</p>	Incomplete/Ongoing	Compliance with Occupations Code Sec. 164.0036.

VII. External Audit Services Procured in Fiscal Year 2019

TMB procured the internal audit services documented in the approved Internal Audit Plan for fiscal year 2019. No other external audit services were performed.

VIII. Reporting Suspected Fraud and Abuse

TMB has provided information on their website home page on how to report suspected fraud, waste, and abuse to the State Auditor's Office (SAO) by posting a link to the SAO's fraud hotline. TMB has also developed a Fraud Reporting Policy that provides information on how to report suspected fraud, waste, and abuse to the SAO.

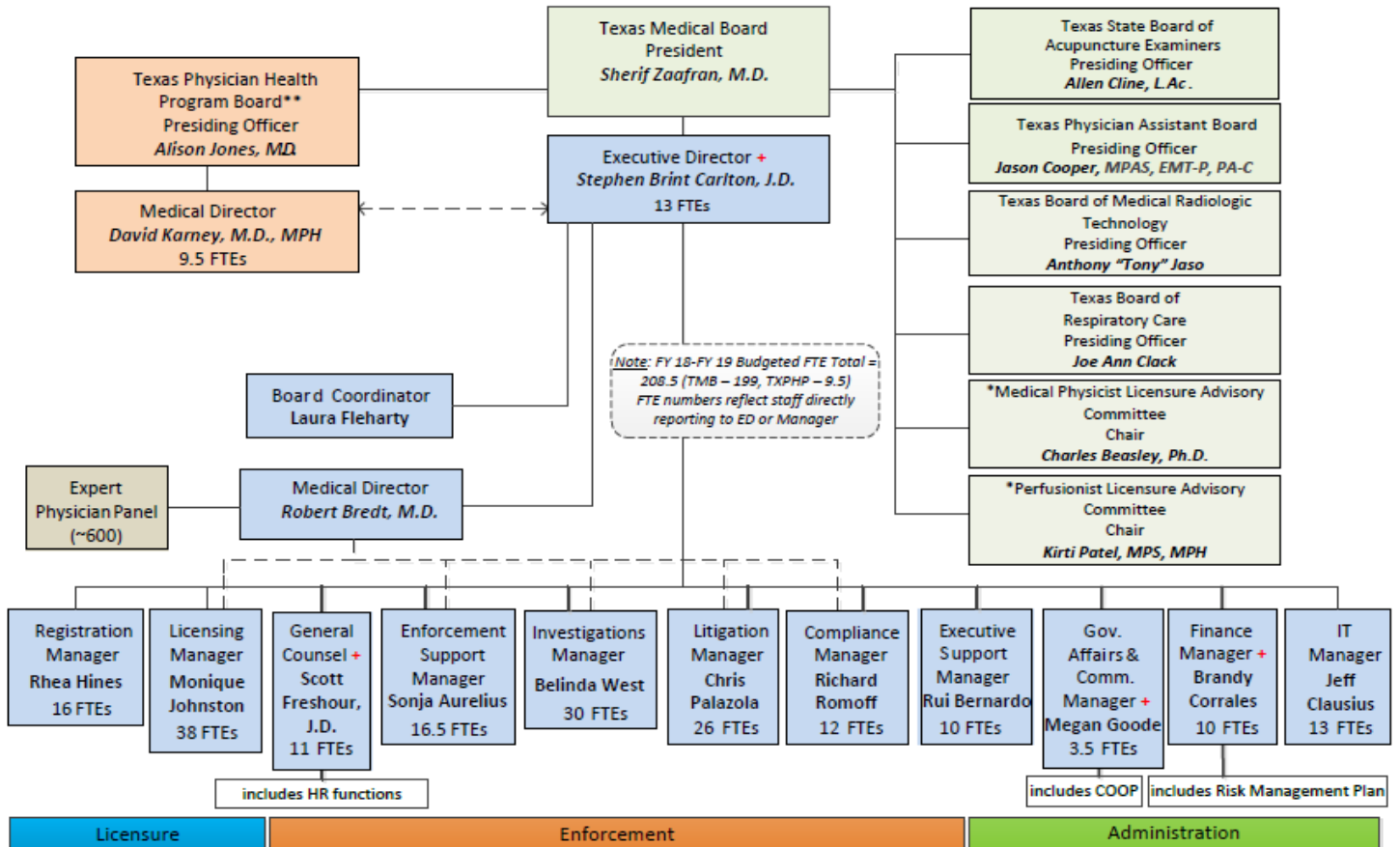
IX. Proposed Internal Audit Plan for Fiscal Year 2020

The risk assessment performed during the 2019 fiscal year was used to identify the following *proposed* area that is recommended for internal audit and other tasks to be performed for fiscal year 2020. The Internal Audit Plan for Fiscal Year 2020 will be developed and presented to the Executive Committee/Board, for acceptance and approval, at a meeting to be determined at a later date.

- Licensing – Medical Radiologic Technologists
- Follow-up of Prior Year Internal Audits
- Other Tasks Assigned by the Executive Committee/Board

X. Organizational Chart

Texas Medical Board Organizational Chart



+ Risk Management Function included in multiple departments as noted.
 * The TMB advisory committees are appointed by the TMB president.
 --- The TMB Medical Director has oversight on standard of care issues within designated departments.
 ** The Texas Physician Health Program (TXPHP), which is administratively attached to the TMB, has a governing board appointed by the TMB president.
 <---> The TXPHP Medical Director provides program performance reporting to TMB Executive Director.

As of October 2018