

Texas Medical Board

Internal Audit Report over Enforcement

Report Date: April 18, 2023

Issued: May 3, 2023

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This report presents the results of the audit procedures performed for Texas Medical Board (Medical Board, the Board, or TMB) during the period March 3, 2023 through April 18, 2023 relating to the Enforcement processes of the Medical Board.

The objectives of this internal audit were to evaluate the design and effectiveness of the Board's Enforcement processes as follows:

- A. Determine whether internal controls over Enforcement processes are designed to ensure that consistent processes are implemented and designed effectively to address the risks within the associated sub-processes and to ensure effective operations.
- B. Verify that controls over critical Enforcement processes are operating effectively, efficiently and according to Texas law and TMB policy.
- C. Ensure that access to SQL Tracer is appropriate and user access controls are operating effectively.

To accomplish these objectives, we conducted interviews and walkthroughs with key personnel involved in Enforcement processes to gain an understanding of the current processes in place, examined existing supporting documentation, and evaluated the internal controls over the processes. We evaluated the existing policies, procedures, and processes in their current state. Our coverage period was from April 1, 2021 through August 31, 2022.

The following report summarizes the findings identified, risks to the Medical Board, recommendations for improvement and management's responses.

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Austin, Texas
May 3, 2023

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Background

The Texas Medical Board (TMB) Enforcement Division is responsible for enforcing compliance with state licensing regulations. As part of the enforcement administration process, the Enforcement Division is responsible for processing complaints about licensed and unlicensed businesses and individuals from both the general public and from within TMB. Additionally, the Enforcement Division is responsible for a call center hotline where the public can call to get clarification regarding TMB policy.

Complaints are submitted through TMB's website or through mail by members of the general public, licensees, or are internally submitted by personnel. Upon receipt of a complaint, the Enforcement Administrator performs an initial review of the complaint to determine if the complaint is within TMB's jurisdiction. Complaints are then either assigned a physician reviewer for cases involving standard of care or an attorney reviewer for non-standard of care complaints. If the complaint is non-jurisdictional, the complaint is deposited into a folder in on a network drive to be assigned for closure. If the complaint is dismissed, TMB mails out dismissal forms to the complainant which detail the reason for dismissal and provides information on how to appeal. All complaints are recorded in TMB's tracking system, SQL Tracer, and data storage system, Laserfiche for processing and retention.

The Texas Occupations Code (TOC) section 154.07 requires preliminary investigations to be complete within 45 days. In order to meet this deadline, within 48 hours of receiving complaints, the Board notifies respondents the complaint status via Standard Notice One (SN-1) letters. This notification includes a document request list to aid the reviewer in determining whether or not the complaint should be elevated to an investigation. Respondents have 28 days from the time they receive the SN-1 letters to respond. Should the complaint reach the end of the 45 day window without correspondence from the respondent, the complaint is elevated to an investigation.

Once a complaint is elevated to an investigation it is assigned an investigator by the Investigation Department Manager. Within one business day of the complaint being elevated to an investigation, Standard Notice Two (SN-2) letters are sent to both the complainant and the respondent. SN-2 letters inform both the complainant and the respondent that a formal investigation has begun. Additionally, SN-2 letters contain instructions on filling out a questionnaire, an affidavit, and may include additional request for documentation. When investigators complete their investigation a supervisory review is performed, and standard of care cases are reviewed by a minimum of two experts from the Board's Expert Review Panel.

Disciplinary Process Review Committee (DPRC) review and approval is required for all jurisdictional complaint dismissals, and the DPRC also reviews 10% of all Jurisdictional-Not Filed (JNF) complaints. JNF complaints are jurisdictional, however the allegations do not constitute a violation and an investigation is not opened. These complaints are reviewed by Board members and the review is documented in the Board's meeting minutes. If dismissed, dismissal letters, which include the appeals process, are provided to complainants.

Appeals to complaints also fall under the Medical Board's responsibility. After dismissal, if an appeal is filed, the appeal is emailed to the appeals inbox which is monitored by the Enforcement Team Administrator. Complainants have the opportunity to submit additional documentation to support their appeal. All appeals are reviewed by the Board and documented in the meeting minutes. If the appeal is dismissed, the complainant is again sent a letter of dismissal detailing that their appeal has been reviewed and the reason for dismissal.

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The Board is also responsible for the temporary suspension and restriction of licensees. When a temporary suspension or restriction of a licensee takes place, the Litigation Department notifies the Respondent by overnight delivery mail, and email. Within two days, a Compliance Officer is required to make contact with the licensee by phone. Additionally, within seven days, the Compliance Officer attempts to make contact with the licensee again by either visiting the site where the licensee practices or attempting to make an appointment with the licensee. Compliance Officers maintain evidence of these procedures within Suspension/Surrender Revocation Forms as they process temporary suspensions and restrictions.

Audit Objective and Scope

This audit focused on the enforcement process in place within the Texas Medical Board. We reviewed the procedures in place for appropriate risk and regulatory coverage and compliance to ensure efficient and effective processes. Key functions and sub-processes within the Enforcement process to be reviewed which included:

- Enforcement Support
- Administrative Functions
- Complaint Receipt and Processing
- Investigations and Referrals
- Temporary Suspensions or Restrictions
- Appeals

Our procedures were designed to ensure relevant risks were covered and verify the following:

Enforcement Support

- Enforcement support personnel are properly trained
- Inquiries are resolved in a timely manner
- Complaint jurisdiction is appropriately determined
- Criminal history records are properly maintained

Administrative Functions

- Enforcement support staff assists with the processing of litigation, compliance, investigations and receipt processing in a timely manner.

Complaint Receipt Processing

- TMB contact information is accessible to consumers for complaint filing purposes
- Complaints are adequately documented and monitored by the Agency
- Complaints receive appropriate correspondence
- Complaints are appropriately referred to investigations
- Management reviews and closes out all complaints

Investigation and Referrals

- Investigated complaints have complete information and documentation
- Individuals involved with the complaint are notified of the investigation initiation
- Investigations are performed according to TMB procedures
- Investigations are completed in a timely manner
- Investigations are closed or referred to prosecution appropriately
- Monthly activity reports are produced for periodic review

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Temporary Suspensions or Restrictions

- Visits to suspended licensees are completed timely to ensure physicians are not practicing
- Notice is provided to the licensee of suspension or restriction in a timely manner
- Documentary evidence is adequately maintained and monitored by the Agency
- Temporary restrictions or suspensions are appropriately lifted

Appeals

- Complaints that are dismissed are sent a dismissal letter to the complainant in a timely manner that details the reason for dismissal
- Appeals to the Board are not processed timely

The objectives of this internal audit were as follows:

- A. Determine whether internal controls over the Enforcement process are designed to ensure that consistent processes are implemented and designed effectively to address the risks within the associated sub-processes and to ensure effective operations.
- B. Verify that controls over critical Enforcement processes are operating effectively, efficiently and according to Texas law and TMB policy.
- C. Ensure that access to SQL Tracer is appropriate and user access controls are operating effectively.

Our procedures included interviewing key personnel involved in the Enforcement process to gain an understanding of the current processes in place, examining existing documentation, and evaluating the internal controls over the process. We evaluated the existing policies, procedures, and processes in their current state. Our coverage period was from April 1, 2021 through August 31, 2022.

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Executive Summary

Through our interviews, evaluation of internal control design and testing of transactions we identified three findings. The listing of findings include those items that have been identified and are considered to be non-compliance issues with documented Texas Medical Board policies and procedures, rules and regulations required by law, or where there is a lack of procedures or internal controls in place to cover risks to the Texas Medical Board. These issues could have significant financial or operational implications.

A summary of our results, by audit objective, is provided in the table below. See the Appendix for an overview of the Assessment and Risk Ratings.

OVERALL ASSESSMENT		Satisfactory
SCOPE AREA	RESULT	RATING
<p>Objective A: Determine whether internal controls over the Enforcement process are designed to ensure that consistent processes are implemented and designed effectively to address the risks within the associated sub-processes and to ensure effective operations.</p>	<p>We identified 21 controls to be in place in the processes. However, there are opportunities to strengthen the processes and control environment including:</p> <ul style="list-style-type: none"> Establishing a process to monitor complaints in Pending Determination Status Monitoring Compliance Officer completion of Suspension/Surrender Revocation (SSR) Forms 	Satisfactory
<p>Objective B: Verify that controls over critical Enforcement processes are operating effectively, efficiently and according to Texas law and TMB policy.</p>	<p>Controls over Enforcement processes are in place; however, all are not consistently executed. We identified the following:</p> <ul style="list-style-type: none"> One complaint from May, 2020 was processed timely (within 45 days), however the status remained in Pending Determination as of March, 2023. One Compliance Officer did not complete Suspension/Surrender Revocation (SSR) Forms timely, and did not verify the licensee had ceased practicing for two restrictions. 	Satisfactory

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SCOPE AREA	RESULT	RATING
Objective C: Ensure that access to SQL Tracer is appropriate and user access controls are operating effectively.	Access to TMB's SQL Tracer program is not appropriately restricted, TMB should perform the following: <ul style="list-style-type: none">• Develop an Agency-wide procedure for conducting user access reviews to ensure current roles and responsibilities align with job duties.• Develop a procedure so that application level user access is removed at the time of employee termination.	Satisfactory

Conclusion

Based on our evaluation, the Enforcement process has procedures and controls in place to conduct effective management of the significant processes within TMB. However, we identified three opportunities to improve the effectiveness of the controls within the enforcement process.

TMB should generate monthly reporting from SQL Tracer for all complaints in Pending Determination (PDD) status to ensure complaints are reviewed timely and updated to reflect the appropriate classification. TMB should retrain Compliance Officers over the requirements for processing temporary restrictions, and develop systematic reporting from SQL Tracer to monitor the completion of required correspondence to licensees. TMB should develop an Agency-wide procedure over conducting user access reviews in SQL Tracer to ensure user access is commensurate with job duties, and develop a procedure to remove application level user access at the time of employee termination.

Follow-up procedures will be performed in Fiscal Year 2024 to evaluate the effectiveness of remediation efforts taken to address the findings identified.

**Detailed Procedures Performed,
Findings, Recommendations and
Management Response**

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Detailed Procedures Performed, Findings, Recommendations and Management Response

Our procedures included interviewing key personnel within the Enforcement Department to gain an understanding of the current processes in place, examining existing documentation, and evaluating the internal controls over the processes. We evaluated the existing policies, procedures, and processes in their current state.

Objective A: Design of Internal Controls

Determine whether internal controls over the Enforcement process are designed to ensure that consistent processes are implemented and designed effectively to address the risks within the associated sub-processes and to ensure effective operations.

Procedures Performed: We conducted interviews of key personnel within the Enforcement Department and examine existing documentation to gain an understanding of the current Enforcement process. Document understanding of the processes and identify internal controls over the following sub-processes:

- Enforcement Support
- Administrative Functions
- Complaint Receipt Processing
- Investigations and Referrals
- Temporary Suspensions and Restrictions
- Appeals

We evaluated the controls identified against expected controls to determine whether the identified reoccurring procedures and internal controls are sufficiently designed to mitigate the critical risks associated with the operational sub-processes for Enforcement. We identified unacceptable risk exposures due to gaps in the existing control structure as well as opportunities to strengthen the effectiveness and efficiency of the existing procedures. Additionally, we evaluated the existing control design to verify that TMB processes are designed to ensure compliance with relevant guidance and regulations.

Results: We identified 21 total controls in place over the significant activities within Licensing and Renewals. We identified two findings where improvements in the processes, policies, and procedures could be made.

Process Area	Control Coverage	Findings
Enforcement Support	5	Finding 1
Complaint Receipt Processing	5	-
Investigations and Referrals	6	-
Temporary Suspension or Restriction	3	Finding 2
Appeals	2	-
Totals	21	2

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Enforcement Support

Finding 1 - Low - Pending Determination Status (PDD) Aging Reports:

Enforcement Management does not have a process in place to monitor the status of complaints logged into SQL Tracer as Pending Determination (PDD), resulting in inaccurate complaint classifications.

Jurisdictional complaints are entered in to the SQL Tracer database as PDD until a review can take place by a Standard of Care or Attorney Complaint Reviewer. The Texas Occupations Code (TOC) section 154.057 requires this review to take place on or before 45 days from the date the complaint was received.

We reviewed 25 of 14,143 open complaints between April 1, 2021 through August 31, 2022 which included jurisdictional, jurisdictional not-filed, non-jurisdictional, and PDD. We determined that one PDD case opened in May, 2020 remained in PDD status throughout the scope period and was not updated within SQL Tracer to reflect the case's current status of jurisdictional. The case was reviewed timely by investigator (within 45 days), however, the status of the complaint was not updated at the time of the review.

In March, 2020 the Agency rolled out a significant change to the complaint review process by implementing a pre-investigation process that allowed for the informal and quick resolution of complaints that do not involve patient care, impairment, or boundary violations. This process is designed to be completed in the initial 45 day PDD period, but this new process has also spread the responsibilities to more individuals, including leads, supervisors and managers. As a result, this process complicated the monitoring of complaints within the PDD period.

Recommendation: We recommend that Enforcement management generate monthly reporting from SQL Tracer for all complaints in PDD status and monitor the aging of these complaints to ensure complaints are reviewed timely, and complaints are updated to reflect the appropriate complaint classification.

Management Response: We agree with this finding. To improve oversight, the PDD report will be pulled on the 15th of every month by the executive assistant to the Director of Operations. Cases in PDD status will be tracked to determine where they are in the process, including determining if they are part of a Physician Health Program referral, part of the pre-investigation process, or if they are in the complaint review process within investigations. The Doctor of Osteopathic Medicine will follow up with managers, supervisors and/or staff as necessary.

Responsible Party: The Executive Assistant will be responsible for pulling the report and updating with data from the past review. The Director of Operations will be responsible for following up with relevant staff.

Implementation Date: Complete as of May, 2023

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Temporary Suspensions or Restrictions:

Finding 2 - Moderate - Temporary Suspension Correspondence Monitoring:

Enforcement management does not have an effective process in place to monitor the completion of required notifications to licensees from Compliance Officers. Compliance Officers are required to complete Suspension/Surrender Revocation Forms (SSR Forms) within two days of a Board ordered suspension and are required to contact the licensee via telephone within seven days to verify they are no longer practicing.

We tested 10 of 33 temporary restrictions from April 1, 2021, through August 31, 2022, and determined that two SSR Forms were not completed timely, and a verification was not performed to ensure the licensee was no longer practicing. One of the two temporary restriction orders went in to effect on February 22, 2022, and the Compliance Officer did not make contact until January 9, 2023; the other was contacted on day 29.

TMB does have mitigating controls in place to ensure licensees suspended or restricted following an emergency hearing do not continue to practice. These include issuing a press release, updating the profile within 24 hours, submitting a report to the National Practitioner Data Bank, and sending immediate notice to the licensee and their legal representative.

However, failure to contact Probationers and confirm the receipt of orders and their understanding and acknowledgement of the suspension, surrender, or revocation increases the risk associated with Probationers illegally practicing. We determined that policies and procedures that detail the requirements of Compliance Officers to contact Probationers are in place, however, monitoring procedures are not in place to ensure Compliance Officers performed these tasks.

Recommendation: We recommend Enforcement management retrain Compliance Officers over the requirements for processing temporary restrictions, and develop systematic reporting from SQL Tracer to monitor the completion of required correspondence to licensees.

Management Response: We agree with the finding. The cases where contact did not occur were cases assigned to one Compliance Officer. This Compliance Officer had a personal matter that became a performance issue that had to be addressed by the department's new Manager. This issue was addressed with HR and appropriate actions taken.

Additionally, the Compliance Manager has put in place new monitoring measures to make sure this isn't repeated in future. This starts with new case assignments. When an Order of Temporary Suspension or Restriction is entered into the electronic file and email notice received in the Compliance Department, the assigned Compliance Officer is immediately notified by email with a copy of the order. Compliance no longer relies solely on the electronic file inbox to notify a Compliance Officer of a new case assignment involving this type of action.

The Department will also, as suggested, will retrain all Compliance Officers on the process and emphasize the critical nature of this task. Compliance has regular meetings that include training. In fact, in the meeting held on February 22, 2023 this issue was raised with the entire department. More specific training will be held during the meeting on May 10, 2023.

Responsible Party: Manager of Compliance

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Implementation Date: Training began with meeting on February 22, 2023 and continuing. New process for assigning Orders like this were implemented around November 2022. This was also the implementation date of increased monitoring, which is what allowed the department to discover the performance issue.

Objective B: Effectiveness of Controls

Verify that controls over critical Enforcement processes are operating effectively, efficiently and according to Texas law and TMB policy.

Planned Procedures

Execute test procedures over reoccurring procedures that occur on an ongoing basis to verify that key controls and procedures are being consistently performed and documented.

Enforcement Support

- 1. Procedures Performed:** We reviewed 25 of 14,143 open complaints between April 1, 2021 through August 31, 2022 which included jurisdictional, jurisdictional not-filed, non-jurisdictional, and PDD and verified the following:
 - Enforcement support personnel processing complaints were properly trained
 - Inquiries were resolved in a timely manner
 - Complaint jurisdiction was appropriately determined
 - Criminal history records were properly maintained

Results: We determined that one Pending Determination (PDD) case from May, 2020 had not been updated due to human error to reflect the current status of the case. The case was reviewed timely by investigator (within 45 days), however, the status of the complaint was not updated to jurisdictional at the time of the review.

Finding 1 - Low - Pending Determination Status (PDD) Aging Reports

Administrative Functions

- 2. Procedures Performed:** We conducted interviews, obtained supporting documentation, and verified the following:
 - Processes are in place to ensure TMB Enforcement Support staff processes litigation, compliance, investigations, and receipt processing in a timely manner

Results: No findings identified.

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Complaint Receipt Processing

- 3. Procedures Performed:** We reviewed 25 of 14,143 open complaints between April 1, 2021 through August 31, 2022 which included jurisdictional, jurisdictional not-filed, non-jurisdictional, and PDD and verified the following:
- Enforcement support personnel is properly trained
 - Inquiries were resolved in a timely manner
 - Complaint jurisdiction was appropriately determined
 - Criminal history records were properly maintained

Results: No findings identified.

Investigation and Referrals

- 4. Procedures Performed:** We reviewed 25 of 14,143 open complaints between April 1, 2021 through August 31, 2022, 10 of which were jurisdictional and resulted in investigations. We verified the following:
- Investigated complaints were completed and documented
 - Individuals involved with the complaints were notified of investigation initiation
 - Required investigation procedures were completed by investigators
 - Investigations were completed within 180 days of being opened
 - Investigations were closed or referred to prosecution appropriately

Results: No findings identified.

Temporary Suspension or Restriction

- 5. Procedures Performed:** We tested 10 of 33 temporary restrictions from April 1, 2021 through August 31, 2022 and verified:
- Employers are visited to ensure a suspended physician is out of practice
 - A notice is provided to the licensee of suspension or restriction in a timely manner
 - Documentary evidence is adequately maintained by the Agency
 - Lifting of temporary restrictions or suspensions are appropriate

Results: We determined one Compliance Officer did not complete two SSR Forms timely, and did not verify the licensee was no longer practicing.

Finding 2 - Moderate - Temporary Suspension Correspondence Monitoring

Appeals

- 6. Procedures Performed:** We tested 25 of 543 appeals from April 1, 2021 through August 31, 2022 and verified:
- Complaints were dismissed with a dismissal letter to the complainant in a timely manner that detailed the reason for dismissal
 - Appeals to the Board were processed timely

Results: No findings identified.

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Objective C: User Access

Ensure that access to SQL Tracer is appropriate and user access controls are operating effectively.

Procedures Performed: We selected a sample of 15 of 200 SQL Tracer users and verified access was appropriate based on job duties, and that a process was in place to perform periodic user access reviews.

Result: We identified inappropriate user access within the SQL Tracer System.

Finding 3 - Moderate - SQL Tracer User Access: The Board does not have efficient and effective process in place to monitor user access for SQL Tracer. We identified nine users with excessive privileges which were not commensurate with job duties. We selected a sample of 15 of 200 users with permissions to Enforcement processing capabilities within SQL Tracer, including high risk permissions to open and close cases, generate letters, and edit database tables. We determined that nine of 15 users had excessive permissions.

User access provisioning is administered by placing personnel in to user groups depending on their roles, responsibilities, and requirements for System access. The Board's current process includes adding personnel to new user groups during departmental transfers, however existing user groups are not evaluated for appropriateness at that time. As a result, personnel who have worked in various departments are in numerous user groups and have user access permissions that do not align with their current roles and responsibilities. Of the 15 users tested we determined that nine users had access to multiple user groups; one user had access to five groups.

Recommendation: We recommend the Board develop an Agency-wide procedure over conducting user access reviews for SQL Tracer. The procedure should require department heads to review user access permissions on a periodic basis to ensure current roles and responsibilities align with job duties. The procedure should also include specific requirements for removing application level user access for terminated users on the date of termination.

Management Response: We agree that user access in Tracer should be more specifically targeted to the tasks for which an employee is responsible. The Board will develop departmental procedures to ensure appropriate employee access corresponds to current job duties. Additionally, the Board will develop a better process for controlling view and read/write access across the Agency.

Responsible Party: I.T. Manager, Director of Operations and all Department Heads as well as HR staff.

Implementation Date: January 1, 2024

Appendix

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The appendix defines the approach and classifications utilized by Internal Audit to assess the residual risk of the area under review, the priority of the findings identified, and the overall assessment of the procedures performed.

Report Ratings

The report rating encompasses the entire scope of the engagement and expresses the aggregate impact of the exceptions identified during our test work on one or more of the following objectives:

- Operating or program objectives and goals conform with those of TMB
- Board objectives and goals are being met
- The activity under review is functioning in a manner which ensures:
 - Reliability and integrity of financial and operational information
 - Effectiveness and efficiency of operations and programs
 - Safeguarding of assets
 - Compliance with laws, regulations, policies, procedures and contracts

The following ratings are used to articulate the overall magnitude of the impact on the established criteria:

Strong

The area under review meets the expected level. No high risk rated findings and only a few moderate or low findings were identified.

Satisfactory

The area under review does not consistently meet the expected level. Several findings were identified and require routine efforts to correct, but do not significantly impair the control environment.

Unsatisfactory

The area under review is weak and frequently falls below expected levels. Numerous findings were identified that require substantial effort to correct.

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Risk Ratings

Residual risk is the risk derived from the environment after considering the mitigating effect of internal controls. The area under audit has been assessed from a residual risk level utilizing the following risk management classification system.

High

High risk findings have qualitative factors that include, but are not limited to:

- Events that threaten the TMB's achievement of strategic objectives or continued existence
- Impact of the finding could be felt outside of TMB or beyond a single function or department
- Potential material impact to operations or TMB's finances
- Remediation requires significant involvement from senior TMB management

Moderate

Moderate risk findings have qualitative factors that include, but are not limited to:

- Events that could threaten financial or operational objectives of TMB
- Impact could be felt outside of TMB or across more than one function of TMB
- Noticeable and possibly material impact to the operations or finances of TMB
- Remediation efforts that will require the direct involvement of functional leader(s)
- May require senior TMB management to be updated

Low

Low risk findings have qualitative factors that include, but are not limited to:

- Events that do not directly threaten TMB's strategic priorities
- Impact is limited to a single function within TMB
- Minimal financial or operational impact to TMB
- Require functional leader(s) to be kept updated, or have other controls that help to mitigate the related risk