



Physician's Guide to the TMB

TOP 10 TIPS TO UNDERSTANDING THE INVESTIGATION PROCESS

- 1. INITIAL NOTICE** – Initial Notice is typically sent by mail. Make sure your contact information is current on your public TMB profile. Do not be offended with allegations of statutory violations.
- 2. WHO/WHAT IS SOURCE OF COMPLAINT?** – Focus on the specific factual allegations set forth mid-letter. Do your best to determine source of complaint (patient, nurse, self-report, NPDB report, unknown). Unless waived, source will be anonymous.
- 3. INITIAL RESPONSE** – Your initial response is due in 28 days. Obtain and review the patient's medical and billing records to make sure your narrative is consistent. You can even attach records to your initial response. If it concerns an adverse privileges action, tell the story of what happened.
- 4. FURTHER REQUESTS FOR INFORMATION** – Additional information may be requested by the investigator. With the help of TMB defense counsel, a physician should always endeavor to answer such requests fully, with speed and candor.
- 5. SUBPOENAS TO THIRD PARTIES** – If third parties have relevant records, the TMB may well subpoena them without your knowledge (e.g., a patient's medical and/or billing records held by third parties, your peer review file of a health care entity, even your own health records).
- 6. ISC HEARING IN AUSTIN** – If not dismissed, an Informal Settlement Conference (ISC) in Austin may be set for 60 to 90 days out. Experienced TMB defense counsel should be retained immediately. For a real conflict, you can request a continuance under limited statutory grounds within 5 days after receipt of notice; it's usually best to just find a way to be in Austin on that date.
- 7. REVIEW THE TMB EVIDENCE** – The TMB will deliver to your attorney all evidence (in CD format) at least 45 days before the ISC hearing itself. Anticipate the evidence and line up necessary witness and/or expert testimony for submission. Review the entire CD carefully to ensure no surprises.
- 8. SUBMIT A FULL REBUTTAL** – Rebutting any TMB Expert Panel report in the CD evidence is key. With counsel, prepare a narrative of the medical care rendered and your reasoning, and your own expert report. Your rebuttal must be submitted 15 days before the ISC hearing itself.
- 9. PREPARE AND ATTEND THE ISC** – Prepare for the ISC with your attorney. Arrive at the TMB that day rested, ready, and on time. Your attorney will be there to guide you through the ISC process. But the TMB Panel will want to hear from you directly. After the ISC, the TMB Panel will privately deliberate and determine its recommendation.
- 10. SOAH CHALLENGE AVAILABLE** – If short of dismissal, you may confer with your attorney as to the recommendation made (i.e., the form of any agreed order and its possible ramifications). If not accepted, a public TMB complaint will be filed at the State Office of Administrative Hearings. Once at SOAH, the ISC recommendation may no longer be available and the TMB may well pursue a harsher remedy.

TOP 10 TIPS WHEN YOU RECEIVE A COMPLAINT

- 1. TAKE IT SERIOUSLY** – Your medical license and your professional record are at stake. Deal with a complaint diligently. A statutory privilege for TMB investigatory materials exists. But any action taken can be affirmatively reportable or self-reportable in the future.
- 2. BUT DON'T PANIC** – Patient complaints happen, as do NPDB reports and adverse privilege actions. The TMB's stated mission is to protect patients, so even the most frivolous patient complaints will be reviewed. Understand the process and get the facts out in a concise, credible manner.
- 3. GET LEGAL HELP** – Retaining an experienced TMB defense attorney will help you clearly communicate the relevant facts, which may allow a better chance at early dismissal. Your malpractice insurer may provide some coverage for TMB defense counsel. Press your carrier to identify or to let you choose TMB defense counsel whom you trust.
- 4. FRANKNESS AND TONE ARE CRUCIAL** – Always honestly address the factual allegations in a tone that reflects respect for the complainant. Anger or indignation (even if you are factually justified) will cut against your credibility and make you look like a bully.
- 5. TEACH THE MEDICINE** – Teach the medicine in each case. Avoid merely reciting your notes from the medical record, as your audience may be a TMB investigator or staff attorney (with little to no medical training) or a TMB Panel member (who may be a lay person or a physician not within your subspecialty). Make sure you point specifically to the medical record for support.
- 6. STATE LESSONS LEARNED** – No physician is perfect. Recognize your role in the complaint and how you might react differently next time. Explain sincerely what lessons you have learned.
- 7. ADDRESS BEHAVIORAL ISSUES** – If behavioral issues are raised, be proactive in addressing them. TMB Panels typically appreciate physicians who are self-aware and who work toward self-improvement. Convince them that there is no need for further action as such issues have been fully addressed.
- 8. IMPAIRMENT ISSUES NEED A DIFFERENT APPROACH** – If such issues are raised (e.g., mental or physical health, drug or alcohol issues), immediate help from an experienced TMB attorney is essential. Working with the Texas Physician Health Program (PHP) may decrease the risk of immediate suspension due to impairment allegations, as well as allow for a confidential path back to medicine after recovery.
- 9. STAY ALERT FOR TMB HOT TOPICS** – The TMB will always be subject to political and media pressure. Recent hot topics: aggressive prosecution of "pill mills" and pain management physicians, telemedicine, HIPAA violations, and physician ownership interest disclosure.
- 10. YOUR PROFESSIONAL RECORD IS TOP PRIORITY** – A TMB complaint itself, the underlying events that trigger the complaint, or the result may have serious effects and various reporting consequences, including public disclosure. Do not go it alone. Get the legal help you need from experienced TMB defense counsel early on.



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