

Texas Medical Board

Current Process for Disclosure of Complaints

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Complaint Requirements

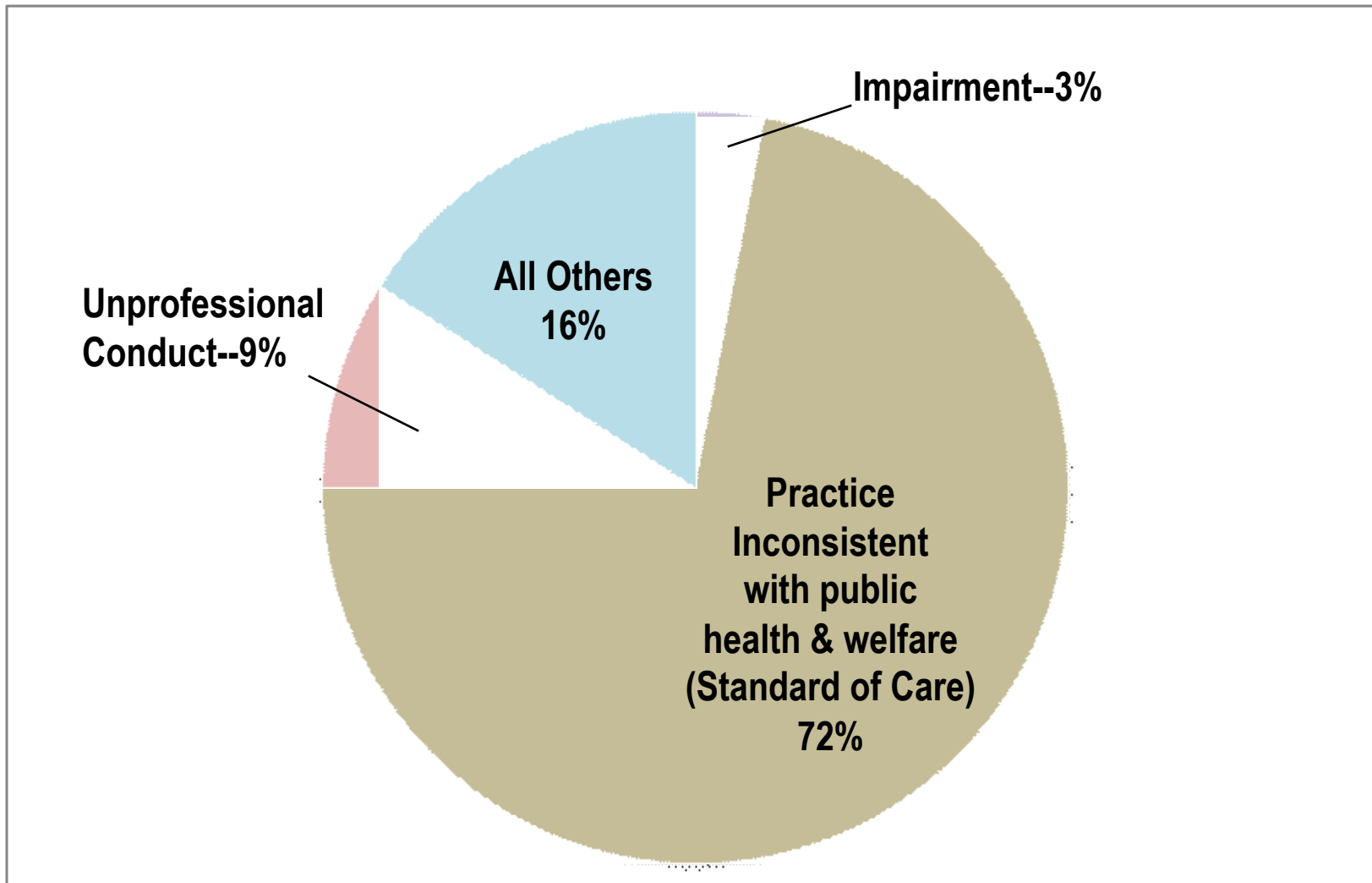
The Medical Practice Act requires the following:

- All information pertaining to the investigation of a complaint is confidential.
- TMB must maintain a record of all complaints. These records are not public information, and do not appear on public records related to the licensee.
- TMB must accept complaints from all sources. TMB may file a complaint on its own initiative.
- There is no statute of limitations for filing a complaint.

Anonymous v. Confidential Complaints

- The Medical Practice Act requires that all information pertaining to the investigation of a complaint be confidential. This is interpreted to mean that the information cannot be shared with any entity outside the TMB.
- TMB Rule 178.2 authorizes the board to accept “anonymous” complaints. This is interpreted to mean a complaint for which the name and/or identity of the complainant is not known.
- There is an important distinction between “confidential” and “anonymous” when describing complaints received by TMB. TMB receives very few complaints that are truly anonymous – an estimated 2% to 3% per year.

Basis of TMB Complaints FY 09



Identity of Complainant and Release of Complaint

Key Points:

- The identity of a complainant is revealed only if that person signs a waiver authorizing TMB to release a copy of the complaint or if the complainant testifies in a proceeding against the physician.
- A complaint may only be used as evidence against a physician if this waiver is signed.
- In considering a disciplinary action, the board's disciplinary panel will never receive a copy of the complaint without the physician also receiving a copy.

Identity of Complainant and Release of Complaint

Investigations Process:

- If at any point in the investigations process a violation is not identified and the board dismisses the complaint, the identity of the complainant is not revealed.
- Should the complainant sign a waiver during the normal course of an investigation, the complaint may be reviewed by the expert panelists who review standard of care cases. The complaint is not released to the physician during this process.
- A complainant is required to sign the following statement on the TMB complaint form: *I have read the preceding, and it is true to the best of my information and belief. If my complaint would be more appropriately addressed by a different agency or society, I authorize TMB to forward my complaint to that agency or society.*

Identity of Complainant and Release of Complaint

Litigation Process:

- If an investigation results in a determination that the standard of care was violated the case is referred to the Litigation Department. The case is reviewed and if deemed appropriate is scheduled for an informal settlement conference (ISC) before a board panel.
- Once the ISC date is scheduled both the respondent and the complainant are notified. If the complainant released the copy of the complaint for review by the expert panel then it is provided both to the physician and the board panel at this time.
- If the complainant did not previously release a copy of the complaint then he/she has the opportunity to release it at this stage of the process. If the complainant chooses not release the complaint it is not made available for use as evidence by either the physician or the board panel.

Public Information Requirements

- Information about a disciplinary action taken as a result of a complaint is required to be available on a physician's profile on the TMB website and is printed in the agency's semi-annual newsletter.
- Certain types of disciplinary actions (restrictions, suspensions, revocations, surrenders, or denial of a license) are reported to the National Practitioner Databank.
- Information regarding a formal complaint filed on a physician to SOAH by TMB is required to be available on the physician's profile. This is required regardless of whether the formal complaint is ultimately dismissed or no action is taken. If a formal complaint is dismissed as baseless or no action is taken then the information can be removed from the profile after five years.
- With the possible exception of formal complaints, complaints that are not substantiated are not considered to be part of the public record.

Complaints by Source, FY 02 - 09

Average Percentage and Percentage Range

Source	Average Percentage	Percentage Range
Insurance Companies	1%	<1% to 1%
Law Enforcement	2%	<1% to 4%
Anonymous	2%	1% to 3%
Government Agencies	2%	1% to 5%
Consumers	3%	2% to 3%
Health Professionals	10%	7% to 13%
TMB*	17%	12% to 32%**
Friends or Family of Patient	23%	19% to 27%
Patient	39%	21% to 47%

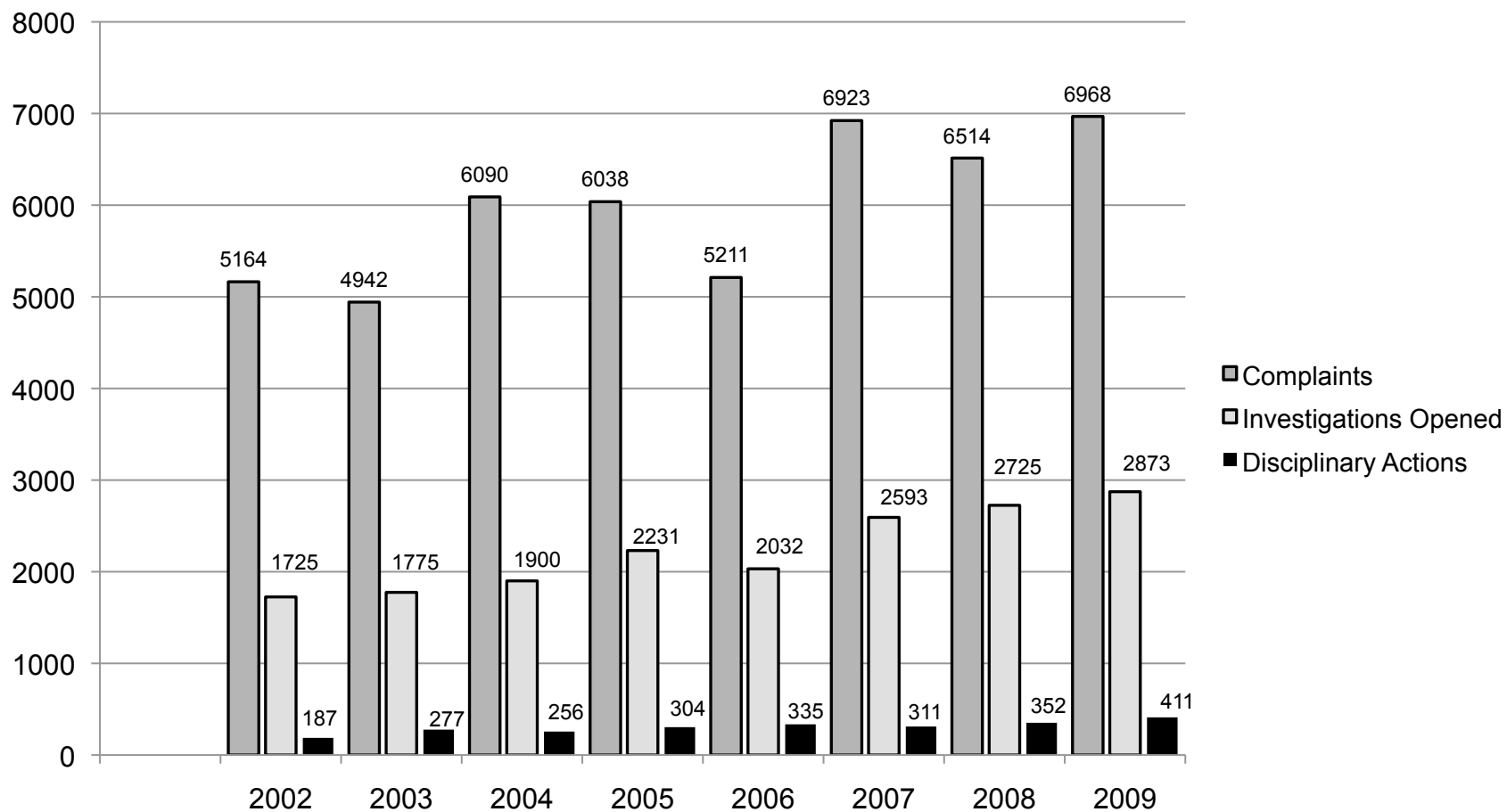
**TMB category includes registration responses, CME audits, medical malpractice reviews, newspaper items, and board discovered violations.*

***This category experienced an unusually high number of complaints in 2005 due to requirements for investigating medical malpractice violations. Without the 2005 data, the average % is 14% and the range goes only to 18%.*

Complaints by Source, FY 02 – FY 09

FY '09	Insurance Co.	1%	FY '05	Insurance Co.	<1%
	Law Enforcement	1%		Law Enforcement	1%
	Gov't Agencies	2%		Gov't Agencies	3%
	Anonymous	2%		Anonymous	1%
	Consumers	2%		Consumers	3%
	Health Professionals	9%		Health Professionals	8%
	TMB*	13%		TMB*	32%
	Friends/Family of Pt	27%		Friends/Family of Pt	19%
	Patient	43%		Patient	33%
FY '08	Insurance Co.	<1%	FY '04	Insurance Co.	1%
	Law Enforcement	1%		Law Enforcement	1%
	Gov't Agencies	3%		Gov't Agencies	5%
	Anonymous	3%		Anonymous	3%
	Consumers	2%		Consumers	3%
	Health Professionals	8%		Health Professionals	13%
	TMB*	14%		TMB*	14%
	Friends/Family of Pt	24%		Friends/Family of Pt	21%
	Patient	44%		Patient	39%
FY '07	Insurance Co.	1%	FY '03	Insurance Co.	1%
	Law Enforcement	<1%		Law Enforcement	4%
	Gov't Agencies	1%		Gov't Agencies	3%
	Anonymous	3%		Anonymous	2%
	Consumers	2%		Consumers	2%
	Health Professionals	7%		Health Professionals	12%
	TMB*	15%		TMB*	15%
	Friends/Family of Pt	22%		Friends/Family of Pt	22%
	Patient	47%		Patient	39%
FY '06	Insurance Co.	<1%	FY '02	Insurance Co.	<1%
	Law Enforcement	<1%		Law Enforcement	2%
	Gov't Agencies	2%		Gov't Agencies	4%
	Anonymous	2%		Anonymous	2%
	Consumers	3%		Consumers	2%
	Health Professionals	10%		Health Professionals	11%
	TMB*	12%		TMB*	18%
	Friends/Family of Pt	23%		Friends/Family of Pt	25%
	Patient	46%		Patient	36%

Number of Complaints, Investigations, and Disciplinary Actions FY 02 - 09



Opportunities for Licensee to Respond to Complaint

Complaints FY '09

