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## Managing the Pain of Patients Can Put Your Medical License At Risk

Our nation's [opioid crisis](#) has been deemed a public health emergency. The [Center for Disease Control](#) (CDC) reports a significant increase in drug overdose death rates in Texas. In 2016, [2,831 Texans died](#) from drug overdoses, which is a 7.4 percent increase over the number of Texans who died from overdoses in 2015. The CDC attributes the main driver of drug overdose deaths to prescription and illicit opioids.

In response to the growing problem, the Texas Medical Board (TMB) as well as law enforcement agencies have been targeting doctors who prescribe pain medication. Since prescription opioids are cited as part of the problem, the medical licenses of doctors who prescribe opioids may be put at risk. Medical facilities and doctors who work with the chronically ill are under heightened scrutiny.

## **The Texas Medical Board Investigates Prescriptions for Pain Medication**

Prescriptions written for controlled substances classified as Schedule II drugs under federal law are often targets of investigations. Schedule II drugs include the opioids oxycodone, hydrocodone, hydromorphone, and fentanyl. The federal statute states that these drugs have "a high potential for abuse[.]" [21 U.S.C. §812\(b\)\(2\)](#). The TMB may open an investigation into a physician's alleged "excessive" writing of pain prescriptions on its own accord, based on a criminal investigation or charges, or based on a complaint filed against a physician.

If the TMB informs you of a pending investigation against you, your medical license is at risk. As soon as you are notified of any issues with the TMB, we urge you to seek the advice of an experienced [medical license defense attorney](#). Too much is at stake not to have an advocate by your side.

Understand that the TMB is not your ally and has no interest in protecting your medical practice. Their function is to protect the public. Also, the TMB will likely not inform you of your rights. You have the right to have an attorney represent you at every stage of an investigation and the complaint resolution process. You have the right to an attorney before speaking with them or providing written answers in their investigation.

## **Texas Minimum Requirements for the Treatment of Chronic Pain**

Under the Texas Administrative Code, a physician's treatment of a patient's pain will be evaluated by considering whether the [minimum requirements](#) of the code section were met and whether the treatment meets the generally accepted standard of care. [22 Tex. Admin. Code. §170.3](#).

The minimum requirements include, but are not limited to:

- Evaluation of the patient.
  - A physician is responsible for obtaining a medical history and a physical examination that includes a problem-focused exam specific to the chief presenting complaint of the patient. 22 Tex. Admin. Code. §170.3(1)(A).
  - The medical record shall document the medical history and physical examination. In the case of Chronic pain, the medical record must document:
    - The nature and intensity of the pain;
    - Current and past treatments for pain;
    - Underlying or coexisting diseases and conditions;
    - The effect of the pain on physical and psychological function;
    - Any history and potential for substance abuse or diversion; and
    - The presence of one or more recognized medical indications for the use of a dangerous or scheduled drug. 22 Tex. Admin. Code. §170.3(1)(B)(i)-(vi).
- Prior to prescribing dangerous drugs or controlled substances for the treatment of chronic pain, a physician must consider reviewing prescription

data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program and consider obtaining at a minimum a baseline toxicology drug screen to determine the presence of drugs in a patient, if any. 22 Tex. Admin. Code. §170.3(1)(C).

- Treatment plan for chronic pain. The physician is responsible for a written treatment plan that is documented in the medical records. The medical record must include:
  - How the medication relates to the chief presenting complaint of chronic pain;
  - Dosage and frequency of any drugs prescribed;
  - Further testing and diagnostic evaluations to be ordered, if medically indicated;
  - Other treatments that are planned or considered;
  - Periodic reviews planned; and
  - Objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function. 22 Tex. Admin. Code. §170.3(2)(A)-(F).

A comprehensive list of the [Minimum Requirement for the Treatment of Chronic Pain](#) under Texas law can be viewed [here](#).

### **Hire An Experienced TMB License Defense Attorney**

As a licensed physician with the TMB, you have a duty to comply with the rules on prescribing medication. Failure to comply with federal, state, and TMB laws and regulations on prescribing medication could lead to an array of consequences, including licensing issues with the TMB or even criminal charges.

If you have been notified of a complaint filed against you with the Texas Medical Board, [BERTOLINO LLP](#) can help. We are experienced TMB license defense attorneys and we know how to navigate the TMB's complaint process. We are prepared to represent you at any legal hearing or proceeding regarding your professional license.

With offices in Austin, Houston, and San Antonio, we serve clients all over the state. As experienced attorneys, well-versed in state and federal laws, we know how to win. [Our results](#) speak for themselves!

***Our law firm helps professionals, like you, keep their licenses when those licenses are under attack by a state agency or board.***

If you are facing disciplinary action from a professional licensing board, [contact us](#) today or call (800) 210-0126 and schedule a case evaluation.

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Get a copy of Tony R. Bertolino's #1 Bestselling book [When Your License is Under Attack: A Survival Guide for Texas Professionals](#) in hardcover or for Kindle here.

### ***Texas Board of Nursing v. W.S.***

Our Client, W.S., a L.V.N., faced a complaint ("**Complaint**"), filed by his former employer, with the Texas Board of Nursing ("**Board**"), which alleged W.S. (i) exceeded his scope of practice, (ii) obtained medications improperly, (iii) violated the professional boundaries of the nurse/client relationship, (iv) and inappropriately manipulated the patient schedule, delaying further appointments for imminent medical issues. By discovering the bad-blood politics beneath the surface, and preparing a robust written argument, we convinced the Board that the allegations were false, and secured an outright dismissal of the Complaint, with no disciplinary action taken against our Client's license.

### ***Texas Real Estate Commission v. J.R.***

Our Client, J.R., a licensed real estate sales agent and former Federal Firearms Instructor, plead guilty to conversion of ammunition belonging to the federal government in 2014. J.R.'s conversion case contained substantial mitigation, but J.R. plead out pursuant to legal advice from his criminal attorney. The Texas Real Estate Commission ("**TREC**") sought to revoke J.R.'s sales agent license. After successfully pleading J.R.'s case to an impartial Administrative Law Judge ("**ALJ**") in the State Office of Administrative Hearings ("**SOAH**"), and saving J.R.'s license from revocation, TREC grossly violated the bounds of their judicial discretion, and improperly manipulated the ALJ's decision, to revoke J.R.'s license. We appealed the case to a District Court, and convinced the Judge that TREC's abuse of discretion and unauthorized conduct was not only improper, but so improper, as to pass the threshold for a reversal of TREC's decision, pursuant to stringent standards of review.

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## **Bertolino Team Highlights**



Our firm has resolved to contribute to our community monthly this year. In January we supported the University of Texas Law School in their annual mock interview program. Students who are in their first year and meet stringent requirements can participate by submitting their updated resumes. When assigned to a particular attorney for their mock interview they then must do their homework and research the firm, its area of practice and background information on the attorney with whom they will be "interviewing". Pictured here is Tony Bertolino, Managing Partner, in the middle of a conversation.

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*"Our law firm helps professionals, like you, keep their licenses when those licenses are under attack by a state agency or board."*

*-Tony R. Bertolino, Managing Partner*

