TMB Update 2019

Texas Medical Board

Sherif Zaafran, MD, FASA
President, TMB

Mission Statement

"Our mission 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."

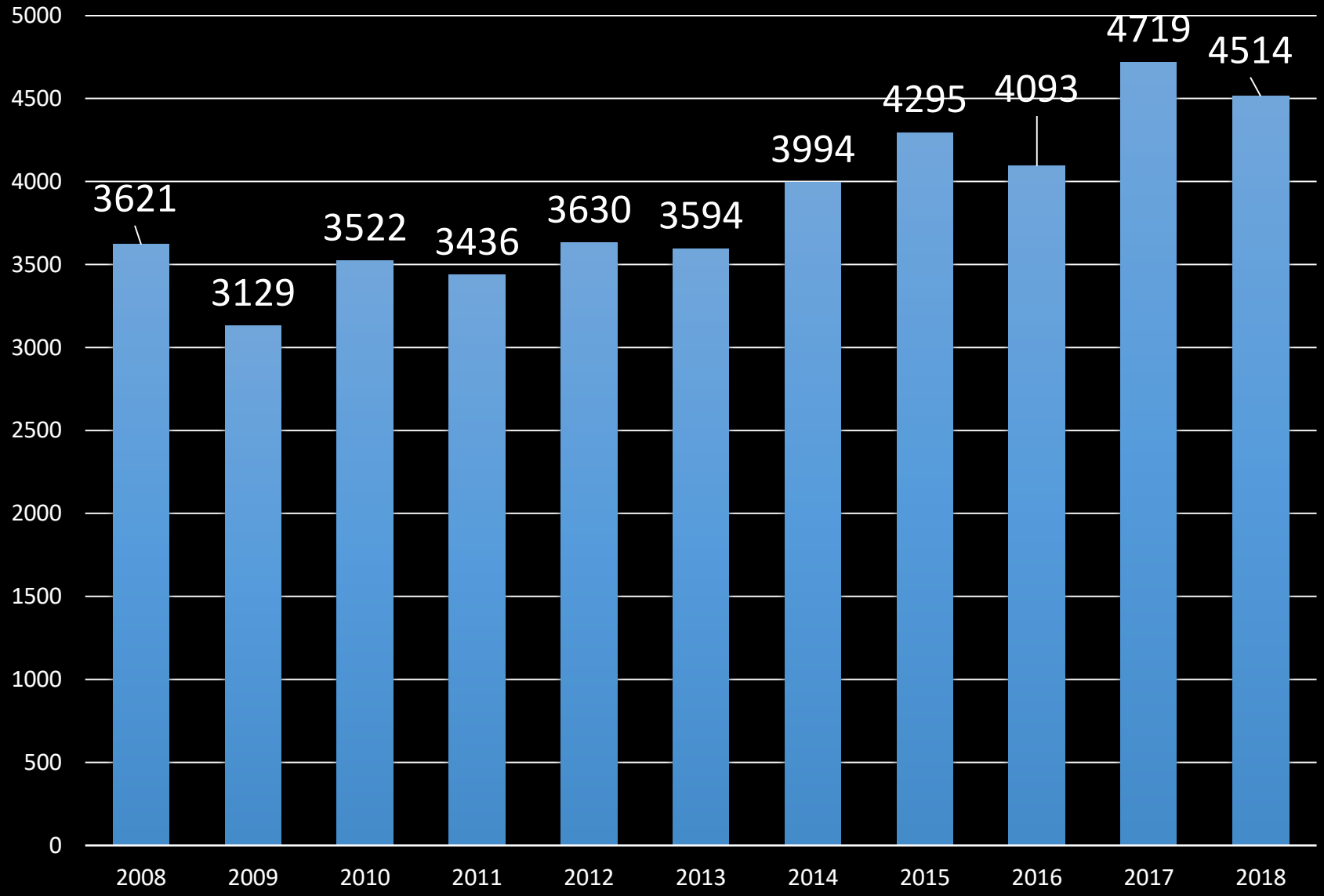
Texas Medical Board Composition

- 12 Physician members (9 M.D. and 3 D.O.)
- 7 Public members (non-physicians)
- Appointed by the Governor for 6 year term

Board members
Sherif Zaafran, M.D.- President
Kandace B. Farmer, D.O. -Vice President
Michael Cokinos– Secretary

Arun Agarwal
Sharon Barnes
Devinder S. Bhatia, M.D.
George L. De Loach, D.O.
Kandace B. Farmer, D.O.
Robert Gracia
Vanessa F. Hicks-Callaway
Jeffrey L. Luna, M.D.
Roberto D. Martinez, M.D.
Linda Molina J.D.
LuAnn R. Morgan
Jayaram B. Naidu, M.D.
Satish Nayak, M.D.
Manuel “Manny” Quinones, Jr., M.D.
Jason K. Tibbels, M.D.
David G. Vanderweide, M.D.

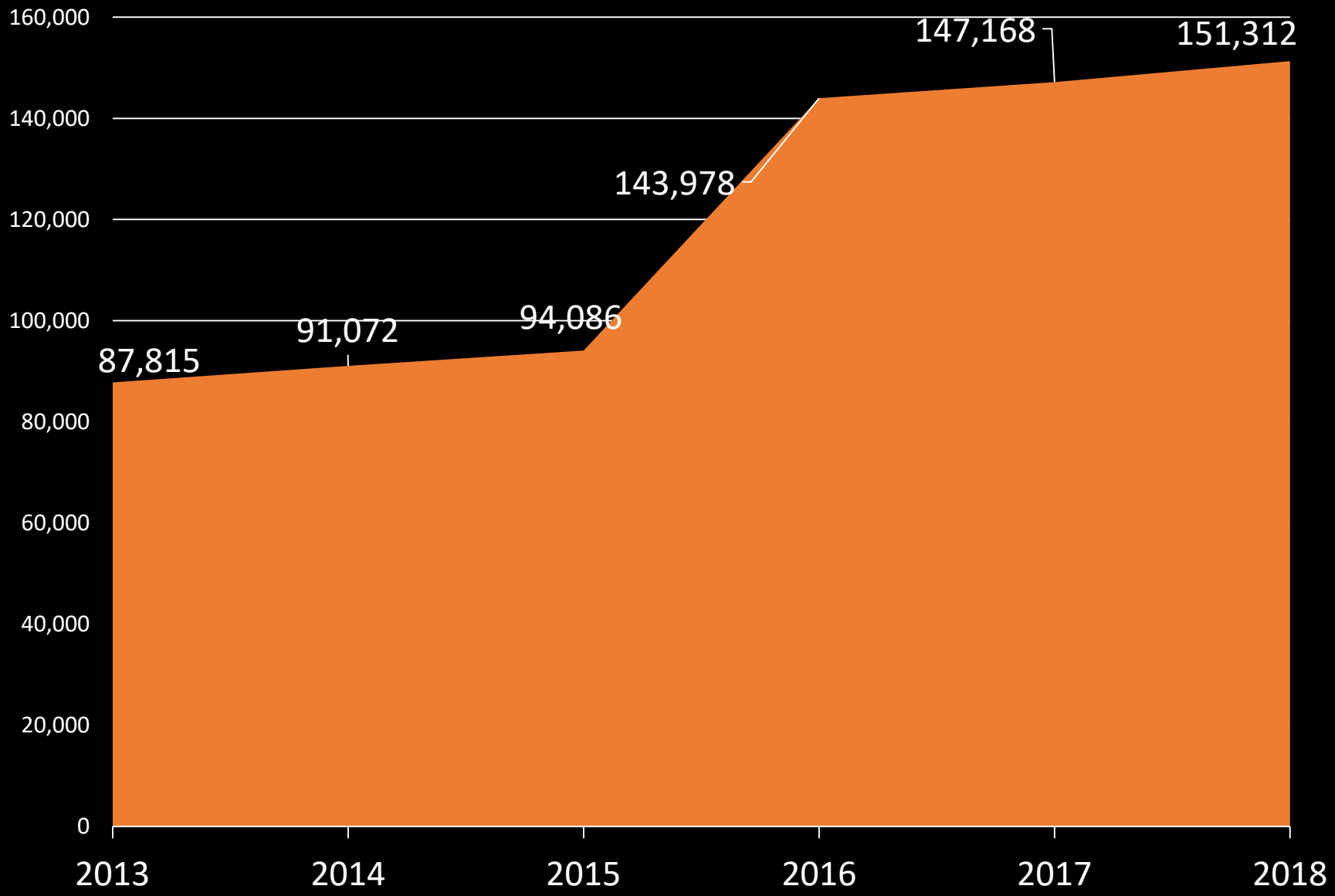
Physician Licenses Issued



Licensee Demographics

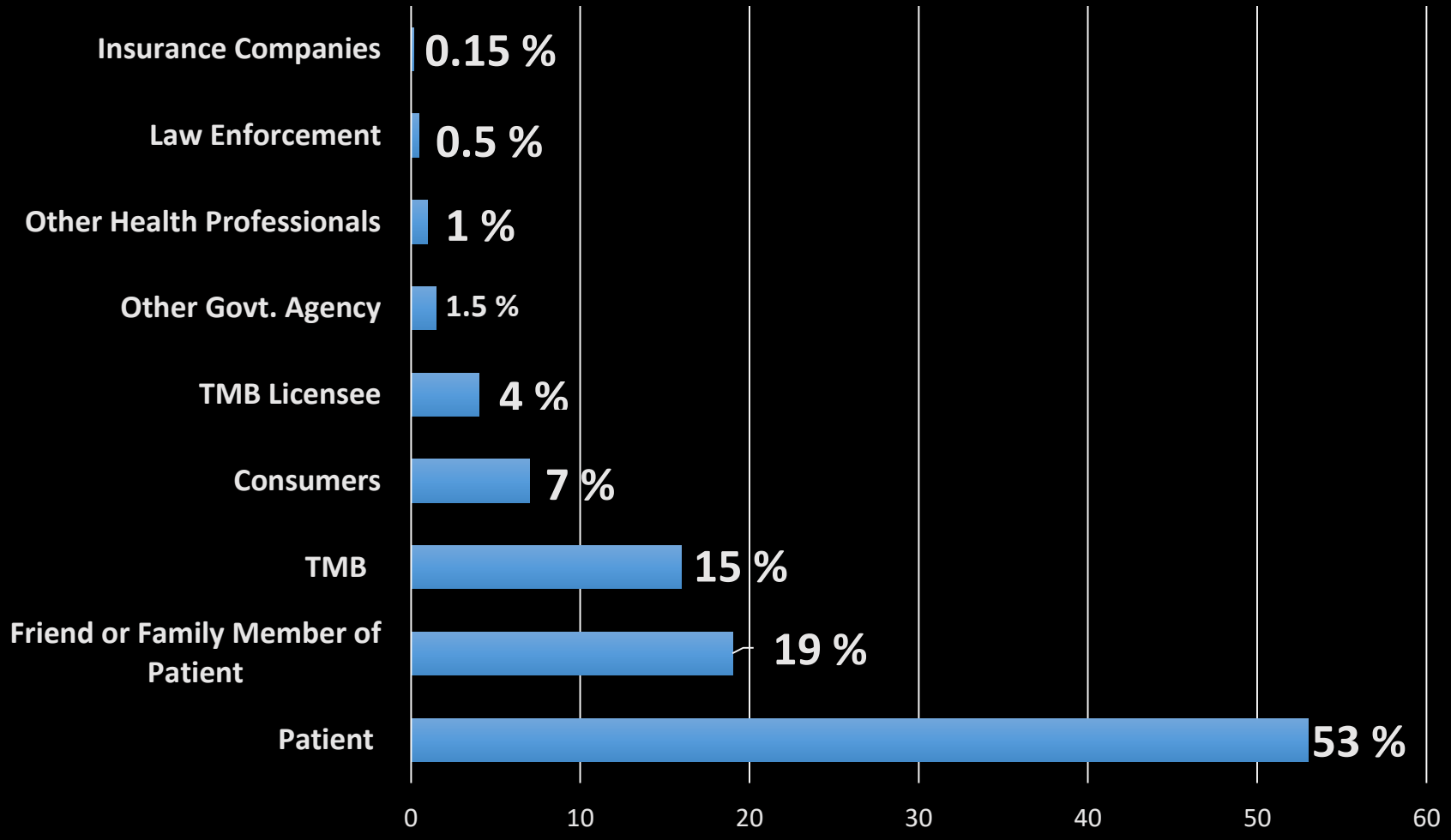
	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY 17	**FY18**
Licensed Physicians	69,133	72,948	75,132	77,421	79,613	82,230	84,792	85,987	89,007	**92,036**
Acupuncturists	875	961	1,019	1,052	1,107	1,188	1,214	1,241	1,260	**1,275**
Medical Physicists								671	649	**653**
Medical Radiologic Technologists								26,868	27,168	**28,108**
Non-certified Technicians								4,764	4,008	**3,738**
Perfusionists								397	400	**399**
Physician Assistants	4,854	5,633	6,066	6,323	6,736	7,278	7,662	8,058	8,556	**9,089**
Respiratory Therapists								15,540	15,649	**15,494**
Surgical Assistants	269	314	314	345	359	376	418	452	469	**520**

Total Licensees



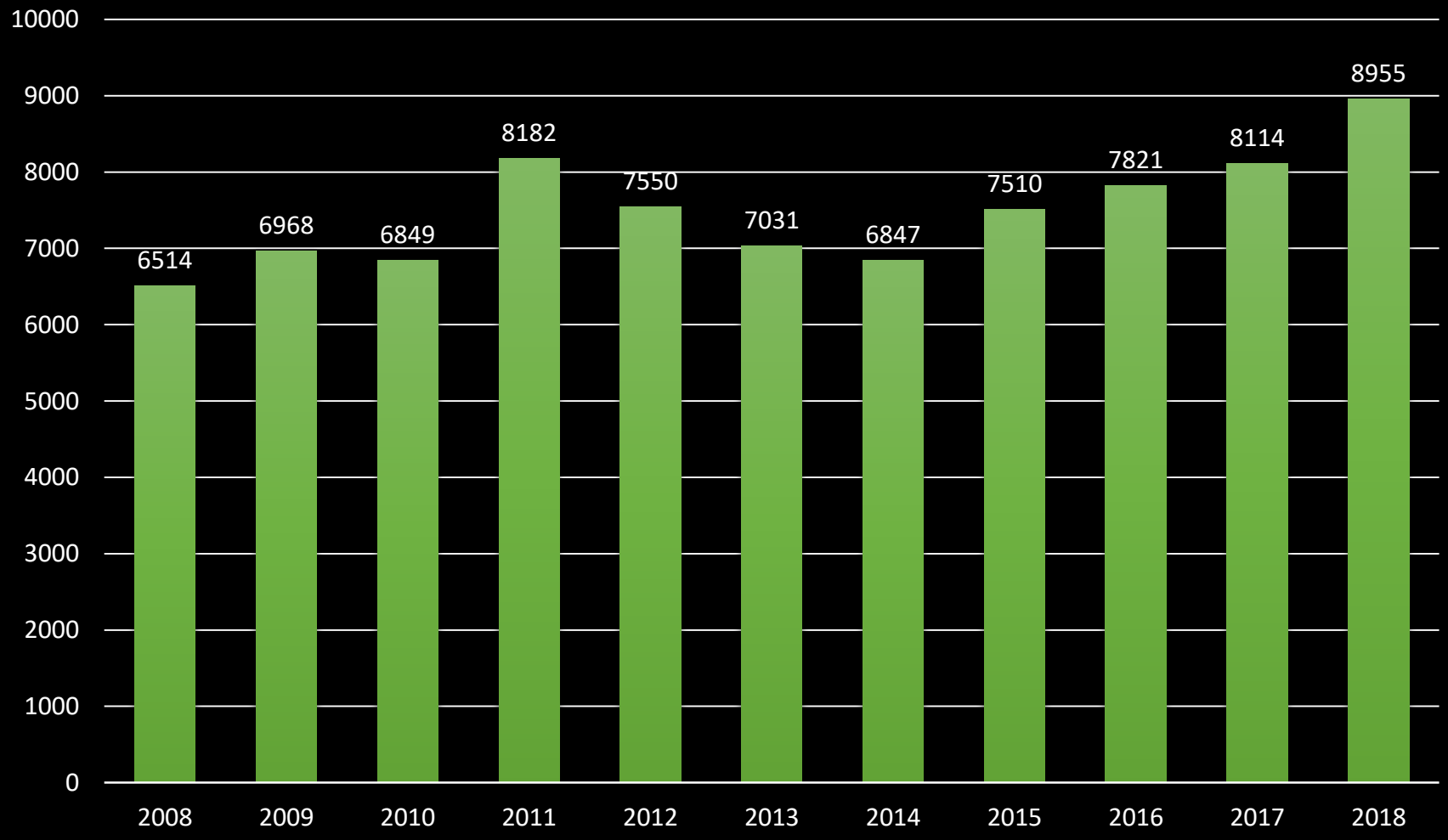
The Enforcement Process

Complaint Sources

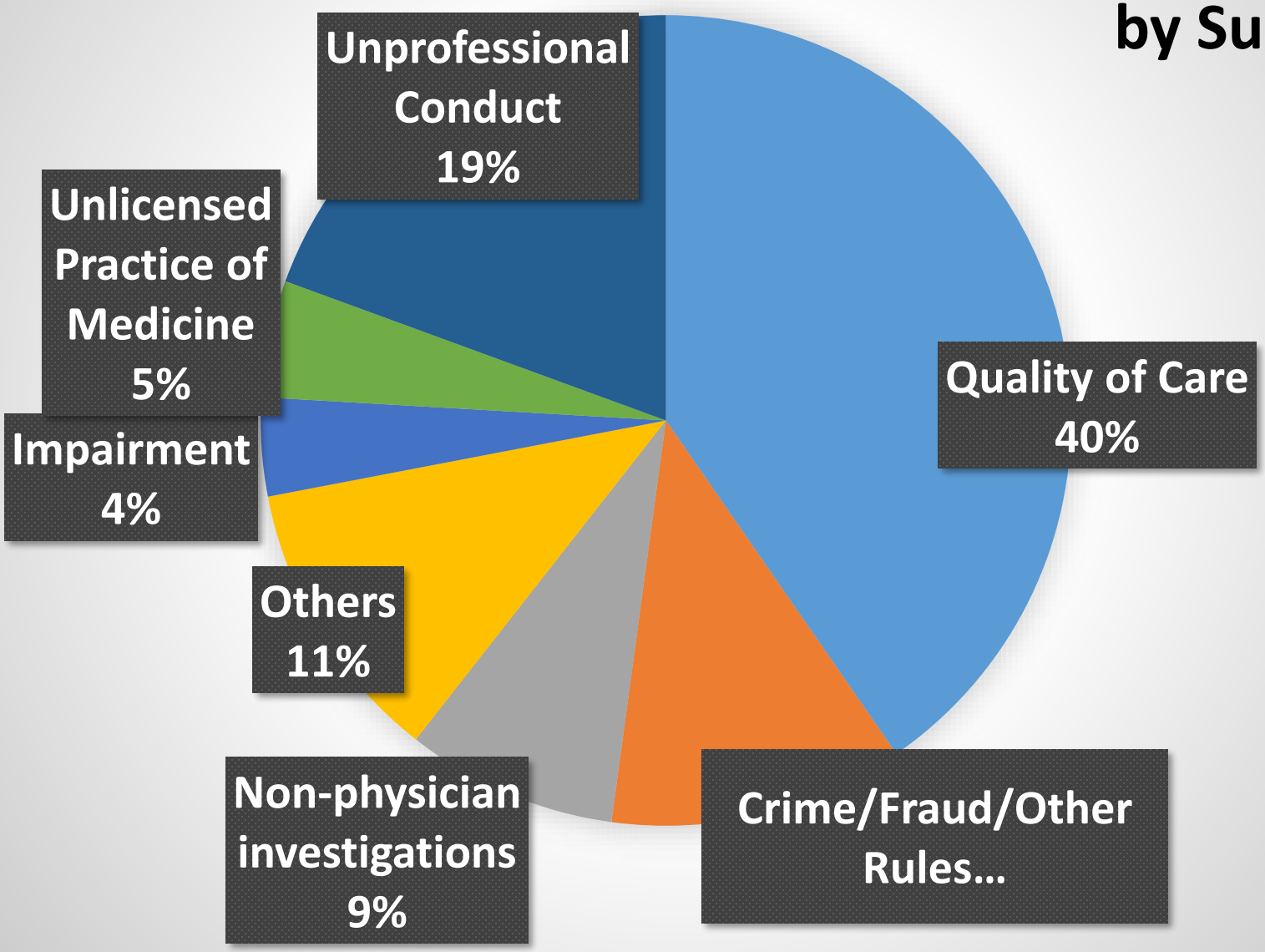


*TMB category includes registrations responses, CME audits, medical malpractice reviews, newspaper items, and board discovered violations.

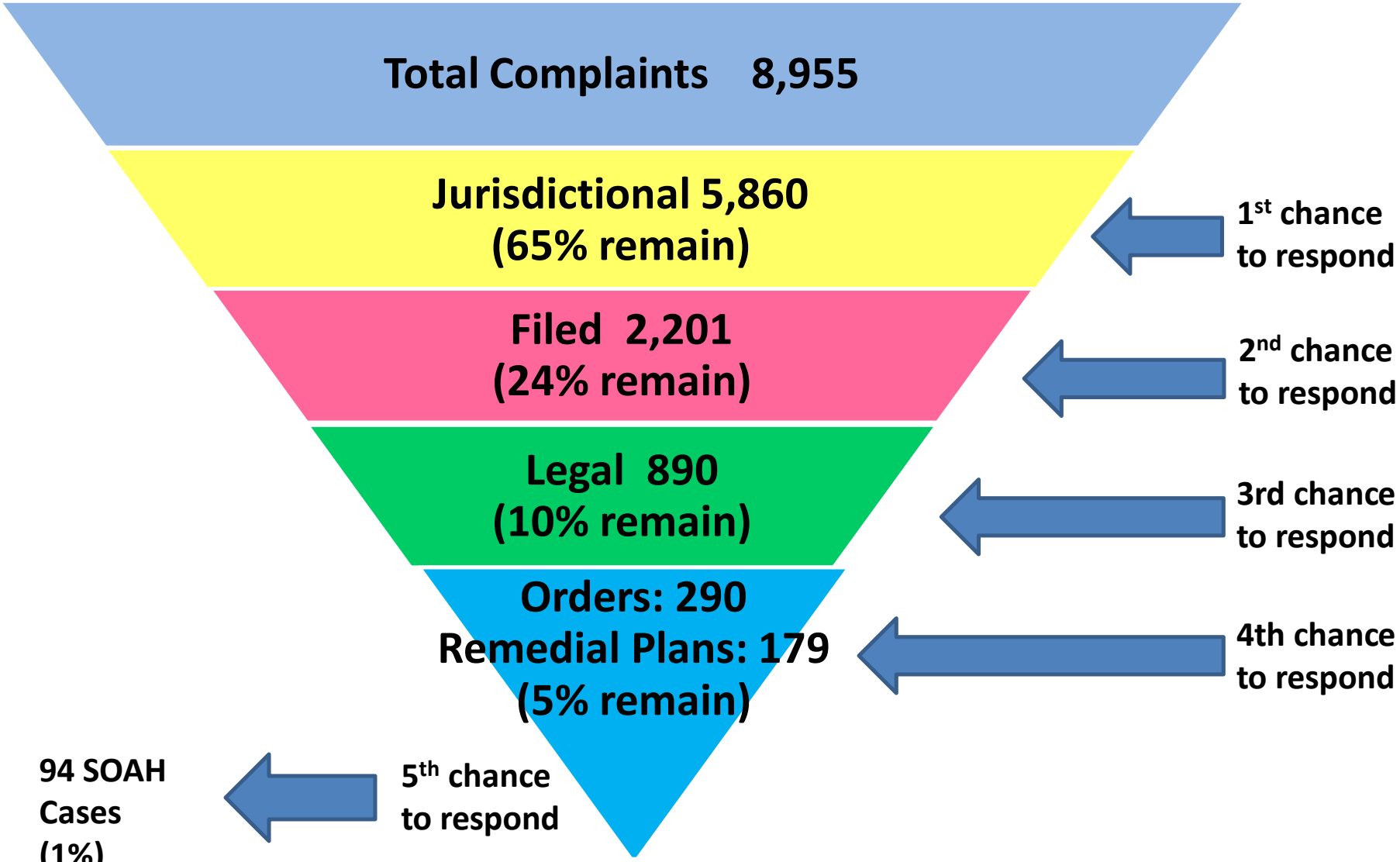
Complaints Received
FY08 – FY18



Complaints by Subject



Complaints FY 18



Remedial Plans

- Non-disciplinary in nature
- Not reportable to NPDB
- Cannot be used in cases of
  - Patient death
  - Boundary violations
  - Felonies

Agreed Orders

- Disciplinary in nature
- Reportable to NPDB
- Must be used in cases of
  - Patient death
  - Boundary violations
  - Felonies

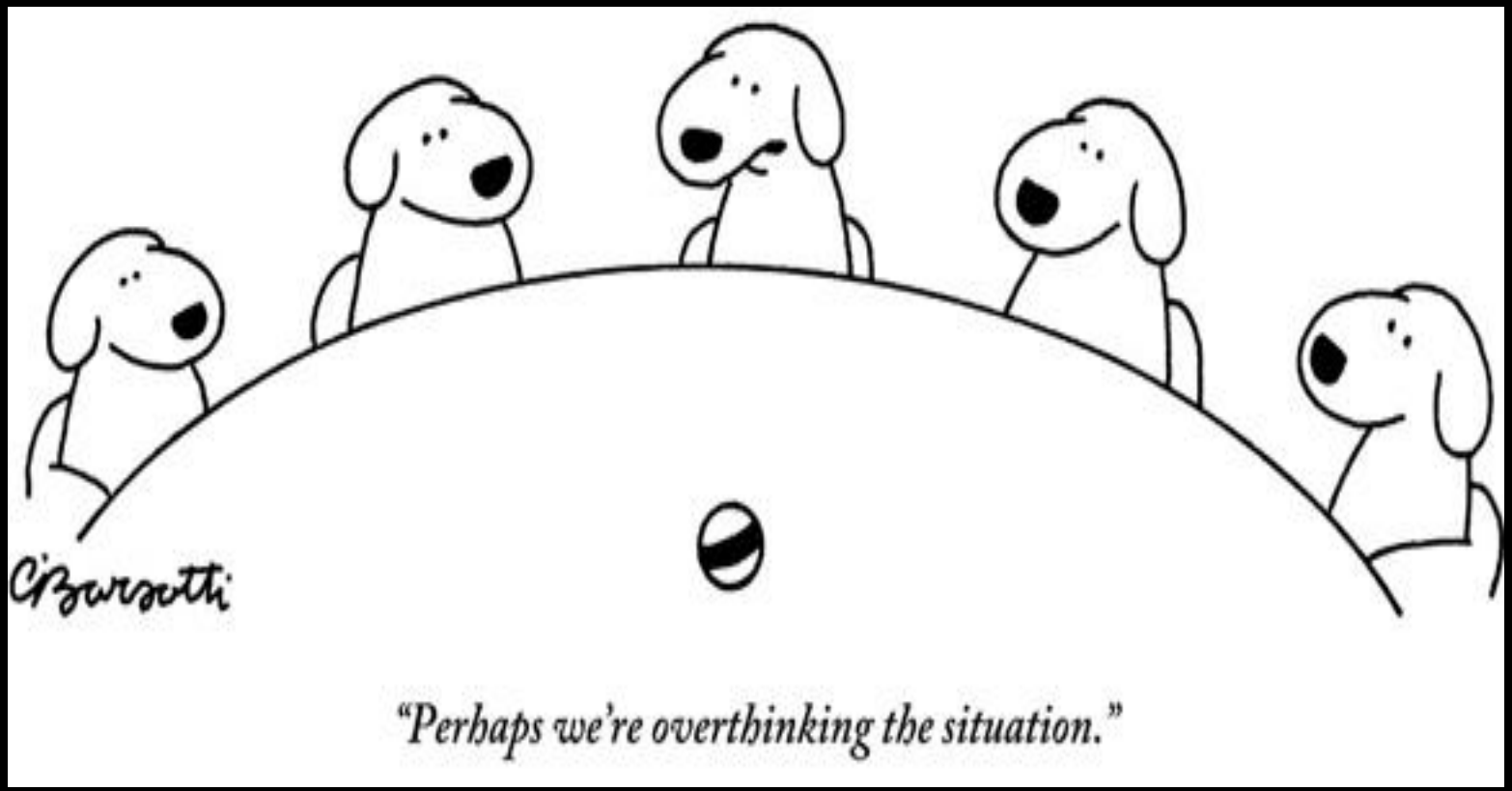
Expert Panelist Qualifications

- Currently licensed & actively practicing in Texas.
- Board-certified
- Never convicted of a crime, imprisoned or placed on probation.
- Acceptable medical malpractice history.
- May not serve as an expert witness or consultant for physicians who are being investigated by the Texas Medical Board
- Never excluded from any federal or state reimbursement program.
- Not the subject of a pending investigation, pending disciplinary action, or final disciplinary action by any licensing agency or health care entity.
- Never resigned medical staff privileges while under an investigation.
- Never asked to surrender state or federal controlled substance registration nor had it restricted in any way.
- Never cited by the TMF (Texas Medical Foundation) or hospital medical staff for a quality of care issue.

How is impairment handled?

- Referrals to TXPHP
- Remain confidential unless agreement is violated
- Violations presented to the board
- Can stay confidential or be subject to board action
- If egregious, then temporary suspension

Legal Refresher



Prescribing to Friends & Family

Rule 190.8(1)(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

Reporting Requirements

- Peer Review Committees and Health Care Entities
  - Must report action that impacts a physician's privileges for more than 30 days
  - Must report a physician surrendering privileges in lieu of investigation
- Professional societies or associations who conduct peer reviews
  - Must report an action that adversely impacts membership

The duty to report may not be nullified through contract.

Reporting Requirements

- **Continuing threat to the public welfare through the practice of medicine**
  - You must report this. Failure to report this may be a violation of Board rules.
  - Actions or impairment that rises to a level that threatens patient safety
  - Ex. Practicing medicine while intoxicated

- **160.003**- A peer review committee, physician, PA, medical student, or acupuncturist must report to the Board a physician who poses a continuing threat to the public welfare through the practice of medicine.

Don’t date your patients

- **This is Unprofessional Conduct**
  - Engaging in sexual contact with a patient
  - Engaging in sexually inappropriate behavior or comments towards a patient
  - Becoming financially or personally involved with a patient
  - Failing to maintain the confidentiality of a patient

Medical Recordkeeping

- Chapter 165 of the Board Rules
- Medical records must contain:
  - History, physical exam, prior diagnostic results, rationale, the patient's progress on treatment, plan of care, written consents,
  - Summary of communications w/patient
  - Billing codes must be supported by the MR

Maintenance of MR

- You must keep records for 7 years after the last treatment
- For minors, 7 years or until patient is 21, whichever is longer
- Other state and federal laws may require longer maintenance
- Destruction must be done in a confidential manner (i.e. incineration)

Providing MR to Patients

- Physicians must provide MR to patients who make a request
- Must be provided within 15 business days of request
- Can only charge a “reasonable fee”
  - Generally no more than $25 with additional fees for extra pages depending on format
  - $8 per imaging study
- Can’t withhold MR for unpaid medical bills

Moving or Retiring

- You must notify patients
  - About the move or retirement
  - About how they can get MR
- How to notify patients
  - newspaper
  - Posted in the office
  - Letters to patients seen in the last 2 years
- Partners/employers can't prevent a doc from notifying patients or withhold info from doc.

Ownership Interests in other Businesses

- If you refer a patient to a **facility, lab, or pharmacy** that you own (or own part of it, and yes stock counts)
- Then you **must** disclose this ownership interest to the patient.
  - In writing is best.
  - Document it in you MR.
- 190.8(2)(H) Unprofessional Conduct
  - referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

Legislation

TMB Sunset 2019

- SB610 (Sen. Nichols and Birdwell)
- HB 1504 (Rep. Paddie)
- Expedited Licensure Process
- Exception to Exam Limits for Licensure
  - Exempt if licensed in another state for more than 5 years in good standing
- Rules Pertaining to Office Based Anesthesia Inspections

TMB Rules

- Image Interpretaion
- Delegation and Supervision
- Med Spas
- Reporting Requirements for MECs and Peer Review Committees

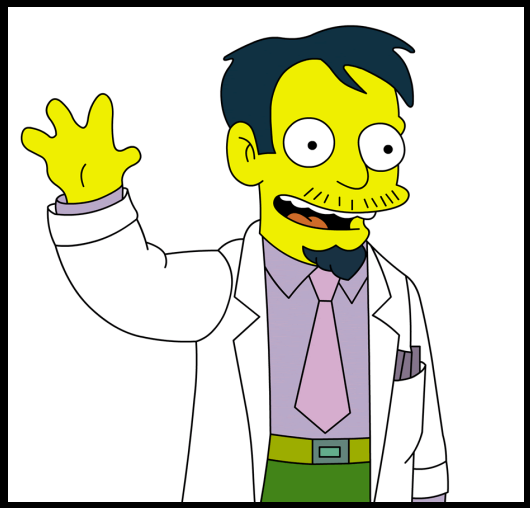
Radiology Rule Proposal

- RULE §193.21 Delegation Related to Radiological Services
- (a) This section does not apply to PAs and APRNs who have been specifically delegated
- authority to perform and interpret radiologic studies.
- (b) A physician may delegate the performance of radiological procedures and diagnostic
- reading to specially trained individuals instructed and directed by a licensed physician who
- accepts responsibility for the acts of such allied health personnel.
- (c) The specially trained individuals may:
- (1) do preliminary reading and interpretation of the radiological studies; and
- (2) render a preliminary diagnosis and course of treatment based on the radiological
- studies.
- (d) The delegating physician's approval or changes to (c)(1) and (2) must documented in
- the medical record, within a reasonable time, following the action taken by the specially
- trained individual.
- (e) The delegating physician is ultimately responsible for any and all actions taken by a
- specially trained individual under (c)(1) and (2) of this section.
- (f) This section does not allow a physician to delegate any medical act, including but not
- limited to performance of a radiologic procedure, preliminary reading and interpretation
- of a radiologic study, and rendering a preliminary diagnosis and course of treatment
- based on a radiologic study, to an individual not properly trained, qualified, and licensed to
- perform the medical act.

Pain Management Enforcement

Areas of Concern

- Outdated prescribing practices
  - normally not pain specialists
  - physicians with a small percentage of chronic pain patients
  - too trusting - especially with long term patients
  - no controls in place:
    - accept excuses for lost meds;
    - early refills;
    - no UDS; and
    - inadequate pain management contracts
    - not checking the PMP regularly



Areas of Concern

- An “everyone else is wrong” perspective:
  - ideologically adverse to the prevailing standard of care
  - Unwilling or unable to recognize and acknowledge mistakes
  - Not willing to adapt to new requirements
  - Places monetary gain over patient health and safety

Areas of Concern

- Top 50 prescribers of Hydrocodone in Texas are automatically audited
  - If the audit raises concerns, the Board may investigate
- Physicians who have a large number of 5/5/5 patients who in one month:
  - Have 5 or more CS prescriptions
  - Filled at 5 or more different pharmacies
  - From 5 or more different providers

Areas of Concern

- Pill mills
  - everyone pays cash
  - everyone gets prescription
  - nearly 100% get an opioid and a majority either a benzo or Soma
  - may or may not be records, diagnostic imaging, or UDS
  - pre-signed prescriptions
  - sometimes even discharge patients, but
  - no legitimate practice of medicine occurring

But I'm doing things right, how do I avoid investigations?

- Keep up with the evolving standard of care
- Follow the rules
- Document that you followed the rules
- You can't prevent complaints, but treat patients correctly, think through the tough calls, and document your rationale in your medical records.

Statutes and Rules

Statutes and Rules on Pain Management

- Statutes
  - Tex. Occ. Code, Chapter 163: Pain Management Clinics
  - Tex. Occ. Code § 164.051(a)(6): TMB enforcement authority
  - Tex. Health & Safety Code, Chapter 483: Recordkeeping requirements for prescription drugs
  - Tex. Health & Safety Code § 481.075(e)(1): information that must be included in prescriptions
- Rules
  - Chapter 170: Pain Management
  - Chapter 195: Pain Management Clinics
  - Chapter 193: Standing Delegation Orders (supervision and delegation of midlevels)
  - 190.8(1)(A): Physicians must meet the standard of care

Prescribing for Chronic Pain

Board Rule 170.3

- Evaluation of the patient
- Treatment plan
- Informed consent
- Agreement for treatment of chronic pain
- Periodic review of the treatment
- Consultation and referral
- Medical records

Prescribing for Acute Pain

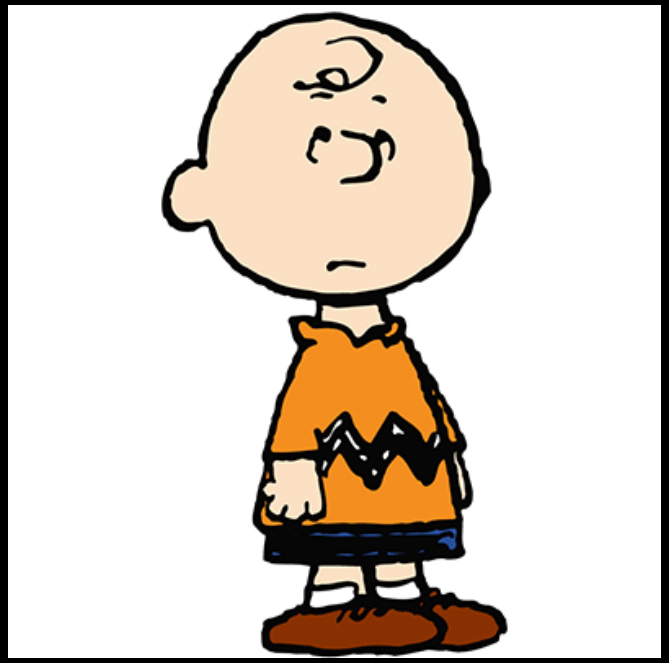
- **Limit on opioids for acute pain:**

  only for ten days and no refills

- **"Acute pain" means "the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures."**
- **"acute pain" limitation does not include:**
  - **Chronic pain**
  - **Cancer patients**
  - **Hospice patients**
  - **Suboxone and substance addiction treatment**

Check the PMP

- Beginning on March 1, 2020 prescribers must check a patients prescribing history before every prescription for:
  - opioids
  - benzodiazipines
  - barbituates
  - Carisoprodol
- Exception: a cancer patient or someone in hospice
  - You must document this in their medical record



Prescription Monitoring Program (PMP)

- Docs can look up patients' prescribing history here
- Monitors the prescription and dispensing of all controlled substances in TX and also shows surrounding states
- Pharmacists must report Rx for Schedule II-V drugs within one business day
- Docs can access the PMP through the Tex. Pharmacy Board's website

Telemedicine

- No chronic pain management via telemedicine
- Must comply with the Ryan Haight Act which requires an in-person visit before prescribing a controlled substance, with some exceptions.

New CME Requirements

- Do you prescribe controlled substances?
- Do you prescribe opioids?
- THEN you must complete some CME about:
  - best practices, alternative pain management treatment options, and multimodal approaches to pain management.
  - prescribing and monitoring for controlled substances.

- this is subject-specific and does not increase the total hours you have to complete every two years. That's still 48 hours.

E-prescribing

- **Beginning in 2021, you must e-prescribe all your controlled substances**
  - **Exceptions for economic hardship, technological limitations, other exceptional circumstances**
  - **Waivers granted by the TMB for up to a one-year period.**
- **You may delegate someone to do this on your behalf, but you remain responsible for their actions.**

Opioid Bill Rules

- Stakeholder workgroup mtg held 10/9/2019
- CME
  - Likely to determine that it is 2 hours overall. Possible variations for some specialties.
- 10-day prescriptions for acute pain
  - Likely to determine acute pain as 30 days or less. Allow 10 day prescription with 2 refills. Refills through office visit, or telemedicine.
  - Defining other types of pain.
- PMP Checks
  - Facility admission exceptions?
  - What would those details look like?

Questions?