Texas Medical Board
Self-Evaluation Report

Submitted to the
Sunset Advisory Commission
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Self-Evaluation Report

I. Agency Contact Information

Texas Medical Board
Exhibit 1: Agency Contacts

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Table 1 Exhibit 1 Agency Contacts

II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

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. The agency has adopted a shortened version of its mission: *Safeguarding the public through professional accountability.*

Although the Texas Medical Board's name and identity are based in the regulation of physicians, the agency regulates, through licensing and enforcement, a variety of health care professionals and entities. In addition to the Texas Medical Board (TMB), agency staff also support the Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners. Overall, there are 15 different types of licenses, permits, and certifications for which the agency is responsible.

Continuous improvement has been the hallmark of the agency and governing boards since the last Sunset Review. The primary objectives are to ensure that the key functions of licensure and enforcement are implemented as efficiently and effectively as possible.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

The key functions of licensure and enforcement continue to serve the ongoing mission and objectives of public protection and professional accountability. Without these functions, there would be significant harm to the public due to a lack of clear criteria and oversight for establishing and enforcing professional accountability.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

The agency demonstrates this through a variety of methods including standard agency requirements such as performance measures, reporting through the statewide strategic planning and budgeting process, and results and recommendations from both internal and SAO audits. For example, one measure of the agency's licensure function is whether a physician license is issued within a 51-day average. The agency continues to successfully license in fewer days than the required average despite significant increases in the number of new physician applications received each year. Furthermore, this performance measure was evaluated by the SAO in 2014 as part of a standard measure audit and the agency received a rating of certified with qualifications.

In addition to standard agency requirements, the agency demonstrates effectiveness and efficiency through the following:

- the ability to successfully leverage technology to address process changes and improvements;
- positive feedback from outreach presentations on agency requirements to physicians' groups, medical schools, and professional associations.
- successful support to three oversight boards that combined meet a total of 11 times per year;

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

The agency's and boards' enabling statutes continue to correctly reflect and support the mission, objectives, and functions. The agency has recommended changes to the legislature to improve operations through a variety of means including the last Sunset Review, interim charges in 2010 relating to the agency's enforcement process, and through feedback on policy issues requested by legislative and leadership offices. Several of the changes recommended in the last Sunset Review were adopted. In 2010, the Sen HHS Committee had an interim charge and issued recommendations to change the agency's enforcement process, which included feedback from the agency. The committee recommendations were adopted by the 82nd Legislature.

E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

The agency's functions do not duplicate those of any other state or federal agency.

F. In general, how do other states carry out similar functions?

The corresponding agencies in other states vary widely in terms of organization but the majority implement licensing and enforcement functions in a manner similar to the enabling

statutes that Texas has. A majority of states have independent boards similar to the TMB structure. Some states incorporate the functions into a larger umbrella regulatory agency.

G. What key obstacles impair your agency's ability to achieve its objectives?

Ensuring that the agency has the optimal resources to carry out objectives can be a challenge. As the Texas economy remains strong and unemployment rates low, competing with private sector salaries continues to be an obstacle for long-term retention of key professional positions such as litigating attorneys and computer programmer positions.

H. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).

In February 2015, the U.S. Supreme Court ruled in *North Carolina Board of Dental Examiners v. Federal Trade Commission* that the North Carolina Board of Dental Examiners had illegally stifled competition by excluding non-dentists from providing teeth-whitening services or products to consumers. The case arose out of a claim in an FTC complaint against the N.C. dental board for issuing cease and desist letters and threatening criminal prosecution of non-dentists who practicing teeth whitening. FTC claimed that the practice of allowing professions and occupations to be regulated solely by state occupational licensing boards, comprised of a majority of the licensees of the profession, is anti-competitive and exclusionary because the members of those boards have a financial conflict of interest. The North Carolina board claimed that they were immune from FTE oversight based on the fact that they are a state actor. The Court found that the board had no "active state oversight," so there was no immunity for its actions and the case had to go to trial. An important feature of this case was that the N.C. board lacked statutory authority for their action, and they did not follow the rule making process under state law.

As discussed further in Sec. XII, Agency Comments, the outcome of this case potentially has far-reaching repercussions to state sovereignty and to all state regulatory entities and their mission of public protection. Various states are beginning to examine how the opinion could impact occupational regulation in their state.

TMB is also impacted by this decision due to active federal litigation on issues related to the practice of telemedicine in Texas in light of the FTC ruling. The suit, brought by Teladoc, a company that provides telephone-based medical services, claims that certain board rules are anti-competitive and harm Teladoc, and the rules are an attempt by TMB to put them out of business. More detail on this lawsuit is provided in Section III.

I. What are your agency's biggest opportunities for improvement in the future?

The agency looks forward to continuing to grow and improve with the addition of four new license types and regulatory boards/committees being transferred to TMB from the Dept of State Health Services. The agency is in the process of transitioning to absorb the workload associated with 40,000 additional licensees while ensuring that all licensing and enforcement activities are performed as efficiently and effectively as possible.

J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. *See Exhibit 2 Example*.

Texas Medical Board
Exhibit 2: Key Performance Measures — Fiscal Year 2014

Key Performance Measures	FY 2014 Target	FY 2014 Actual Performance	FY 2014 % of Annual Target
Licensing			
Percent of Licensees Who Renew Online: Physicians	*96%*	*98%*	*102.08%*
Percent of Licensees Who Renew Online: Physician Assistant	*87%*	*85%*	*97.70%*
Number of New Licenses Issued to Individuals: Physicians	*3,687*	*3,995*	*108.35%*
Number of New Licenses Issued to Individuals: Acupuncture	*75*	*119*	*158.67%*
Number of New Licenses Issued to Individuals: Physician Assistant	*644*	*749*	*116.30%*
Number of New Licenses Issued to Individuals: Surgical Assistant	*28*	*42*	*150.00%*
Number of Licenses Renewed (Individuals): Physicians	*37,500*	*38,463*	*102.57%*
Number of Licenses Renewed (Individuals): Acupuncture	*1,090*	*1,127*	*103.39%*
Number of Licenses Renewed (Individuals): Physician Assistant	*6,489*	*6,999*	*107.86%*
Number of Licenses Renewed (Individuals): Surgical Assistant	*190*	*213*	*112.11%*
Average Number of Days for Individual License Issuance: Physicians	*44*	*41*	*93.18%*
Enforcement			
Percent of Complaints Resulting in Disciplinary Action: Physician	*12%*	*17%*	*141.67%*
Percent of Complaints Resulting in Disciplinary Action: Acupuncture	*12%*	*17%*	*141.67%*
Percent of Complaints Resulting in Disciplinary Action: Physician Assistant	*12%*	*34%*	*283.33%*
Percent of Complaints Resulting in Disciplinary Action: Surgical Assistant	*12%*	*25%*	*208.33%*
Percent of Complaints Resulting in Remedial Action: Physician	*12%*	*14%*	*116.67%*
Percent of Complaints Resulting in Remedial Action: Acupuncture	*12%*	*8%*	*66.67%*
Percent of Complaints Resulting in Remedial Action: Physician Assistant	*12%*	*11%*	*91.67%*
Percent of Complaints Resulting in Remedial Action: Surgical Assistant	*12%*	*0%*	*0%*
Number of Complaints Resolved: Physicians	*2,200*	*1,806*	*82.09%*
Number of Complaints Resolved: Acupuncture	*6*	*11*	*183.33%*
Number of Complaints Resolved: Physician Assistant	*85*	*93*	*109.41%*

Key Performance Measures	FY 2014 Target	FY 2014 Actual Performance	FY 2014 % of Annual Target
Number of Complaints Resolved: Surgical Assistant	*3*	*1*	*33.33%*
Average Time for Complaint Resolution: Physicians	*260*	*272*	*104.62%*
Number of Jurisdictional Complaints Received: Physicians	*2,050*	*1,692*	*82.54%*
Number of Jurisdictional Complaints Received: Acupuncture	*6*	*4*	*66.67%*
Number of Jurisdictional Complaints Received: Physician Assistant	*110*	*91*	*82.73%*
Number of Jurisdictional Complaints Received: Surgical Assistant	*3*	*5*	*166.67%*

Table 2 Exhibit 2 Key Performance Measures

III. History and Major Events

Historical Perspective & Timeline

1837 The Congress of the Republic of Texas created the Board of Medical Censors for the purposes of administering examinations and granting medical licenses. The original medical practice act was written by Dr. Anson Jones, one of the few formally trained physicians in Texas at that time. The Board was discontinued by legislative act in 1848.

1873 Regulatory law for physicians passed, establishing board of examiners in each county.

1875 Constitution amended to establish minimum qualifications for the practice of medicine.

1876 Legislature required each district court to set up a board of three licensed doctors for the licensing or certification of medical practitioners in each district.

1901 A state-wide board was not re-established until the passage of the Medical Practices Act in 1901 (House Bill 173, 27th Texas Legislature), creating three medical boards: the Board of Medical Examiners, the Board of Eclectic Medical Examiners, and the Board of Homeopathic Medical Examiners. Each board had nine members.

1907 Three medical boards combined into one **Texas State Board of Medical Examiners** established by the 30th Texas Legislature (Senate Bill 26) to administer the examination and licensing of physicians and surgeons, prescribe their qualifications, and provide procedures for the registration and revocation of licenses. The Board, when created, consisted of 11 members appointed by the governor for two-year terms, and was required to meet twice a year.

1931 Legislature increased the board to 12 physician members serving six-year terms

1981 Legislature changed the composition of the board to nine allopathic physicians, three osteopathic physicians and three public members

1993 Legislature added three public members, bringing the number of board members to 18

1993 Legislature created the Physician Assistant Advisory Council, an advisory board to the medical board. Legislature created the Texas State Board of Acupuncture Examiners, made up of nine members: four acupuncturists, two physicians and three public members

1995 Legislature passed the Physician Assistant Licensing act, which changed the PA Advisory Council to the Texas State Board of Physician Assistant Examiners, made up of nine members: three physicians, three physician assistants and three public members

1997 Legislature amended the Medical Practice Act to require that non-certified radiologic technicians be registered under the supervision of a licensed physician

2001 Legislature added the licensing of Surgical Assistants to the agency's functions

2003 Legislature strengthened board's disciplinary powers, to be funded by additional physician registration fees; required the board to collect registration fees biennially rather than annually (SB 104). Legislature also added one public member for a total of 7 public members and 19 board members.

2005 Sunset Legislation, SB 419, changed the agency's name to the Texas Medical Board, made numerous changes to streamline all stages of the enforcement process and to increase the efficiency of the licensing process, and made standard across the board changes relating to board membership requirements, rulemaking, and use of technology.

2007 Special Purpose Review by Sunset Advisory Commission required by HB 3249 to include an evaluation of management efforts to comply with legislative direction and performance measure targets. HB 1973 required that the average time to process a physician license must not exceed 51 days.

2009 Creation of the Texas Physician Health Program resulted from SB 292. SB 911 required the certification and regulation of pain management clinics.

2011 Changes to the agency's enforcement process, including the creation of a non-disciplinary option to address complaints (remedial plans), the elimination of anonymous complaints and an expansion of the time a physician has to respond to a complaint, resulted from HB 680.

2013 Substantive changes to physician delegation and supervision authority resulted from SB 460.

2015 Four regulatory programs are transferred from DSHS to TMB resulting from SB 202 in the 84th Legislative Session.

Significant State/Federal Litigation

Federal Anti-Trust Lawsuit: Teladoc et. al v. Texas Medical Board-

This suit is an antitrust claim brought by a company called Teladoc against TMB as a result of the Federal Trade Commission (FTC) v. N.C. Dental Bd case heard by the U.S. Supreme Court and described in Section II. The claim is that board rule 190.8(1)(L) is anti-competitive and harms Teladoc, and it is an attempt by TMB to put them out of business. Teladoc claims that the rule discriminates against Teladoc physicians both out of state physician and in-state because it requires them to see a patient in-person before treating them. The claim of being anticompetitive also is based on the physicians on the board being "market competitors" of Teladoc physicians.

TMB contends that the rule does not limit any physician or group of physicians, it requires all Texas licensed physicians to establish a physician-patient relationship before diagnosing and treating a patient, including issuance of a prescription. This relationship can be established by in-person evaluation or a face-to-face visit, which includes a physical examination. A face to face visit includes an evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.

TMB also contends that this case is easily distinguished from the N.C. dental board case. The board members are appointed by the governor and approved by the Senate. They are subject to removal and conflict of interest provisions, the claim was based on rule making that was done according to statute, and the Board has the express authority to pass these types of rules and all board rules are subject to judicial review.

This case is important because if the board loses it will effectively cause the entire state Administrative Procedures Act (APA) and rule making structure of the state and all licensing

agencies to be changed, and add a new layer of review of all agency rules and effectively negate the regulatory authority of the state over physician licensing and discipline.

State Rule-Making Lawsuit:- Teladoc et. al v. Texas Medical Board-

This suit is a declaratory judgment brought by Teladoc against TMB. This was brought regarding board rule 190.8(1)(L) which requires an established physician-patient relationship prior to a physician prescribing dangerous drugs or controlled substances to a patient. This rule has been in effect since at least 1999. In this suit Teladoc claimed that a June 2011 letter, from a former TMB General Counsel to Teladoc, which stated that Teladoc's business model of providing medical services, including prescribing medications/drugs without establishing a physician-patient relationship through a face-to-face visit, was in violation of Rule 190.8(1)(L) and constituted improper rulemaking and was invalid. The State District Court found in favor of the Board and determined that the June 2011 letter was a restatement of long-standing law and policy of the Board.

Teladoc appealed the District Court ruling to the Texas Court of Appeals, Third District, (Third Court) under Cause No. 03-13-00211-CV. Again, Teladoc claimed that a June 2011 letter, from the TMB former General Counsel to Teladoc, constituted improper rule making and was invalid, as it was not properly promulgated under the state's Administrative Procedure Act.

Specifically, the Third Court found that because the 2011 GC letter applied to all physicians, and was sent to the Texas Medical Association (TMB), it was intended to apply to all Texas physicians and therefore it was a rule. The primary focus of the Third Court was comparing rule 190.8(1)(L) to rule 174 (telemedicine rule). Both rules have a face-to-face requirement before prescribing medications to a patient. Rule 190.8 defines a face-to-face visit to include items "such as" a physical exam, while in Rule 174 a "face-to-face visit "includes" a physical exam. The Third Court interpreted the term "including" to mean something is required, while the term "such as" just provides a non-binding example**.**

The board properly amended and published Rule 190.8 to change the "such as"' to "includes" and published it as required under the APA. Following the publication of this rule Teladoc filed the federal lawsuit previously described.

Benjamin Wiseman, M.D. v. Texas Medical Board- Appeal of Temporary Suspension-

This suit was a challenge to the temporary suspension hearing process utilized by the board. The challenge mainly focused on issue of whether contested case rules apply to this type of proceeding, and if a temporary suspension of the board is subject to being appealed to state court. Dr. Wiseman was the subject of a temporary suspension hearing for operating a "pill mill" and engaging in non-therapeutic prescribing. At the temporary suspension hearing the evidence included statements from DEA undercover agents and inspection documents from TMB staff inspections of clinics where Wiseman worked and supervised mid-level providers. The disciplinary panel that heard the evidence determined Dr. Wiseman was a continuing threat and suspended his license.

Dr. Wiseman's attorney filed an appeal in state district court alleging that this temporary suspension hearing was subject to the same rules required in a formal contested case at the State Office of Administrative Hearings (SOAH), and he had a right to judicial review of a

temporary suspension. The Board argued that the contested case rules did not apply to the temporary suspension, and there was no right to a judicial review because the proceeding by definition was not final and was ancillary to further disciplinary action by the Board and/or SOAH.

The District Court found for the board. Dr. Wiseman appealed to the Third Court of Appeals. The Third Court found that the board has the exclusive jurisdiction to make determinations of "continuing threat," and the temporary suspension hearing is an ancillary, non-final proceeding which is not subject to appeal. The Court found that Dr. Wiseman was provided full due process after a temporary suspension hearing by being provided an informal disciplinary hearing before a Board panel and the opportunity for a formal contested case hearing at SOAH. In the event the matter went all the way through the SOAH process then Dr. Wiseman could file for a substantial evidence review in district court.

Physician Assistants Business Alliance of Texas (PABAT) v. Texas Medical Board-

In 2011 the Texas Legislature enacted House Bill 2098 adding several new sections to the Business Organizations Code and the Occupations Code to regulate business entities formed by PAs and physicians. The new law placed restrictions on the ability of PAs to manage and control business entities they jointly own with physicians. The Act placed restrictions on the ownership interests of PAs: "A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. This law also had a grandfather provision which stated that, "The restrictions on ownership interests . . . apply to an ownership interest acquired on or after the effective date of this Act."

The Board adopted Board rule 177.6 which stated that a change in an entity's or PA's supervising physician, independent of a change in ownership interests, would trigger the provisions of the new law and the PA would have to reduce their ownership interest to a minority percentage. When drafting this rule the Board had a letter of intent from the author of the bill supporting the board rule.

The Third Court found that the Board rule regarding the change of supervision as trigger for reduction of ownership interest of the PA was not proper. The Court stated the rule was inconsistent with the plain language of the statute and the letter by the bill's author was not determinative.

The Association of American Physicians & Surgeons, Inc. (AAPS) v. Texas Medical Board-

AAPS, a nationwide professional association of physicians that is not affiliated with the American Medical Association or the American Osteopathic Association, sought declaratory and injunctive relief on behalf of its association members for claims of pervasive and continuing violations of its members' constitutional rights. The allegations were that the Board and its members manipulated anonymous, confidential, or bad-faith complaints against physicians. Specifically, the complaint alleged, among other things, abuses perpetrated on physicians by means of anonymous complaints, harassment of doctors who complained about the Board, and conflicts of interest by decision-makers.

The Court found for the Board on all counts alleged. There was no evidence presented by AAPS that revealed any type of conflict of interest issues inherent in the structure of the Board that

would interfere with the outcome of its disciplinary proceedings. There was no proof that any member of the Board had a "direct, personal, substantial, and pecuniary interest" in the outcome of any disciplinary actions involving Board licensees.

AAPS failed to prove any due-process violations by the Board; failed to prove that the Board retaliated against any of the AAPS members for exercising their right to free speech; and failed to provide any evidence beyond conjecture that specific board members somehow worked in concert with state officials to manipulate the outcome of physician complaints before the Board. The Court stated that AAPS's body of proof is inferential and conjectural and failed to convince the court that there was any legal merit to any of the allegations.

Reorganizations

Reorganizations of agency staff and processes have typically occurred as the agency has evolved in response to changes in statutory responsibilities and personnel and resource needs. In 2009, the agency's executive management structure changed and since that time the executive director has been an attorney who has appointed a medical director to be responsible for policies, systems, and measures regarding clinical and professional issues and determinations. All managers of agency departments report directly to the executive director.

As referenced in Section II, the agency is currently undergoing a major transition and reorganization due to the addition of four new license types and regulatory boards/committees transferred to TMB from DSHS as required by SB 202 (2015). The two agencies have been working to ensure a smooth transition while ensuring that all licensing and enforcement activities are performed as efficiently and effectively as possible. As an agency, TMB has increased in size due to the addition of 29 FTEs and associated funding to implement the transition.

IV. Policymaking Structure

The policymaking structure of the agency includes three boards and one advisory committee: the Texas Medical Board, Texas Physician Assistant Board, Texas State Board of Acupuncture Examiners and the Surgical Assistants Advisory Committee. The Texas Medical Board has oversight of the associated boards' and committee's rulemaking.

The Texas Medical Board is assisted for enforcement purposes by four District Review Committees (DRCs). Each DRC consists of seven members appointed by the governor; four are physician members and three are public members. DRC members are not part of the policy making body, but assist the agency by sitting on disciplinary hearing panels that evaluate the medical practice and professional competency of physicians.

SB 202, 84th Legislature, transferred the regulation of four additional occupations to the agency beginning in FY 2016. This transfer also modifies the agency's policymaking structure to include two advisory boards and two advisory committees. The advisory boards include the Texas Board of Medical Radiologic Technology and the Texas Board of Respiratory Care, whose members are appointed by the governor. The advisory committees consist of the Medical Physicist Licensure Advisory Committee and the Perfusionist Licensure Advisory Committee, whose members are appointed by the TMB president.

A. Complete the following chart providing information on your policymaking body members.

Texas Medical Board
Exhibit 3: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by *(e.g., Governor, Lt. Governor, Speaker)*	Qualification *(e.g., public member, industry representative)*	City
Michael Arambula, M.D., Pharm.D (President).	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Licensed Physician, (M.D.)*	*San Antonio*
Julie Attebury	*6-year term, April 2011 – April 2017, appointed by the Governor*	*Public Member*	*Amarillo*
Frank S. Denton	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Public Member*	*Conroe*
John D. Ellis, Jr., J.D.	*6-year term, April 2009 – April 2015, appointed by the Governor*	*Public Member*	*Houston*
Carlos L. Gallardo	*5-year term, January 2012 – April 2017, appointed by the Governor*	*Public Member*	*Frisco*
Manuel G. Guajardo, M.D.	*6-year term, April 2009 – April 2015, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Brownsville*

Member Name	Term / Appointment Dates / Appointed by *(e.g., Governor, Lt. Governor, Speaker)*	Qualification *(e.g., public member, industry representative)*	City
John R. Guerra, D.O.	*3-year term, September 2014 – April 2017, appointed by the Governor*	*Licensed Physician, (D.O.)*	*Mission*
J. "Scott" Holliday, D.O.	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Licensed Physician, (D.O.)*	*University Park*
Margaret C. McNeese, M.D.	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Houston*
Allan Shulkin, M.D.	*6-year term, April 2009 – April 2015, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Dallas*
Robert Simonson, D.O.	*2-year term, May 2013 – April 2015, appointed by the Governor*	*Licensed Physician, (D.O.)*	*Duncanville*
Wynne M. Snoots, M.D.	*6-year term, April 2009 – April 2015, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Dallas*
Paulette B. Southard	*3-year term, January 2012 – April 2015, appointed by the Governor*	*Public Member*	*Alice*
Karl W. Swann, M.D.	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Licensed Physician, (M.D.)*	*San Antonio*
Surendra K. Varma, M.D.	*5-year term, October 2014 – April 2019, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Lubbock*
Stanley S. Wang, M.D., J.D.	*6-year term, April 2011 – April 2017, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Austin*
Timothy Webb, J.D.	*6-year term, May 2013 – April 2019, appointed by the Governor*	*Public Member*	*Houston*
George Willeford III, M.D. (Vice-President)	*6-year term, April 2011 – April 2017, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Austin*
Vacant		*Public Member*	

Table 3 Exhibit 3 Policymaking Body

B. Describe the primary role and responsibilities of your policymaking body.

The primary role and responsibilities of the policymaking body are to make final decisions regarding board policy, approve board rules, grant licenses, and approve disciplinary actions against licensees. The complete listing of the Medical Board's purpose and functions is provided in Rule 161.2.

C. How is the chair selected?

The President of the Board is appointed by the Governor.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The Texas Medical Board has oversight authority over the Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners in the area of rulemaking. There is also a Surgical Assistants Advisory Committee which makes recommendations regarding regulation of surgical assistants to the Texas Medical Board through its Ad Hoc Surgical Assistants Committee.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2014? In FY 2015?

The Texas Medical Board typically meets five times per year. In FY 2014 and FY 2015, the Texas Medical Board met five times in each fiscal year.

F. What type of training do members of your agency's policymaking body receive?

Prior to serving, Board members receive training in the following areas: 1) enabling statute of the board (Medical Practice Act); 2) agency programs; 3) board rules; 4) role and functions of the board and the departments of the agency; 5) agency budget; 6) agency audit; 7) requirements of open meetings, open records, and administrative procedure laws; 8) requirements of other applicable laws and policies relating to public officials, including conflict of interest laws and ethics policies; 9) travel reimbursement procedures; 10) what to expect at a board meeting; 11) how much time is involved in serving on the board; and 12) working with other governmental agencies, including the legislature. In addition, Board members receive annual training to provide a refresher of the information listed above. ..

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Board Rule Chapter 161, General Provisions, delineates the role, purpose, and organization of the Board and its committees as policy-making bodies. This rule chapter also specifies the roles, responsibilities, and requirements for the executive director, medical director, and general counsel. The rules serve as the agency policies in regard to policymaking and administration.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

Staff provide updated enforcement and licensure information and statistics at every board meeting as well as standard budget information. The Executive Director also provides an update at every board meeting on issues related to any legislative changes, mandates, and hearings; internal and SAO audits; personnel changes; statewide agency requirements such as strategic planning; and outreach to physician's groups and medical schools.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

A. Rulemaking. Since June 2005, the board has had a formal process of obtaining stakeholder input during the development rules and prior to the board's adoption of any rule changes. There are standing stakeholder committees for Enforcement, Licensure, Physician Assistant and Acupuncture rules. Ad hoc stakeholder work groups are formed as needed for specific topics. The agency also posts information on its website regarding rules in development with links to provide input by mail, facsimile or electronically. Additionally, the agency reviews all comments received during the standard process for comments upon publication of a rule in the *Texas Register.*
The public is also given the opportunity to provide comments during designated opportunities at board meetings in advance of the board's final adoption of any rule amendments.

B. Request by the Public to Speak to the Board. If someone from the public wishes to address the board on any subject, there is s always a time designated for public comment at every board meeting.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. *See Exhibit 4 Example.*

Texas Medical Board
Exhibit 4: Subcommittees and Advisory Committees

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Disciplinary Process Review Committee	*10-11 members (at least 1 M.D., 1 D.O., and 1 public member appointed by Board President*	*(A) oversee the disciplinary process and give guidance to the board and staff regarding means to improve the disciplinary process and more effectively enforce the Medical Practice Act (MPA) and board rules;* *(B) monitor the effectiveness, appropriateness and timeliness of the disciplinary process;* *(C) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from board staff or board representatives;* *(D) approve dismissals of complaints and closure of investigations; and* *(E) make recommendations to the board staff and the board regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the MPA and board rules.*	*Tex Occ Code Ann §153.005 And Rule 161.6*

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Executive Committee	*President, Vice President, Secretary-Treasurer, Disciplinary Process Review Committee Chair, plus any other members the Board President deems necessary*	*(A) ensure records are maintained of all committee actions;* *(B) delegate tasks to other committees;* *(C) take action on matters of urgency that may arise between board meetings;* *(D) assist in the presentation of information concerning the board and the regulation of the practice of medicine to the Legislature and other state officials;* *(E) review staff reports regarding finances and the budget;* *(F) formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;* *(G) study and make recommendations to the board regarding the roles and responsibilities of the board offices and committees;* *(H) study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board;* *(I) study and make recommendations to the board regarding board rules or any area of a board function that, in the judgment of the committee, needs consideration; and* *(J) make recommendations to the board regarding matters brought to the attention of the executive committee.*	*Tex Occ Code Ann §153.005 And Rule 161.6*
Finance Committee	4 members (at least 1 M.D., 1 D.O., and 1 public member) appointed by Board President	*(A) review staff reports regarding finances and the budget;* *(B) assist in the presentation of budget needs to the Legislature and other state officials;* *(C) recommend proper fees for the agency to charge; and* *(D) consider and make recommendations to the board regarding any aspect of board finances.*	*Tex Occ Code Ann §153.005 And Rule 161.6*

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Licensure Committee	*8-9 members (at least 1 M.D., 1 D.O., and 1 public member) appointed by Board President*	*(A) review applications for licensure and permits, make determinations of eligibility and report to the board its recommendations as provided by the Medical Practice Act and board rules;* *(B) review board rules regarding licensure and make recommendations to the board regarding changes or implementation of such rules;* *(C) evaluate each examination accepted by the board and develop each examination administered by the board;* *(D) investigate and report to the board any problems in the administration of examinations and recommend and implement ways of correcting identified problems;* *(E) make recommendations to the board regarding postgraduate training permits and issues concerning physicians in training;* *(F) maintain communication with Texas medical schools;* *(G) develop rules with regard to international medical schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;* *(H) study and make recommendations regarding documentation and verification of records from all applicants for licensure or permits;* *(I) review applications for acudetox specialist certification, make determinations of eligibility, and report to the board its recommendations as provided by Texas Occupations Code Annotated, ∋205.303;* *(J) review applications for acupuncture licensure recommended by the Texas State Board of Acupuncture Examiners, make determinations of eligibility, and report to the board its recommendations;* *(K) review applications for approval and certification of non-profit health organizations pursuant to the Medical Practice Act;* *(L) develop and review board rules regarding all persons and entities subject to the board's jurisdiction;* *(M) review applications for surgical assistant licensure and make recommendations to the board; and* *(N) make recommendations to the board regarding matters brought to the attention of the licensure* committee.	*Tex Occ Code Ann §153.005 And Rule 161.6*

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Public Information Committee	*5 members (at least 1 M.D., 1 D.O., and 1 public member) appointed by Board President*	*(A) develop information for distribution to the public;* *(B) review and make recommendations to the board in regard to press releases, newsletters, web-sites and other publications;* *(C) study and make recommendations to the board regarding all aspects of public information and public relations;* *(D) receive information from the public concerning the regulation of medicine pursuant to a published agenda item and board rules;* *(E) study and make recommendation to the board regarding all aspects of physician profiles; and* *(F) make recommendations to the board regarding matters brought to the attention of the public information/physician profile committee.*	*Tex Occ Code Ann §153.005 And Rule 161.6*
Telemedicine Committee	*5-7 members (at least 1 M.D., and 1 public member) appointed by Board President*	*(A) review, study, and make recommendations to the board concerning the practice of telemedicine, including but not limited to licensure, regulation, and/or discipline of telemedicine license holders or applicants;* *(B) review, study, and make recommendations to the board concerning interstate and intrastate telemedicine issues;* *(C) review, study, and make recommendations to the board concerning board rules regarding or affecting the practice of telemedicine; and* *(D) review, study, and make recommendations to the board concerning any other issue brought to the attention of the committee.*	*Tex Occ Code Ann §153.005 And Rule 161.6*

Table 4 Exhibit 4 Subcommittees and Advisory Committees

In addition to the committees listed above, the Medical Board has on-going ad hoc committees, including the Electronic Medical Records (EMR) Committee and the Advertising Review Committee. These committees have met in the recent past but are not currently active.

IV.B Policymaking Structure – Texas Physician Assistant Board

A. Complete the following chart providing information on your policymaking body members.

Texas Physician Assistant Board
Exhibit 3: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by *(e.g., Governor, Lt. Governor, Speaker)*	Qualification *(e.g., public member, industry representative)*	City
Vacant -Presiding Officer			
Reginald C. Baptiste, M.D.	*4-year term, October 2011 – February 2015, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Austin*
Anna Arredondo Chapman	*6-year term, March 2011 – February 2017, appointed by the Governor*	*Public Member*	*Del Rio*
Jason Cooper, P.A.-C	*4-year term, December 2013 – February 2017, appointed by the Governor*	*Licensed Physician Assistant*	*Midland*
Linda Delaney, P.A.-C	*3-year term, August 2012 – February 2015, appointed by the Governor*	*Licensed Physician Assistant*	*Dallas*
Teralea Jones, P.A.-C	*6-year term, May 2013 – February 2019, appointed by the Governor*	*Licensed Physician Assistant*	*Beeville*
Felix Koo, M.D., Ph.D.	*6-year term, March 2011 – February 2017, appointed by the Governor*	*Licensed Physician, (M.D.)*	*McAllen*
Michael D. Reis, M.D.	*6-year term, May 2013 – February 2019, appointed by the Governor*	*Licensed Physician, (M.D.)*	*Woodway*
Raymond Blayne Rush	*6-year term, May 2013 – February 2019, appointed by the Governor*	*Public Member*	*Frisco*

Table 5 Exhibit 3 Policymaking Body

B. Describe the primary role and responsibilities of your policymaking body.

The primary role and responsibilities of the policymaking body are to grant licenses and to approve disciplinary actions against physician assistant licensees. The board also makes recommendations to the Texas Medical Board regarding proposed rule changes. The complete listing of the Texas Physician Assistant Board's purpose and functions is provided in Rule 185.1.

C. How is the chair selected?

The Presiding Officer of the Board is appointed by the Governor.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The Texas Medical Board has oversight authority over the Texas Physician Assistant Board in the area of rulemaking.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2014? In FY 2015?

The Texas Physician Assistant Board typically meets three times per year. In FY 2014 and FY 2015, the Texas Physician Assistant Board met three times in each fiscal year.

F. What type of training do members of your agency's policymaking body receive?

Prior to serving, Board members receive training in the following areas: 1) enabling statute of the board (Physician Assistant Licensing Act); 2) agency programs; 3) board rules; 4) role and functions of the board and the departments of the agency; 5) agency budget; 6) agency audit; 7) requirements of open meetings, open records, and administrative procedure laws; 8) requirements of other applicable laws and policies relating to public officials, including conflict of interest laws and ethics policies; 9) travel reimbursement procedures; 10) what to expect at a board meeting; 11) how much time is involved in serving on the board; and 12) working with other governmental agencies, including the legislature. In addition, Board members receive annual training to provide a refresher of the information listed above. ..

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Board Rule Chapter 185 delineates the role, purpose, and organization of the Board and its committees as policy-making bodies. The roles, responsibilities, and requirements for the agency's executive director, medical director, and general counsel are delineated in Texas Medical Board Rule Chpt. 161 as mentioned above. All these rules serve as the agency and board policies in regard to policymaking and administration.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

Staff provide updated enforcement and licensure information and statistics at every board meeting as well as standard budget information. The Executive Director also provides an update at every board meeting on issues related to any legislative changes, mandates, and hearings; internal and SAO audits; personnel changes; statewide agency requirements such as strategic planning; and outreach to licensee groups and associated programs/schools.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

A. Rulemaking. Since June 2005, the board has had a formal process of obtaining stakeholder input during the development rules and prior to either the PA Board or Medical Board's

adoption of any rule changes. There is a standing stakeholder committee for Physician Assistant issues and rules. The agency also posts information on its website regarding rules in development with links to provide input by mail, facsimile or electronically. Additionally, the agency reviews all comments received during the standard process for comments upon publication of a rule in the *Texas Register.*

The public is also given the opportunity to provide comments during designated opportunities at board meetings in advance of the board's adoption of any rule amendments.

B. Request by the Public to Speak to the Board. If someone from the public wishes to address the board on any subject, there is always a time designated for public comment at every board meeting.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. *See Exhibit 4 Example.*

Texas Physician Assistant Board
Exhibit 4: Subcommittees and Advisory Committees

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Disciplinary and Ethics Committee	*3-4 Members (at least 1 physician, 1 physician assistant, and 1 public member) appointed by the Presiding Officer*	*(A) Draft and review proposed rules regarding the discipline of physician assistants and enforcement of the Physician Assistant Licensing Act.* *(B) Oversee the disciplinary process and give guidance to the board and staff regarding methods to improve the disciplinary process and more effectively enforce the Physician Assistant Licensing Act.* *(C) Monitor the effectiveness, appropriateness, and timeliness of the disciplinary process.* *(D) Make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations.* *(E) Draft and review proposed ethics guidelines and rules for the practice of physician assistants, and make recommendations to the board regarding the adoption of such ethics guidelines and rules.* *(F) Make recommendations to the board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Physician Assistant Licensing Act.* *(G) Make recommendations to the board regarding matters brought to the attention of the Disciplinary and Ethics Committee*	Tex Occ Code Ann §204.101 and R*ule 185.3*

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Licensure Committee	*3-4 Members (at least 1 physician, 1 physician assistant, and 1 public member) appointed by the Presiding Officer*	*(A) Draft and review proposed rules regarding licensure, and make recommendations to the board regarding changes or implementation of such rules.* *(B) Draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the board regarding changes or implementation of such rules.* *(C) Receive and review applications for licensure in the event the eligibility for licensure of an applicant is in question.* *(D) Present the results of reviews of applications for licensure, and make recommendations to the board regarding licensure of applicants whose eligibility is in question.* *(E) Make recommendations to the board regarding matters brought to the attention of the Licensure Committee.*	Tex Occ Code Ann §204.101

Table 6 Exhibit 4 Subcommittees and Advisory Committees

IV.C Policymaking Structure – Texas State Board of Acupuncture Examiners

A. Complete the following chart providing information on your policymaking body members.

Texas State Board of Acupuncture Examiners
Exhibit 3: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by *(e.g., Governor, Lt. Governor, Speaker)*	Qualification *(e.g., public member, industry representative)*	City
Suehing Woo Yee Chiang	*6-year term, February 2009 – January 2015, appointed by the Governor*	*Public Member*	*Sugar Land*
Allen Cline, L.Ac.	*6-year term, February 2013 – January 2019, appointed by the Governor*	*Licensed Acupuncturist*	*Austin*
Linda Wynn Drain	*6-year term, February 2009 – January 2015, appointed by the Governor*	*Public Member*	*Lucas*
Raymond J. Graham	*6-year term, August 2011 – January 2017, appointed by the Governor*	*Public Member*	*El Paso*
Jingyu Gu, L.Ac.	*4-year term, February 2013 – January 2017, appointed by the Governor*	*Licensed Acupuncturist*	*Austin*
Donna S. Guthery, L.Ac.	*3-year term, October 2014 – January 2017, appointed by the Governor*	*Licensed Acupuncturist*	*Bellaire*
Claudia E. Harsh, M.D.	*5-year term, October 2014 – January 2019, appointed by the Governor*	*Licensed Physician*	*Dallas*
Rachelle Webb, L.Ac.	*6-year term, February 2013 – January 2019, appointed by the Governor*	*Licensed Acupuncturist*	*Austin*
Reynaldo Ximenes, M.D.	*6-year term, May 2009 – January 2015, appointed by the Governor*	*Licensed Physician*	*Austin*

Table 7 Exhibit 3 Policymaking Body

B. Describe the primary role and responsibilities of your policymaking body.

The primary role and responsibilities of the Board of Acupuncture Examiners are to make recommendations to the Texas Medical Board regarding: 1) proposed board rules relating to the practice of acupuncture; 2) granting of acupuncture licenses; and 3) approval of disciplinary actions against acupuncture licensees. The complete listing of the Texas State Board of Acupuncture Examiner's purpose and functions is provided in Rule 183.1.

C. How is the chair selected?

The Presiding Officer of the Board is appointed by the Governor.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The Texas Medical Board has oversight authority over the State Board of Acupuncture Examiners in the area of rulemaking.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2014? In FY 2015?

The Texas State Board of Acupuncture Examiners typically meets three times per year. In FY 2014 and FY 2015, the Texas State Board of Acupuncture Examiners met three times in each fiscal year.

F. What type of training do members of your agency's policymaking body receive?

Prior to serving, Board members receive training in the following areas: 1) enabling statute of the board; 2) agency programs; 3) board rules; 4) role and functions of the board and the departments of the agency; 5) agency budget; 6) agency audit; 7) requirements of open meetings, open records, and administrative procedure laws; 8) requirements of other applicable laws and policies relating to public officials, including conflict of interest laws and ethics policies; 9) travel reimbursement procedures; 10) what to expect at a board meeting; 11) how much time is involved in serving on the board; and 12) working with other governmental agencies, including the legislature. In addition, Board members receive annual training to provide a refresher of the information listed above.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Board Rule Chapter 183 delineates the role, purpose, and organization of the Board and its committees as policy-making bodies. The roles, responsibilities, and requirements for the agency's executive director, medical director, and general counsel are delineated in Texas Medical Board Rule Chpt. 161 as mentioned above. All these rules serve as the agency and board policies in regard to policymaking and administration.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

Staff provide updated enforcement and licensure information and statistics at every board meeting as well as standard budget information. The Executive Director also provides an update at every board meeting on issues related to any legislative changes, mandates, and hearings; internal and SAO audits; personnel changes; statewide agency requirements such as strategic planning; and outreach to licensee groups and associated schools.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

A. Rulemaking. Since June 2005, the board has had a formal process of obtaining stakeholder input during the development rules and prior to either the Acupuncture Board or Medical Board's adoption of any rule changes. There is a standing stakeholder committee for Acupuncture issues and rules. The agency also posts information on its website regarding rules in development with links to provide input by mail, facsimile or electronically. Additionally, the agency reviews all comments received during the standard process for comments upon publication of a rule in the *Texas Register.*

The public is also given the opportunity to provide comments during designated opportunities at board meetings in advance of the board's adoption of any rule amendments.

B. Request by the Public to Speak to the Board. If someone from the public wishes to address the board on any subject, there is always a time designated for public comment at every board meeting.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. *See Exhibit 4 Example.*

Texas State Board of Acupuncture Examiners
Exhibit 4: Subcommittees and Advisory Committees

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Discipline and Ethics Committee	*3-5 members (at least 1 physician, 1 acupuncturist, and 1 public member) appointed by the presiding officer*	*(A) draft and review proposed rules regarding the discipline of acupuncturists and enforcement of Subchapter H of the Act;* *(B) oversee the disciplinary process and give guidance to the acupuncture board and staff regarding methods to improve the disciplinary process and more effectively enforce Subchapter H of the Act;* *(C) monitor the effectiveness, appropriateness, and timeliness of the disciplinary process;* *(D) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the acupuncture board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations;* *(E) draft and review proposed ethics guidelines and rules for the practice of acupuncture, and make recommendations to the acupuncture board regarding the adoption of such ethics guidelines and rules;* *(F) make recommendations to the acupuncture board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of Subchapter H of the Act; and* *(G) make recommendations to the acupuncture board regarding matters brought to the attention of the Discipline and Ethics Committee.*	Tex Occ Code Ann §205.101 and Rule 183.3

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Education Committee	3-5 members (at least 1 acupuncturist, and 1 public member) appointed by the presiding officer	*(A) draft and propose rules regarding educational requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;* *(B) draft and propose rules regarding training required for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;* *(C) draft and propose rules regarding continuing education requirements for renewal of a Texas license and make recommendations to the acupuncture board regarding changes or implementation of such rules;* *(D) consult with the Texas Higher Education Coordinating Board regarding educational requirements for schools of acupuncture, oversight responsibilities of each entity, degrees which may be offered by schools of acupuncture;* *(E) maintain communication with acupuncture schools;* *(F) plan and make visits to acupuncture schools at specified intervals, with the goal of promoting opportunities to meet with the students so they may become aware of the board and its functions;* *(G) develop information regarding foreign acupuncture schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;* *(H) draft and propose rules which would set the requirements for degree programs in acupuncture;* *(I) be available for assistance with problems relating to acupuncture school issues which may arise within the purview of the board;* *(J) offer assistance to the Licensure Committee in determining eligibility of graduates of foreign acupuncture schools for licensure;* *(K) study and make recommendations regarding documentation and verification of records from foreign acupuncture schools;* *(L) make recommendations to the acupuncture board regarding matters brought to the attention of the Education Committee.*	Tex Occ Code Ann §205.101 and Rule 183.3

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Licensure Committee	*3-5 members (at least 1 physician, 1 acupuncturist, and 1 public member) appointed by the presiding officer*	*(A) draft and review proposed rules regarding licensure, and make recommendations to the acupuncture board regarding changes or implementation of such rules;* *(B) draft and review proposed application forms for licensure, and make recommendations to the acupuncture board regarding changes or implementation of such rules;* *(C) oversee the application process for licensure;* *(D) receive and review applications for licensure;* *(E) present the results of reviews of applications for licensure and make recommendations to the acupuncture board regarding licensure of applicants;* *(F) oversee and make recommendations to the acupuncture board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination;* *(G) draft and review proposed rules regarding any aspect of the examination;* *(H) make recommendations to the acupuncture board regarding matters brought to the attention of the Licensure Committee.*	Tex Occ Code Ann §205.101 and Rule 183.3

Table 8 Exhibit 4 Subcommittees and Advisory Committees

V. Funding

A. Provide a brief description of your agency's funding.

The Texas Medical Board was appropriated $11.6 million in FY 2014 from three sources: General Revenue ($9.5 million), General Revenue Dedicated ($2.1 million), and Appropriated Receipts ($0.06 million). Overall, TMB collected $41.6 million in revenue in FY 2014, and was appropriated 28 percent of its collections.

B. List all riders that significantly impact your agency's budget.

Senate Bill 1, 83rd Legislative Session, affecting FY 2014:

Article VIII – State Office of Administrative Hearings

Rider 7. Billing Rate for Workload. Clarifies that the Legislature appropriated funds to SOAH in each year of the biennium for conducting administrative hearing s for the Texas Medical Board.

Article VIII – Texas Medical Board

Rider 2. Capital Budget. Limits capital expenditures to $302,713 in FY 2014 and $200,308 in FY 2015 for acquisition of information resource technologies including server, storage, and network lifecycle replacement; software replacement and upgrades; and desktop, printer and scanner lifecycle upgrades.

Rider 5. Contingent Revenue. Allows the TMB to receive additional appropriations if it increases fees to generate $1,141.726 in excess of the Comptroller's Biennial Revenue Estimate. The additional appropriation would include $316,660 for the Physician Health Program and $612,500 for Enforcement. In addition, the agency's FTE cap would increase by 7.5 FTEs.

Article VIII – Special Provisions Relating to All Regulatory Agencies

Sec. 2. Appropriations Limited to Revenue Collections. States the Legislature's intent that the TMB generate sufficient revenue to cover its direct and indirect appropriations and authorizes the Comptroller to reduce the TMB's appropriation authority at the direction of the Legislative Budget Board and Governor, if the actual and projected revenue collections are insufficient.

Sec. 3. Funding for Health Professions Council. Requires the TMB, as an agency participating in the Health Professions Council to transfer $29,855 each year through interagency contract to the Health Professions Council from the TMB's appropriations.

Article IX – General Provisions

Sec. 18.18. Contingency for HB 1803. Provides additional funding of $126,000 in FY 2014 to the TMB after the passage of legislation relating to the renewal of a controlled

substance registration and if it increases fees to generate $126,000 in excess of the Comptroller's Biennial Revenue Estimate and in addition to other revenue requirements.

House Bill 1, 84th Legislative Session, affecting FY 2016:

Article VIII – State Office of Administrative Hearings

Rider 8. Billing Rate for Workload. Clarifies that the Legislature appropriated funds to SOAH in each year of the biennium for conducting administrative hearing s for the Texas Medical Board.

Article VIII – Texas Medical Board

Rider 2. Capital Budget. Limits capital expenditures to $302,713 in FY 2016 and $200,308 in FY 2017 for acquisition of information resource technologies including server, storage, and network lifecycle replacement; software replacement and upgrades; and desktop, printer and scanner lifecycle upgrades.

Rider 5. Contingency for Behavioral Health Funds. Directs the Comptroller to prohibit the TMB's expenditure of General Revenue-Related behavioral health funds if the Legislative Budget Board notifies the Comptroller that the TMB's planned expenditure in fiscal year 2017 does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

Article VIII – Special Provisions Relating to All Regulatory Agencies

Sec. 2. Appropriations Limited to Revenue Collections. States the Legislature's intent that the TMB generate sufficient revenue to cover its direct and indirect appropriations and authorizes the Comptroller to reduce the TMB's appropriation authority at the direction of the Legislative Budget Board and Governor, if the actual and projected revenue collections are insufficient.

Sec. 3. Funding for Health Professions Council. Requires the TMB, as an agency participating in the Health Professions Council to transfer $32,378 in FY 2016 and $27,189 in FY 2017 through interagency contract to the Health Professions Council from the TMB's appropriations.

Article IX – General Provisions

Sec. 18.55. Contingency for SB 195. Provides additional funding to the Texas State Board of Pharmacy to implement the Prescription Drug Monitoring Program through fees assessed and transferred to it by the agencies participating in the program. The Texas Medical Board as a participating agency is expected to generate sufficient fee revenue in additional to any other revenue requirements to contribute $590,358 in FY 2016 and $360,366 in FY 2017.

Sec. 18.56. Contingency for SB 202. Provides additional funding after the passage of legislation to transfer the regulation of four occupations from the Department of State Health Services to the TMB of $2,070,947 in FY 2016 and $1,569,317 in FY 2017 and if the

TMB increases fees to generate $4,393,493 in excess of the Comptroller's Biennial Revenue Estimate and in addition to other revenue requirements. In addition, the agency's FTE cap would increase by 29 FTEs.

C. Show your agency's expenditures by strategy. *See Exhibit 5 Example.*

Texas Medical Board
Exhibit 5: Expenditures by Strategy — 2014 (Actual)

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount
A.1.1 – Licensing	*$1,766,475.07*	*16%*	*37,213.00*
Goal A: Licensure Subtotal	*$1,766,475.07*	*16%*	*37,213.00*
B.1.1 – Enforcement	*$7,156,077.16*	*64%*	*265,727.10*
B.1.2 – Physician Health Program	*$483,912.33*	*4%*	*3,326.97*
B.2.1 – Public Education	*$224,248.89*	*2%*	*38,870.53*
Goal B: Enforce Acts Subtotal	*$7,864,238.38*	*70%*	*307,924.60*
C.1.1 – Indirect Administration - Licensing	*$528,387.02*	*5%*	*7,507.72*
C.1.2 – Indirect Administration - Enforcement	*$1,051,031.56*	*9%*	*17,514.13*
Goal C: Indirect Administration Subtotal	*$1,579,418.58*	*14%*	*25,021.85*
GRAND TOTAL:	**$11,210,132.03**	**100%**	**$370,159.85**

Table 9 Exhibit 5 Expenditures by Strategy

D. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines. *See Exhibit 6 Example.*

(Agency Name)
Exhibit 6: Sources of Revenue — Fiscal Year 2014 (Actual)

Source	Amount
General Revenue (excluding convenience fees)	*$38,416,956*
GR-Dedicated – GR Account 5105 Public Assurance	*$3,090,880*
Appropriated Receipts	*$48,730*
TOTAL	**$41,556,566**

Table 10 Exhibit 6 Sources of Revenue

E. If you receive funds from multiple federal programs, show the types of federal funding sources. *See Exhibit 7 Example.*

Not Applicable. The Texas Medical Board did not receive any federal funds in FY 2014.

F. If applicable, provide detailed information on fees collected by your agency. *See Exhibit 8 Example*.

Exhibit 8: Fee Revenue — Fiscal Year 2014

Fee Description/ Program/ Statutory Citation[B]	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited *(e.g., General Revenue Fund)*
Acupuncture and Acudetox				
Acupuncture License Application §205.103	*$305 - $320* No Maximum Set	*111*	*$34,350.00*	General Revenue Fund 0001
Acupuncture Temporary License (includes Distinguished Professor) §205.103 & §205.208	*$50 - $107* No Maximum Set	*70*	*$7,326.00*	General Revenue Fund 0001
Acupuncture Annual Registration §205.103& §205.251	$161.25 - $415.63 No Maximum Set	*1,134*	*$358,783.00*	General Revenue Fund 0001
Acupuncture Delinquent Penalty §205.103 & §205.253	$159.25 - $318.50 No Maximum Set	*36*	*$6,848.00*	General Revenue Fund 0001
Acupuncture Criminal History Evaluation Letter §205.103	$100 No Maximum Set	*14*	*$1,400*	General Revenue Fund 0001
Acupuncture CAE Review §205.103	$25 - $50 (varies based on type of review) No Maximum Set	*48*	*$1,350.00*	General Revenue Fund 0001
Acudetox Annual Permit Registration §205.103 & §205.303	$87.00 - $87.50 No Maximum Set	106	$ 9,275.00	General Revenue Fund 0001
Acudetox Permit Application §205.103 & §205.303	$25 - $52 No Maximum Set	22	$ 793.00	General Revenue Fund 0001
Physicians				
Physician Licensure Application (includes all physician license types) §153.051	*$787 - $1002 Max $900*	*5,031*	*$4,053,550.00*	General Revenue Fund 0001
Physician Provisional License §153.051	*$107 Max $200*	*17*	*$1,819.00*	General Revenue Fund 0001

Fee Description/ Program/ Statutory Citation[B]	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited *(e.g., General Revenue Fund)*
Physician Temporary License §153.051	*$107 Max $200*	*8*	*$856.00*	General Revenue Fund 0001
Physician Faculty Temporary Permit/License §153.051	*$457 - $472 Max $200*	*160*	*$74,155.00*	General Revenue Fund 0001
Physician Visiting Professor Permit §153.051	*$167*	*11*	*$1,837.00*	General Revenue Fund 0001
Physician Registration §153.051	*$127.50 - $370 Max $400*	*38,476*	*$13,134,674.00*	General Revenue Fund 0001
Physician Delinquent Penalty §153.051	*$75 - $100*	*634*	*$77,325.00*	General Revenue Fund 0001
Physician/Physician Assistant Jointly Owned Entity Annual Report §153.051 & §162.053	*$18*	*9*	*$162.00*	General Revenue Fund 0001
Office Based Anesthesia §153.051 & §162.105	*$26.25 - $210 Max $600*	*1,481*	*$287,963.00*	General Revenue Fund 0001
Post Graduate Resident Application (Physician – In– Training) §153.051	*$71 - $212 Max $200*	*2,607*	*$576,713.00*	General Revenue Fund 0001
Post Graduate Training Evaluation §153.051	*$250*	*39*	*$9,700.00*	General Revenue Fund 0001
Remedial Plan §164.0015	*$500 Cover Costs*	*278*	*$139,000.00*	General Revenue Fund 0001
Physician Administrative Penalty §165.001	*Up to $5,000 per violation*	*731*	*$394,275.00*	General Revenue Fund 0001
Texas Physician Health Program §153.051 & §167.011	*$100 - $1,200 Max $1,200*	*560*	*$417,036.00*	General Revenue Fund 0001
Physician Surcharges				
$200 Professional Surcharge/Year §153.053	*$200/Year Fixed Fee*	*43,666*	*$16,041,630.00*	General Revenue Fund 0001
$80 Surcharge for SB 104 §153.0535	*$80 Fixed Fee*	*38,637*	*$3,090,880.00*	*GR Account 5105 – Public Assurance*
Physician Assistants				
Physician Assistant License Application §204.103 & §204.152	*$200 - $220 Cover Costs*	*943*	*$198,450.00*	General Revenue Fund 0001

Fee Description/ Program/ Statutory Citation[B]	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited *(e.g., General Revenue Fund)*
Physician Assistant Temporary License §204.103 & §204.155	*$107 Cover Costs*	*647*	*$69,229.00*	General Revenue Fund 0001
Physician Assistant Annual Registration §204.103 & §204.156	*$123.75 - $507 Cover Costs*	*7,022*	*$1,803,880.00*	General Revenue Fund 0001
Physician Assistant Delinquent Penalty §204.103 & §204.156	*$126.50 - $268.50 Cover Costs*	*133*	*$20,840.00*	General Revenue Fund 0001
Surgical Assistants				
Surgical Assistants Application Occupations Code §206.208 & §206.202	$300 - $315 Cover Costs	59	$18,210.00	General Revenue Fund 0001
Surgical Assistants Temporary License §206.208 & §206.206	$50 Cover Costs	13	$650.00	General Revenue Fund 0001
Surgical Assistants Biennial Registration §206.208 & §206.210	*$136.25 - $596.63 Cover Costs*	*217*	$113,624.00	General Revenue Fund 0001
Surgical Assistants Delinquent Penalty §206.208& §206.212	*$278.50 Cover Costs*	*4*	$1,114.00	General Revenue Fund 0001
Non-Certified Radiologic Technicians				
Non-Certified Radiologic Technician Application §153.051 & §601.252	$115.50 - $130.50 No Maximum Set	247	30,888.00	General Revenue Fund 0001
Non-Certified Radiologic Technician Registration Renewal §153.051 & §601.252	$115.50 - $130.50 No Maximum Set	1,098	$142,884.00	General Revenue Fund 0001
Non-Certified Radiologic Technician Delinquent Penalty §153.051 & §601.252	$25 No Maximum Set	70	$1,750.00	General Revenue Fund 0001
Non-Profit Organization				
Non-Profit Organization Permit Application §153.051	$2,500 No Maximum Set	47	$122,500.00	General Revenue Fund 0001
Non-Profit Organization Permit Biennial Renewal §153.051	$1,125 No Maximum Set	124	$137,250.00	General Revenue Fund 0001
Non-Profit Organization Late Penalty §153.051	$1,000 No Maximum Set	11	$11,000.00	General Revenue Fund 0001

Multiple License Types				
Advertising Review §153.051	$200	1	$200.00	General Revenue Fund 0001
Hardcopy Registration Forms (Physicians, PAs, Acupuncturists) §153.051	$50	233	$11,650.00	General Revenue Fund 0001
Office of Patient Protection Surcharge (Physicians, PAs, Acupuncturists, Surgical Assistants) $101.307	$1 or $5 Fixed Fee	46,879	$102,480.00	General Revenue Fund 0001
General				
Open Records Requests Government Code §552.261 & 1 TAC §70.3	*Varies TAC Sets Maximums*	*5*	*$314.00*	General Revenue Fund 0001
Public Information Data Products Government Code §552.261& 1 TAC §70.3	*Varies TAC Sets Maximums*	*556*	*$37,941.00*	General Revenue Fund 0001
Convenience Fees Government Code §2054.111	*Varies No Maximum Set*	*57,222*	*$897,683.00*	General Revenue Fund 0001

Table 11 Exhibit 8 Fee Revenue

Notes:

A – Fees that changed during fiscal year 2014 have both fee amounts shown and fees that generated no revenue are not included in Exhibit 8.

B – Where a range is indicated, a combination of fees may be reflected.

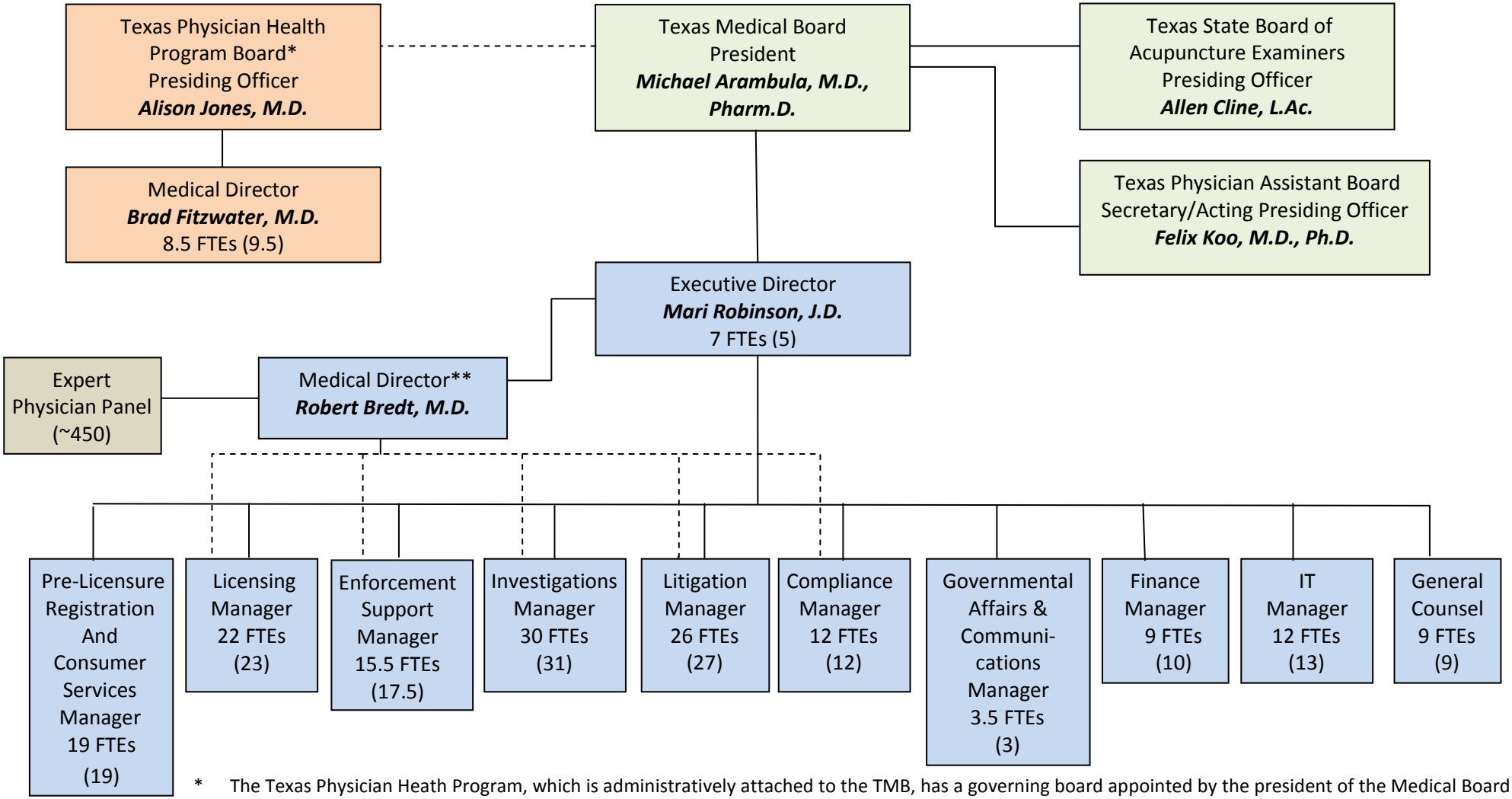
C – Statutory Citations are to the Occupations Code unless otherwise noted.

VI. Organization

A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.

Texas Medical Board & Associated Boards Organizational Chart

( ) Number inside parentheses represents budgeted FTEs.



* The Texas Physician Heath Program, which is administratively attached to the TMB, has a governing board appointed by the president of the Medical Board

** The TMB Medical Director has oversight on standard of care issues within the noted departments.

B. If applicable, fill in the chart below listing field or regional offices.

Exhibit 9: FTEs by Location — Fiscal Year 2014

Headquarters, Region, or Field Office	Location	Co-Location? Yes / No	Number of Budgeted FTEs FY 2014	Number of Actual FTEs as of June 1, 2014
Headquarters/Central Office	Austin	No	137	132.5
Field Offices	Statewide (field staff work in home offices)	No	42	41
			TOTAL: 179	**TOTAL: 173.5**

Table 12 Exhibit 9 FTEs by Location

C. What are your agency's FTE caps for fiscal years 2014–2017?

The FTE caps for fiscal years 2014 and 2015 were the same in each year at 172.5. Based on authorization in Article IX, Sec.6.10 of the GAA, TMB's FTE cap increased from 172.5 to 179 for each year of the biennium.

The FTE caps for fiscal years 2016 and 2017 are 210.5, which includes 181.5 FTEs for historical TMB functions and 29 FTEs associated with the transfer of functions from the Department of State Health Services.

D. How many temporary or contract employees did your agency have as of August 31, 2014?

There were no temporary or contract employees on 8/31/14. For the total fiscal year, TMB had two temporary employees for a combined total of three months. TXPHP had one temporary employee for a total of three months.

E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2014

Program	Number of Budgeted FTEs FY 2014	Actual FTEs as of August 31, 2014	Actual Expenditures
Executive	5	5	$375,748
General Counsel	9	8	$605,367
Governmental Affairs & Communications	3	3	$224,249
Licensure	23	23	$1,091,708
Pre-Licensure, Registration, & Customer Affairs	19	19	$674,767
Enforcement Support	18.5	18.5	$597,950
Investigations	31	30	$2,831,599
Litigation	27	24	$2,316,172
Compliance	12	10	$804,989

Program	Number of Budgeted FTEs FY 2014	Actual FTEs as of August 31, 2014	Actual Expenditures
Finance	10	10	$495,674
Information Resources	13	9	$707,996
Texas Physician Health Program (TXPHP)	9.5	8.5	$483,912
TOTAL	**179**	**167**	**$11,210,132**

Table 13 Exhibit 10 List of Program FTEs and Expenditures

VII. Guide to Agency Programs

The agency's 12 programs are provided in the order listed below. In addition, the last section is comprised of informational tables on the four licenses being transferred to TMB from DSHS per the requirements of SB 202.

A. Executive
B. General Counsel
C. Governmental Affairs and Communications
D. Pre-Licensure, Registration and Consumer Services
E. Licensing
F. Enforcement Support
G. Investigations
H. Litigation
I. Compliance
J. Finance
K. Information Resources
L. Texas Physician Health Program
M. DSHS – transfer of four license types

VII. A. Guide to Agency Programs – EXECUTIVE DEPARTMENT

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***EXECUTIVE***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***MARI ROBINSON, EXECUTIVE DIRECTOR***

Actual Expenditures, FY 2014: ***$375,748***

Number of Actual FTEs as of June 1, 2015: ***7***

Statutory Citation for Program: ***Occ. Code, Chpt 152***

B. What is the objective of this program or function? Describe the major activities performed under this program.

Executive Director (ED)

- Executive management of all agency functions, policies, and procedures
- Policy and Administrative Support for three oversight boards and provides training to board and district review committee (DRC) members
- Provides key support to the Disciplinary Process Review Committees of all three oversight boards
- Primary Agency Liaison to Legislature, Governor, and State Leadership offices – testify at legislative hearings on budget and policy issues. Track legislative issues and implementation of legislation.
- Provide information, statements, interviews to media on agency issues
- Primary Agency Liaison on outreach presentations to physicians groups, medical schools, hospitals, professional associations
- Primary Agency Liaison to affiliated national groups (FSMB, AIM) and relevant federal agencies (DEA, FBI)
- Key agency Liaison to rule stakeholder groups
- Key staff person for developing and reporting agency enforcement performance measures
- Final approval for all required state agency reporting
- Review complex license application files for potential approval or referral to Board Licensure Committee
- Oversees the agency's Annual Meeting which is required attendance for all staff

Medical Director

- Oversight on standard of care issues for licensure and enforcement cases.
- Oversight of expert physician panel: reviewing expert reports for enforcement cases, recruiting physicians to serve on panel.
- Serve on Quality Assurance Committee with Board/DRC members and Litigation Manager to review enforcement cases

Additional

- Scheduling of disciplinary hearings impacting all oversight boards and DRC members
- Administrative support to all three boards and DRC members
- Track status of agency projects
- Administrative support to Executive Director and Medical Director
- Administrative support for expert physician panel.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The ED tracks all enforcement performance measures and provides an update on enforcement cases at all board meetings and in required annual reporting.
The ED and MD attend meetings of all oversight boards and provide policy and administrative support and feedback.
The ED attends numerous outreach presentations each calendar year to ensure that licensees and medical students understand agency requirements.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Because the current Executive Director is not a physician, the Medical Practice Act (Occ. Code, Sec. 152.054) requires that the ED appoint a Medical Director who is primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations. Since 2009 when the current ED was appointed, the agency has also had a Medical Director position.

It is assumed that the same or similar functions of the Executive Department have existed since the creation of the Medical Board. It is assumed that a majority of the prior agency Executive Directors have been physicians.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Executive function affects all agency employees and departments, all board and district review committee members, all board meetings, all members of the expert physician panel, and potentially any licensee or applicant for licensure in the state of Texas.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The ED oversees 13 employees including the agency's Medical Director, Executive Support Manager, one Executive Assistant, and all 10 departmental managers. The Medical Director has no supervision of staff but does have oversight of standard of care issues for licensure and enforcement cases. The Executive Support Manager oversees three positions including positions that assist with administrative support to the expert physician panel.

The department maintains relevant policies and procedures for all key functions.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue and general-revenue dedicated appropriations.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The ED serves as the agency liaison to a variety of other units of government relating to health policy and health care enforcement issues. At the state level this includes HHSC, DSHS, TDI, other members of the Health Professions Council, etc. At the federal level this includes the DEA and FBI. In some instances, the TMB is required to be an ex-officio member of a state taskforce or entity such as the recently repealed Institute of Health Care Quality and Efficiency.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

TMB maintains a pool of approximately 500 physicians who provide statutorily required expert reviews of standard of care cases at a set rate of $100/hr. All contracts are reviewed by both the Executive Director and the Medical Director (expert physician review and chart monitor) before submitting for approval to the Medical Board. The aggregate cost of these contracts is detailed under the Investigations Department – Sec. VII, G.

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

As medicine continues to evolve and is used by several types of practitioners, a review of the current definition of practicing medicine may warrant review to consider covering elective procedures, as well as addressing decision-making for medical necessity. Currently "practicing medicine" is defined in Sec. 151.002(a)(13) as follows:

(13) "Practicing medicine" means the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who:

(A) publicly professes to be a physician or surgeon; or

(B) directly or indirectly charges money or other compensation for those services.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Not applicable.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

These are described in detail in the enforcement department sections and the flowchart and description of the agency's enforcement process.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See regulatory program information and charts under Enforcement Support Department – Schedule VII, F.

VII. B. Guide to Agency Programs – GENERAL COUNSEL

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***GENERAL COUNSEL***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***SCOTT FRESHOUR, GENERAL COUNSEL & MANAGER***

Actual Expenditures, FY 2014: ***$605,367***

Number of Actual FTEs as of June 1, 2015: ***9***

Statutory Citation for Program: ***Occ. Code, Chpt 152***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The General Counsel's office provides legal counsel to the executive director, medical director, division and department directors, Medical Board, Physician Assistant Board, and Acupuncture Board. Key activities include:

- Serving as hearings counsel at disciplinary hearings to provide guidance to all hearing participants including board members and DRC members
- Primary coordination and drafting of board rules
- Primary coordination of rule stakeholder meetings for discussions on policy issues and rules
- Responding to lawsuits in state district and federal courts, work with assigned attorney liaison from the AG's office
- attend board meetings to provide guidance and information to board members and to provide an update on litigation that the agency is a party to
- Track and respond to open records requests and maintain all open records procedures and policies
- Fulfill reporting requirements to law enforcement agencies and the National Practitioner Databank (NPDB).
- Respond to inquiries from licensees, the general public, and attorneys regarding statutory and rule requirements.
- Oversight and administration of the agency's Human Resources function

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

- Serve as hearings counsel in approximately 650 disciplinary hearings each year.
- Track all pending litigation in state and federal court and provide updates at every board meeting.
- Respond to hundreds of open records requests every year.

- Provide department statistics to executive director on monthly basis.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The GC Department has grown and changed over time to include the agency's HR function and to include sufficient staff to effectively and efficiently address the many responsibilities of the department.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This function affects all agency staff/departments, all board members, all DRC members, all licensees, all rules stakeholders,

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The General Counsel position oversees eight other positions as indicated below. The department maintains relevant policies and procedures for all key functions. General Counsel has oversight of:

- 3 Assistant General Counsel positions
- 1 Legal Assistant
- 1 Open Records Coordinator
- 1 Administrative Assistant
- 1 HR Specialist
- 1 HR Administrative Assistant

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's enforcement strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The GC Dept works with a variety of other state agencies including OAG – OAG attorneys provide legal representation for the boards in district and federal courts. State agencies such as HHSC, DSHS, and TDI also forward regulatory issues or concerns to the GC Dept. The dept works with law enforcement agencies at all levels (local/state/federal) to address regulatory issues.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The General Counsel's office shares oversight of contracts with the Litigation Department related to transcription services for disciplinary hearings and for Lexis-Nexus legal research services. The GC's office also reviews the agency's internal audit contract with the Executive Director and GAC Manager. All contracts are reviewed by the relevant department manager and agency purchasing officer. The contracts are itemized as follows:

- Ken Owens & Associates, court reporting and disciplinary hearing services - $123,142;
- Rupert & Associates, internal audit services - $23,659;
- Lexis-Nexus, legal research service - $5,268

L. Provide information on any grants awarded by the program.

Not applicable

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Evidentiary Thresholds for Emergency Disciplinary Hearings

Emergency disciplinary hearings and their resulting actions – temporary suspensions or restrictions – are designed to immediately take effect to protect the public and are intended to be used in rare circumstances. The Medical Practice Act requires that a high evidentiary burden must be met – there must be evidence that a physician is a "continuing threat" [Occ. Code, Sec. 164.059(b)] to the public welfare in order to act on an emergency basis. In order to meet this

burden, the board's evidence must meet two basic standards: 1) the licensee's actions must be egregious and 2) the licensee's actions must have occurred recently.

A significant challenge the board faces in meeting this "timeliness" threshold is the lack of timely reporting of a patient death or complication since the board may not receive a complaint on a standard of care case until several months after the event occurred. The longer the lag in reporting the event the more difficult it becomes for the board to prove a "continuing threat."

Rather than continuing the present standard which focuses on both elements of egregiousness and timing, consideration could be given to making the egregiousness of a licensee's action the primary criteria in the analysis of whether an emergency temporary action should be taken. The element of timing may not be particularly relevant at this level of violation. If a physician is responsible for patient deaths, it could be argued that the board should be able to act on a temporary basis to ensure the public safety, even if the reported deaths occurred a year ago. While this area of enforcement affects a small percentage of the board's caseload, the board's ability to take an emergency action is paramount for public safety and welfare.

Confidentiality of TMB Disciplinary Hearing Materials in SOAH Cases

The Medical Practice Act currently provides that all TMB investigative and informal settlement conference (ISC) materials are confidential. Regardless of these requirements, TMB has encountered situations where, after a formal complaint has been filed against a licensee at SOAH, there have been attempts by licensees to use the confidential TMB enforcement information in the case before SOAH.

TMB has also encountered situations where a SOAH Administrative Law Judge (ALJ) allow the licensee to use any ISC information in defense of their case. The ALJ's reason that material has been given to the licensee and they should be able to utilize it, and the confidentiality provision applies to everyone but the licensee. This logic ignores the express language of 164.007(d) which clearly distinguishes a SOAH proceeding from an ISC, and the ALJ's have found waiver of the protection despite requirements in the aw that the Licensee must be provided the ISC evidence. The ALJ argue that because the material is sealed as confidential it does not harm TMB to allow this to be used; however, this ignores that defense uses ISC information particularly the expert panel reports to attacks the Board's SOAH expert opinion, which the staff as has never shown to its SOAH because it because it is confidential under 164.007(c), 164.003 (h) and board rule 182.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

More information about the Open Records function, rulemaking process, and answers to frequently asked questions from licensees and consumers can be found at the following link: **http://www.tmb.state.tx.us/page/general-counsel-overview**

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**

- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

The GC Dept works with all other enforcement departments to ensure all regulatory requirements are appropriately followed and performed by the agency.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See regulatory program information and charts under Enforcement Support Department – Schedule VII, F.

VII. C. Guide to Agency Programs – GOVERNMENTAL AFFAIRS

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***GOVERNMENTAL AFFAIRS & COMMUNICATIONS***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***MEGAN GOODE, MANAGER***

Actual Expenditures, FY 2014: ***$224,249***

Number of Actual FTEs as of June 1, 2015: ***3.5***

Statutory Citation for Program: ***Occ. Code, Chpt 154***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Governmental Affairs & Communications (GAC) Department performs these major activities:

- Facilitate required reporting to state oversight agencies and legislature including Strategic Plan, LAR, performance measure reporting, internal audit, records retention, etc.
- Monitor legislation and respond to inquiries during legislative session, develop agency presentations for legislative hearings
- Track and respond to constituent and policy inquiries from offices of elected officials
- Write, gather information for, edit, and publish agency newsletter/bulletin
- Update and maintain agency website
- Issue press releases related to board disciplinary actions and board meetings
- Coordinate information for and draft responses to media requests, coordinate requests for interviews from media outlets
- Coordinate responses for information from the public and licensees
- Complete reporting and training requirements related to business continuity/disaster recovery
- Coordination of outreach presentations - provide administrative support to Executive & Licensing Departments with scheduling outreach presentations to medical schools, professional associations, physicians' groups, etc. and
- Coordinate records management function for the agency.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The GAC Department publishes the boards' newsletter/bulletin multiple times per year, issues news releases, and provides updates on public information activities at board meetings. The department ensures that required state agency publications and reports are accurately completed and submitted as required.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The department helped oversee the transition to a new, more user-friendly agency website in 2013-2014. This is in keeping with the agency's strategy of public and licensee education. The function was created to help the agency better fill its mission to protect the public by creating greater public awareness. Prior to creation of the communications officer (formerly public information officer position), the functions were carried out at a minimal level by various other staff members.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This department impacts the oversight boards, licensees, agency staff, media outlets, and users of the agency website including the general public.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The department manager oversees 2.5 full-time positions including the communications officer, governmental affairs analyst, and business continuity/special projects coordinator. The department maintains relevant policies and procedures for all key functions.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's public education and indirect administration strategies in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The department works with legislative and governor's offices to respond to constituent inquiries and questions on policy issues, rules, etc. The department works with state oversight agencies such as the LBB and SAO to fulfill agency reporting requirements.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Contracted expenditures are made for website design and maintenance services, records management services, and e-mail communications services. All contracts are reviewed by the relevant department manager and Finance Dept staff. The contracts are itemized as follows:

- Interactive Ensemble, website redesign, maintenance, and hosting - $33,204;
- Records Center, Texas State Library & Archives Commission, records storage - $11,646

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Agency publications including required reporting to oversight agencies as well as newsletters and press releases are available on the agency website at the following links: http://www.tmb.state.tx.us/page/legislative-info-&-required-reporting and http://www.tmb.state.tx.us/page/news

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not applicable to this department.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See regulatory program information and charts under Enforcement Support Department – Schedule VII, F.

VII. D. Guide to Agency Programs - PRC

A. Provide the following information at the beginning of each program description.

Name of Program or Function: PRE-LICENSURE, REGISTRATION & CONSUMER SERVICES

Location/Division: AUSTIN/HQ

Contact Name: RHEA HINES

Actual Expenditures, FY 2014: $674,767

Number of Actual FTEs as of June 1, 2015: 19

Statutory Citation for Program: OCC. CODE, CHPT 155

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Pre-Licensure, Registration and Consumer Services (PRC) Department has three primary functions: 1) assisting applicants in pre-licensure; 2) registration of licenses and permits; and 3) providing information to consumers.

Staff review applications for completeness and communicate with applicants about missing documentation and the status of their applications. The department is also responsible for all maintenance requirements on licenses, such as registration (renewal) and issuance of annual or biennial permits, and cancellation of licenses when the required fees are not paid or the forms are not filed.

The department maintains the agency's call center and answers questions from the public, licensees, and verification entities concerning the licensing and regulation of physicians, physician assistants, surgical assistants, acupuncturists, and other types of licenses, permits, or registrations. Staff maintain the current status of licensees and update the licensee profile information published on the agency website.

The PRC department also registers pain management clinics (PMCs), maintains the physician delegation registration system, conducts audits on licensees for compliance with continuing medical education (CME) requirements, and reviews information related to noncompliance with state student loan and child support payment requirements.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The department manager meets monthly with the Executive Director to review workload statistics. Relevant performance measures for this function include:

- % of Licensees who Renew Online (Physicians & PAs),
- Number of Licenses Renewed (Phy, PA, Acu, SA), and
- Average Number of Days to Renew License (Phy, PA, Acu, SA).

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In FY 2008, TMB significantly improved process efficiencies by implementing the Licensure Inquiry System of Texas (LIST), a web-based license application tracking system that allows applicants to track the status of their physician licensure applications through the internet. The system provides two-way electronic communication between applicants and both PRC and Licensing staff. Since its inception, this system has helped reduce the time required to license a physician in Texas by adding efficiencies not only for TMB staff but also for applicants, who have real-time access to the status of their applications.

A variety of legislation passed by the 81st Legislature (2009) added new and significant registration and licensing requirements to TMB. This included registration of pain management clinics (SB 911) and registration of physician delegation of prescriptive authority to physician assistants and advanced practice nurses (SB 532).

HB 2098 enacted by the 82nd Legislature (2011), authorized physicians and physician assistants (PAs) to create, form, or own corporations, partnerships, professional associations, or professional limited liability companies. The legislation required both physicians and PAs who jointly own an entity to report annually to TMB ownership interest and other required information.

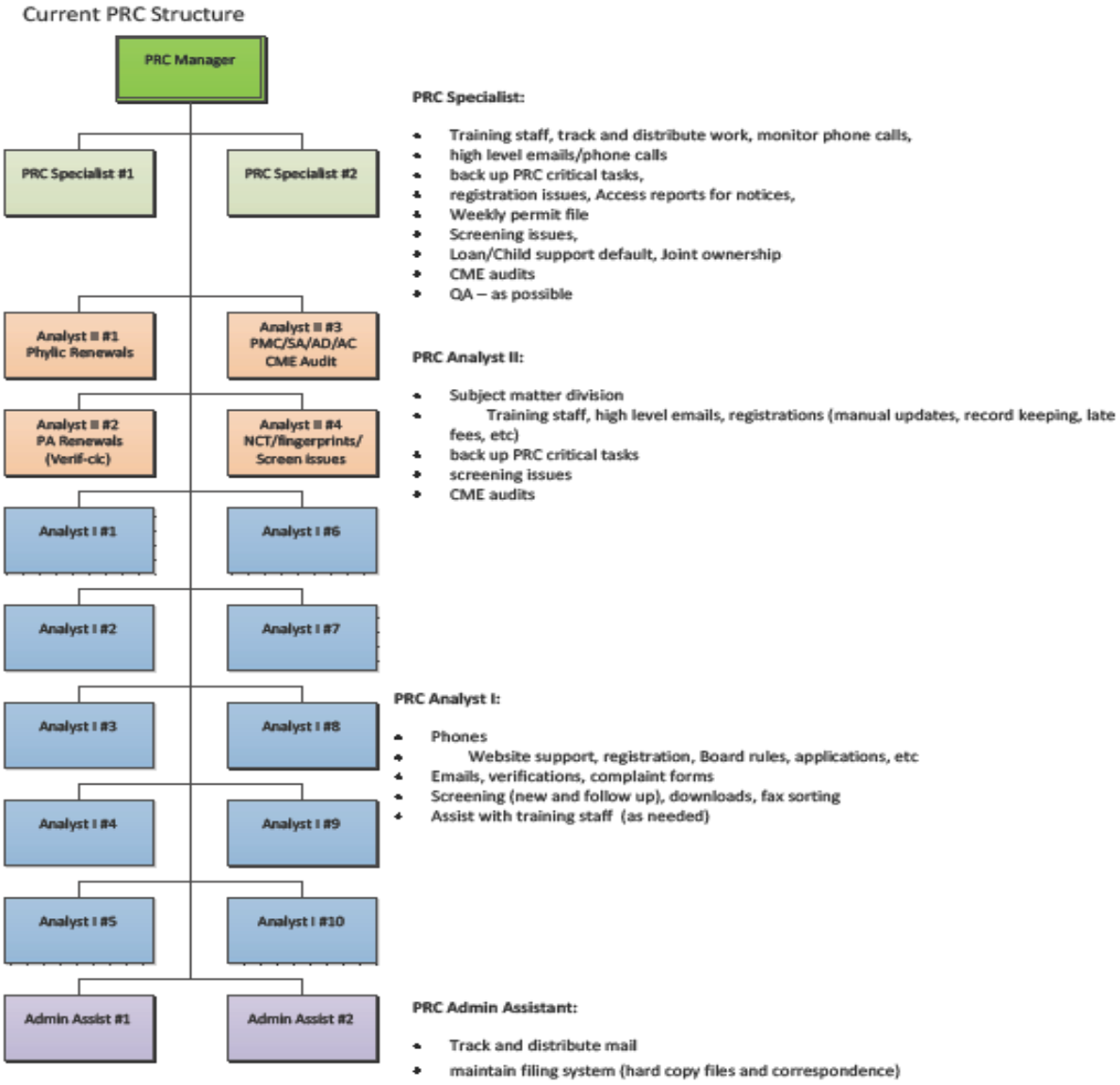
In 2013, the 83rd Legislature passed SB 406 changing requirements related to physician registration for prescriptive delegation – which included a requirement for TMB to make available an on-line searchable list of physicians and mid-level practitioners who have entered into prescriptive authority agreements and identify the physician with whom each mid-level practitioner has an agreement.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

General public, all licensees, all boards, all agency departments, entities requiring verification of licensure, etc.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The PRC Manager oversees 18 positions comprised of two PRC specialists, four PRC Analyst IIs, 10 PRC Analyst Is, and two PRC Administrative Assistants. A chart with detail on the duties for each position is provided below. The department maintains relevant policies and procedures for all key functions.



G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's licensing strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The PRC Department obtains information on criminal history background checks on current licensees from DPS criminal history clearinghouse information and on applicants via fingerprinting of applicants through DPS and FBI. The department also receives information from other agencies that is forwarded to the Enforcement Support Department to evaluate as possible complaints filed by TMB, this includes OAG information on delinquent child support payments and THECB and TGSL information on delinquent student loan payments. The PRC Department also coordinates with DSHS to ensure TMB has updated information about registration information for EMS medical directors since physicians who act as off-line medical directors for an EMS service in Texas must register with both TMB and DSHS – Office of EMS/Trauma Systems Coordination.

The PRC Department overlaps with DEA on the verification of pain management clinic registrations to ensure that licensees associated with those clinics have valid DEA controlled substance registration numbers.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The department maintains a contract with a printing vendor, Paragon Printing, for printing services for permit forms and registration (renewal) notification postcards that are mailed to licensees. In FY 14, the contract amount was $17,202. The department manager and finance department staff review the contract as needed.

TMB participates in the DPS contract with MorphoTrust USA for the digital fingerprint system for criminal background checks on physician and PA license applicants. This contract is maintained by DPS and applicants pay a fee directly to the vendor.

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Additional information about renewals and registration for all license types is available on the agency website at: http://www.tmb.state.tx.us/page/renewals. Additional information about continuing education requirements (CME) and other licensing information is available here: http://www.tmb.state.tx.us/page/licensee-resources.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

As required by statute (Sec. 156.051, Occ. Code) and board rule (Sec. 166.2) designated PRC staff conduct continuing education audits for all license types. Currently, the following license types receive random audits: Physicians (Full, Telemedicine, and Voluntary Charity Care Status); Physician Assistants; and Acupuncturists. If non-compliance is identified the information is sent to the Enforcement Support Department for review as a complaint. In addition, if a licensee fails to complete the Continuing Education question or answers ”no” to that question on their hardcopy renewal form then that licensee can be added to the next audit list.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency’s practices.

See information and charts related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

VII. E. Guide to Agency Programs – LICENSING

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***LICENSING***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***TONIE KNIGHT, MANAGER***

Actual Expenditures, FY 2014: ***$1,091,708***

Number of Actual FTEs as of June 1, 2015: ***22***

Statutory Citation for Program: ***Occ. Code, Chpt 155***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Licensure Department completes application processing and initial issuance of licenses, permits, registrations, and certifications for the following:

- licenses physicians, physician assistants, acupuncturists, and surgical assistants;
- issues 11 different types of limited licenses or permits to physicians in addition to a full license;
- issues physician-in-training permits (for medical school residency programs);
- certifies acudetox specialists, pain management clinics, and non-profit health organizations; and
- approvals of fellowships offered at institutions providing graduate medical education.

Key activities for this function include:

- review, investigate, and analyze applications of practitioners, clinics, and non-profit entities to determine whether they meet all the statutory and rule criteria to practice or operate in Texas;
- continuous communication with prospective and current applicants;
- analyzing and updating application information;
- recommend eligibility of applicants to executive director and three oversight boards;
- provide administrative support to the licensure committees of the oversight boards; and
- develop reports and recommendations to executive director and boards regarding rules and policy issues

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

There are relevant performance measures for efficiency based on the average number of days for individual license issuance for Physicians, PAs, Acupuncturists, and Surgical Assistants.

As demonstrated in the chart below, the Board continues to maintain the time to license physician applicants below the legislatively mandated 51-day average which has been in effect since August 31, 2008. In FY 14, approximately 4,000 physicians were licensed at an average of 41 days per license. TMB is currently on track to receive over 5,000 applications in FY 15 and issue a similar number of licenses. The Board continuously works to evaluate and increase the efficiency of its licensure processes and uses IT-based solutions as effectively as possible.

Average Number of Days to Issue License Compared to Number of Applications Received, FY 2004 – FY 2014

FY	Average # of Days to Issue License	Applications Received	Licenses Issued
FY 2004	59	2,947	2,343
FY 2005	95	2,992	2,692
FY 2006	97	4,026	2,516
FY 2007	81	4,041	3,324
FY 2008	62	4,023	3,621
FY 2009	39	4,094	3,129
FY 2010	35	4,218	3,522
FY 2011	42	4,181	3,436
FY 2012	31	4,253	3,630
FY 2013	34	4,610	3,594
FY 2014	41	5,150	3,994

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The licensure process has been amended by a variety of legislation and internal process changes since the 2005 Sunset review. In 2007, HB 1973 was passed which requires the agency to maintain an average of 51 days or or less to issue a license.

In FY 2008, TMB significantly improved process efficiencies by implementing the Licensure Inquiry System of Texas (LIST), a web-based license application tracking system that allows applicants to track the status of their physician licensure applications through the internet. The system provides two-way electronic communication between applicants and TMB staff. Since its inception, this system has helped reduce the time required to license a physician in Texas by adding efficiencies not only for TMB staff but also for applicants, who have real-time access to the status of their applications.

In 2009, legislation passed authorizing new limited license types for physicians including a provisional license for physicians practicing in medically underserved areas (SB 202) and a

temporary license for physicians employed by or associated with graduate medical education programs (at the level of an assistant professor) to practice medicine (SB 1225).

SB 949 passed in 2013, exempted physician licensure applicants who agree to practice in a medically underserved area or health professionals shortage area from existing requirements to pass each section of the standardized national licensing exam (USMLE) within a 7-10 year timeframe.

In 2013 and 2015, a number of bills were passed ensuring expedited processing of licenses for military members including military spouses and veterans.

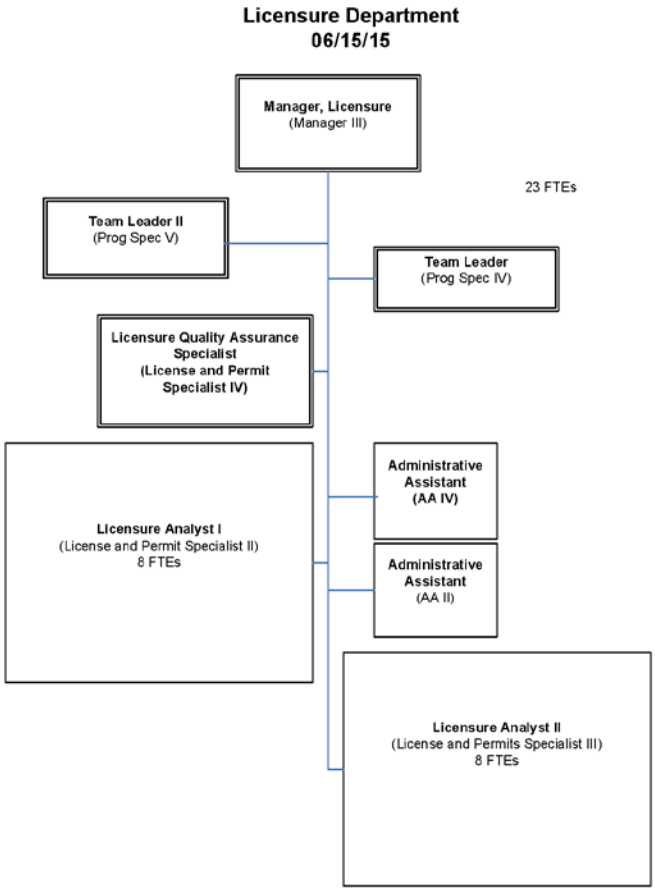
E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Entities served by this program include:

- Patients in need of services to be provided by newly licensed physicians
- Entities employing/recruiting physicians
- All categories of applicants and entities listed above under Sec. B.
- Board and committee members
- Medical Schools and residency programs (providers of medical education)

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Licensing Department is budgeted 23 positions as indicated in the chart below. In addition to the manager, the department is comprised of two team leaders, one quality assurance specialist, eight Licensure Analyst Is, eight Licensure Analyst IIs, and two Administrative Assistants. The department maintains relevant policies and procedures for all key functions.



G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's licensing strategy in the General Appropriations Act. In the next biennium, funding from the the agency's GR-Dedicated Fund will be eligible for appropriations per HB 7 from 84(R), 2015.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The Licensing Department works with medical education providers (both undergraduate and graduate) throughout the state, including all medical schools, to coordinate information and outreach. The department also works with the Texas Higher Education Coordinating Board on issues pertaining to medical education curriculum.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The required physician jurisprudence exam is contracted out to PearsonVue, a vendor which has testing centers available throughout the state and the U.S. and administers a computer-based exam. Applicants pay the examination fee directly to the vendor. The contract is reviewed by the Licensing Manager and by Finance staff.

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

- Change statute to authorize PAs to be licensed to perform acudetox. Other medical professionals (such as social workers and professional counselors) with less medical training and experience than a PA are authorized to perform acudetox after completing a training program.

- Change the name of the Texas State Board of Acupuncture Examiners to the Texas Acupuncture Board, to better reflect the Board's role and duties and be aligned with the name changes for the Texas Medical Board and Texas Physician Assistant Board.

- Ensure that statutory and rule listings of all Texas medical schools are updated to include new medical schools.

- Eliminate the current out of state telemedicine license since it is no longer needed due to the ability to practice telemedicine under a regular (full) physician's license.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

There is a considerable amount of information describing state licensing requirements on the TMB website at this link: http://www.tmb.state.tx.us/page/licensing.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Licensing is needed to meet statutory requirements for license issuance and to fulfill the agency's mission of public protection through professional accountability. The Licensing Department addresses a variety of issues related to applicant noncompliance, including if an applicant falsifies an application, has a criminal history, has an impairment issue, or fails to meet the required threshold criteria for licensure. These are not considered inspections or audits but are issues that licensing staff must address based on current statute. When these issues are identified, the licensing staff forward the issues to the executive director, medical director, and licensure committee of the relevant board, as needed, to address. A board order issued by the relevant board may require that an applicant fulfill certain requirements before being considered eligible for licensure. An applicant may also be determined to be ineligible for a Texas license.

Complaints against regulated entities are addressed by the agency's enforcement departments and the disciplinary committees of the relevant boards.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See information and charts related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

VII. F. Guide to Agency Programs – ENFORCEMENT SUPPORT

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***ENFORCEMENT SUPPORT***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***SONJA AURELIUS***

Actual Expenditures, FY 2014: **$597,950**

Number of Actual FTEs as of June 1, 2015: ***15.5***

Statutory Citation for Program: ***OCC. CODE, CHPT.154***

B. What is the objective of this program or function? Describe the major activities performed under this program.

Enforcement Support staff receive and process complaints and provide administrative support for all enforcement departments. Major activities include:

- Communicate with and assist complainants with filing complaints;
- Review and organize incoming mail;
- Obtain necessary third party information for creation of investigative files (reports from National Practitioner Databank and DPS Prescription Monitoring Program, etc);
- Coordinate document management for all complaint, investigative, litigation and compliance cases;
- Manage digital evidence;
- Assist with processing of subpoenas;
- Process all complainant appeals;
- Review DPS criminal history reports and OAG child support delinquency reports and reconcile with current licensee lists;
- Generate standard letters to complainants;
- Ensure appropriate transfer of enforcement case files between all departments and boards as needed;
- Generate reports on enforcement statistics for all boards;
- Provide administrative support for disciplinary committees of all boards and process all documentation associated with board decisions following board meetings;
- Process all medical malpractice reporting and manage database;
- Coordinates exchange of information with Texas Physician Health Program as needed.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The total number of complaints received by the agency in any given year drives the workload for this department. All case load information is reviewed with the Executive Director on a monthly basis. As indicated in the charts listed in Section P, Exhibit 11 below, this department

processes approximately 7,000 complaints per year and assists in making determinations of whether a complaint is within the agency's jurisdiction to review or needs to be forwarded to a different agency.

The workload of all four of the agency's enforcement departments are reflected in reports and statistics provided at every board meeting. The agency's enforcement performance measures are the same or similar to other regulatory boards and reflect the average time for complaint resolution as well as the percentage of complaints resulting in either disciplinary or remedial action.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The Enforcement Support Department's name has changed from the "Complaints Department" since the last Sunset review and all the primary responsibilities and support to the agency's mission have not changed. As referenced in the general agency history section, HB 680 passed in 2013 made a number of changes to the enforcement process including eliminating anonymous complaints and expanding the length of time a physician has to respond to a complaint.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This department affects anyone associated with a complaint filed against the agency including complainants, licensees, other enforcement departments within the agency, all boards, other state agencies, etc.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Enforcement Support Manager oversees 15.5 positions and maintains relevant policies and procedures for all key functions. Reporting to the manager are two Team Leads (Admin Asst IV and V), one Complaint Analyst (Admin Asst III), 11 staff whose duties include processing complaints (three Admin Asst IIIs and eight Admin Asst IIs), and two staff (Admin. Asst IIs) whose duties focus on filing and scanning complaint information.

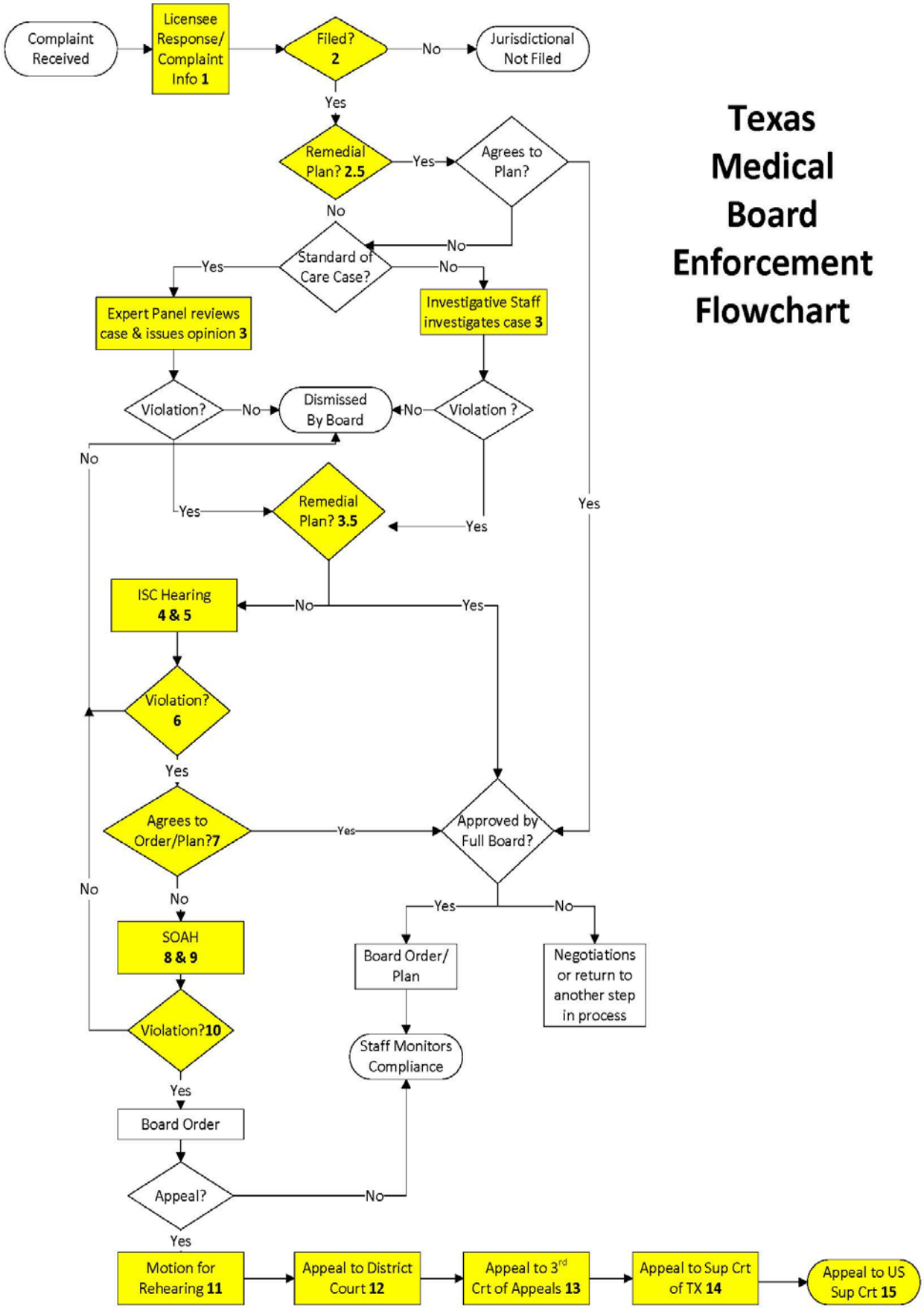
The flowchart provided below shows the multiple steps in the agency's enforcement process. This applies to all four of the agency's enforcement departments – Enforcement Support, Investigations, Litigation, and Compliance.

Also provided below is a map illustrating the agency's use of geographic regions to organize enforcement caseloads. While all Enforcement Support and Litigation Department staff are located in the Austin HQ, all of the Investigations Dept. staff and all but one of the Compliance Department staff are located in the field.

The assignment of cases and workload to the Investigations, Litigation, & Compliance Departments is generally organized based on five geographic regions (and corresponding counties) of the state: Region One consists of central Texas and north Texas including the Fort Worth area; Region Two represents east Texas and includes the Dallas area; Region Three includes the Houston, Harris County, and the Beaumont/Orange area; Region Four consists of south Texas including Corpus Christi and the Rio Grande Valley; and Region Five consists of west Texas including the Panhandle and El Paso areas.

For each region the allocation of staff by department is typically: one lead investigator for each region; several senior investigators assigned to each region (can vary from two to five depending on the number of cases originating in each region); two to three staff attorneys and legal assistants assigned to each region; and one to two compliance officers assigned to each region.

Texas Medical Board Enforcement Flowchart



TMB –Enforcement Process Description
(Accompanies TMB Enforcement Flowchart)

Step 1 – A compliant is evaluated to determine if it is jurisdictional. The complainant may be contacted at this initial point for more information. If the compliant is jurisdictional, the licensee is given the opportunity to provide more information. The initial complaints that concern standard of care are evaluated by physicians, and they write an initial notice letter to the licensee. Currently this evaluation period is limited by statute to 45 days which begins the day the board receives the complaint. The licensee is given 28 of those days to make a response. If we receive a sufficient response from the licensee to show that no violation of law occurred, the complaint is closed at this point without ever being formally filed.

Step 2 – If the complaint is filed after the 45 day period, the licensee receives a letter informing him of this. He is given the name of an investigator, and he can send any information to that investigator.

> Step 2.5— If the investigation concerns a purely administrative issue, the licensee can opt out of this process by signing a non-disciplinary Remedial Plan. The Remedial Plans offered at this stage typically require the licensee to obtain continuing medical education in a given subject area. If the physician accepts the order it is presented to the full board for approval.

Step 3 – The assigned investigator will send the licensee another letter, this time generally asking for specific information. Again, the licensee may provide any information he chooses. For standard of care cases, the matter must be reviewed by at least two experts board certified in the same or similar area as the licensee, and the panel will issue a report concerning the care given in the case. Any information sent by the licensee at this point is given to the expert panel to consider in their review of the case. At the conclusion of the investigation, the matter is either referred to the board disciplinary process review committee to consider dismissal or it is referred to the Quality Assurance (QA) Panel (up to 5 board representatives) for evaluation. About 60-70% of cases are referred for dismissal at this point.

> **Step 3.5**—There is another option for a licensee to resolve his case at this point. If a case goes to the QA Panel, a non-disciplinary Remedial Plan may be offered. This may be used in cases where the panel believes that there was a violation of the Act, but a restriction on the license of the physician is not needed to have an appropriate resolution of the issues. If the physician accepts the order it is presented to the full board for approval.

Step 4 – If the investigation indicates a violation occurred, and the QA Panel believes a restriction on the license might be needed, then the matter is referred to the legal division for prosecution the case is set for an informal settlement conference (ISC), which is an informal hearing before a board disciplinary panel. Once it has been referred, the licensee is notified of this fact and given the name of the assigned attorney to whom he can send additional information.

Step 5 - Once a case has been set for an ISC, the licensee is provided all of the material that the board will use at the upcoming informal hearing 45 days prior to the hearing. This same material will be provided to the board panel. This is another point where the licensee may provide more information. If new information is received at this point, an effort is made to have the expert panel review the new evidence and determine if it changes their opinion. If it does, the case is referred for dismissal.

Step 6 – An informal hearing is held to give the licensee an opportunity to show that he is in compliance with the law, and he may bring counsel or witnesses to this hearing. The board is represented by a least one physician and one public member to hear the case. These hearings generally last an hour or longer. At the conclusion of this hearing, the panel may: recommend an agreed order, recommend a remedial plan, recommend dismissal, recommend additional investigation be completed, refer the case directly to SOAH, or refer the matter to a temporary suspension hearing. About 25% of cases are dismissed following the informal hearing. This step may be skipped altogether by the licensee when the licensee agrees to an order without seeking a hearing, as described by steps 2.5 and 3.5.

Step 7 – If an agreed order or a non-disciplinary remedial plan was recommended at the informal hearing, the staff attorney drafts the terms of the order and sends it to the licensee. The licensee may attempt to mediate the terms and/or language of the agreed order, but not a non-disciplinary remedial plan. All such offers are given to the board representatives who sat on the disciplinary panel that heard the case to consider. If agreement can be reached at this stage, the order is sent to the full board for approval.

Step 8 – If an agreed order cannot be reached, the case is filed at the State Office of Administrative Hearings (SOAH). <u>This is the first public action in the case, unless there is a temporary suspension hearing.</u> A SOAH filing happens in about 10% of cases where the informal hearing representatives recommended an agreed order. Following this filing, the licensee generally requests and is granted another opportunity to mediate his case using the SOAH mediation system. In some cases, such as when the board believes the only appropriate resolution is revocation, mediation is not conducted. That said, under the current system, a large portion of the cases at SOAH are mediated. Through the mediation process, the licensee and board may agree on the terms of a resolution, with final approval resting with the full board.

Step 9 – If there is still no agreed resolution, discovery is conducted and a full trial is held at SOAH. The licensee is generally represented by counsel, and may present evidence and cross examine the board witness including any experts.

Step 10 – The SOAH Administrative Law Judge (ALJ) issues a proposal for decision (PFD) that includes findings of fact and conclusions of law. The board may not change these finding and conclusions, but they may appeal them. The penalty is fully discretionary to the board. Once the PFD is issued, a hearing is set before the board. The licensee has the opportunity to present his position regarding the PFD to the full board, as does the board staff. At the conclusion of this hearing, the board will issue a final order.

Step 11 – If the licensee disagrees with the order of the board, he can request a rehearing of his case. The board votes on this request. If granted, Step 10 is repeated. If not, the order is considered final.

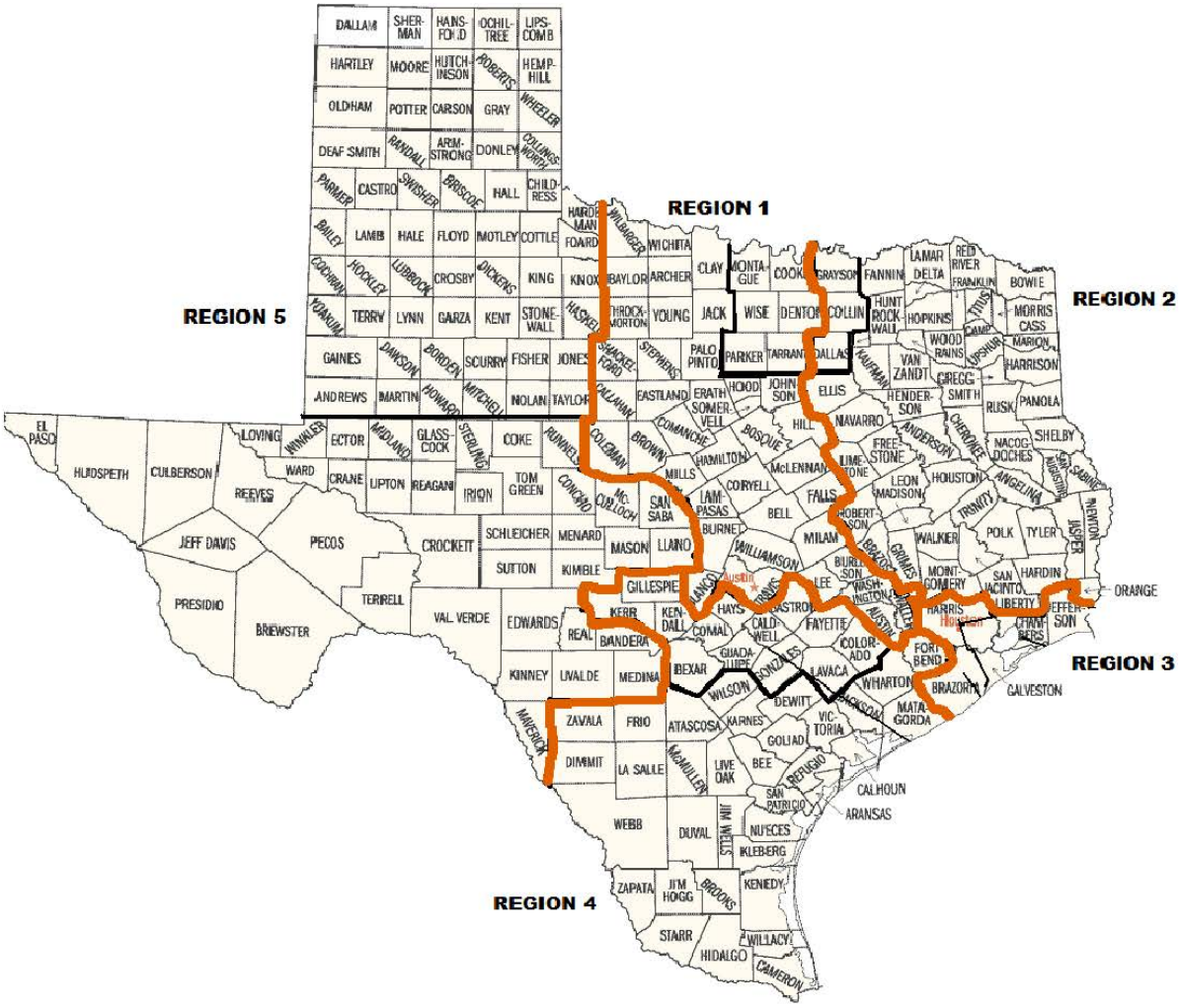
Step 12 – The licensee may appeal to district court, and this appeal must be accepted by the court.

Step 13 – Following this, the licensee may appeal to the Third Court of Appeals, and this appeal must be accepted by the court.

Step 14 – Next, the licensee may appeal to the Texas Supreme Court, and this appeal may or may not be granted by the court.

Step 15 – Next, the licensee may appeal to the U.S. Supreme Court, and this appeal may or may not be granted by the court.

Texas Medical Board Enforcement Regions



The assignment of cases to the Investigations, Litigation, & Compliance Departments are organized based on five geographic regions (and corresponding counties) of the state:

Region One consists of central Texas and north Texas including the Fort Worth area;
Region Two represents east Texas and includes the Dallas area;
Region Three includes the Houston, Harris County, and the Beaumont/Orange area;
Region Four consists of south Texas including San Antonio, Corpus Christi and the Rio Grande Valley; and
Region Five consists of west Texas including the Panhandle and El Paso areas.

For each region the allocation of staff by department is typically: one lead investigator for each region; several senior investigators assigned to each region (can vary from two to five depending on the number of cases originating in each region); two to three staff attorneys and legal assistants assigned to each region; and one to two compliance officers assigned to each region. In most cases, the investigators and compliance officers live and work in the regions to which they are assigned. All litigation staff are located in the Austin headquarters.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's enforcement strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The Enforcement Support Department works with a variety of other entities. At the federal level this includes the National Practitioner Databank (NPDB), which is a federal entity that maintains data on state board and hospital disciplinary actions on physicians. For every complaint that TMB files as an investigation, a query is run through NPDB to determine if there have been any actions on the licensee. The department works with several other state agencies forwarding complaints on licensees including DSHS, other health licensing boards, HHSC-OIG, TDI-Workers Compensation, OAG- suspensions for child support delinquency, and DPS to request reports from the Prescription Monitoring Program.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Not applicable.

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

TMB provides information on the complaints process and how to file a complaint, as well as a summary of the entire enforcement process, on its website at:

http://www.tmb.state.tx.us/page/enforcement

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

The agency and oversight boards are responsible for implementing state laws relating to public protection through the licensing and discipline of licensees including physicians, physician assistants, acupuncturists, surgical assistants and other mandated license types and entities.

Complaints received from any source that pertain to any licensee follow the same enforcement process as mandated by current law. The steps of this process are outlined in the chart provided in **Section F.**

In addition, there is limited statutory authority for inspections and audits. Inspections are authorized for registered pain management clinics and for physicians' offices and clinics performing office-based anesthesia. Audit authority is authorized only for the license registration (renewal) function for the purposes of checking a licensee's compliance with continuing education requirements.

If noncompliance is identified in either a licensing or enforcement capacity, and at any stage of the licensing or disciplinary process, the issue is typically reviewed by management and the Executive Director and referred to the appropriate oversight board as needed.

The oversight boards have a full range of sanctions and disciplinary options to address noncompliance and to ensure compliance. These range from a non-disciplinary remedial plan to the revocation of a license. Sanction guidelines are provided in Board Rule, Sec. 190.12.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Medical Board - Physicians
Exhibit 11a: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	71,551	73,762
Total number of complaints received*	4,958**	5,034**
Number of Jurisdictional Not Filed complaints received	2,665	2,701
Number of Non-Jurisdictional complaints received	777	678
Number of Jurisdictional Investigations opened	1,571***	1,692***
Number of Jurisdictional Investigations completed	1,776	1,724
Number of complaints pending from prior years	248	176
Average number of days for complaint resolution	315	272
Complaints resulting in disciplinary action:	282	315
Administrative Penalties	0	3
Public Reprimands	42	37
Suspensions	11	17
Revocation/Surrenders	50	52
Restrictions	144	164
Cease & Desist	17	14
Licensed with Conditions	18	28
Complaints resulting in non-disciplinary action:	296	285
Remedial Plans	254	247
Licensure Remedial Plans	42	38

Includes registration responses, continuing medical education audits, medical malpractice reviews, newspaper items, and board discovered violations.

****Complaints submitted to the agency against an individual/entity not licensed by the TMB are not reflected in the number of complaints received for this individual license type. These complaints were processed as non-jurisdictional and referred to the appropriate entity for processing, if applicable. The total number of complaints received by the agency for FY 2013 & FY 2014 was 6,857 & 6,847, respectively.***

*****Includes jurisdictional investigations opened against Physicians who held a Physician in Training (PIT) permit.***

Texas Physician Assistant Board - Physician Assistants
Exhibit 11b: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	6,522	6,987
Total number of complaints received*	277**	295**
Number of Jurisdictional Not Filed complaints received	123	134
Number of Non-Jurisdictional complaints received	79	75
Number of Jurisdictional Investigations opened	78	91
Number of Jurisdictional Investigations completed	94	88
Number of complaints pending from prior years	29	22
Average number of days for complaint resolution	299	352
Complaints resulting in disciplinary action:	19	39
Administrative Penalties	0	1
Public Reprimands	3	6
Suspensions	1	2
Revocation/Surrenders	4	8
Restrictions	10	17
Cease & Desist	0	3
Licensed with Conditions	1	2
Complaints resulting in non-disciplinary action:	11	14
Remedial Plans	8	10
Licensure Remedial Plans	3	4

Includes registration responses, continuing medical education audits, medical malpractice reviews, newspaper items, and board discovered violations.

****Complaints submitted to the agency against an individual/entity not licensed by the TMB are not reflected in the number of complaints received for this individual license type. These complaints were processed as non-jurisdictional and referred to the appropriate entity for processing, if applicable. The total number of complaints received by the agency for FY 2013 & FY 2014 was 6,857 & 6,847, respectively.***

Texas State Board of Acupuncture Examiners - Acupuncturists
Exhibit 11c: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	1,087	1,165
Total number of complaints received*	27**	17**
Number of Jurisdictional Not Filed complaints received	3	3
Number of Non-Jurisdictional complaints received	15	10
Number of Jurisdictional Investigations opened	10	4
Number of Jurisdictional Investigations completed	7	8
Number of complaints pending from prior years	2	1
Average number of days for complaint resolution	435	335
Complaints resulting in disciplinary action:	1	1
Administrative Penalties	0	0
Public Reprimands	0	0
Suspensions	0	0
Revocation/Surrenders	1	0
Restrictions	0	1
Cease & Desist	0	0
Licensed with Conditions	0	0
Complaints resulting in non-disciplinary action:	1	2
Remedial Plans	1	1
Licensure Remedial Plans	0	1

Includes registration responses, continuing medical education audits, medical malpractice reviews, newspaper items, and board discovered violations.

****Complaints submitted to the agency against an individual/entity not licensed by the TMB are not reflected in the number of complaints received for this individual license type. These complaints were processed as non-jurisdictional and referred to the appropriate entity for processing, if applicable. The total number of complaints received by the agency for FY 2013 & FY 2014 was 6,857 & 6,847, respectively.***

Texas Medical Board - Surgical Assistants
Exhibit 11d: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	355	376
Total number of complaints received*	3**	8**
Number of Jurisdictional Not Filed complaints received	0	1
Number of Non-Jurisdictional complaints received	0	2
Number of Jurisdictional Investigations opened	3	5
Number of Jurisdictional Investigations completed	3	1
Number of complaints pending from prior years	0	0
Average number of days for complaint resolution	105	325
Complaints resulting in disciplinary action:	0	2
Administrative Penalties	0	0
Public Reprimands	0	0
Suspensions	0	0
Revocation/Surrenders	0	0
Restrictions	0	1
Cease & Desist	0	0
Licensed with Conditions	0	1
Complaints resulting in non-disciplinary action:	0	1
Remedial Plans	0	0
Licensure Remedial Plans	0	1

Includes registration responses, continuing medical education audits, medical malpractice reviews, newspaper items, and board discovered violations.

****Complaints submitted to the agency against an individual/entity not licensed by the TMB are not reflected in the number of complaints received for this individual license type. These complaints were processed as non-jurisdictional and referred to the appropriate entity for processing, if applicable. The total number of complaints received by the agency for FY 2013 & FY 2014 was 6,857 & 6,847, respectively.***

VII. G. Guide to Agency Programs – Investigations

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***INVESTIGATIONS***

Location/Division: ***FIELD OFFICES***

Contact Name: ***BELINDA WEST, MANAGER***

Actual Expenditures, FY 2014: ***$2,831,599***

Number of Actual FTEs as of June 1, 2015: ***31***

Statutory Citation for Program: ***OCC. CODE, CHPT.154***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The key functions of this department are to investigate complaints against licensees. The major activities involved in providing these services are:

1. Receiving from the Enforcement Support Department complaints that fall within the jurisdiction of the board for review.
2. Gather information pertinent to the jurisdictional complaint to allow professional complaint reviewers to make an appropriate determination whether or not the complaint needs to proceed for a complete investigation.
3. Gathering all evidence and information pertinent to jurisdictional complaints to allow the board to make an appropriate resolution for each complaint.
4. Maintaining all files and records related to the complaints.
5. Answering inquiries into current complaints and the history of licensees.
6. Corresponding with licensees and complainants and witnesses.
7. Drafting reports related to investigations of jurisdictional complaints.
8. Giving testimony in informal and formal disciplinary hearings concerning complaints; may also provide testimony in criminal cases.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

Investigations statistics, including the number of Jurisdictional (J), Jurisdiction Not Filed (JNF), and Non-Jurisdictional (NJ) complaints reviewed by investigations staff are included in the enforcement reports provided at every board meeting and for each fiscal year. Information about inspections of pain management clinics is found under Section P for this department.. All case load information is reviewed with the Executive Director on a monthly basis.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The department was established as early as 1954 to investigate complaints received on licensees, including communicating with complainants, licensees, and other governmental agencies about the complaints. As referenced in the general agency history section, HB 680 passed in 2013 made a number of changes to the enforcement process including eliminating anonymous complaints and expanding the length of time a physician has to respond to a complaint.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This program affects all complainants, any licensees who are requested to respond to a complaint, and any health care entities that are requested to provide medical records related to the investigation of a complaint. Other entities affected include relevant state agencies, such as DPS, other regulatory boards such as nursing and pharmacy, local law enforcement entities, and federal agencies such as DEA.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Investigations Manager oversees 31 positions. All staff work remotely from their home offices located around the state. The department maintains relevant policies and procedures for all key functions.

The agency's enforcement flowchart and process information as well as the description of the use of regional assignments is provided under the Enforcement Support Department, Sec. VII, F.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue and GR-dedicated funds via the agency's enforcement strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers.

If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Investigators work with state/local law enforcement as well as federal law enforcement agencies (DEA, FBI, FDA, etc). The interactions with these entities varies and can include obtaining routine criminal history information pertinent to the investigation of a licensee to conducting joint investigations or service of search warrants and the gathering of records and interviewing individuals in offices/clinics where criminal activity is occurring.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The agency maintains standardized contracts with approximately 500 physicians who serve as expert reviewers (expert physician review panel) for standard of care cases at a rate of $100/hr. The contracts are reviewed by the Medical Director and relevant Executive Support staff and not by the Investigations Department. The cost of the contracts, approximately $1,094,517 in FY 14, is allocated to the Investigations Department

L. Provide information on any grants awarded by the program.

Not applicable

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**

- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

In addition to the standard process for investigating complaints, investigators conduct inspections of pain management clinics (PMCs) and clinics where office-based anesthesia (OBA) is performed. The number of regulated entities registered were 379 in FY 13 and 255 in FY 14. TMB inspected approximately 239 OBAs in fiscal year 2014 and approximately 57 PMC in fiscal year 2014. TMB began a schedule of periodic review for these facilities in FY 14 after resources became available from the 2013 legislative session. In FY 15, inspections were continued on PMCs but were suspended on OBAs pending rule changes.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

VII. H. Guide to Agency Programs – LITIGATION

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***LITIGATION***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***CHRIS PALAZOLA, MANAGER***

Actual Expenditures, FY 2014: ***$2,316,172***

Number of Actual FTEs as of June 1, 2015: ***26***

Statutory Citation for Program: ***OCC. CODE, CHPT. 164***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Litigation Department is responsible for the prosecution of all disciplinary actions brought by the agency against licensees and permit holders. The key services of the department are to handle all aspects of the resolution of disciplinary cases, through both informal and formal disciplinary processes, after an investigation is concluded. Once the agency's Quality Assurance (QA) Panel determines that an investigation should be referred to the Litigation Department, then the following activities listed below occur.

The QA Panel is comprised of the Medical Director, Litigation Manager, and board representatives who meet weekly to review cases forward by the Investigations Department and determines the next steps which can include referral of a case to Litigation for a possible informal settlement conference, refer the case to the Board's disciplinary process review committee for dismissal, or offer the licensee a remedial plan.

The major activities for the Litigation Department include:

1. Receiving an investigation that has been approved for litigation by the QA Panel; assigning the case to an attorney; and establishing any special priority.
2. Organizing and preparing the investigation information into a packet of allegations and evidence (ISC packet) to be distributed to the licensee under review (and any attorney of the licensee), the board representatives who are scheduled to serve on the disciplinary panel, and the hearings counsel.
3. Representing the agency in the presentation of the alleged violation at the informal disciplinary hearing.
4. Preparing and distributing the draft of the dismissal memo or agreed order, remedial plan, or referral to TXPHP, that includes the terms and conditions recommended by the informal disciplinary panel for resolution of the matter. Resolution may also include an evaluation for a temporary suspension.
5. Communicating with the licensee (or the attorney) concerning the agreed order or remedial plan.
6. Preparing the final agreed order or plan for signature by the licensee for review and approval by the appropriate oversight board.

7. If the case is not resolved through the informal disciplinary process, a Formal Complaint is filed by the agency at the State Office of Administrative Hearings (SOAH).
8. Handling all aspects of presenting the case at SOAH to include mediation and possible trial.
9. SOAH trials involve drafting of pleadings, written discovery, depositions, briefs, oral and written arguments, etc.
10. Developing any necessary exceptions to the Proposal for Decision issued by the SOAH Administrative Law Judge at the conclusion of the trial.on the case
11. Presenting the case to the board for action on the SOAH Proposal for Decision.
12. Preparing the Final Order of the board to include sanctions as directed by the board and to include the findings of fact and conclusions of law provided in the SOAH PFD.
13. For egregious cases, preparing and presenting temporary suspension/restriction cases for board disciplinary panels.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The department frequently evaluates its caseload assignments to ensure effective and efficient workload distribution among the litigation staff. Litigation statistics are reported in the agency's enforcement reports to the oversight boards at every board meeting. The agency's enforcement performance measures reflect the combined efforts of this department along with the enforcement support and investigations department.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The department has most recently reorganized in early 2015 to address a continued increase in both the number and complexity of enforcement cases. In addition to the manager, the department has three levels of attorney positions: Attorney IVs primarily focus on cases that involve informal resolution, Attorney Vs primarily focus on cases involving formal resolution at SOAH, and one supervising attorney position was created to help review the department workload and determine the most efficient allocation of resources.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This program affects any complainant and licensee who is impacted by the resolution of a complaint through the agency's informal or formal disciplinary processes. The department impacts all board members, district review committee members, and a majority of other agency departments. The department also interacts with the defense counsel of licensees and relevant state agencies such as the State Office of Administrative Hearings, other regulatory boards, law enforcement entities, etc.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Litigation Manager directly oversees four employees consisting of a Supervising Attorney, Supervisory Legal Assistant, and two administrative assistants. The Supervising Attorney oversees 11 attorneys and the Supervisory Legal Assistant oversees 10 legal assistants. Typically, each legal assistant supports at least one attorney. There are currently six Attorney IVs and five Attorney Vs within the department. The department maintains relevant policies and procedures for all key functions. The use of regional assignments occurs in conjunction with the Investigations and Compliance Departments though maintaining an effective distribution of cases may take priority over the use of regional assignments.

The agency's enforcement flowchart and process information as well as the description of the use of regional assignments is provided under the Enforcement Support Department, Sec. VII, F.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds and GR-dedicated funds via the agency's enforcement strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The department works with local, state, and federal agencies as needed on enforcement issues and prosecution of specific cases. This can range from a local district attorney's office to the state Office of the Attorney General to federal agencies such as the DEA and FBI. The department works very closely with the State Office of Administrative Hearings for the formal resolution of disciplinary cases.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**

- **a short description of any current contracting problems.**

The department maintains contracts with physician experts who serve as consulting experts on litigation cases and/or testifying witnesses at SOAH trials. Total amount spent in FY 14 on these types of contracts was $387,026. Contracts are reviewed by Litigation staff and Finance staff to ensure accuracy. See General Counsel's Department information for additional information about related contracts.

L. Provide information on any grants awarded by the program.

Not applicable

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

VII. I. Guide to Agency Programs - COMPLIANCE

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***COMPLIANCE***

Location/Division: ***FIELD AND AUSTIN/HQ***

Contact Name: ***RICK ROMOFF, MANAGER***

Actual Expenditures, FY 2014: ***$804,989***

Number of Actual FTEs as of June 1, 2015: ***12***

Statutory Citation for Program: ***OCC. CODE, CHPT. 164***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Compliance Department is responsible for monitoring and assuring licensees' (probationers') compliance with board orders and remedial plans. Key activities include:

- reviewing board orders and remedial plans approved by all oversight boards
- Meeting with probationers to explain probation requirements of orders and plans
- for orders requiring evaluation, monitoring, and treatment of licensees – the department assists with the approval process for selection of evaluators, monitors, and treatment programs
- oversight of probationers' alcohol/drug testing program and maintenance of contracts with third party testing programs
- identifying potential violations of probation and preparing reports, documents, and testimony for board disciplinary and compliance hearings
- attendance at board hearings (order modification or termination requests) to report on probationers' adherence to board requirements.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The department evaluates its caseload ratio of probationers to compliance officers on a monthy basis to ensure effective and efficient monitoring of probationers. All compliance statistics are reported to the oversight boards at every board meeting and in the annual enforcement report.

The Compliance Specialist, who works from the Board office in Austin, manages the drug/alcohol testing program for all the oversight boards, as well as the Texas PHP. This position also enrolls probationers, interacts with the testing vendors, and prepares drug/alcohol testing reports for various hearing packets.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The compliance function was established in 1987 to ensure that licensees were sanctioned, rehabilitated, and or retrained according to board approved orders.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This program affects any licensee who receives a disciplinary order, licensure order, or remedial plan from the oversight boards.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Compliance department maintains relevant policies and procedures for all key functions. The Compliance Manager oversees 11 positions comprised of ten field Compliance Officers and one Compliance Specialist. All of the staff work remotely from their home offices located around the state with the exception of the Compliance Specialist located in Austin/HQ.

The agency's enforcement flowchart and process information as well as the description of the use of regional assignments is provided under the Enforcement Support Department, Sec. VII, F.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue and general revenue-dedicated funds via the agency's enforcement strategy in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The Texas Physician Health Program (TXPHP) was created in 2009 to assist licensees with evaluation, treatment, and monitoring for conditions (substance abuse, mental or physical impairment) which could compromise their ability to practice. Prior to the creation of TXPHP, the oversight boards entered into confidential rehabilitation orders with licensees. The Compliance Department monitored the probationers under these pre-PHP orders.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

There is no duplication with TXPHP; it now monitors activities/requirements which were previously monitored by the Compliance Department.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Compliance Officers maintain relationships with state/local law enforcement and federal law enforcement agencies (DEA, FBI, etc) as well as county Probation Officers and state Parole Officers who may have involvement with probationers.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The Compliance Department maintains contracts with physicians serving as chart monitors who are reviewing medical records as required by probationers' disciplinary orders. Costs for chart monitoring services are paid by the probationers.

The agency has a contract with RecoveryTrek, LLC to provide testing services for use by TMB to satisfy all TMB disciplinary orders that require license applicants and probationers to be tested by TMB for alcohol and other prohibited substances. There is no dollar amount associated with this because all applicants and licensees are required to pay for their own testing services.

L. Provide information on any grants awarded by the program.

Not applicable

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

If noncompliance with a disciplinary order or remedial plan is identified, the Compliance Department takes the following steps:

1. **The Compliance Officer (CO) notifies the probationer of the compliance deficiency and requires an explanation.**
2. **The CO prepares a standardized disciplinary packet which describes the non-compliance and contains informational and evidentiary documents.**
3. **The manager of Compliance reviews the packet and approves the submission to the Quality Assurance (QA) Committee for review.**
4. **If QA concurs, a legal case is opened, assigned to a staff attorney, and scheduled for an ISC. The CO continues to supervise and monitor the probationer while the disciplinary process proceeds.**
5. **If QA does not concur, the packet is returned to the CO and supervision of the probationer continues.**

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

See information related to all four enforcement departments provided under the Enforcement Support Department, Sec. VII F.

VII. J. Guide to Agency Programs - FINANCE

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***Finance***

Location/Division: ***Austin/HQ***

Contact Name: ***Brandy Corrales, CFO***

Actual Expenditures, FY 2014: ***$495,674***

Number of Actual FTEs as of June 1, 2015: ***9***

Statutory Citation for Program: ***Occ. Code, Chpt 152***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Finance Department provides the following key administrative and support functions: payroll, time-keeping, accounts payable, purchasing, facilities management, cash posting and updating, budgeting and planning, general accounting, mailroom operations (incoming & outgoing mail), required financial and performance reporting, and reception area.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

There are no external performance measures reported for this department. Effectiveness and efficiency are demonstrated through: 1) internal and external audits of this function; 2) timely and accurate reporting of required financial information to state oversight agencies; and 3) regular budget reporting to the agency's oversight boards and executive director.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

There is no additional information to report beyond the clarification that the department has added FTEs as needed to address workload.

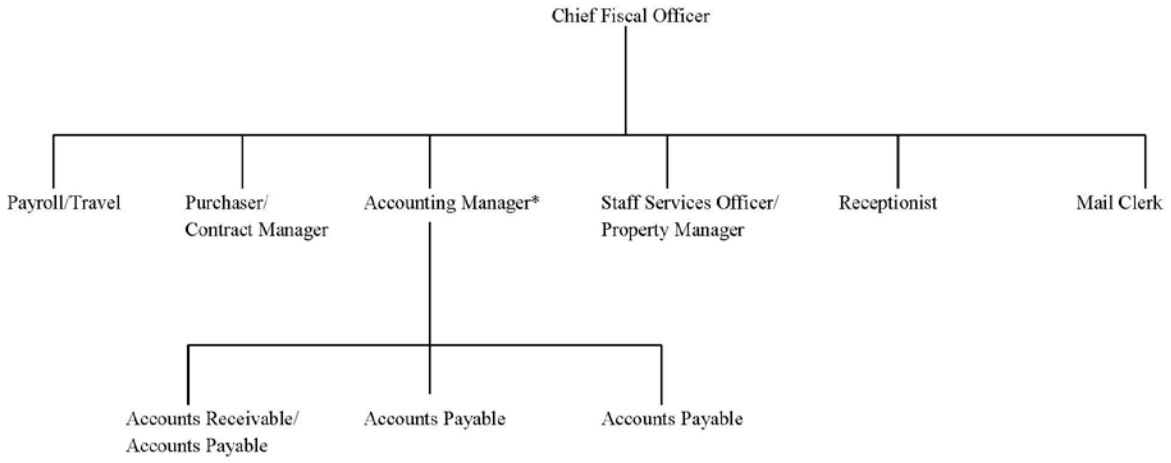
E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This function impacts the following groups through the activities listed above: all staff and agency departments, all board members, all district review committee members, all consultants, and contracted vendors. The department also interacts with many other state agencies with regard to financial and administrative matters.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The CFO oversees nine positions as indicated in the chart below. The department maintains relevant policies and procedures for all key functions.

Organizational Chart for the Finance Department of the Texas Medical Board



**The Accounting Manger handles operational management only. This is not a supervisory position.*

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's indirect administration strategies in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Not applicable.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The Finance Department maintains the agency contracts that impact all departments and agency operations such as contracts for shipping, equipment maintenance (copiers), supplies, etc. For FY 14, these include the following:

1) Office supplies (TIBH Central Store) - $32,435
2) Xerox Copiers & Fax Machines - $21,904
3) Shipping, Lone Star - $22,665
4) Shipping, Capital Courier - $7,559

L. Provide information on any grants awarded by the program.

Not applicable.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Not applicable.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable.

VII. K. Guide to Agency Programs – Information Resources

A. Provide the following information at the beginning of each program description.

Name of Program or Function: ***INFORMATION RESOURCES***

Location/Division: ***AUSTIN/HQ***

Contact Name: ***JEFF CLAUSIUS, MANAGER***

Actual Expenditures, FY 2014: ***$707,996***

Number of Actual FTEs as of June 1, 2015: ***12***

Statutory Citation for Program: ***Occ. Code, Chpt 152***

B. What is the objective of this program or function? Describe the major activities performed under this program.

The department is responsible for maintaining the agency's custom information management system and for planning and managing major projects to enhance agency information technology systems. Information Resources also provides technical support for all computers, laptops, network functions, board meetings and any administrative hearings conducted by the agency.

The agency uses technology to increase productivity and efficiency with a finite amount of resources. Field investigators, professional consultants, board members, and district review committee members all rely on the agency's electronic document management system via web-based access to conduct agency business from field and remote locations.

Major activities include:

- assisting agency departments with efficient automation of tasks and proactive planning for future IR services and projects
- maintaining and programming agency's custom database (SQL Tracer) for licensure and enforcement case activity;
- Maintaining and programming the agency's information storage system (Laserfiche and Sharepoint) used to store and organize enforcement and licensure case information, board meeting information, and to facilitate information exchange between departments and board members, agency consultants, and
- Provide network administration services, PC and laptop support, and technical assistance with the agency's website in conjunction with the agency's website vendor.
- Serves as the liaison between the agency and the Dept of Information Resources (DIR) and fulfills all DIR reporting requirements.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

This department uses project management, trouble-shooting tools, and system maintenance schedules to ensure effective and efficient operation of the agency's IT systems. The department successfully maintains operational IT systems and applications that do not experience lengthy or unexpected downtime or errors. *See list of accomplishments below.*

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The IR Department has grown considerably over the past decade as the agency's use of technology to increase productivity has increased.

Information Technology Accomplishments, 2012-2014

The Texas Medical Board (TMB) is dependent on efficient and cost effective Information Technology (IT). TMB completed several IT initiatives and projects from 2012 through 2014 which are listed below. Each accomplishment brought a combination of new or enhanced services, improved customer service or reliability to licensees, the public and agency staff. The end result is an improved ability for TMB to complete its mission.

- *My TMB* is a new web site for licensees. The site serves as a centralized place to securely interact with the agency, similar to many consumer websites. The initial *My TMB* applications allow licensees to change their contact information and register the prescriptive delegation agreements. Consultants and agency staff can also securely access information through *My TMB*.
- Migrated the online applications licensees use to apply for and renew a license to a new platform resulting in improved service levels and cost savings estimated at $195K.
- Implemented online payment options for physicians participating in the Physician Health Program. Program participants can easily pay their fees through multiple methods.
- Integrated the Federal of State Medical Board's Uniform Application (UA) with the Physician license application. The UA offers a way to apply for licenses in multiple states through sharing core information including education and work history.
- Launched a redesigned website making information more accessible to visitors. The redesign included a content management system to reduce maintenance costs and speed updating.
- Implemented a Multimedia Evidence Storage System (MESS) working in conjunction with TMB's existing electronic document management service and providing centralized storage for any type of electronic media (medical, audio, and video) received during an investigation as evidence. Features include media importing and management
- The TMB Medical Image viewer displays medical imagery stored in the MESS while reducing the costs associated with shipping X-rays or CDs to reviewers located statewide. The viewer runs within TMB's secure network to protect patient data.

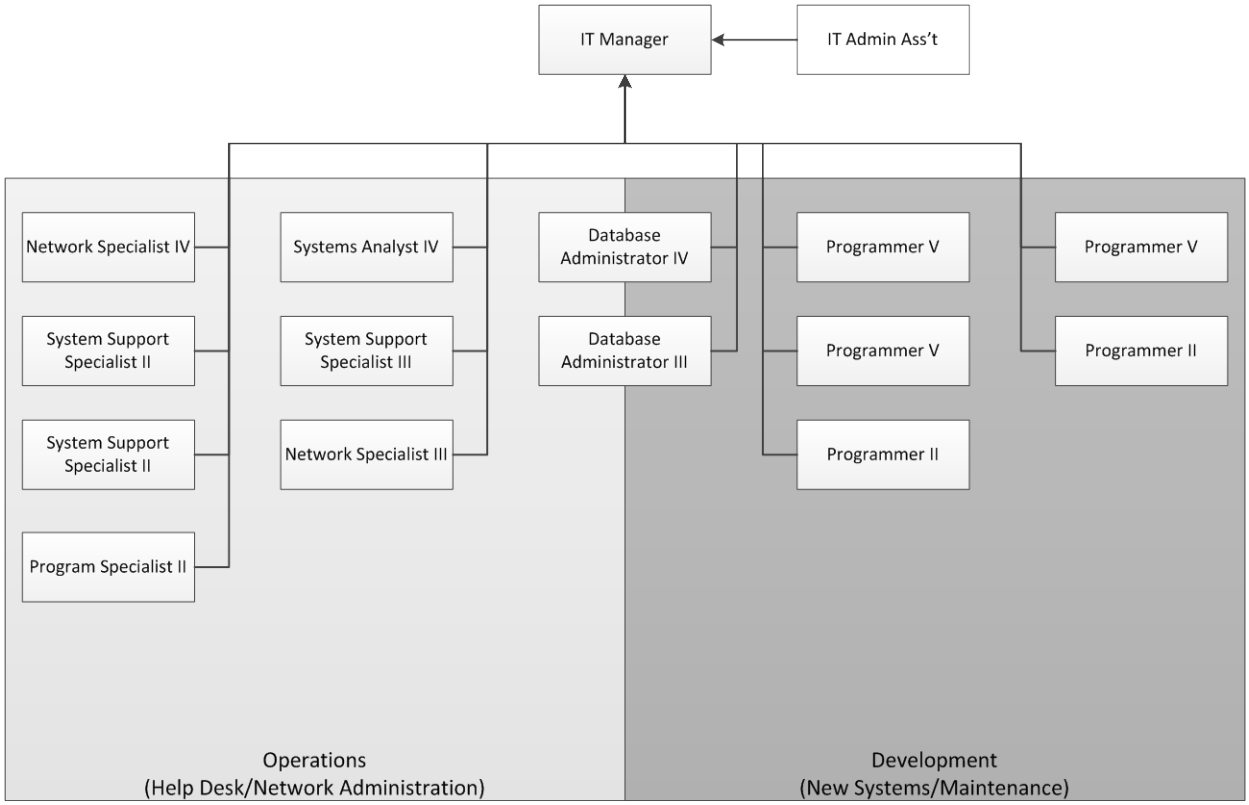
- Two applications focused on improving TMB internal operations. The upgraded the Human Resources application increases the security of data, improves tracking and reporting of employee information. The agency's intranet, *TMB-Net,* provides improved departmental and agency collaboration and communication.
- Several infrastructure initiatives finished, including network, server and desktop hardware and software upgrades. These projects provide a strong foundation allowing TMB to further improve service delivery and reduce costs through information technology.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This program affects all agency employees, all departments, all oversight boards, all district review committee members, all consultants (expert physician panel members) and potentially all licensees.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The IR Department organizational chart is provided below. The department maintains relevant policies and procedures for all key functions.



G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The department is funded through general revenue funds via the agency's indirect administration strategies in the General Appropriations Act.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

This function uses DIR and Comptroller resources and policies as required or as needed to ensure IT contracts are executed properly and that all purchasing meets state guidelines.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

There were two contracts in FY 14 related to Information Resources that were reviewed by the IR Manager and relevant agency staff:

1) Microsoft Enterprise Agreement, Software License Renewals - $83,777
2) Laserfiche License & Support (document imaging system) - $42,029

L. Provide information on any grants awarded by the program.

Not applicable

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Not applicable.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The department completes all required reporting to state oversight agencies including DIR and LBB including the Biennial Operation Plan and IT Strategic Plan.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable.

VII. L. Guide to Agency Programs – Texas Physician Health Program

A. Provide the following information at the beginning of each program description.

Name of Program or Function: **Texas Physician Health Program**

Location/Division: **333 Guadalupe, Tower 2, Suite 520, Austin, Texas 78701**
Contact Name: **Brad Fitzwater, M.D.**
(512) 305-7462
Brad.Fitzwater@txphp.state.tx.us
Actual Expenditures, FY 2014: ***$483,912***
Number of Actual FTEs as of June 1, 2015: **8.5**
Statutory Citation for Program: **Texas Occupations Code chapter 167**

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Texas Physician Health Program is a confidential, nondisciplinary, therapeutic monitoring program for physicians, physician assistants, and others who have substance abuse disorders, mental impairments, or physical impairments. The program is established to protect public safety and to promote licensee wellness, treatment, and monitoring of all health conditions that have the potential to compromise the licensee's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues. Major activities are intake, monitoring including drug screens and reports from outside monitors, reporting substantive non-compliance of participants' monitoring agreements to the appropriate Texas Medical Board disciplinary committee, drug screening, selecting acceptable treatment centers, and exiting successful participants from the program. Key functions are: public safety, participant recovery and monitoring, education and outreach, and relationships with outside entities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

Key statistics will include average number of days to process referrals and percentage of cases processed within the timeline, disposition of referrals as resolved or unresolved, participant statistics such as number of referrals and licensee participation, and participant outcomes.

As of August 7, 2015, TXPHP has served 1,552 individuals since its inception and had 377 participants currently enrolled. Physicians made up 78% of the participant population, with physician assistants making up 7% of the population. The remaining 15% of participants are physicians in training, medical students, surgical assistants, non-certified radiological technicians and acupuncturists.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

No change from original intent.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

A licensee who has or may have mental or physical health condition or an alcohol/substance use disorder is eligible to participate in the program. The program enrolls the following licensees: physicians, physicians in training, physician assistants, acupuncturists, surgical assistants, medical radiological technologists, respiratory care practitioners, medical physicists, perfusionists, and applicants for the Texas Medical Board (TMB) licensure who are affected by substance use disorders (SUD), physical illnesses and impairment, and/or psychiatric conditions. Licensees may refer themselves to the program or be referred by the Texas Medical Board due to a disclosure of a potential health condition or impairment on a licensing report or a complaint filed against the licensee that contains allegations of impairment.

Individuals who have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony, may be publicly referred by TMB through the entry of a disciplinary order that addresses the standard of care, boundary, and/or criminal law related violations. Individuals who refer themselves who have committed these violations are ineligible for participation.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Governing Board

The Texas Physician Health Program is overseen by the eleven member TXPHP Governing Board, which reports to the President of TMB, who appoints Governing Board members and the Presiding Officer. Members meet specific qualifications for their position. The Governing Board generally meets five times per year, scheduled in advance of the Texas Medical Board meetings and reports to the Texas Medical Board.

The Governing Board of the Texas Physician Health Program is statutorily charged with the responsibility of providing advice and counsel to the Texas Medical Board and establishing policy and procedures for the operation and administration of the TXPHP program. The TXPHP Governing Board appoints members of the Physician Health and Rehabilitation Advisory Committee (also called the TXPHP Advisory Committee). The Governing Board reviews cases in which participants are in substantial non-compliance with the requirements of their monitoring agreements, and makes recommendations to the Texas Medical Board's Disciplinary Process Review Committee for final determination and action.

The TXPHP Governing Board does not have rulemaking authority. The Texas Medical Board promulgates all rules pertaining to TXPHP in 22 Tex. Admin. Code chapter 180. The Governing Board approves participant management policies and procedures with oversight from TMB. The Governing Board reviews and makes recommendation for participant non-compliance cases but does not have final authority over participant status. All cases of participant substantive non-compliance are presented to the appropriate disciplinary committee of TMB for disposition.

Texas Medical Board/Texas Physician Health Program
Exhibit 3: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by *(e.g., Governor, Lt. Governor, Speaker)*	Qualification *(e.g., public member, industry representative)*	City
Alison R. Jones, M.D.	2009 - 2015, Presiding Officer since 2010, TMB President	Physician (M.D.)	Austin
Anand Mehendale, M.D.	2010-2016, Secretary, TMB President	Physician (M.D.)	Kerrville
Eugene Boisaubin, M. D.	2014-2020, TMB President	Physician (M.D.)	Houston
Mary Boone, LCSW, LCDC	2014-2020, TMB President	Mental Health Professional	Austin
Ronald W. Brenz, D.O.	2013-2019, TMB President	Physician (Doctor of Osteopathy)	San Antonio
Vella V. Chancellor, M.D.	2013-2019, TMB President	Physician (M.D.)	Mansfield
Judy Googins, M.D.	2013-2019, TMB President	Physician (M.D.)	Tyler
Helaine W. Lane	2010-2016, TMB President	Public Member	Houston
Martha Leatherman, M.D.	2012-2018, TMB President	Physician (M.D.)	San Antonio
Russell Thomas, D.O., M.P.H.	2012-2018, TMB President	Physician (D.O.)	Eagle Lake
Vicki Waters, MS, PA-C	2014-2015, TMB President	Physician Assistant	Houston

Table 14 Exhibit 3 Policymaking Body

Executive Medical Director

The Governing Board recommends to the Texas Medical Board the appointment of the Executive Medical Director (EMD), who is charged with the day to day operations of the program. The EMD must be a physician licensed by the Texas Medical Board and have expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance use disorders. Dr. John Bradley Fitzwater, M.D. is the program's Executive Medical Director. The EMD serves at the pleasure of the TMB. The Governing Board oversees the performance of the Executive Medical Director and reviews case review recommendations from him or her. The Executive Medical Director provides clinical and policy oversight for the program. The EMD supervises the staff of TXPHP, determines participation in the program and terms of participation, and makes reports regarding case reviews, financial reports, outreach, and other program matters.

Committees

The Physician Health and Rehabilitation Advisory Committee (TXPHP Advisory Committee) is established by Tex. Occup. Code section 167.004 and provides assistance and recommendations to the Governing Board and staff. The Executive Committee of the Governing Board handles emergency items and other matters between board meetings. The Personnel Committee is responsible for recommending for hiring and evaluating the Executive Medical Director.

Staff

The program is administered by its Executive Medical Director, who is recommended for employment by the TXPHP Governing Board and appointed by and serves at the pleasure of the Texas Medical Board. TXPHP staff monitors licensees who have a physical or mental condition or a substance use disorder that has the potential to compromise the licensee's ability to practice with reasonable skill and safety.

Processes

Referral to TXPHP. Licensees come to the program through five avenues: self-referral/private third party referrals, TMB licensing referrals, TMB complaint referrals, TMB litigation referrals, and TMB compliance referrals. In the majority of cases participation in TXPHP is voluntary; however, mandatory participation may occur if so required by TMB.

Intake, Monitoring, Non-Compliance, and Closure

Upon referral, an individual is privately interviewed by the Executive Medical Director for program eligibility and monitoring requirements. The individual may be required to undergo a substance use disorder evaluation, a neurocognitive evaluation, or psychological evaluation, or a medical evaluation by a medical professional in order to determine an appropriate monitoring agreement. Once the agreement is executive and the program fee paid (generally $1200 per

year), the program participant is assigned to a Program Specialist (functionally titled Clinical Coordinator) to monitor drug screening results, including Breathalyzer testing, urine, blood, hair, and nail testing, timely submission of monitoring reports from recovery monitors, work site monitors, and medical providers, and other agreement requirements. The Program Specialist is required to notify the Executive Medical Director of any non-compliance.

If it is found that participant is in substantive non-compliance with a requirement or requirements of the monitoring agreement, the participant's case is subject to case review by the TXPHP Governing Board. The TXPHP Governing Board may determine that the non-compliance was not substantive; determine the noncompliance was substantive and refer the case for review by the appropriate disciplinary committee of TMB; or if the non-compliance is such that the Participant is deemed an immediate danger to the public, may direct that the case be emergently referred to TMB.

Closure

When a participant reaches the end of the monitoring agreement term, a review of the case file is conducted to determine if the participant has successfully completed the agreement and can be released from the program. Criteria for release include drug testing compliance, including negative results; submission of all monitoring reports; and no indication of any further issues. Participants may request that their agreement be considered for early termination due to excellent performance; the EMD presents those requests to the Governing Board for determination.

Other Major Processes

These include the establishment and maintenance of a drug screening policy which sets forth positive and negative test results, establishing a listing of acceptable treatment centers to evaluate and treat substance use disorders and other disorders, and performing outreach activities to notify the licensee population of the existence and benefits of the program.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The TXPHP is funded through general revenue appropriations via line-item strategy within the Texas Medical Board's enforcement goal in the General Appropriations Act. The program is required to charge participant fees to cover its costs and a $1,200 annual fee is set in Sec. 153.051(d)(1), Occ. Code.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The Texas Medical Board disciplinary program monitors impaired licensees who have not been referred to TXPHP. The monitoring provided is similar to that of TXPHP; the difference is that

any violation of the monitoring requirements results in a disciplinary response. The Texas Medical Association provides monitoring services to its members, primarily through a program of drug testing that is similar in scope to that administered by TXPHP. The Texas Medical Association (TMA) provides results to third parties, while the TXPHP confidentiality statute prohibits this. TMA does not have accountability to TMB for reporting of impaired providers that are non-compliant with program requirements. Some County Medical Societies provide monitoring services to physicians and sometimes serve as Recovery Monitors for TXPHP participants but they too do not have a reporting requirement to TMB.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The Texas Medical Board program serves a different population from TXPHP, i.e. those who are under disciplinary sanction. The Texas Medical Association program is a non-governmental voluntary program primarily focused on the needs of the physician with health conditions or impairments and providing advocacy by providing reports to employers and credentialing authorities. A Memorandum of Understanding, dated March 11, 2010 between TMB and TXPHP was executed and requires that TXPHP maintain all TMB documents it receives as confidential.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

TXPHP works with other state physician health programs to ensure that impaired licensees are monitored during the term of the agreement. If a physician is licensed in another state, TXPHP, with the consent of the physician, provides compliance reports. Conversely, an out-of-state physician provides reports from their resident program to demonstrate compliance with their Texas agreement.

K. If contracted expenditures are made through this program please provide:

- **a short summary of the general purpose of those contracts overall;**
- **the amount of those expenditures in fiscal year 2014;**
- **the number of contracts accounting for those expenditures;**
- **top five contracts by dollar amount, including contractor and purpose;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

FY 14 contract expenditures were less than $400 for website hosting and maintenance with one vendor. TMB IT and Finance staff review IT and website contracts.

L. Provide information on any grants awarded by the program.

None.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

1) Amend the confidentiality statute (Tex. Occup. Code section 167.010) to permit exchange of program information about a participant between the program and medical providers, monitors, and other necessary individuals in order to protect the public and enable the participant to better reassure practice partners, hospitals, and credentialing organizations that he or she is being appropriately monitored. By bringing these individuals into the TXPHP confidentiality statute, timely exchange of information can occur, enhancing public safety and participant recovery.

2) By statutory amendment, expand the program to include all TMB licensees and to include medical students and physician assistant students due to the high likelihood of those students remaining in Texas for post-graduate training and medical practice.

3) Provide monitors and advisory committee members with immunity from suit and from liability for providing their reports to TXPHP. Monitors are concerned about the potential for liability while reporting to TXPHP.

4) Provide additional sources of funding other than increasing the statutory fee for program participation

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The impact of the Texas Physician Health Program extends beyond the individual medical provider and his/her patients. The state health system benefits through the provision of a confidential, nondisciplinary recovery accountability program for medical professionals. Public safety of participants' patients, as well as the state's general patient population, is protected by providing the program on a confidential basis to medical professionals who refer themselves outside of the Texas Medical Board's disciplinary and licensure process.

O. and P. omitted – not applicable.

VII. M. Guide to Agency Programs – Dept of State Health Services

Exhibit 11 completed for each of the four license types being transferred to TMB. TMB and DSHS are working to complete the transition by December 31, 2015.

Texas Board of Licensure for Professional Medical Physicists
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	607	627
Total number of regulated entities	0	0
Total number of entities inspected	0	0
Total number of investigations	0	1
Total number of complaints received from the public	1	2
Total number of complaints initiated by agency	1	2
Number of complaints pending from prior years	1	1
Number of jurisdictional complaints received	2	4
Number of jurisdictional complaints resolved	2	2
Average number of days for complaint resolution	191	111
Complaints resolutions - Disciplinary action:	0	1
administrative penalty	0	0
reprimand	0	0
probation	0	0
suspension	0	0
revocation	0	0
denial	0	0
surrender	0	1
Complaint resolutions - Other	2	1
No violation	2	1
Non-substantiated	0	0
Violation Found & Corrected	0	0
Withdrawal	0	0
License Expiration	0	0
Warning letter	0	0
Cease and desist letter	0	0

Medical Radiologic Technologist Certification Program
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	28,350	29,070
Total number of regulated entities	25	28
Total number of entities inspected	0	0
Total number of investigations	5	6
Total number of complaints received from the public	18	17
Total number of complaints initiated by agency	12	4
Number of complaints pending from prior years	26	27
Number of jurisdictional complaints received	29	21
Number of jurisdictional complaints resolved	28	20
Average number of days for complaint resolution	388	432
Complaints resolutions - Disciplinary action:	4	2
administrative penalty	0	0
reprimand	0	0
probation	4	0
suspension	0	2
revocation	0	0
denial	0	0
surrender	0	0
Complaint resolutions - Other	24	18
No violation	4	3
Non-substantiated	4	0
Violation Found & Corrected	0	0
Withdrawal	0	0
License Expiration	7	4
Warning letter	7	7
Cease and desist letter	2	4

Perfusionist Licensing Program
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	365	375
Total number of regulated entities	0	0
Total number of entities inspected	0	0
Total number of investigations	0	0
Total number of complaints received from the public	0	2
Total number of complaints initiated by agency	0	0
Number of complaints pending from prior years	0	0
Number of jurisdictional complaints received	0	2
Number of jurisdictional complaints resolved	0	0
Average number of days for complaint resolution	0	0
Complaints resolutions - Disciplinary action:	0	0
administrative penalty	0	0
reprimand	0	0
probation	0	0
suspension	0	0
revocation	0	0
denial	0	0
surrender	0	0
Complaint resolutions - Other	0	0
No violation	0	0
Non-substantiated	0	0
Violation Found & Corrected	0	0
Withdrawal	0	0
License Expiration	0	0
Warning letter	0	0
Cease and desist letter	0	0

Respiratory Care Practitioners Certification Program
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Total number of regulated persons	14,568	14,910
Total number of regulated entities	0	0
Total number of entities inspected	0	0
Total number of investigations	4	3
Total number of complaints received from the public	17	13
Total number of complaints initiated by agency	3	0
Number of complaints pending from prior years	20	20
Number of jurisdictional complaints received	20	12
Number of jurisdictional complaints resolved	20	14
Average number of days for complaint resolution	340	598
Complaints resolutions - Disciplinary action:	4	1
administrative penalty	0	0
reprimand	0	0
probation	2	1
suspension	2	0
revocation	0	0
denial	0	0
surrender	0	0
Complaint resolutions - Other	16	13
No violation	6	6
Non-substantiated	3	0
Violation Found & Corrected	0	0
Withdrawal	1	0
License Expiration	1	2
Warning letter	5	5
Cease and desist letter	0	0

VIII. Statutory Authority and Recent Legislation

A. Fill in the following charts, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2011–2015, or earlier significant Attorney General opinions, that affect your agency's operations.

Texas Medical Board
Exhibit 12: Statutes / Attorney General Opinions

Statutes

Citation / Title	Authority / Impact on Agency *(e.g., "provides authority to license and regulate nursing home administrators")*
Texas Occupations Code, Chapters 151 – 168 (Medical Practice Act)	Provides authority to regulate the practice of medicine including physicians, non-profit health organizations, office-based anesthesia and pain management clinics. Provides authority to administer the Texas Physician Health Program.
Texas Occupation Code, Chapter 204	Provides authority to regulate physician assistants.
Texas Occupations Code, Chapter 205	Provides authority to regulate acupuncturists and acudetox specialists.
Texas Occupations Code Chapter 206	Provides authority to regulate surgical assistants.
Texas Occupations Code, §601.251 and §601.252	Provides authority to regulate non-certified radiologic technicians (regulated by TMB prior to transfer from DSHS).
Texas Occupations Code Chapter 601	Provides authority to regulate medical radiologic technologists.
Texas Occupations Code Chapter 602	Provides authority to regulate medical physicists.
Texas Occupations Code Chapter 603	Provides authority to regulate perfusionists.
Texas Occupations Code Chapter 604	Provides authority to regulate respiratory care practitioners.
Texas Occupations Code, Chapter 53	Provides for consequences of a criminal conviction related to the practice of medicine and provides for a criminal history evaluation to determine an individual's eligibility for a license upon request.
Texas Occupations Code, Chapter 54	Requires licensing examinations administered by state agencies to provide reasonable accommodation for examinees diagnosed with dyslexia and to permit examinees to take exams on alternate dates when the exam date falls on their religious holiday.
Texas Occupations Code, Chapter 55	Provides for certain licensing deadlines and penalties to be waived or extended for members of the military and their spouses and to allow alternative license procedures in certain circumstances.
Texas Occupations Code, Chapter 101	Creates the Health Professions Council of which the Texas Medical Board is a member
Texas Occupations Code, Chapter 102	Specifies what is permitted and prohibited regarding the solicitation and advertising for patients.
Texas Occupations Code, Chapter 115	Creates a system administered by the Department of State Health Services for health practitioners from any state can be deployed to another state when an emergency is occurring. Requires TMB to coordinate with DSHS when an emergency declaration is in effect.

Citation / Title	Authority / Impact on Agency *(e.g., "provides authority to license and regulate nursing home administrators")*
21 U.S. Code, Chapter 13 – Drug Abuse Prevention and Control, §§801-971	Provides authority to classify and regulate the distribution of drugs as controlled substances.
Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act)	Provides for the regulation of controlled substances.
Texas Health and Safety Code, Chapter 483 (Texas Dangerous Drug Act)	Provides for the regulation of drugs that are unsafe for self-medication, but are not categorized as controlled substances.
Texas Business Organization Code	This new code is supposed to contain the following that were previously in the Texas Revised Civil Statutes: Texas Revised Partnership Act Texas Professional Association Act Professional Limited Liability Companies Texas Professional Corporation Act Texas Non-Profit Corporation Act
Texas Civil Practices and Remedies Code, Chapter 74 (Medical Liability and Insurance Improvement Act)	Provides that the TMB be consulted before certain disclosure materials can be prescribed by the disclosure panel.
Texas Civil Practices and Remedies Code, Chapter 88	Requires health insurance carriers, health maintenance organizations, or other managed care entities for a health care plan to exercise ordinary care when making "health care treatment" decisions. (?Does this apply to TMB?)
Texas Government Code, §521.0994	Requires the TMB to participate in the HHSC's annual study and report on new developments in safeguarding protected health information.
Texas Health and Safety Code, Chapter 81 (Communicable Disease Prevention and Control Act)	Specifies who must report, how, and to whom reportable communicable diseases are to be communicated; and responsibility to test for certain diseases and to instruct a person with a communicable disease on preventing reinfection and spreading of the disease and treatment of the disease.
Texas Health and Safety Code, Chapter 84 (Occupational Condition Reporting Act)	Specifies who must report suspected or actual cases of reportable occupational conditions.
Texas Health and Safety Code, Chapter 161	Provides for physician responsibilities related to the immunization of children and adults and provides for the immunization registry. Also, requires physician reporting of gunshot wounds and controlled substances overdoses.
Texas Health and Safety Code, Chapter 164 (Treatment Facilities Marketing Practice Act)	Provides safeguards against fraud, deceit, and misleading marketing practices related to the provision of mental health and chemical dependency services.
Texas Health and Safety Code, Chapter 166 (Advance Directives Act)	Provides authority to create and implement advance directives.
Texas Health and Safety Code, Chapter 170	Specifies the prohibited acts regarding abortion
Texas Health and Safety Code, Chapter 171	Includes the requirements for physicians performing abortions.
Texas Health and Safety Code, Chapter 181	Provides for covered entities to comply with HIPPA standards regarding access to and use of protected health information; requires providers to provide the health record within 15 business days if the system is capable of fulfilling the request; and requires HHSC to consult with TMB on rules related to electronic format for the release of health information.
Texas Health and Safety Code, §193.002 and §193.005	Requires person completing the medical certification on a death certificate tol submit the information and attest to its validity using an electronic process approved by the state registrar
Texas Health and Safety Code, Chapter 241 (Texas Hospital Licensing Law)	Provides authority for hospitals to credential and review medical staff, requires direct patient care healthcare

Citation / Title	Authority / Impact on Agency *(e.g., "provides authority to license and regulate nursing home administrators")*
	providers to wear photo identification badges, and specifies requirements for patient transfers between hospitals.
Texas Health and Safety Code, Chapter 245 (Texas Abortion Facility Reporting and Licensing Act)	Requires only a physician can perform an abortion and requires annual reporting by facilities, but that report may not identify the physician or the patient. Allows provision of information to the public on disciplinary action, civil penalties or criminal convictions of physicians providing services at the facility.
Texas Health and Safety Code, Chapter 313 (Consent to Medical Treatment Act)	Provides for consent for medical treatment for incapacitated adults
Texas Health and Safety Code, Chapter 401, Subchapter M	Provides for laser hair removal regulation by the Department of State Health Services, but specifies that if laser hair removal is within a professional's scope of practice that professional is not required to hold a certificate issued by the department.
Texas Health and Safety Code, Chapter 571 (Texas Mental Health Code)	Provides for the humane care and treatment of individuals with mental illness and contains provisions related to physicians providing this type of care.
Texas Health and Safety Code, Chapter 611	Provides for the rights to and confidentiality of patient mental health records.
Texas Health and Safety Code, Chapter 671A	Requires a private autopsy facility to post a notice for filing a complaint against a physician using the form adopted by the TMB.
Texas Health and Safety Code, Chapter 692 (Anatomical Gift Act) and Chapter 692A (Revised Uniform Anatomical Gift Act)	Provides for making anatomical gifts and specifies the physician's roles and responsibilities.
Texas Family Code, Chapter 32	Provides for consent to medical treatment a child by a non-parent or child.
Texas Family Code, Chapter 33	Provides for parental notice of abortion to be performed on a minor and duty to report physical or sexual abuse of a minor by a person responsible for the minor's care, custody or welfare.
Texas Family Code, Chapter 261	Provides for the duty to report abuse or neglect of a child, disabled person or the elderly.
Texas Family Code, Chapter 264	Not sure how this one applies…
Texas Human Resources Code, Chapter 48	Specifies the physician and physician assistant actions regarding emergency order for protective services.
Texas Insurance Code, Chapter 843 (Texas Health Maintenance Organization Act)	Specifies the relationships of physicians with health maintenance organizations.
Texas Insurance Code, Chapter 1460	Provides limited circumstances under which physicians can be ranked and prohibits physicians from requiring or requesting patients refrain from evaluate, participate in a survey regarding or in any way comment on patient's opinion of the physician.
Texas Insurance Code, Chapter 1467	Requires physicians to participate in mediation over a out-of-network claim dispute with an enrollee of a preferred provider or health benefit plan; requires reporting of an mediation to the TMB; and allows an enrollee who is not satisfied with the outcome to file a complaint with the TMB for improper billing.
Texas Penal Code, Chapter 22	Excludes lawful and reasonable medical procedures from assaultive offenses.
Texas Penal Code, §42.08	Provides that the abuse of a corpse is a Class A misdemeanor. (Applies to anyone, not sure this belongs here.)
Texas Code of Criminal Procedure, Article 49	Provides for duties of physicians regarding autopsies and

Citation / Title	Authority / Impact on Agency *(e.g., "provides authority to license and regulate nursing home administrators")*
	inquests in counties without medical examiners, provides for the duties of medical examiners, who must be a licensed physician, and provides for informed consent to postmortem examination or autopsy.
Texas Transportation Code, §521.126	Allows health care providers to use and maintain information derived from a driver's license or personal identification to provide health care services to the individual.
Texas Transportation Code, Chapter 681	Provides for physicians and physician assistants to provide statements or prescriptions that allow individuals to be issued disabled parking placards.
Emergency Medical Treatment and Active Labor Act (EMTALA) – Section 1867 of the Social Security Act.	Imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide stabilizing treatment for patients with emergency medical conditions to prevent "patient dumping".
Health Insurance Portability and Accountability Act of 1996 (HIPPA)	Provides for a nationally standardized protections for individual health information.
42 U.S. Code, §1320a–7b	Illegal remuneration and anti-kickback law…
42 U.S. Code, §1395nn	Prohibits certain physician referrals to an entity where the physician or physician's family has an ownership and/or compensation agreement.
42 U.S. Code, §§11131-11137	Provides for the reporting of malpractice to state medical boards and the reporting of disciplinary actions taken by state medical boards.

Table 15 Exhibit 12 Statutes

Attorney General Opinions

Attorney General Opinion No.	Impact on Agency
Allowing TMB Investigators who possess a Conceal Handgun License (CHL) to carry during work hours- The Attorney General opinion clarifies that the Board may allow its investigators, who hold a concealed handgun license ("CHL"), and are non-commissioned peace officers, to carry a concealed handgun while on duty. The opinion found no law prohibiting properly licensed CHL holders from carrying while on the job. The opinion also discussed the potential liability and waiver of sovereign immunity of TMB in event of some type of incident. The opinion concluded any such event would be fact/situation specific with a focus on whether the involved CHL holder acted negligently. TMB has subsequently implemented a CHL Policy regarding this matter. The decision to carry a CHL is discretionary to any individual TMB investigator, and is not required by TMB.	The opinion authorizes TMB to allow those investigators who hold concealed handgun licenses ("CHL") and are non-commissioned peace officers, to carry a concealed handgun while on duty. There are instances where the investigators are placed in dangerous situations while carrying out board duties. This is particularly true when investigating clinics or offices that are suspected “pill mills.” Many of these types of operations have been found to be extremely dangerous, including the presence of multiple firearms in these clinics..

Table 16 Exhibit 12 Attorney General Opinions

SIGNIFICANT OPEN RECORDS RULINGS

The board received two significant open records rulings regarding the confidentiality of their investigative and licensure files. The Board receives numerous requests for investigative information and files. The Medical Practice Act, section 164.007(c) defines this file as confidential and not subject release

There are also requests for licensure files that contain extensive information about applicants including academic performance and deficiencies, performance evaluations from supervising physicians and program directors. These evaluations provide very candid assessments of applicant’s fitness for licensure. These files are considered investigative file and are also subject to the protection of Section 164.007 (c) of the Medical Practice

As required under open records law the board was required, in response to requests for these files, to seek a ruling from the Attorney general, Open Records Division that the files did not have to be released based on the provision of Section 164.007(c).

The Attorney General, Open Records Division after having to write multiple opinions on redundant, similar requests issued a "pre-determination letter" to TMB regarding the non-disclosure of this information. A pre-determination letter is issued once an agency has repeatedly received requests for certain information and the AG has consistently found the material is protected from disclosure as an exception to the Open records law. This allows the agency to save its resources as well as AG resources by not having to brief a settled issue repeatedly, rather when receiving such a request the agency simply furnishes a copy of the "pre-determination" to the requestor.

The pre-determination letters are OR2006-14198, related to licensure files; and OR2007-03117, related to investigative files.

B. Provide a summary of recent legislation regarding your agency by filling in the charts below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency. *See Exhibit 13 Example.*

Texas Medical Board
Exhibit 13: 84th Legislative Session

Legislation Enacted

The legislation reflected below was passed in the 84th Regular Session of the Texas Legislature (2015) and is organized into two categories: 1) Health Professions - Licensing and Enforcement, and 2) Physician Practice & Prescription Monitoring. Bills are effective 9/1/15 unless noted.

Bill No. & Author	Subject	Summary of Key Provisions
Category I. Health Professions - Licensing & Enforcement		
SB 202 * (Nelson)	Sunset	Transfers four occupational regulatory programs from the Dept. of State Health Services (DSHS) to the TMB: Perfusionists, Medical Physicists, Medical Radiologic Technicians, and Respiratory Care Practitioners.
SB 622 (Uresti)	Physician Assistant Board	Amends the composition of the Physician Assistant Board by adding four positions for physician assistants; requires the presiding officer to be a physician assistant.
SB 807 (Campbell)	Military Licensees	Requires state licensing agencies to waive licensing application and registration fees for an applicant who is: 1) a military service member or veteran whose training/education substantially meets all license requirements; or 2) a service member, veteran, or spouse who holds a current license issued by another jurisdiction that has requirements substantially equivalent to those of Texas.

Bill No. & Author	Subject	Summary of Key Provisions
SB 1235 (Whitmire)	Pain Management Clinics	Specifies the definition of an "operator" of a pain management clinic to mean an owner, medical director, or physician affiliated or associated with the clinic in any capacity. Clarifies that a clinic owner/operator is engaged in the practice of medicine which includes all supervision and delegation activities related to the clinic. Clarifies that violations of Chpt 168, Occ. Code, are subject to criminal prosecution.
SB 1307 (Menendez)	Military licensees	Clarifies definitions of military service member, military spouse, and military veteran. Changes timelines for extension of license renewals and requires expedited licensure for military service members and veterans in addition to military spouses. Requires a state licensing agency to post a notice on its website home page describing the licensing provisions available to military service members.
HB 7 (Darby)	State Occupations Tax	Authorizes TMB to use general-revenue dedicated funds, collected from the $80 surcharge on physician licensure registration, for licensure as well as enforcement purposes. Repeals $200 Occupations Tax collected by TMB on physician licensees and passed through to the general revenue fund.
Category 2. Physician Practice & Prescription Monitoring Program		
HB 21 (Kacal)	Right to Try Act	Authorizes patients with terminal illnesses to access investigational treatments, drugs, biological products, and devices and prohibits state interference with an eligible patient's access. Prohibits TMB from taking action on a physician's license based solely on recommendations to an eligible patient regarding investigational treatments, provided that the recommendations meet the medical standard of care. Effective 6/15/15.
HB 177 (Zedler)	Stem Cells	Authorizes use of adult stems cells in FDA approved clinical trials and for use in hospital procedures under certain criteria. Creates the Texas Adult Stem Cell Coordinating Board to administer the state's adult stem cell research program and develop guidelines for providing grants and loans for specific research projects. Requires a biennial report.
HB 1945 (Bonnen)	Direct Primary Care	Authorizes and specifies the provision of "direct primary care" to be a primary medical care service (routine/general health care) provided by a physician to a patient through a medical service agreement and in return for payment in accordance with a direct fee. Specifies that a physician providing direct primary care through a medical service agreement is not an insurer or HMO and is not subject to regulation by the Texas Dept. of Insurance. Prohibits the TMB from initiating a proceeding against a physician solely because the physician provides direct primary care. Effective 5/28/15.
HB 3074 (Springer)	Advance Directives	Amends the state's Advance Directives Act to provide criteria by which a physician or health care facility could decide not to provide artificially administered nutrition and hydration and life-sustaining treatment to a patient.
HB 3374 (Morrison)	Down Syndrome Information	Amends the Health & Safety Code by requiring DSHS to make available information regarding Down Syndrome and requiring a health care provider who administers a test for Down Syndrome or who initially diagnoses a child with Down Syndrome to provide the DSHS information to the parents or expectant parents.
SB 66 (Hinojosa)	Epinephrine Auto-Injectors	Amends the Education Code to establish the criteria by which a physician, or person who has been delegated prescriptive authority, may prescribe epinephrine auto-injectors in the name of a school district or open-enrollment charter school. Effective 5/28/15.

Bill No. & Author	Subject	Summary of Key Provisions
SB 195* (Schwertner)	Prescription Monitoring	No later than 9/1/16 requires the transfer of the Prescription Monitoring Program (PMP) from DPS to Pharmacy Board. Repeals current Controlled Substance Registration requirements. Authorizes TMB, Nursing Board, and Pharmacy Board to charge a fee on applicable licensees to assist in funding the operational costs of the PMP at Pharmacy Bd.
SB 339 (Eltife)	Compassionate Use Act	Creates the Texas Compassionate Use Act relating to the medical use of low-THC cannabis to treat intractable epilepsy. Amends the Medical Practice Act to specify the criteria by which a physician may prescribe low-THC cannabis including maintaining a patient treatment plan. Requires DPS to administer a program for licensing dispensing organizations and maintain a compassionate-use registry that contains relevant prescribing information. Effective 6/1/15.
SB 791 (Kolkhurst)	Cytomegalovirus	Requires DSHS in consultation with TMB to develop and publish informational materials for parents regarding cytomegalovirus including incidence, transmission, preventive measures, and resources available. DSHS is required to establish an outreach program to raise awareness among parents and health care providers.
SB 1128 (Zaffirini)	Diagnostic testing during pregnancy	Amends current diagnostic testing requirements for a physician attending a pregnant woman by requiring that a test for syphilis be performed during the third trimester of pregnancy and not at delivery.

Table 17 Exhibit 13 Legislation Enacted 84th Leg

Legislation Not Passed

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass
SB 848	Estes	Radiology Assistant Licensing; engrossed and referred to House committee
SB 1813	Kolkhurst	Change confidentiality of complaints and confidentiality of expert physician reviewers; pending Senate intent calendar
HB 661	Zerwas	Interstate Compact for Medical Licensure; pending House Calendars Committee
HB 2250	Coleman	Amend Telemedicine Chpt. 111, Occ. Code; referred to House committee
HB 2267	Davis, S.	Anesthesiology Assistant Licensing; didn't pass to engrossment
HB 2978	Bonnen	Licensing of Neurodiagnostic technologists; pending House Calendars Committee

Table 18 Exhibit 13 Legislation Not Passed 84th Leg

IX. Major Issues

The table below lists the agency's major issues. There are several policy issues that the agency considers to be major; however, some of them cannot be addressed by a change to state law. Consequently, some policy issues including those that address issues raised at the federal level are addressed in the agency comments section – Section XII.

MAJOR ISSUES LIST	
1	TELEMEDICINE
2	HOSPITAL REPORTING OF PEER REVIEW ACTIONS TO TMB
3	TRANSITION OF FOUR LICENSE TYPES & CORRESPONDING BOARDS & COMMITTEES FROM DSHS TO TMB
4	INTERSTATE COMPACT FOR PHYSICIAN LICENSURE
5	MEDICAL RECORDS ISSUES
a	ELECTRONIC MEDICAL RECORDS
b	ABANDONMENT OF RECORDS
6	TEXAS PHYSICIAN HEALTH PROGRAM

ISSUE 1: TELEMEDICINE

A. Brief Description of Issue

Texas has long acknowledged the importance of telemedicine in the delivery of health care and has been one of the first states to adopt guidelines addressing its use in medical practice. In order to ensure the best balance of patient safety and use of convenient and cutting edge technology, the TMB continues to review its rules with key stakeholders to address the evolving and expanding role of telemedicine and to ensure the most appropriate regulatory structure. While various entities have made attempts to regulate telemedicine at the federal level these have so far not been successful and this key issue remains within the purview of the states.

B. Discussion

In Chapter 111, Occ. Code, relating to telemedicine and telehealth, state law expressly authorizes TMB to adopt the necessary rules to "ensure that patients using telemedicine medical services receive appropriate, quality care" (Sec. 111.004(1), Occ. Code). In addition, Sec. 111.002, Occ. Code, requires a health professional who uses telemedicine to ensure that a patient's informed consent is obtained before telemedicine medical services are provided.

In 2010, the TMB substantively expanded its telemedicine rules to accommodate developing trends in health care delivery and the majority of telemedicine practiced in rural and urban areas of Texas. Key rule amendments were also adopted in April 2015 after several rounds of stakeholder input. These changes affirmed the Board's longstanding interpretation of the rules that before a physician prescribes to a patient there must be an established physician-patient relationship. In addition to reinforcing this critical component of proper medical treatment, the amended rules expanded the use of telemedicine for behavioral and mental health treatment. Patients can now seek mental health treatment for non-emergencies in their own home, which is often a more preferred, comfortable therapy setting.

The Board recognizes the need to expand access to care to underserved and remote parts of the state, and the current rules allow that expansion to occur while maintaining the safety of patients. There are real examples of safe and effective telemedicine programs in operation in rural Texas areas, such as those used by the Texas Tech University Health Sciences Center and University of Texas Medical Branch. The current rules allow these and other telemedicine programs to flourish.

TMB is currently in active litigation regarding the issue of defining an established physician-patient relationship for the purposes of prescribing dangerous drugs or controlled substances to a patient via telemedicine. During the pendency of this litigation, the Board will continue to adhere to all relevant state law and rules pertaining to patient safety, the standard of care, and telemedicine, that it is not enjoined from taking action on. Further information about pending litigation is provided in Sections II and III of this report.

C. Possible Solutions and Impact

In order to ensure that Texas has the optimal regulatory structure for safe telemedicine, and to ensure the state's right to regulate telemedicine in medical practice without potential federal interference, one possible solution is for Texas to join the Interstate Medical License Compact which would expand state telemedicine use by expediting the licensure of highly qualified doctors in other states, including specialists in various medical fields, to practice in Texas. This is further addressed in Issue 4. In addition, the continued affirmation of the current statutory language in Chpt. 111, Occ. Code, could ensure clear direction that board rules regulating telemedicine medical services must address patient safety and that a patient's informed consent is a key element in the use of telemedicine.

ISSUE 2: HOSPITAL REPORTING OF PEER REVIEW ACTIONS TO TMB

A. Brief Description of Issue

Medical peer review committees (typically in hospital settings) and certain types of health care entities are required to report in writing to the Medical Board the results and circumstances of the review of a physician that adversely affects a physician's clinical privileges or membership in a professional association. This reporting is not always occurring as required causing a serious enforcement challenge for the Board. In order to protect the public and allow cases to be properly investigated in a timely manner, the Board relies on the required reporting from hospitals.

B. Discussion

Section 160.002 of the Texas Occupations Code currently requires medical peer review committees (typically in hospital settings) and certain health care entities to report in writing the results and circumstances of the review of a physician that:

1) adversely affects the clinical privileges of a physician for a period of longer than 30 days;

2) results in acceptance of a physician's surrender of clinical privileges while the physician is under investigation or in lieu of conducting an investigation; or

3) adversely affects the membership of a physician in a professional society or association, if conducted by that society or association.

The outcome in these instances can be concerning. The Board is aware of cases where the choice was made to not report an action to the Board and this continued to put patients at risk until the Board became aware of the problems from another source, such as a patient complaint. Unfortunately, this delays the Board in becoming aware of a practitioner's potential violation of law and acting appropriately to address it. In the worst case, the Board does not become aware of an issue until other violations by the same physician have occurred and are then reported to the Board.

Another issue that can arise is that a hospital will wait until a matter goes through a several month-long process, sometimes involving lengthy litigation, to declare an action final before issuing a report to the Board. This delay means that the public is in a vulnerable situation, as the hospital already has made at least an initial determination of problems with a physician, but the Board has no information. In this case, a physician can simply continue to work at other facilities or in his private office while the matter works its way through the hospital's system, and the public is not aware of the issues. Complicating this matter is the fact that even if the Board uncovers an issue of a failure to report, the Board has no authority over these health care entities. There is no specific statute to guide oversight in this exact area to help ensure compliance.

C. Possible Solutions and Impact

There are solutions that may merit consideration in this matter. The first is whether the event that triggers reporting to the board should focus on the action the licensee committed rather

than on whether a peer review group acted. For example, the requirement could be that if a peer review group is aware that a licensee committed an act that causes death or serious injury to a patient, the peer review group is required to report that act to the Board. The second potential solution could be an enforcement structure to ensure that DSHS has authority to audit for proper reporting, as well as investigate any potential failures to report as submitted by the Board. Appropriate penalties could be established to deter violations in this area. Another solution could be to ensure that any peer review reporting is given absolute immunity from liability and suit. This could address a hospital's concerns about incurring liability for reporting an action to the Board.

ISSUE 3: TRANSITION OF FOUR LICENSE TYPES & CORRESPONDING BOARDS & COMMITTEES FROM DSHS TO TMB

A. Brief Description of Issue

As a result of Sunset Commission recommendations to the 84th Legislature stemming from the review of the Department of State Health Services (DSHS), Senate Bill 202 was passed in 2015. This legislation incorporated recommendations that four regulatory and occupational licensing programs, totaling approximately 45,000 licensees, be moved from DSHS to TMB: medical radiologic technologists, respiratory care practitioners, medical physicists, and perfusionists. The timeline for the transition is required to be "as soon as practicable" and the legislation goes into effect on Sept. 1, 2015.

B. Discussion

The agency has been working with relevant DSHS staff to ensure an efficient transition of all four programs by December 31, 2015. This will include initial licensing of new applicants; renewals and registrations of existing licensees; complaint intake; and investigations and any resulting enforcement actions on licensees. Once the associated boards and committees for these programs are established, the boards requiring gubernatorial appointments and the committees requiring appointment by the TMB President, policy and rulemaking issues can begin to be addressed.

All TMB departments will be impacted by this transition, either through an increase in the volume of current workload and/or an expansion of the complexity of the type of work being done. Consequently, TMB requested and was granted the funding and staff resources necessary to address the workload issues. The agency has been reorganizing departments, adding staff, and leveraging information technology as needed to address the September through December 2015 transition timeframe.

C. Possible Solutions and Impact

Because TMB is currently experiencing a major transition while simultaneously undergoing Sunset review, the agency looks forward to future opportunities to provide updated information on the transition and organizational changes during the review process. In addition, once SB 202 requirements are implemented, TMB will be better able to identify any potential suggestions for additional statutory changes pertaining to these four regulatory programs.

ISSUE 4: INTERSTATE COMPACT FOR PHYSICIAN LICENSURE

A. Brief Description of Issue

In May 2015, the Interstate Medical Licensure Compact was established with the required membership of at least seven states. This Compact creates a new pathway to expedite and simplify physician licensing for physicians seeking to practice medicine in multiple states. An interstate compact is an agreement between multiple states that coordinates the exchange of information among the member states. Many states in 2015, including Texas, pursued the adoption of legislation establishing the Compact. Since House Bill 661 did not pass in the 84th legislative session, Texas did not join the Compact.

B. Discussion

Texas is already a member of a variety of interstate compacts that facilitate information sharing across state lines, these include: recently passed legislation to join the *EMS Personnel Licensure Interstate Compact* (in 2015); the *Interstate Compact on Educational Opportunity for Military Children*, and the *Nurse Licensure Compact*. Membership in an interstate compact retains a state's authority and is not a national license.

The Interstate Medical Licensure Compact offers several key benefits including:

- substantially reducing the time it takes a physician to receive multiple state licenses;
- complementing the growing emphasis on regional and multi-state health care systems by streamlining a physician's ability to apply for multiple state licenses;
- expanding access via telemedicine to physician experts practicing in other states, especially for patients in underserved or rural areas, while maintaining state authority; and
- strengthening public protection by helping member states share investigative and disciplinary information on physician licensees.

To be eligible to join the Compact, a physician would have to possess a full and unrestricted license in a member state; be certified in a medical specialty, and have no history of being disciplined, penalized or punished by a court, a medical licensing agency or the Drug Enforcement Administration.

It is important to reiterate that state membership in the Compact does not change a state's existing authority and medical practice act beyond creating a new pathway for licensure. The Compact does not create a national license, each member state retains its existing authority to issue and regulate a license to practice medicine. Each license must be issued by the member state's medical board and a physician must be licensed in the same state where a patient is located.

As required for any interstate compact, each state wishing to participate must have its state legislature adopt the agreed upon compact language and join the Interstate Compact Commission. The Commission serves solely an administrative role assisting member states with information coordination and tracking, and is primarily funded via nominal operational fees collected on initial applications and renewal registrations. The Commission would not have the ability to issue or revoke licenses.

C. Possible Solutions and Impact

State membership in the Interstate Medical Licensure Compact provides a variety of benefits and incurs no cost to the state to implement this new license type since medical boards have the ability to charge applicants relevant license application and renewal fees. As addressed in Issue 1, the adoption of the Compact overlaps with the key issue of expanding telemedicine opportunities in Texas.

ISSUE 5A: MEDICAL RECORDS ISSUES – ELECTRONIC MEDICAL RECORDS

A. Brief Description of Issue

The role of technology and innovation are always important factors in the health care arena and important trends that are currently shaping health care and will continue to do so in the future include the continued digitization of the health care system, the use of health information exchanges (HIE), and the use of electronic medical records (EMR). EMR technology, implementation and utilization are rapidly evolving and have presented numerous challenges along the way.

B. Discussion

In order to address these trends, the Board created an Electronic Medical Records Ad-Hoc Committee to research the scope of the issues and determine the Board's role and parameters of regulation. The Board wants to ensure that medical records maintain their substantive value in order to provide for the best possible patient care including maintaining the continuity of a patient's care amongst multiple providers. To that end, the Board has passed rule changes clarifying EMR requirements for physicians, and in April 2015, adopted a position statement to clarify EMR standards and expectations for creating and maintaining a useful, meaningful, and readable medical record.

These actions have been taken to address the fact that while the intended role of EMRs was to improve patient care, it has evolved into a role of recording information focused on administrative and billing issues, which are only a portion of the healthcare process. Since the adoption of EMRs nationwide, healthcare providers have experienced situations where EMRs unintentionally obscure key clinical medical information due to a provider having to search through masses of often-repetitive data in a single record to find the relevant clinical information. TMB has observed the progressive difficulty in obtaining medical decision-making information from current EMRs, which can impede the Board's ability to investigate and review medical care cases.

In 2007, The Texas Health Services Authority (THSA) was created as a public-private collaborative to implement state-level health information technology functions and to serve as a catalyst for the development of a seamless electronic health information infrastructure. In the 83rd Legislative session, technology and efficiency issues were addressed through a variety of legislation including House Bill 300. HB 300 added to the duties of the THSA by requiring it, along with other relevant state agencies including HHSC and TMB, to develop recommendations for privacy and security standards for the electronic sharing of protected health information (PHI).

C. Possible Solutions and Impact

In addition to the emphasis placed on HIE and protected health information, as addressed by HB 300 and subsequent legislation such as HB 2641 passed in 2015, any additional opportunities for state health policy entities to research the use of EMRs and develop recommendations for best practices could be very beneficial to providers. Since EMR systems are often not developed by health care practitioners, researching ways that EMRs could become a more user-friendly method for practitioners to maintain clinical medical information would assist with a longer term view of patient care. This could also better ensure continuity of care of a patient among several health care practitioners and provide the information that medical boards need to adequately regulate care.

ISSUE 5B: MEDICAL RECORDS ISSUES – ABANDONMENT OF RECORDS

A. Brief Description of Issue

TMB receives dozens of inquiries every year from patients regarding access to their medical records created by physicians, typically in solo or small practices, who are no longer practicing for various reasons. These reasons can range from retirement or dissolution of a business partnership to license revocation or due to the fact that the physician is deceased or has become incapacitated. In these cases, it is not uncommon that the practice lacks a plan to transfer or store medical records. There is no reliable mechanism to assist physicians with storing or transferring medical records when they leave practice nor to assist patients with accessing their medical records that may otherwise potentially be abandoned, lost, or misplaced.

B. Discussion

Physicians are subject to both statutory and rule requirements for the transfer and disposal of medical records, including TMB's authorization to appoint a custodian for a physician's medical records (Sec. 159.0061, Occ. Code), who must keep records for 90 days as well as other requirements delineated in Board rules (Sec. 165.4). The rules also address TMB's authorization to issue a request for bids for an entity to function as the appointed record custodian for either all areas of the state or designated regions of the state. TMB has issued an RFP for this function but received no bids from any entity. The feedback that the agency received is that there is not enough financial incentive for an entity to provide this service based on the amount of uncertainty involved with potentially abandoned records and the amount of start-up costs required to establish storage space with potentially unreliable returns dependent on fees charged to provide storage as well as copies of records.

C. Possible Solutions and Impact

Potential solutions to this issue could include dedicated state resources to establish a statewide repository for medical records that would ensure appropriate storage and enable access for patients seeking their health information. The issue of records abandonment, and other security risks to protected health information by a variety of entities possessing protected health information, have been addressed by HHSC and other state agencies in reports required by HB 300, 83(R), available at this link: http://www.hhsc.state.tx.us/reports/2012/Unsustainable-Covered.pdf.

ISSUE 6: TEXAS PHYSICIAN HEALTH PROGRAM

ITEM 1

A. Brief Description of Issue:

The ability to manage participants and protect the public is impeded by TXPHP's current confidentiality statute (Tex. Occup. Code, Sec. 167.010).

B. Discussion

The Texas Physician Health Program can receive information from monitors, providers and others under the current confidentiality statute, but has very little latitude to share information. The statute limits the ability of TXPHP to notify those who observe the participant on a regular basis of any monitoring issues that could impact the participant's safety to practice and decreases the reliability of information that can be obtained from these same individuals when a monitoring issue occurs. For example, if the program has information from a work site monitor that may be concerning, the program cannot then share this information with a participant's provider as part of a request for repeat assessment. This inability to engage in open dialogue with medical providers, monitors, advisory committee members and other necessary individuals impedes the ability of the program to accurately and timely determine a participant's status and ability to safely practice. By exchanging information, situations such as relapses or decompensation problems can be brought to the attention of those individuals best positioned to swiftly intervene to protect the public and the participant. For example, TXPHP could communicate that the participant is being placed under a cease practice directive, and the work site monitor could ensure compliance.

C. Possible Solutions and Impact

Amend the confidentiality statute (Tex. Occup. Code, Sec. 167.010) to permit the exchange of program information about a participant between the TXPHP and medical providers and monitors in order to protect the public.

ITEM 2

A. Brief Description of Issue

The current statute does not provide authorization for TXPHP to enroll all categories of licensees that are under the jurisdiction of TMB and its associated boards, nor does it authorize TXPHP to enroll those who have stated intent to apply for a license but who have not yet done so.

B. Discussion

Currently, TXPHP's enabling statute (Tex. Occ. Code, Chpt. 167) only specifies that physicians and physician assistants may be enrolled in the program. Expanding program participation to all categories of licensees and licensure applicants under TMB's jurisdiction will ensure that the directives of TMB and the TXPHP participant population are statutorily aligned. TXPHP would be able to provide a single point of contact and consistent monitoring programs across all

categories of TMB licensees and potential applicants and be better able to protect the public by providing for establishment of a track record of compliance prior to licensure by TMB.

Currently, many licensure applicants come to TMB without having been monitored for conditions that are potentially impairing and thus constitute a greater unknown risk to the public. The statute also does not authorize TXPHP to engage the medical school and physician assistant student populations, many of whom are likely to pursue training permits and / or full licensure in the state. Early stages of impairing conditions often present during professional training and allowing these individuals access to monitoring would likely improve their outcomes and public safety. Public safety is potentially impacted because some individuals that provide or will provide care as TMB licensees will not be optimally treated and monitored for their potentially impairing conditions. Schools responsible for educating the next generation of providers do not have access to the resources and monitoring expertise that TXPHP provides.

With this expansion, licensee populations would have clear information that they may participate in TXPHP and potentially avoid disciplinary action due to a health condition or impairment. Medical schools and physician assistant schools, several of which have already asked for help with monitoring potentially impaired students, would have access to TXPHP monitoring. This in turn will lead to better outcomes for both the public and the individuals with potentially impairing conditions.

C. Possible Solutions and Impact

By statutory amendment, expand the program to include all TMB and associated boards' licensees and applicants, as well as medical students, physician assistant students and individuals whose stated intention is to apply for licensure under TMB or an associated board.

ITEM 3

A. Brief Description of Issue

TXPHP depends on monitors and advisory committee members to perform local monitoring and intake functions for program participants. Volunteers are hesitant to participate as monitors or advisory committee members without a specific grant of immunity from suit and liability

B. Discussion

Recruitment and retention of monitors and advisory committee members is suboptimal, and relationships with interest groups such as the county medical societies and TMA are jeopardized, due to concerns about potential liability arising from their actions on behalf of the program. With immunity, monitors and advisory committee members will be more willing to serve and to report fully to TXPHP, further protecting public safety and monitoring of participants.

C. Possible Solutions and Impact

Provide monitors and advisory committee members with immunity from suit and from liability arising from their actions on behalf of TXPHP.

ITEM 4

A. Brief Description of Issue

TXPHP is not adequately funded and the current funding mechanism is a barrier to some individuals participating in the program.

B. Discussion

TXPHP is funded through statutory annual participation fees set at $1,200 per participant. Due to revenue shortfalls the program is currently operating at a reduced staffing level. More than 95% of the program costs are related to staffing levels and the program has not been able to reach the legislatively authorized number of FTE's, impeding the program's ability to implement process improvements that would enhance the program's ability to meet its mission.

In addition, the appropriation does not provide adequate support for program outreach. TXPHP has been unable to make significant progress in the realm of public and provider education. Key to protecting the public is to identify and enroll providers with conditions that may place the public at risk. A significant opportunity exists to increase the number of self- and third party referrals, but the agency currently has a limited ability to perform outreach and educational activities that would increase awareness of the program's existence and mission, leading to increased referrals and program enrollment.

Funding the Program solely through participant fees discourages or prevents some individuals from participating due to the high cost. TXPHP has limited latitude to make adjustments for providers that are under severe financial strain or, in the case of low wage allied health professionals, cannot afford the basic program fees. The costs associated with drug screening and medical services are also significant and must be paid directly by the participant. Some licensees who would otherwise voluntarily participate in the program balk at the high participation cost and consequently end up not reporting, leading to a public safety risk due to lack of monitoring.

C. Possible Solutions and Impact

Partially fund the program from sources other than participant fees. Increase participation fees if no other options are available.

X. Other Contacts

A. Fill in the following charts with updated information on people with an interest in your agency, and be sure to include the most recent email address.

Texas Medical Board
Exhibit 14: Contacts

Interest Groups/Professional Associations
(groups affected by agency actions or that represent others served by or affected by agency actions)

Group or Association Name/ Contact Person	Address	Telephone	Email Address
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Texas Osteopathic Medical Association Steven Yount, D.O. David Reynolds	1415 Lavaca Street Austin, TX 78701	Phone: (800) 444-8662 Fax: (512) 708-1415	syount@safe-mail.net reynolds@txosteo.org
Texas Academy of Physician Assistants Lisa Jackson	401 W. 15th Street Austin, TX 78701	Phone: (800) 280-7655 Fax: (512) 370-1626	lisa.jackson@texmed.org
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Texas Association of Acupuncturists Lisa Lin	4005 Manchaca Rd Austin, TX 78704	Phone: (512) 383-9888 Fax: (512) 707-8866	lisalin@thsu.edu
Texas Hospital Association Charles Bailey, J.D. Jennifer Banda, J.D.	1108 Lavaca, Suite 700 Austin, TX 78701	Phone: (512) 465-1000 Fax: (512) 465-1090	cbailey@tha.org jbanda@tha.org
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Texas Academy of Anesthesiology Assistants Paul McHorse	P.O. Box 1166 Round Rock, TX 78680-1166		lonestaraa@gmail.com
Texas Neurodiagnostic Society Craig Schweitzer	P.O. Box 580469 Houston, TX 77258	713-300-2384	
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Texas A&M Health Science Center College of Medicine Bryan/College Station Ruth Bush, M.D., J.D., M.P.H.	3050 Health Professions Education Building 8447 Highway 47 Bryan, TX 77807	Phone: (979) 436-0241	rbush@medicine.tamhsc.edu
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Texas A&M Health Science Center College of Medicine Temple Paul B. Hicks, M.D., PhD Ravi Kallur, PhD, M.P.A.	2401 S. 31st Street Temple, TX 76508	Phone: (254) 724-6853	phicks@medicine.tamhsc.edu rkallur@sw.org
Texas Tech University Health Sciences Center Amarillo Janet Abbott Kristin Stutz Richard M. Jordan, M.D.	1400 Coulter Street Amarillo, TX 79106	Phone: (806) 354-5417 Fax: (806) 351-3787	janet.abbott@ttuhsc.edu kristin.stutz@ttuhsc.edu richard.jordan@ttuhsc.edu
UT Austin Dell Medical School Jonathan Macclements, M.D.	1912 Speedway, Suite 564 Austin, TX 78712		jonathan.macclements@austin.utexas.edu
Texas Higher Education Coordinating Board Stacey Silverman, M.D.	1200 E. Anderson Lane Austin, TX 78752	Phone: (512) 427-6101 Fax: (512) 427-6168	stacey.silverman@thecb.state.tx.us
Lone Star Family Health Center Stephen McKernan, N.D., D.O., F.A.A.F.P.	605 South Conroe Medical Drive Conroe, TX 77304	Phone: (936) 539-4004	stephen.mckernan@lonestarfamily.org
Brooke Army Medical Center Woodson "Scott" Jones, M.D.	3551 Roger Brooke Dr. Fort Sam Houston, TX 78234	Phone: (210) 916-3400	woodson.s.jones.civ@mail.mil

Table 19 Exhibit 14 Interest Groups

Interagency, State, or National Associations

(that serve as an information clearinghouse or regularly interact with your agency)

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Federation of State Medical Boards Lisa Robin	400 Fuller Wiser Road Euless, TX 76039	Phone: (817) 868-4000	lrobin@fsmb.org
Administrators in Medicine Stephanie Ricker	1500 Sunday Drive, Suite 102 Raleigh, NC 27607	Phone: (919) 573-5445	sricker@FirstPointResources.com
American Board of Medical Specialties	353 North Clark Street Suite 1400 Chicago, IL 60654	Phone: (312) 436-2600	
American Medical Association	330 North Wabash Avenue Chicago, IL 60611	Phone: (800) 621-8335	
American Osteopathic Association	142 E. Ontario Street Chicago, IL 60611	Phone: (800) 621-1773	
Educational Commission for Foreign Medical Graduates	3624 Market Street Philadelphia, PA 19104	Phone: (215) 386-5900	
National Board of Medical Examiners	3750 Market Street Philadelphia, PA 19104	Phone: (215) 590-9500	
National Board of Osteopathic Medical Examiners	8765 W. Higgins Rd Suite 200 Chicago, IL 60631	Phone: (773) 714-0622	
National Practitioner Data Bank Gloria Pelletier	4094 Majestic Lane PMB-332 Fairfax, VA 22033	Phone: (800) 767-6732	GPelletier@hrsa.gov
USMLE (United States Medical Licensing Examination	3750 Market Street Philadelphia, PA 19104	Phone: (215) 590-9700	
Texas Society for Medical Services Specialists	PO Box 721885 Houston, TX 77272	713-448-2104	info@tsmss.org

Table 20 Exhibit 14 Interagency, State, and National Association

Liaisons at Other State Agencies

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Legislative Budget Board Trevor Whitney	Robert E. Johnson Building Fifth Floor 1501 North Congress Austin, TX 78701	Phone: (512) 463-8203	Trevor.Whitney@lbb.state.tx.us
Texas Comptroller of Public Accounts Drey Lord	Lyndon B. Johnson State Office Building 111 East 17th Street Austin, TX 78774	Phone: (512) 475-0897	drey.lord@cpa.texas.gov
Texas State Auditor's Office	Robert E. Johnson, Sr. Building 1501 North Congress Avenue Austin, TX 78701	Phone: (512) 936-9500	
Office of the Governor Kara Crawford	P.O. Box 12428 Austin, TX 78711	Phone: (512) 463-9036	Kara.Crawford@gov.texas.gov

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Office of the Attorney General Ted Ross	P.O. Box 12548 Austin, TX 78711	Phone: (512) 463-2100	Ted.Ross@texasattorneygeneral.gov
Health Professions Council John Monk	333 Guadalupe, Tower II Suite 2-220 Austin, TX	Phone: (512) 305-8551	john.monk@hpc.state.tx.us
Texas Higher Education Coordinating Board Stacey Silverman, M.D.	1200 E. Anderson Lane Austin, TX 78752	Phone: (512) 427-6101 Fax: (512) 427-6168	stacey.silverman@thecb.state.tx.us
Health & Human Services Commission	Brown Heatly Building 4900 N. Lamar Blvd Austin, TX 78751-2316	512-424-6500	
Texas Department of Public Safety Controlled Substance Registration Sherry Wright	5805 N Lamar Austin, TX 78773	Phone: (512) 424-7568 Fax: (512) 424-5373	sherry.wright@txdps.state.tx.us
Texas Department of Public Safety Fingerprinting Susan Monaghan	5805 N Lamar Austin, TX 78773	Phone: (512) 424-2365, option 6	susan.monaghan@txdps.state.tx.us
Texas Department of Insurance Division of Worker's Compensation Maris Lopez Wagley	7551 Metro Center Drive Suite 100 Austin, TX 78744	Phone: (512) 804-4739	marisa.lopez.wagley@tdi.texas.gov
Texas Physician Health Program Brad Fitzwater, M.D.	333 Guadalupe, Tower II Suite 520 Austin, TX 78701	Phone: (512) 305-7462 Fax: (512) 463-0216	brad.fitzwater@txphp.state.tx.us

Table 21 Exhibit 14 Liaisons at Other State Agencies

XI. Additional Information

A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each agency-specific report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was put in place. Please do not include general reporting requirements applicable to all agencies, reports that have an expiration date, routine notifications or notices, posting requirements, federally mandated reports, or reports required by G.A.A. rider. If the list is longer than one page, please include it as an attachment. ***See Exhibit 15 Example.***

(Agency Name)
Exhibit 15: Evaluation of Agency Reporting Requirements

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
Biennial Report on Physician Licensure (HB 1731, 2007)	Occ. Code, §155.007(h)-(l)	August 1 of Even years; Biennial	Governor, LBB, relevant legislative committees (Sen HHS & House Public Health)	Overview of physician licensing	Yes for the majority of report, to provide summary of key licensure statistics
Annual Report on Investigations over one year old (SB 104, 2003)	Occ. Code, §153.056	Required submission with annual financial report	Recipients of annual financial report	Report on any investigations pending after one year	Yes, to identify cases over one year old
Annual Report on Complaints Received & Complaint Disposition by Type (SB 104, 2003)	Occ. Code, §154.002(6)	Annual - included in annual financial report	Recipients of annual financial report	Aggregate info on all complaints received by type of complaint	Yes, to provide complaint disposition by category

Table 22 Exhibit 15 Agency Reporting Requirements

B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibits these changes.

The agency will begin reviewing these requirements in conjunction with current statutory provisions.

C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

TMB receives approximately 10 complaints a year directed at the agency. These may come directly from a licensee, an applicant, or a member of the public, etc. In some instances, the complaint is forwarded to the agency from another agency such as the State Auditor's office. In

all instances, the complaint is reviewed to determine if it has merit and if needed, a written response will be sent to the complainant.

Exhibit 16: Complaints Against the Agency — Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Number of complaints received	10 (est.)	10 (est.)
Number of complaints resolved	10 (est.)	10 (est.)
Number of complaints dropped / found to be without merit	10 (est.)	10 (est.)
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	1 month (est)	1 month (est)

Table 23 Exhibit 16 Complaints Against the Agency

D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases. *See Exhibit 17 Example.*

(Agency Name)
Exhibit 17: Purchases from HUBs

Fiscal Year 2013

Category	Total $ Spent	Total HUB $ Spent	Percent	Agency Specific Goal*	Statewide Goal
Heavy Construction	NA	NA	NA	NA	11.2%
Building Construction	NA	NA	NA	NA	21.1%
Special Trade	NA	NA	NA	NA	32.7%
Professional Services	21,897	21,897	100%	23.60%	23.6%
Other Services	1,698,577	53,556	3.15%	24.60%	24.6%
Commodities	557,266	179,344	32.18%	21.00%	21.0%
TOTAL	2,277,740	254,797	11.19%		

Table 24 Exhibit 17 HUB Purchases for FY 2013

Fiscal Year 2014

Category	Total $ Spent	Total HUB $ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	NA	NA	NA	NA	11.2%
Building Construction	NA	NA	NA	NA	21.1%
Special Trade	NA	NA	NA	NA	32.7%
Professional Services	15,180	-	0%	23.60%	23.6%
Other Services	705,511	61,156	8.67%	24.60%	24.6%
Commodities	286,247	99,439	34.74%	21.00%	21.0%
TOTAL	1,006,938	160,595	15.95%		

Table 25 Exhibit 17 HUB Purchases for FY 2014

Category	Total $ Spent	Total HUB $ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	NA	NA	NA	NA	11.2%
Building Construction	NA	NA	NA	NA	21.1%
Special Trade	NA	NA	NA	NA	32.7%
Professional Services	1,060	-	0%	23.70%	23.6%
Other Services	810,838	115,018	14.19%	26.00%	24.6%
Commodities	178,447	120,222	67.26%	21.10%	21.0%
TOTAL	990,345	235,240	23.73%		

Table 26 Exhibit 17 HUB Purchases for FY 2015

E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)

Yes, TMB has a HUB policy and has consistently exceeded the statewide procurement goals in 67% of the applicable HUB categories. The only area that TMB falls short in achieving the HUB goal is in the category of Other Services. As a part of the procurement procedures, TMB utilizes a HUB vendor for purchases whenever possible.

F. For agencies with contracts valued at $100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of $100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)

Yes.

G. For agencies with biennial appropriations exceeding $10 million, answer the following HUB questions.

1. Do you have a HUB coordinator? If yes, provide name and contact information. (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26)

Yes.
Melissa De Tarr
(512) 305-7063
Melissa.detarr@tmb.state.tx.us

2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27)

No. TMB has not designed a program; however, the HUB coordinator participates in most HUB events and forums sponsored by Senator West, other state agencies, institutes of higher education and various other entities. The participation in these events has resulted in increased purchases from additional HUB qualified vendors.

Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28)

To date, TMB has not had the resources to develop and implement this type of program.

H. Fill in the charts below detailing your agency's Equal Employment Opportunity (EEO) statistics. *See Exhibit 18 Example.*

Texas Medical Board
Exhibit 18: Equal Employment Opportunity Statistics [A]

1. Officials / Administration

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	3	0.00%	7.12%	0.00%	20.90%	33.33%	37.48%
2014	3	0.00%	7.12%	0.00%	20.90%	33.33%	37.48%
2015*	2	0.00%	7.12%	0.00%	20.90%	50.00%	37.48%

Table 27 Exhibit 18 EEO Statistics for Officials/Administration

2. Professional

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	46	4.35%	10.96%	17.39%	18.55%	63.04%	54.88%
2014	53	7.55%	10.96%	15.09%	18.55%	66.04%	54.88%
2015*	45	8.89%	10.96%	13.33%	18.55%	68.89%	54.88%

Table 28 Exhibit 18 EEO Statistics for Professionals

3. Technical

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	7	14.29%	13.75%	14.29%	28.82%	28.57%	51.31%
2014	6	16.67%	13.75%	16.67%	28.82%	16.67%	51.31%
2015*	5	20.00%	13.75%	20.00%	28.82%	20.00%	51.31%

Table 29 Exhibit 18 EEO Statistics for Technical

4. Administrative Support

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	71	11.27%	13.58%	29.58%	33.00%	80.28%	72.80%
2014	80	16.25%	13.58%	30.00%	33.00%	81.25%	72.80%
2015*	67	19.40%	13.58%	29.85%	33.00%	83.58%	72.80%

Table 30 Exhibit 18 EEO Statistics for Administrative Support

5. Service / Maintenance

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	59	13.56%	12.22%	23.73%	53.71%	77.97%	51.35%
2014	66	16.67%	12.22%	19.70%	53.71%	81.82%	51.35%
2015*	53	13.21%	12.22%	16.98%	53.71%	83.02%	51.35%

Table 31 Exhibit 18 EEO Statistics for Service and Maintenance

6. Skilled Craft

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	0	0.00%	9.52%	0.00%	49.26%	0.00%	11.13%
2014	0	0.00%	9.52%	0.00%	49.26%	0.00%	11.13%
2015*	0	0.00%	9.52%	0.00%	49.26%	0.00%	11.13%

Table 32 Exhibit 18 EEO Statistics for Skilled Craft

[A] *The fiscal year 2015 data is as of July 30, 2015. The information for the full fiscal year will be available in mid-September 2015.*

[B] ***The Texas Medical Board has a significant number of employees in the para-professional category. The Texas Workforce Commission notes in the Statewide Civilian Workforce Composition that the state category "Para-professional" was not included because it is not possible to derive this category from the available data. However, the TMB's understanding of the Sunset Staff's guidance was to include para-professionals in the Service/Maintenance category. Prior to adding the para-professionals, TMB had no employees in the Service/Maintenance category.***

I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

The Texas Medical Board has an equal employment opportunity policy that is contained in the agency's Employee Handbook. Any issues are addressed by designated HR personnel, relevant supervisors, and executive management as needed.

XII. Agency Comments

1	SCOPE OF PRACTICE ISSUES
a	SUPERVISION & DELEGATION OVERSIGHT
b	PRACTICE OF ACUPUNCTURE
c	PASTORAL MEDICINE
2	PRESCRIPTION DRUG ABUSE – ENFORCEMENT CHALLENGES
3	CONTINUED INCREASE IN PHYSICIAN LICENSURE APPLICATIONS
4	FEDERAL LEGISLATION & LITIGATION RELATING TO THE PRACTICE OF MEDICINE
a	ANTI-TRUST ISSUES (PER SUPREME COURT LAWSUIT FTC V NORTH CAROLINA DENTAL BD)
b	NATIONAL LICENSURE FOR PHYSICIANS
5	LEGISLATION RELATING TO CREATION OF NEW STATE LICENSE TYPES

COMMENT 1: SCOPE OF PRACTICE ISSUES

A. PHYSICIAN SUPERVISION & DELEGATION OVERSIGHT

In 2013, substantive changes to physician supervision and delegation authority over midlevel practioners were enacted by Senate Bill 406. The legislation created a new structure for prescriptive delegation authority through the use of agreements which can be entered into by a physician and midlevel practitioner such as a physician assistant (PA) or advanced practice nurse (APN), and through which a physician delegates prescribing or ordering a drug or device. The legislation also capped the combined number of APNs and PAs with whom a physician may enter into a prescriptive authority agreement at seven - with certain exceptions.

The prescriptive authority agreements are required to be reviewed annually by the practitioners that have entered into them and must include several types of information including: the nature of the practice in which the agreement is being used and practice locations/settings; types or categories of drugs/devices that may be prescribed; a general plan for addressing consultation and referral; and a prescriptive authority quality assurance and improvement plan that includes chart review and periodic face-to-face meetings between the APN or PA and physician. These agreements are kept at individual practice locations and so it is difficult to know the extent that implementation and compliance are occurring with SB 406 requirements.

The Board has seen some overlap with this issue when investigating allegations of licensees operating unregistered pain management clinics and/or licensees engaging in nontherapeutic prescribing practices. In most cases, licensees are trying to follow all state and rule requirements, but if appropriate agreements have not been implemented and followed by all practitioners, both physicians and midlevels, they are all potentially subject to disciplinary action.

SB 406 required key information sharing among the regulatory boards of those practitioners that have entered into agreements. And, if a relevant complaint related to prescribing or supervision is received by any of the regulatory boards, then each is required to report the complaint to the others so that a review/inspection of the prescriptive authority agreement can occur. TMB will continue to work with the other boards to monitor complaints and determine what if any other enforcement issues may arise that could be addressed by state statute or rule.

TMB will also continue to educate licensees on prescriptive authority agreement requirements. This is done through updating information and frequently asked questions on the agency's website, developed in conjunction with the Nursing Board. TMB also informs licensees about the agreements in both the agency newsletter and in presentations made to physicians groups around the state.

B. PRACTICE OF ACUPUNCTURE

Three issues relating to the scope of acupuncture are currently being addressed in Texas. The first issue relates to the practice of acupuncture by chiropractors. The Texas Association of Acupuncture and Oriental Medicine (TAAOM) has been in litigation against the Texas Board of Chiropractic Examiners (TBCE) since 2014 over rules adopted by the TBCE that authorize

chiropractors to practice acupuncture without a license from, or oversight by, the Texas Board of Acupuncture Examiners.

The practice act for chiropractors (Chpt. 201, Occ. Code) does not expressly reference or authorize the practice of acupuncture by its licensees. The acupuncture practice act prohibits the practice of acupuncture by a person unless the person holds an acupuncture license, except for health care professionals licensed under another state statute and acting within the scope of that license (Chpt. 205, Occ. Code). The TBCE argues that since acupuncture is defined as the "nonincisive, nonsurgical" insertion of acupuncture needles, it is within the scope of chiropractic since it can be considered an exception to the chiropractic practice act's prohibition on incisive procedures, which includes procedures involving needles, with the exception of diagnostic blood draws. The issue is currently before the state's Third Court of Appeals in Austin.

Another issue related to acupuncture is overlap between the practice of acupuncture and the practice of practitioners, who are not licensed acupuncturists, such as physical therapists performing a procedure termed "dry needling"or "trigger point dry needling." This began as a technique used with empty (dry) hypodermic needles to address muscle pain, by poking areas of knotted muscle tissue or trigger points, and to allow the muscle to contract and then relax and thus relieve pain. Over time, dry needling has evolved to use the same solid, filiform needles that acupuncturists use, causing concern that the procedure is actually a basic form of acupuncture. The issue of whether the performance of dry needling is within the professional and legal scope of physical therapy practice is an issue being raised by acupuncturist professional associations as well as the American Physical Therapy Association. Some states have seen Attorney General opinions issued on the subject and this will likely be an issue addressed in Texas in 2016.

The third issue relating to acupuncture scope of practice pertains to the ability of physicians to delegate the act of acupuncture to a midlevel practitioner, such as a physician's assistant, who is not a licensed acupuncturist. This issue arose from recent enforcement cases addressed by the Board. In Texas, a physician can practice acupuncture by virtue of being licensed by the Board; however, any delegation must be granted only to an individual who is qualified and properly trained, and such delegation cannot be in violation of any other statute.

C. PASTORAL MEDICINE

Within the past two years, the agency has noted a number of complaints regarding non-physicians practicing medicine under the term "pastoral medicine," which appears to involve the use of faith-based diagnosis and treatment and "scripturally valid" natural health therapies to treat medical conditions. A few organizations, such as the Pastoral Medical Association (PMA), which appear to be ecclesiastical in nature, state that a mix of natural health and conventionally licensed practitioners are practicing pastoral medicine.

The PMA issues licenses "outside the jurisdiction of…secular regulatory boards, but no different than conventional health care in the respect that it is prudent that standards be established for the licensure and regulation of practitioners."[1]

These practitioners may have other Texas licenses (such as a chiropractic license) and are practicing medicine within the state outside of the scope of their license. During the past year

and a half, TMB has taken four cease and desist actions on individuals who were either licensed by the PMA, or otherwise indicated that they practiced pastoral medicine, and were diagnosing and treating patients in Texas. Since TMB is complaint-driven, there is no way to determine if this will be a growing trend unless relevant complaints are received.

1. http://www.pmai.us/practitionerinfo

COMMENT 2: PRESCRIPTION DRUG ABUSE – ENFORCEMENT CHALLENGES

The abuse of prescription drugs continues to be a major health care crisis in the United States. According to current CDC data, drug overdose was the leading cause of injury death in 2013. Among people 25 to 64 years old, drug overdose caused more deaths than motor vehicle traffic crashes. Nationwide, there were 43,982 drug overdose deaths in 2013 and 52% of these (almost 23,000) were related to prescription drugs. In Texas, drug overdose mortality increased 78% from 1999 to 2010 (5.4 per 100,000 in 1999 to 9.6 in 2010).

According to CDC, "While the public health burden of this epidemic remains enormous, 2012 saw the first national drop in prescription overdose deaths since the 1990s, and it has essentially leveled off. This drop in deaths mirrors a similar drop in painkiller prescribing rates across the country and gives promise to making even more progress in reversing this epidemic."

Since the passage of 2009 legislation (SB 911) regulating pain management clinics, the TMB has continued to work closely with local law enforcement entities and other state and federal agencies to timely address violations by licensees and to shut down illegal pain management clinics as quickly as possible. Based on this authority and these actions, TMB has had over 200 enforcement actions related to nontherapeutic prescribing, including over 25 emergency temporary suspensions, on physicians and physician assistants since 2012.

The regulation of pain management clinics and enforcement against pill mills continues to be a primary enforcement focus of the Board. In the 84th session, SB 1235 passed which provided needed statutory clarifications to assist law enforcement entities in the prosecution of pill mill cases. The legislation will assist TMB and all law enforcement jurisdictions in taking appropriate enforcement action against both health care practitioners and non-practitioners who are involved in pill mill activity.

TMB continuously works to educate licensees about relevant regulations and enforcement actions, including appropriate prescribing for pain, through outreach presentations, articles in the TMB Newsletter, and information on the TMB website. As TMB has implemented a schedule for inspections of pain management clinics on a quarterly basis, this process will also assist in identifying and addressing additional educational and regulatory issues.

One concern of some chronic pain patients is that the increased scrutiny and regulation has had the unintended consequence of physicians limiting their treatment of legitimate pain patients. TMB will continue to inform doctors about the requirements of pain management treatment in Texas and to ensure that doctors are aware of pain management guidelines, currently in rule, that specify criteria for legitimate pain management for those suffering from chronic pain.

COMMENT 3: CONTINUED INCREASE IN PHYSICIAN LICENSURE APPLICATIONS

Since 2008, the agency has successfully worked to increase the efficiency of its licensure processes and to maintain the time to license physician applicants below the legislatively-mandated 51 day average. In addition to implementing a web-based communication system for applicants in 2008, the *Licensure Inquiry System of Texas*, TMB most recently received additional resources from the legislature in 2015 to address the sustained increase in the number of applications received.

Similar to the significant increase in applications in 2007, TMB continues to experience a record number of applications. The agency received over 4,600 applications in FY 13 and over 5,000 applications in FY 14. The agency will likely receive approximately 5,000 applications in FY 15. A chart with historical and current fiscal year information on the average number of days to issue a license, the number of applications received, and the number of licenses issued is available in the Sec. VII, Program Description for the Licensure Department.

COMMENT 4: FEDERAL LITIGATION & LEGISLATION RELATING TO THE PRACTICE OF MEDICINE

A. ANTI-TRUST ISSUES

In February 2015, the U.S. Supreme Court ruled that when a controlling number of the decision makers on a state licensing board are active market participants in the occupation the board regulates, the board can invoke state-action immunity only if it is subject to active supervision by the state. The decision in *North Carolina Board of Dental Examiners v. Federal Trade Commission* addressed actions of the board, such as sending cease and desist letters, to discourage non-dentists from providing teeth-whitening services after dentists complained about the low prices that non-dentists were charging. The opinion stated that even through the dental board is an agency of the state, its actions must have active state supervision in order enjoy antitrust immunity. The opinion clarified that a state's active supervision doesn't translate to micromanagement of an agency's operations and decisions but rather the supervision must provide "realistic assurance" that a state agency's anticompetitive conduct must promote state policy rather than individual interests of market participants.

The outcome of this case potentially has far-reaching repercussions to state sovereignty and to all state regulatory entities and their mission of public protection. Various states are beginning to examine how the opinion could impact occupational regulation in their state. As addressed in Sections II and III of this report, the TMB is in active litigation that overlaps with this ruling and the practice of telemedicine in Texas. It is also important to note that the composition of the NC Dental Board, as well as the level of judicial review that occurs on its rules and actions, are very different from analogous Texas regulatory agencies. The majority of the members of the NC board are elected by other licensed dentists in that state and are not gubernatorial appointees confirmed by the state senate as is the case for Texas regulatory agencies. And all Texas state agency actions and rules are subject to state judicial review through the Texas Administrative Procedures Act.

B. NATIONAL LICENSURE FOR PHYSICIANS

There continues to be debate over national licensure versus state licensure for many healthcare practitioners, including physicians. In response to this and other factors in a fast-changing health care system such as demographic shifts, the need for better and faster access to medical care, and the increased use of telemedicine, the Federation of State Medical Boards launched the initiative to create the Interstate Medical Licensure Compact so that state medical boards could enhance licensure portability and cooperatively address mutual concerns without the need for federal intervention. 2013 saw a number of federal attempts to regulate medicine in various ways including through legislation (HR 3077) that would permit Medicare providers licensed in a state to provide telemedicine services to Medicare beneficiaries in a different state. This is concerning since a state's ability to protect patients and appropriately regulate physicians would be limited and this type of practice scenario could lead to the inability of states to take enforcement action against a physician for patient harm since the physician would not have to be licensed in the same state in which the patient resides.

COMMENT 5: STATE LEGISLATION CREATING NEW LICENSE TYPES

For the past few legislative sessions, there has been legislation filed creating new license types for health care occupations that work, at least partially, with physicians. This legislation has required, either in the filed version or in proposed amendments, that TMB be the oversight agency for these license types. For some license types, legislation has been filed in multiple sessions. In every session there have been an increasing number of bills filed for an expanding array of license types. For the 84th session in 2015, these included anesthesiology assistants (HB 2267), registered radiology assistants (SB 848), neurodiagnostic technicians (HB 2978), and behavior analysts (HB 2703). In 2013, legislation was filed on anesthesiology assistants (SB 1787) and radiology assistants (SB 1079), as well as on medical laboratory technicians (HB 2297) to be regulated by DSHS. If history is any indication, TMB anticipates that it will continue to see the same or similar legislation filed in subsequent legislative sessions.