



Texas Medical Board Complaints and Malpractice Lawsuits:

**A Primer on Best Practices and Practical Steps for Protecting Your Reputation,
Career and Livelihood**

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**THIS PRESENTATION IS NOT LEGAL ADVICE AND DOES
NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP**

YOUR SPECIFIC CASE IS UNIQUE AND NEEDS THE ATTENTION OF A LAWYER WHOM YOU
HAVE RETAINED TO PROVIDE YOU WITH SITUATION SPECIFIC LEGAL ADVICE TAILORED TO
YOUR NEEDS

AGENDA OF TOPICS

- Texas Medical Board (“TMB”) History and Mission
- Complaint Statistics and Common Complaint Allegations: Practice Inconsistent with Public Health and Welfare and Unprofessional Conduct
- Best Practices for Avoiding and Navigating TMB Complaints
- Malpractice Lawsuit Legal Framework and Statistics
- Common Malpractice Allegations
- Best Practices for Avoiding and Navigating Malpractice Lawsuits
- Importance of Obtaining an Attorney while Navigating a TMB Complaint or Malpractice Lawsuit
- Key Takeaways
- Q & A

TMB HISTORY

- The Texas Medical Board, originally named the Texas State Board of Medical Examiners was formed in 1907
- The board consisted of 11 physician members appointed biennially by the governor and confirmed by the Senate
- In 1981, Texas legislation required that nine physician members be doctors of medicine, three be doctors of osteopathy, and three public members be added to the Board
- Today, the TMB has 19 members

TMB MISSION

Safeguarding the Public Through Professional Accountability

The mission of the Texas Medical Board is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of medicine and ensuring quality health care for the citizens of Texas through licensure, discipline, and education

TMB COMPLAINTS: WHAT TO DO TO PROTECT YOUR CAREER AND LIVELIHOOD

TMB COMPLAINT STATISTICS AND COMMON ALLEGATIONS

- Over 7,000 complaints are filed with the TMB every year

The most common complaint allegations fall under two categories:

- Practice Inconsistent with the Public Health and Welfare
 - Failure to Meet Standard of Care
- Unprofessional Conduct
 - Likely to Deceive or Defraud
 - Likely to Injure the Public

PRACTICE INCONSISTENT WITH THE PUBLIC HEALTH AND WELFARE

- Tex. Occ. Code §164.052 prohibits practices inconsistent with public health and welfare
- 22 Tex. Admin. Code §108.1(1) lists conduct that constitutes such practices

Practices inconsistent with the public health and welfare include:

- Failure to treat a patient according to the generally accepted standard of care; negligence in performing medical services
- Failure to use proper diligence in one's practice
- Failure to obtain informed consent
- Failure to disclose foreseeable side effects of treatment

PRACTICE INCONSISTENT WITH THE PUBLIC HEALTH AND WELFARE: STANDARD OF CARE

- Standard of care refers to a level of skill that a reasonable, prudent professional would exercise in similar circumstances
- A physician falls below the standard of care when they fail to provide the same treatment as a reasonable, prudent doctor would have done in similar circumstances
- Conduct that causes actual or potential injury may lead to a standard of care complaint
- Patients who experience adverse treatment outcomes often lead to standard of care complaints

PRACTICE INCONSISTENT WITH THE PUBLIC HEALTH AND WELFARE: STANDARD OF CARE

Some examples of failing to meet standard of care includes:

- Misdiagnosing patients
- Prescriptions Errors
- Surgical Errors

UNPROFESSIONAL CONDUCT

- Tex. Occ. Code § 164.053 prohibits conduct that is likely to harm or injure a patient/public
- 22 Tex. Admin. Code § 180.1(2) lists what the Board considers unprofessional conduct
- Two categories under the rule: Unprofessional conduct that is likely to injure the public and likely to deceive or defraud the public

UNPROFESSIONAL CONDUCT: LIKELY TO INJURE THE PUBLIC

Some examples of unprofessional conduct likely to injure the public include:

- Engaging in sexually inappropriate contact or behavior with a patient, patient's family, other licensees, hospital personnel, or other medical personnel
- Behaving in an abusive or assaultive manner towards a patient
- Failing to respond to communications from a patient timely
- Behaving in a disruptive manner toward patients, hospital personnel, medical personnel, patients, family members of patients, or others
- Inappropriate prescriptions to oneself, family members and individuals whom the physician has a close personal relationship

UNPROFESSIONAL CONDUCT: LIKELY TO DECEIVE AND DEFRAUD THE PUBLIC

Some examples of unprofessional conduct likely to deceive and defraud the public include:

- Becoming personally or financially involved with a patient in an inappropriate manner
- Failing to maintain the confidentiality of a patient
- Failing to complete required CMEs
- Disciplinary action by peer groups
- Failing to report suspected abuse of a patient
- Repeated meritorious healthcare liability claims evidencing professional incompetence

HOW DO YOU AVOID RECEIVING A TMB COMPLAINT?

BEST PRACTICES FOR AVOIDING TMB COMPLAINTS

- Keep patients happy by:
 - Clearly communicate care and risks to patients
 - Respond timely to patients
 - Pay attention to details to avoid errors
 - Keep good documentation-if you didn't chart it didn't happen
 - Practice good patient bedside manor
- Be kind to staff
- Establish appropriate boundaries with patients

WHAT DO YOU DO IF YOU RECEIVE A COMPLAINT?

BEST PRACTICES FOR NAVIGATING TMB COMPLAINTS

If you receive a complaint you want to:

- Open your mail-the Board sends correspondence by US mail
- Do not miss any response deadlines
- Comply with subpoenas for records
- Avoid discussing case unless and until you retain an attorney

MEDICAL MALPRACTICE CLAIMS IN TEXAS: WHAT TO DO TO PROTECT YOUR PROFESSIONAL REPUTATION

TEXAS MALPRACTICE CLAIMS ACT LEGAL FRAMEWORK

- Texas Medical Liability Act-Chapter 74 Texas Civil Practice and Remedies Code
- Two-year statute of limitations
- Claims for minors under the age of 12 have until the age of 14 to file a claim
- Ten-year statute of repose
- \$250,000.00 limitation on non-economic damages
- An emergency physician is immune from liability unless wantonly negligent

TEXAS MALPRACTICE CLAIMS STATISTICS

- In 2025, Texas ranks fourth in the country for medical malpractice payouts, with an average payout amount of \$221,000
- Most claims are filed against surgeons and specialists
- 45% of claims are filed by patients being treated in a hospital or clinic
- Physicians have identified patient volume as a culprit leading to malpractice claims

TEXAS MALPRACTICE CLAIMS: COMMON ALLEGATIONS

- Malpractice lawsuits arise when there is a breach in a duty of care to a patient, leading to injury to the patient

The common allegations that lead to malpractice suits include:

- Misdiagnosis or Delayed Diagnosis
- Prescription Errors
- Surgical Errors
- Anesthesia Errors

HOW DO YOU AVOID A MALPRACTICE LAWSUIT?

BEST PRACTICES FOR AVOIDING A MALPRACTICE LAWSUIT

Physicians should:

- Clearly communicate with patients
- Pay attention to details to avoid diagnostic and prescription errors
- Maintain a reasonable volume of patients- research shows that unreasonable patient volume contributes to mistakes

WHAT DO YOU DO IF A MALPRACTICE LAWSUIT IS FILED?

BEST PRACTICES FOR NAVIGATING A MALPRACTICE LAWSUIT

A malpractice claim begins with sending a demand letter. If you receive a demand letter for civil litigation, you should:

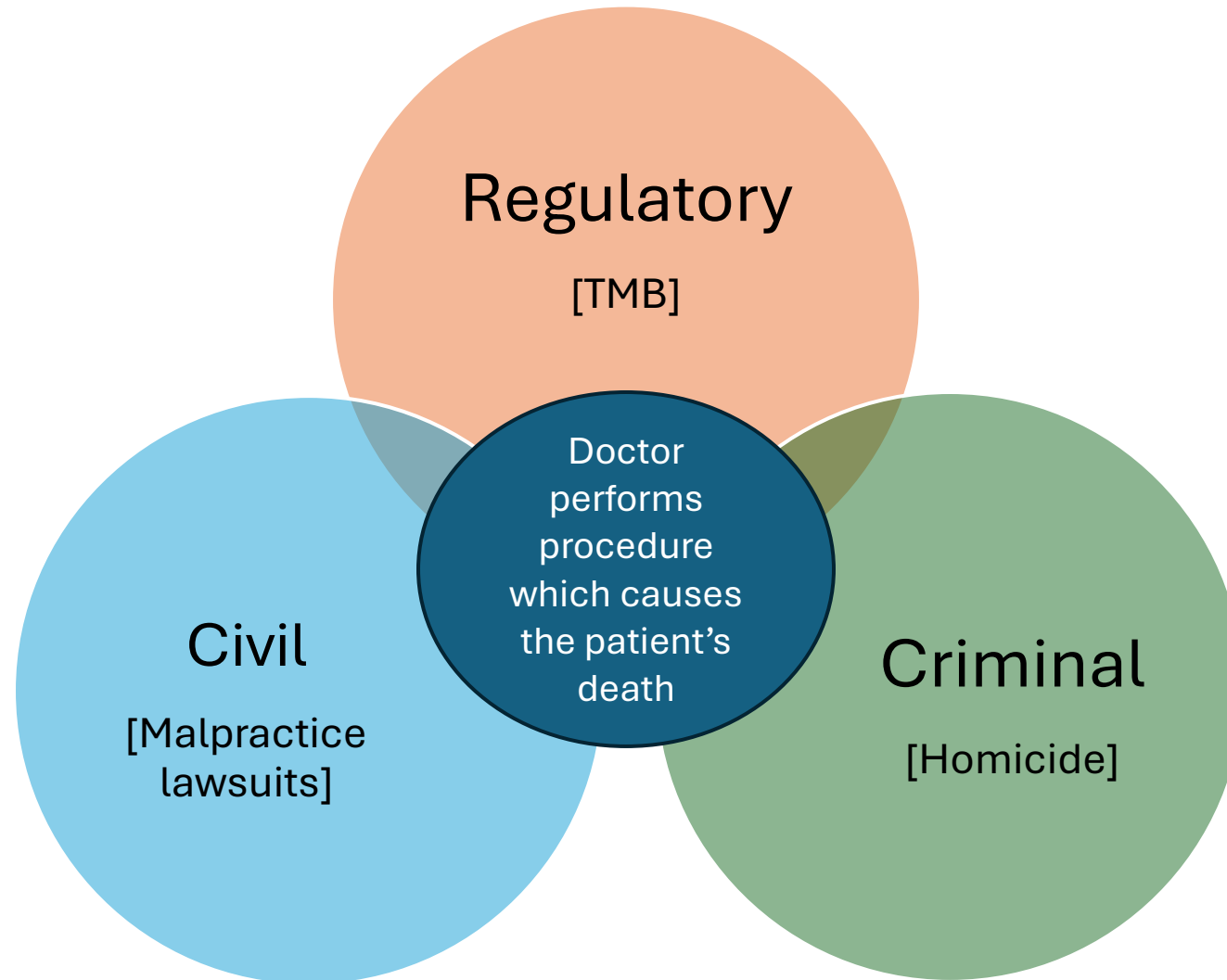
- Immediately notify your insurance carrier
- Inform your records department to retain records
- Avoid talking about the case until you have retained an attorney

WHY SHOULD A PHYSICIAN RETAIN AN ATTORNEY WHEN FACING EITHER A TMB COMPLAINT OR MALPRACTICE LAWSUIT?

THE IMPORTANCE OF RETAINING AN ATTORNEY WHEN FACING A TMB COMPLAINT OR MALPRACTICE LAWSUIT

- An attorney can assist in crafting responses that will not have an adverse impact on the case itself
- Allegations can intersect in multiple areas of law, often leading to both a TMB complaint and malpractice lawsuit simultaneously
- Because of this intersection, you need an attorney that can help you navigate all areas of the law
- Hiring one firm can help save in legal fees

THE INTERSECTION BETWEEN REGULATORY, CIVIL, AND CRIMINAL LAW



KEY TAKEAWAYS

- How you approach patient care impacts the probability of receiving a complaint and/or being sued
- Allegations involving physicians implicate multiple legal areas
- Competent legal counsel that is knowledgeable about the legal areas that have a direct impact on your profession is crucial to defending and protecting your career, reputation and livelihood