TEXAS MEDICAL ASSOCIATION HOUSE OF DELEGATES
INFORMATIONAL REPORTS

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DISCUSSION. Resolution 102-A-19 was adopted as amended at TexMed 2019 as follows:

That the Texas Medical Association House of Delegates reference committees may receive testimony prior to the meeting of the House of Delegates for resolutions and recommendations assigned to the reference committees from any member of the Texas Medical Association. The speakers of the House of Delegates shall determine an appropriate process to receive, compile, and make available this testimony.

The resolution was referred to the speakers, House of Delegates staff, Council on Constitution and Bylaws, and TMA technology staff to be developed into policy.

TMA staff met to develop an initial course of action and to discuss the best way to implement a system that would allow written testimony to be submitted for consideration by the TMA House of Delegates. Discussion focused on creation of a website with the ability for physicians to log in or to fill out pertinent information that identifies the individual providing written testimony along with any conflicts of interest. After testimony is received, it would be reviewed to ensure there is no slander, libel, or antitrust or HIPAA violation. The testimony would then be made available in a public folder for easy access.

On Aug. 27, 2019, the speakers and TMA staff met by conference call to discuss the matter further. During this call, the following was discussed:

- Review of all testimony by TMA legal staff prior to publication/dissemination;
- Making the testimony available to the general membership and reference committee members;
- Allowing additional information and supporting documents, such as a .pdf file, to be uploaded;
- Limiting the amount of written testimony to align with the two-minute rule for oral testimony;
- Setting a deadline for written testimony (to allow for the review, compilation, and posting of all testimony prior to the meeting); and
- Allowing either written or oral testimony but not both so that written testimony would be used only in lieu of an individual not being able to be present at the meeting.

During the winter House of Delegates caucus chair meeting, TMA staff Grant McInnes and John Dorman presented the proposed system to the caucus chairs and heard their comments and concerns. The feedback heard was:

- Add a question mark icon with an explanation of what “speaking on behalf of” means.
- Add an explanation of what constitutes a conflict of interest, with examples.
- On the home page, post legal terminology to explain the review of submissions and the basis for a possible rejection of the written testimony.
- Enable the website to generate a one-page summary print-out of submissions for each reference committee, listing submissions broken down into yea, nay, and supportive information testimony.
- Limit the maximum number of submissions per member for each item to three documents no more than five megabytes in size each.
1. **Collection**

Physician identifies via login on web application on House of Delegates portal

- Submits information (info, behalf, favor/against)
- Submits testimony
- Attaches supporting documents if desired

2. **Review**

- Submission received
- Staff review
- Legal review
- Optional chair review
- Acceptance

3. **Dissemination**

- Testimony formatted for posting
- Testimony posted on house portal
- Submissions summarized for Ref Com hearing
- Process complete

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1. Shut off acceptance of testimony for general posting 14 days before TexMed (to allow time for review and posting).

**Proposed Workflow**

1. Collection

Physicians will be required to log in to the texmed.org website before submitting written testimony. This will allow TMA to match the submission with the physician’s record in the TMA system. This is important so submissions cannot be anonymous or spoofed.

Once authenticated, a physician will complete a form and submit his or her written testimony. An email will be sent to the physician and a TMA staff person notifying them of a new submission.

2. **Staff Review**

Upon notification of written testimony, TMA staff will log in to the refcom.texmed.org website, which is used to manage reference committees and agenda items and provide real-time updates of reference committee meetings at TexMed. Submissions are scanned first to make sure the documents are free from potential viruses and worms. They will then be reviewed by TMA legal counsel to make sure no submission contains slander, libel, or antitrust or HIPAA violations.
3. Dissemination

Once the submission is approved, it will be formatted and placed on the House of Delegates portal for all TMA members to access. Each submission will include the name of the submitter and purpose of submission with any stated conflict of interest.

The acceptance of written testimony will close 14 days before the start of each year’s TexMed. This will give staff ample time to review documents and prepare them for reference committee members to review before the start of reference committees.

Testimony submitted after the 14-day window can be sent to a shell email address (refcom@texmed.org) monitored by House of Delegates staff. When a submission arrives, it will be reviewed (as noted above) and an effort will be made to disseminate it to the reference committee members, but it will not be posted on the website and not be available to all TMA members. There is no guarantee that any submission sent after the 14-day window will be seen by any reference committee members. The reference committee chair will inform the reference committee session during the open hearing at the House of Delegates meeting about all testimony and materials received ahead of time and specifically clarify any additional items that have been received after the 14-day deadline that will be part of the consideration for each agenda item.

Written testimony submission will be implemented under the newly proposed standing rules for House of Delegates (see Speakers Report 2 2020).
At the 2020 TMA Winter Conference, the TMA speakers and caucus chairs discussed the implementation of house standing rules for future TMA House of Delegates meetings. The adoption of standing rules would help codify many of the house’s traditions that are not covered by TMA’s Constitution and Bylaws or the American Institute of Parliamentarians Standard Code of Parliamentary Procedure.

According to TMA Bylaws:

3.73 **Standing Rules.** The House of Delegates shall have the authority to establish standing rules. The house shall be guided in its actions by its standing rules and this Constitution and Bylaws. In all instances not covered by this Constitution and Bylaws or its own standing rules, the American Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern.

Consensus was reached at the Winter Conference caucus chair meeting that the speakers would introduce a basic framework of house standing rules with essential operating procedures defined, allowing for the addition of rules through subsequent amendments. One rule to be included in the initial house standing rules was the allowance for submission of reference committee testimony prior to the house meeting, as adopted by Resolution 102-A-19 at TexMed 2019.

Resolution 102-A-19 was adopted as amended:

That the Texas Medical Association House of Delegates reference committees may receive testimony prior to the meeting of the House of Delegates for resolutions and recommendations assigned to the reference committees from any member of the Texas Medical Association. The speakers of the House of Delegates shall determine an appropriate process to receive, compile, and make available this testimony.

Additionally, at TexMed 2019, Resolution 104-A-19 was referred to the Board of Trustees for action. Resolution 104-A-19 states:

**Alternate Delegates May Address the House of Delegates (Lone Star Caucus):** That alternate delegates to the TMA House of Delegates be allowed to address the house on matters pending before the House of Delegates without being credentialed as a delegate and that under these circumstances may suggest but cannot make any changes to the content of any resolution or recommendation being considered by the House of Delegates.

At the 2019 TMA Fall Conference, the board voted not to adopt Resolution 104-A-19. Since the TMA Bylaws do not prohibit alternate delegates from addressing the TMA House of Delegates, the Board of Trustees directed the speakers instead to include in the house standing rules language regarding rights and privileges for delegates and alternate delegates, for adoption by the house at the 2020 meeting, without making formal policy and thus changes to the TMA Bylaws.
To comply with the Board of Trustee’s action on Resolution 104-A-19, the speakers have developed the attached TMA House of Delegates Standing Rules. These rules cover those issues not addressed by the TMA Bylaws, including the issue of submission of testimony prior to the house meeting (Resolution 102-A-19) and the issue of alternate delegates addressing the House of Delegates (Resolution 104-A-19).

At its June 28, 2020 meeting, the TMA Board of Trustees, acting on behalf of the TMA House of Delegates as a disaster board, adopted these TMA House Standing Rules and referred them to the Council on Constitution and Bylaws and the TMA speakers for further recommendations with a report back at TexMed 2021. The board approved also that the speakers will work with the Council on Constitution and Bylaws to evaluate formalizing a House of Delegates “advisory body” composed of caucus chairs and representatives to help facilitate house function and report back at TexMed 2021.
Texas Medical Association
House of Delegates Standing Rules

Preamble
These House of Delegates Standing Rules serve as an operational guide and description for how the Texas Medical Association’s House of Delegates conducts its business at the annual meeting and throughout the year in accordance with the Texas Medical Association’s Constitution and Bylaws, the American Institute of Parliamentarians Standard Code of Parliamentary Procedure, and standing tradition. The TMA House of Delegates will adopt these standing rules at the opening of each yearly session, and these rules shall be in effect until revoked.

Alternate Delegates Addressing the House of Delegates
Alternate delegates may address the house by approaching the alternate delegate microphone and waiting to be called upon by the speaker. Recognition of alternate delegates is at the discretion of the speaker. Alternate delegates may neither make motions, nor alter the business of the house, nor vote.

Amendments to House Standing Rules
These rules shall be amended by a majority vote using the formal house resolution process outlined in TMA’s Constitution and Bylaws and become effective immediately upon adoption.

Overruling the Speaker of the House
The speaker of the house can be overruled by a two-thirds vote.

Suspension of the House Standing Rules
Suspension of these house standing rules requires a two-thirds vote.

Written Testimony
The acceptance of written testimony for reference committees will close 14 days before the start of each year’s TexMed.

Collection: Physicians will be required to log in at texmed.org to submit written testimony through a dedicated form submission page.

Staff Review: Once written testimony is received, TMA staff will review each submission for potential viruses/worms or other cyber attacks. Submissions will then be reviewed by TMA legal counsel to make sure no submission contains slander, libel, or antitrust or HIPAA violations.

Dissemination: Once the submission is approved, it will be formatted and placed on the House of Delegates portal for all TMA members to access.

Testimony submitted after the 14-day window can be sent to a shell email address (refcom@texmed.org) monitored by House of Delegates staff. Such submissions will be disseminated to the reference committee members but will not be available to all TMA members since these submissions will not have time to undergo review. There is no guarantee that any submission sent after the 14-day window will be seen by any reference committee members. The reference committee chair will inform the session about any additional submissions that will be considered as part of the consideration of each agenda item.
Texas Medical Association Bylaws provide that the board shall organize by electing a chair, a vice chair, and a secretary, and that the chair shall appoint committees as needed. In May 2019, the board elected E. Linda Villarreal, MD, as chair; Gary W. Floyd, MD, as vice chair; and Richard W. Snyder, MD, as secretary. Keith A. Bourgeois, MD, and G. Ray Callas, MD, were elected to fill the at-large positions on the board’s executive committee. Ex officio members of the board’s executive committee are the chair, vice chair, and secretary of the board, and the president of the association, David C. Fleeger, MD. The board also welcomed Kayla A. Riggs, MD, as the resident member for 2019-20, and Ankita V. Brahmaroutu as the medical student member for 2019-20.

Board committees for 2019-20 are:

- Investments (Dr. Floyd, chair; Michelle A. Berger, MD; Dr. Bourgeois; Dr. Callas; Douglas W. Curran, MD; Dr. Fleeger; Dr. Snyder; Dr. Villarreal as board chair liaison; and TMA Foundation liaison Craig Norman, RPh);
- Educational Scholarship and Loan (Sue S. Bornstein, MD, chair; Cynthia A Jumper, MD; Jayesh B. Shah, MD; Joseph S. Valenti, MD; Arlo F. Weltge, MD; Dr. Riggs; Ms. Brahmaroutu; Dr. Villarreal as board chair liaison; Dr. S.E. Thompson Scholarship Fund Trustee Raymond S. Greenberg, MD; Medical Student Section (MSS) representative Jordan McKinney; MSS alternate representative Joseph Camarano; and TMA Alliance representatives Pam Abernathy and James P. Davis); and
- Finance (Dr. Berger, chair; Lindsay K. Botsford, MD; Diana L. Fite, MD; Dr. Snyder; Dr. Shah; Dr. Valenti; Dr. Jumper, and Bradford W. Holland, MD).

Drs. Fite, Villarreal, Bourgeois, Callas, Floyd, Weltge, and Fleeger represent the board on the TMA/Texas Osteopathic Medical Association/TMF Health Quality Institute Liaison Committee. Drs. Bornstein, Callas, Curran, Bourgeois, Fite, Fleeger, Shah, and Valenti represent the board on the TMA/Texas Medical Liability Trust Liaison Committee.

Nancy Foster, MD, chairs the board’s Committee on Physicians Benevolent Fund. Committee members are Sue Bailey; Vickie Blumhagen; Beverly Ozanne; Raymond C. Jess, MD; Muriel Mendell; Ann Morales; George Peterkin III, MD; and Shirley Sanders. Dr. Villarreal is the board’s liaison to the committee.

J. Marvin Smith III, MD, chairs the board’s History of Medicine Committee. Members are Joel S. Dunnington, MD; Mark J. Kubala, MD; Steve L. Steffensen II, MD; Mellick Sykes, MD; Margaret Vugrin, MSLS, AHIP; and J. Patrick Walker, MD. J.J. Waller, MD, serves as the TMA Alliance representative, Kelley Eileen Grant as the MSS representative, and Brooke Denise Walterscheid as the MSS alternate representative.

The TMA board also appoints the Texas Medicine Editorial Board. Chelsea I. Clinton, MD, chairs the board. Members are Jeff Apple, MD; Eman Attaya, MD; Seemal Desai, MD; Troy Fiesinger, MD; Christopher Garrison, MD; Roger Khetan, MD; Gary Ventolini, MD; and Alexis Wiesenthal, MD. Vastal
Patel, MD, serves as the Resident and Fellow Section representative and Pranati Pillutla as the MSS representative.
In May 2006, the House of Delegates adopted Board of Trustees Report 18-A-06 as amended to read as follows:

that (1) any candidate for at-large trustee or any office that includes an ex officio seat on the Board of Trustees (president, president-elect, secretary/treasurer, and speaker and vice speaker of the House of Delegates) provide full disclosure of affiliations on a form developed by the speaker of the House of Delegates for that purpose; (2) all members of the Board of Trustees (at-large trustees and officers) provide full disclosure of affiliations each year at the time of the Winter Conference, and that full disclosure be reported to the House of Delegates in the Handbook for Delegates, on the TMA Web site, and by any other method deemed appropriate by the Board of Trustees; and (3) when a health insurance company or HMO requests recommendations for appointment to a physician advisory committee or any other component, the TMA president shall recommend for appointment individuals who best represent TMA’s position, and the names of those individuals recommended by TMA and subsequently appointed by the health insurance company or HMO will be reported to the House of Delegates for information at its next meeting.

At its January 2011 meeting, the Board of Trustees amended the disclosure form to require that those who answer “yes” to the following questions must indicate the type of material financial interest using the letters, A, B, C, or D from the list below:

Do you or an immediate family member hold or plan to hold a material financial interest in any business which furnishes goods or services, or is seeking to furnish goods or services, to TMA or to any member of the TMA Board of Trustees, TMA Executive Vice President, or TMA Chief Operating Officer?

Do you or any immediate family member hold or plan to hold a material financial interest in any health care business, health insurance company, or health care facility, including a private medical practice?

The types of material financial interest to disclose are:

A. a financial ownership interest of 35 percent or more, or
B. a financial ownership interest which contributes materially (5 percent or more) to your income, or
C. a position as proprietor, director, managing partner, or key employee, or
D. any ordinary income, honorarium, or gift (other than dividends from stock) compensation exceeding $1,000 per year in excess of actual expenses.

Attached is a list of affiliations disclosed by all members of the Board of Trustees.
### BY ORGANIZATION:

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<thead>
<tr>
<th>Organization</th>
<th>Members</th>
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<td><strong>AllCare Physicians Group Board of Directors</strong></td>
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<td><strong>American Academy of Family Physicians</strong></td>
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<td>Keith A. Bourgeois, MD</td>
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<td><strong>American Board of Anesthesiology</strong></td>
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<td><strong>American College of Emergency Physicians</strong></td>
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<td><strong>Anesthesia Associates</strong></td>
<td>G. Ray Callas, MD (D)</td>
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<td><strong>Austin Ear Nose and Throat Clinic</strong></td>
<td>Michelle A. Berger, MD (D)</td>
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<tr>
<td><strong>Bailey Square Surgery Center</strong></td>
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Fishpond Surgery Center
Bradford W. Holland (D)

Harris County Academy of Family Physicians
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Northwest Surgery Center

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Texas Medical Association Specialty Services, LLC

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Caring for Women, PA
Lone Star Alliance
Physicians Foundation
Texas Medical Liability Trust

E. Linda Villarreal, MD
Blue Cross and Blue Shield of Texas (D)
Memorial Medical Clinic

Arlo F. Weltge, MD
American College of Emergency Physicians
American Medical Response
Houston Community College
The University of Texas Medical School at Houston
REPORT OF BOARD OF TRUSTEES

BOT Report 3 2020

Subject: TMAIT, TMFHQI, and TMLT

Presented by: Gary W. Floyd, MD, Chair

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**Texas Medical Association Insurance Trust Board of Trustees**

The TMA Board of Trustees has responsibility to appoint four members of the TMA Insurance Trust (TMAIT) Board of Trustees. In accordance with TMA Insurance Trust’s Amended Agreement and Declaration of Trust, the fifth appointed position is held by the executive vice president of TMA without any term limitation. The TMA board also fills the position reserved for a member of the Young Physician Section. The TMA board offers nominations for the remaining three positions, which are elected by policyholders through the proxy mechanism. Current TMAIT officers are Wendy Parnell, MD, of Dallas (board chair) and Richard Noel, MD, of Houston (secretary). The term of Russ Juno, MD (immediate past chair), expires in September 2020. Dr. Noel will cast the proxy vote to elect Lan Le, DO, of Fort Worth to fill the open position.

**TMF Health Quality Institute Board of Trustees**

The TMF Health Quality Institute (TMFHQI) Board of Trustees comprises physicians, nonphysicians, and consumer (Medicare) beneficiary representatives. The TMFHQI Board of Trustees has up to 15 members, including at least one doctor of allopathic medicine, one doctor of osteopathic medicine, and two consumer representatives. The board may not be composed of a majority of physicians or any other type of practitioner or profession but will include no less than two physicians at all times.

In 2020, no physician terms are expiring.

The TMA Board of Trustees maintains active liaison with the TMF Health Quality Institute Board of Trustees through its TMA/TMF Liaison Committee.

**Texas Medical Liability Trust Governing Board**

The Texas Medical Liability Trust (TMLT) Governing Board annually makes nominations to the TMLT board. These nominations are, in turn, submitted to and approved by the TMA House of Delegates. TMLT policyholders also can nominate other eligible candidates. These nominations are reported to the House of Delegates.

Beginning with elections in 2007, places on the TMLT board are staggered so that only a portion are up for election each year. Each term is for three years, and board members may be reelected for two additional three-year terms for a maximum of nine years of service on the board. The following places are up for election in 2020:
Place 1: Mark S. Gonzales, MD, will fulfill his term and board tenure at the end of 2020. The TMLT Governing Board recommends nominating Herb Singh, MD, urology, Austin, for a three-year term beginning in 2021.

Place 2: Russell Krienke, MD, will fulfill his second term at the end of 2020. The TMLT Governing Board recommends that Russell Krienke, MD, be reelected for an additional three-year term beginning in 2021.

Place 3: Pamela D. Holder, MD, will fulfill her term and board tenure at the end of 2020. The TMLT Governing Board recommends nominating Lindsey Harris, MD, ophthalmology, Houston, for a three-year term beginning in 2021.

On Aug. 16, 2020, the TMA Board of Trustees, acting as the TMA Disaster Board, approved Drs. Herb Singh, Russell Krienke, and Lindsey Harris, nominees of the TMLT Governing Board, to be placed before TMLT policyholders for election.
Subject: Medical Student and Resident Physician Loan Funds

Presented by: E. Linda Villarreal, MD, Chair

Overview
The medical student and resident physician loan program originated in 1952 with trust donations set up in
endowed funds at TMA. Members of the TMA Board of Trustees serve as trustees or as members of the
boards of trustees for six loan funds:

- Dr. S. E. Thompson Scholarship Fund;
- May Owen Irrevocable Trust;
- Texas Medical Association Alliance Student Loan Fund (TMA Special Funds Foundation);
- Durham Student Loan Fund (TMA Special Funds Foundation);
- Medical Student Loan Fund (TMA Special Funds Foundation); and
- Patricia Lee Palmer, MD, Memorial Resident Loan Fund (TMA Special Funds Foundation).

The current interest rate of these loans is fixed at 4.4% (with the 0.4% used for a group life policy, as
required by the trust documents).

Medical Student Loans
Five student loan funds are available to medical students: Dr. S. E. Thompson Scholarship Fund, May
Owen Irrevocable Trust, Texas Medical Association Alliance Student Loan Fund, Durham Student Loan
Fund, and Medical Student Loan Fund. From July 1 through Dec. 31, 2019, 99 loans totaling $486,300
were disbursed from the five funds, and additional applications remain in process.

Resident Physician Loans
The Dr. S.E. Thompson Scholarship Fund and the Patricia Lee Palmer, MD, Memorial Resident Loan
Fund offer loans to resident physicians. Four resident loans totaling $21,000 were disbursed from July 1
through Dec. 31, 2019.

2020-21 Allocation
In January 2020, the board approved allocations for the 2020-21 school year (June 1-May 31) totaling
$845,000, including $38,000 for residents. The loan allocations to the 15 medical schools are based on
availability of funds and the history of each school’s utilization.
Since 1998, The TMA Minority Scholarship Program has given 149 scholarships to underrepresented minority medical students in Texas for a total of $977,500. Thirteen Texas medical schools have received an award. As of Jan. 24, 2020, the TMA Foundation has collected $23,500 in cash and pledges for the 2020 scholarships. All shortfalls will be covered by 2016 donations received from two private donors: Robert J. Bayardo, MD, and Patrick Leung, MD.

The 2020 program will award fifteen (15) $10,000 scholarships to students matriculating at:
- Baylor College of Medicine,
- Sam Houston State College of Osteopathic Medicine (new 2020),
- Texas A&M Health Science Center College of Medicine,
- TCU and UNTHSC School of Medicine (new 2019),
- Texas Tech University Health Sciences Center School of Medicine,
- Texas Tech University Health Sciences Center-El Paso Paul L. Foster School of Medicine (new 2013),
- The University of Texas at Austin-Dell Medical School (new 2016),
- The University of Texas Health Science Center at Houston-John P. and Kathrine G. McGovern Medical School,
- The University of Texas Health Science Center at San Antonio–Joe R. & Teresa Lozano Long School of Medicine,
- The University of Texas Medical Branch at Galveston School of Medicine,
- The University of Texas Rio Grande Valley School of Medicine (new 2016),
- The University of Texas Southwestern Medical School,
- University of Houston College of Medicine (new 2020),
- University of North Texas Health Science Center at Fort Worth-Texas College of Osteopathic Medicine, and
- University of the Incarnate Word School of Osteopathic Medicine (new 2017).

The TMA Office of Trust Fund Administration must have received candidate applications by Feb. 21, 2020. The BOT’s Educational Scholarship and Loan Committee members review qualified applications and make the selection of winners. Scholarship recipients are notified in April and are required to attend the presentation luncheon at TExMED 2020 on May 1 in Fort Worth.

Although the U.S. Supreme Court ruling in 2003 allows race to be used in admissions and financial aid processes of academic institutions (subject to certain criteria), the current renewed scrutiny of race-based admissions policies by the Trump administration may act as a deterrent to any schools currently using or considering using such a policy. This leaves the TMA scholarship program as one of the few available in the state for underrepresented minority students (as defined by the Association of American Medical Colleges) seeking a career in medicine. TMA’s selected recipients must also express interest in practicing in underserved areas and must demonstrate both community service and leadership. Title VI restrictions generally do not prohibit an organization that is not a recipient of Federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or national origin.
Funded by a grant from The Physicians Foundation, the Texas Medical Association Leadership College (TMALC) was launched in 2010 as part of TMA’s effort to ensure strong and sustainable physician leadership within organized medicine.

This successful program, now in its tenth year, boasts 184 alumni. Additionally, 166 graduates are currently serving in TMA leadership via councils, committees, and sections with others representing their county and specialty societies. These physicians serve as thought leaders who can close the divide among clinicians and health care policymakers and serve as trusted leaders in their local communities.

Participants must be active TMA physician members in the first eight years of practice. There is no tuition charge for scholars, but scholars are responsible for their own travel expenses.

This year, TMA will be launching a second cohort known as the Lifelong Leadership cohort. The Lifelong Leadership cohort will mirror the curriculum of the original program, but tailor the content to those whose age or years in practice make them ineligible to participate in the existing Young Physician cohort. Participation will be application- and fee-based, with tuition fees offsetting increased overhead costs without negatively impacting existing programs. The substance of the Lifelong Leadership curriculum will address leadership concerns likely to surface later in a physician’s career: strategic planning and fiduciary responsibility, ethical decision-making, physician burnout, human resource management, and mentorship, among others.

Now Accepting Applications for 2020

Applications for the 2020-21 program are due by August 14, 2020. Visit www.texmed.org/leadership for more information and to access the online application. For questions, contact Melanie Harrison at melanie.harrison@texmed.org, or call (800) 880-1300, ext. 1443.

Congratulations Class of 2020!

Twenty-eight scholars will graduate during a luncheon ceremony held at TexMed 2020 on Saturday, May
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<th>Scholar</th>
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Subject: Pending Lawsuits Involving Texas Medical Association and Audit Trail

Presented by: E. Linda Villarreal, MD, Chair

At each of its meetings, the Board of Trustees reviews an audit trail of pending lawsuits involving the association. The following is an updated report, prepared in January, by the Office of the General Counsel.

A. LITIGATION AS PLAINTIFF

TMA v. Texas Board of Chiropractic Examiners and Texas Chiropractic Association
(Regarding scope of practice, specifically pertaining to vestibular-ocular-nystagmus [VON] testing)

On Jan. 6, 2010, the Texas Board of Chiropractic Examiners (TBCE) proposed an amendment to 22 Texas Administrative Code §75.17(c)(3), concerning Scope of Practice, to add a new subparagraph (C) to describe training required for doctors of chiropractic to perform VON testing.

The Texas Chiropractic Act defines the practice of chiropractic as using “objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body,” or performing “nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.” The performance of VON testing does not, in any way, fall within the scope of practice as defined in Texas Occupations Code §201.002(b), and therefore exceeds the rulemaking authority of the board.

VON testing is a purely diagnostic neurological test intended to diagnose a problem of the brain, inner ears, or eyes. It includes tests of vestibular function that are designed to evaluate the inner ear (vestibular apparatus) and the neural connections between the inner ear and the parts of the brain that control eye movement. Symptoms that would prompt VON testing are dizziness, imbalance, and vertigo. These symptoms must be diagnosed rapidly as they may be caused by something as benign as a viral infection of the inner ear or something as ominous as a brain tumor or an impending brainstem stroke.

Ears and eyes are not part of the spine and musculoskeletal system of the human body. Furthermore, disorders affecting the biomechanical condition of the spine and musculoskeletal system of the human body do not cause vestibular system pathology. As VON testing does not fall within the statutory scope of practice of chiropractic, TMA contends that the board’s adopted rule exceeds the practice of chiropractic as defined by law, and impermissibly attempts to permit chiropractors to practice medicine without a license issued by the Texas Medical Board.

TMA submitted comments containing its strong objections to the proposed rule. TBCE withdrew those proposed rules, based on the comments it had received. In its place, the board proposed a revised amendment to §75.17(c)(3)(C), with an increased requirement that, in order to administer this test, a licensee must have received a diploma in chiropractic neurology and successfully completed an additional 150-hour post-graduate specialty course in vestibular rehabilitation. In the preamble to the proposed rule, TBCE wrote the following interesting statement, pertaining to diagnosis: “A vestibular and oculomotor functional assessment can provide a neurologically trained doctor of chiropractic
with a baseline for treatment of a patient as well as the information necessary for a differential
diagnosis and development of a plan for treatment.”

TMA again submitted its strong objections in a comment letter on July 19, 2010. TBCE held a rule
hearing pertaining to the rule on Aug. 6, 2010. At that rule hearing, Sara Austin, MD, neurologist,
testified on behalf of TMA. TBCE voted to adopt the rule, with no debate. The final rule has been
formally adopted.

Incidentally, at that TBCE hearing, the TBCE president stated that any discussion pertaining to scope
of practice should be sent to one member through email, and not to all the board members, in order to
avoid the “open meetings” rule. In light of that statement, on Aug. 25, 2010, TMA sent TBCE a
public records request under the authority of Texas Government Code §552.021 for copies of all
policy statements or interpretations of the law or rules that have been adopted, published, or issued by
the Texas Board of Chiropractic Examiners, or emails or other writings relating to scope of practice
for chiropractors. TBCE produced some documents and withheld others, seeking an attorney general
opinion pertaining to the documents withheld. TMA prepared a response letter to the attorney general,
and the attorney general has ruled in TMA’s favor. TBCE has since produced the documents it sought
to withhold, which contain some information that is quite contrary to TBCE’s position and very
favorable to TMA’s position.

TMA’s main concern is with the vestibular testing rule adopted by TBCE, as VON testing should not
be performed by chiropractors, regardless of any additional chiropractic education or training they
may obtain pertaining to the test. TMA believes the proposed rule §75.17(c)(3) exceeds the
rulemaking authority of the board and is unconstitutional pursuant to Article XVI, section 31 of the
Texas Constitution.

The TMA Board of Trustees authorized TMA to proceed with a lawsuit. David Bragg was retained to
file the suit. The lawsuit was filed on Jan. 31, 2011.

The case was assigned to the 353rd Judicial District Court of Travis County, Texas. The judge was
Rhonda Hurley. Both parties designated their testifying expert. All depositions of expert witnesses
were taken. TBCE experts that were deposed include Frederick Carrick (“chiropractic neurologist”) and Dr. Brandon Brock (“chiropractic neurologist”). TMA presented Bridgett Wallace and Dr. Richard Kemper for deposition, and both did an excellent job testifying.

The parties filed cross motions for summary judgment, and the court held a hearing on the motions on
Dec. 5, 2011. The court’s order essentially granted TMA all relief it sought in the lawsuit, and on
TBCE filed its reply brief on Aug. 27, 2012. On Sept. 11, 2012, the court denied oral arguments and
set the case for submission on briefs on Oct. 2, 2012.

On Nov. 21, 2012, the Court of Appeals issued its opinion reversing the trial court’s ruling, which
had granted TMA’s motion for summary judgment. The appellate court also remanded the case back
to the trial court to determine what VON testing is. According to the appellate court, questions of fact
existed regarding whether VON testing is solely a medical test, and whether the test can be used for
chiropractic purposes. In summary, the appellate court reversed on a technicality – a motion for
summary judgment is a purely legal (not factual) finding, and because the appellate court felt there
are factual issues to decide (what is VON), it determined that the motion for summary judgment
ruling was improper.

On remand, TMA filed its first amended original petition on Sept. 13, 2013. In it, TMA added the
following arguments for the court’s determination: the rules improperly define “musculoskeletal
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system” to include nerves, and also define that term with a functional context (“that move the body
and maintain its form”), which implies that anything that affects movement of the body or
maintenance of its form would be included in the musculoskeletal system; the rules improperly
authorize certain chiropractors to perform “technologically instrumented vestibular-ocular-
nystagmus” testing, which is unrelated to the biomechanical condition of the musculoskeletal system
or the spine; and the rule improperly defines “subluxation complex” as a “neuromusculoskeletal
condition,” which exceeds the scope of authority conferred on chiropractors by the Chiropractic Act.
TMA also amended discovery responses to TBCE’s request for disclosure to reflect the new issues
contested in the first amended original petition.

TBCE filed a brief in support of a plea to the jurisdiction on Feb. 28, 2014, with respect to the issue
of whether it is within the scope of practice for chiropractors to make a medical diagnosis. After
hearing arguments, the court denied the plea, and interlocutory appeal immediately followed on April
23, 2015, the Third Court of Appeals overruled TBCE’s motion for panel rehearing and/or en banc
rehearing. After petitioning for review with the Supreme Court of Texas, the petition was denied.

On June 16, 2016, TBCE filed a motion for partial summary judgment relating to the diagnosis issue,
which the court denied. Accordingly, the case proceeded to trial on Aug. 2-3, 2016. TMA argued that
as VON testing reveals nothing about the biomechanical condition of the spine or musculoskeletal
system, it is not included in the definition of chiropractic. Since the legislature included only the
musculoskeletal system and spine in the definition of chiropractic, TMA argued, the VON testing rule
exceeds the scope of chiropractic. TBCE claimed that problems with the vestibular system can affect
the musculoskeletal system and therefore are within the purview of chiropractic. As directed by Judge
Hurley, written closing arguments were filed by all parties on Aug. 13, 2016.

On Oct. 19, 2016, Judge Hurley issued a final judgment declaring:

- The authorization for chiropractors to perform “technological instrumented vestibular-ocular-
nystagmus” exceeds the scope of chiropractic and is therefore void;
- The definition of “musculoskeletal system” to include “nerves” exceeds the scope of chiropractic
  and is therefore void;
- The definition of “subluxation complex” as a “neuromusculoskeletal condition” exceeds the
  scope of chiropractic and is therefore void; and
- The use of the term “diagnosis” as used by TBCE in its Scope of Practice Rule exceeds the scope
  of chiropractic and is therefore void.

On Oct. 25, 2016, TBCE asked the court to file findings and fact and conclusions of law. These were
drafted by TMA’s outside counsel, David Bragg, and signed by Judge Hurley. TBCE requested
additional findings of fact and conclusions of law. On Dec. 6, 2016, TMA filed its response to
TBCE’s request for additional findings of fact and conclusions of law and made its own request for
the same. On Dec. 7, 2016, Judge Hurley signed supplemental findings of fact and conclusions of
law.

In January 2017, TBCE filed an appeal with the Third Court of Appeals. In its appeal, TBCE argued
three main points:

1. Nerves are associated with subluxation complexes and are an integral part of chiropractic
treatment, and correction of biomechanical problems affect nerves, which means the rule’s
references to “nerves” or “neuro” are consistent with the statutory scope of chiropractic.
2. TMA did not prove that the VON testing provision is invalid because TMA did not demonstrate
that VON testing was intended to be used exclusively to diagnose disease of the brain, ear, or eye,
whereas TBCE contends it offered uncontradicted evidence that VON testing is useful in chiropractic evidence.

3. The term “diagnosis” in the challenged rule was within the statutory scope of chiropractic practice, and the issue has already been decided and may not be relitigated.

TMA filed its brief in response to TBCE’s brief on Sept. 11, 2017. The case was heard before the appellate court on Feb. 28, 2018.

On Nov. 21, 2018, the Third Court of Appeals issued a memorandum opinion (Justice C. Bourland) affirming the trial court’s judgment in part and reversing in part:

1. The Third Court overruled TBCE’s first point on appeal. The fact that nerves are affected by disorders in or treatment of the musculoskeletal system does not mean the nervous system or the nerves themselves fall within the scope of chiropractic. The statute contains a limitation to evaluation of the “biomechanical condition of the spine and musculoskeletal system,” citing §201.002(b).

2. The Third Court noted that although VON testing may be a useful tool to chiropractors, the evidence establishes that VON testing helps in the diagnosis of vestibular issues and that such disorders do not fall within the ambit of chiropractic.

3. Finally, the Third Court noted that effective Sep. 1, 2017, Tex. Occ. Code §201.002 was amended to provide that a person practices chiropractic if he or she, among other things, “uses objective or subjective means to diagnose, analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body.” Thus, because the term “diagnose” is expressly included in the Occupations Code itself, it is valid to include it in rule (although limited to the biomechanical condition of the spine and musculoskeletal system).

On Dec. 31, 2018, TCBE filed a motion for en banc reconsideration on points 1 and 2 contending that the Third Court did not apply the proper de novo review in the statutory interpretation case and instead applied a sufficient evidence analysis. TCBE further argued that VON testing is within the scope of chiropractic treatment as it helps chiropractors rule out other nonvestibular signs of dizziness and refer to other providers. Finally, TCBE challenges TMA’s standing to file suit in this particular cause under the Administrative Procedures Act. On or about Dec. 28, 2018, TCBE filed a petition for review to the Supreme Court of Texas with briefing filed on Feb. 27, 2019. On Jan. 10, 2019, the court denied TCBE’s motion for en banc reconsideration. TMA filed its response to the petition for review on March 26, 2019.

The court requested additional briefing as to whether it should grant the petition for review. On Aug. 21, 2019, TCBE filed its brief, and TMA filed its response on Sept. 25, 2019. As of January 2020, the court has not issued a decision.

B. LITIGATION AS DEFENDANT

No pending litigation at this time.

C. AMICUS CURiae BRIEFS

1. Gomez v. Memorial Hermann
(Regarding whether the Supreme Court of Texas should grant the petition for writ of mandamus to produce records from a medical peer review proceeding)

This case was brought by Miguel Gomez, MD, a heart surgeon, against Memorial Hermann Hospital System (MH) and Michael Macris, MD, and Keith Alexander (CEO of MH) in their
official capacities. Dr. Gomez alleges tortious conduct on the part of MH and that anticompetitive actions were taken by the defendants.

Dr. Gomez seeks documents that purport to measure his quality and efficiency as compared with other doctors in the MH system. Allegedly, these were improperly compiled by another cardiovascular surgeon (Dr. Macris) and spread using MH’s wholly owned nonprofit health corporation (MHMD) to other physicians who likely would refer patients to Dr. Gomez, and the rumor mill at MH. This allegedly was done after MH learned Dr. Gomez had applied for privileges at a competing facility being constructed a few miles from MH’s Memorial City facility. After Dr. Gomez refused to accept a proposed monitoring of his practice without the benefit of peer review by the hospital medical staff’s peer review committee, attempts to restrict Dr. Gomez’s privileges through the MH Memorial City’s medical staff peer review committee failed. Subsequently, the defendants started an alleged rumor mill in an attempt to affect Dr. Gomez’s referrals adversely, thereby affecting patient choice. Some evidence of this, including the testimony of former MH executives now employed with another health care system, is in the case record.

The TMA Patient-Physician Advocacy Committee (PPAC) reviewed numerous briefs and other documents authored by both sides of the case and spent several hours with presenters from each side at its meeting held May 1, 2014, in conjunction with TexMed 2014. Since that time, the Supreme Court of Texas has asked for briefing from Dr. Gomez on the issue of whether the court should accept the case.

Defendants, MH, Dr. Macris, and Mr. Alexander are seeking a writ of mandamus from the Supreme Court of Texas, which would order the trial court to withdraw its order mandating the discovery of certain medical peer review records. The defendants seeking the writ have already filed briefs with the court, arguing that the court should take the case, grant oral argument, and reverse the trial court’s determination that certain documents relevant to the allegation of anticompetitive conduct are discoverable and must be disclosed to the plaintiff. The trial court’s order came after the trial court judge reviewed the documents in camera and made a judgment on each document’s relevance to the allegation of anticompetitive conduct.

Some of the stipulated medical peer review documents were determined to be related to the alleged anticompetitive conduct by the defendants. Under the anticompetitive exception to peer review protection provided by the Texas Occupations Code, discovery of documents is permitted if the peer review records and proceedings requested are relevant to an anticompetitive action or to a federal civil rights proceeding.

The trial court determined that the Texas Occupation Code’s peer review provisions applied, rather than the medical committee protections found in the Texas Health and Safety Code. This determination was based upon the reasoning that the more specific statute controlled. TMA drafted the original peer review bill and supported the resulting medical peer review language, which was passed in 1987 to adopt the protections in the federal Health Care Quality Improvement Act of 1986 and to shore up the Texas peer review protections that had been eroded by the Texas appellate courts. The Texas Hospital Association also supported the bill. The 1987 Texas law protections prohibiting discovery of peer review minutes and proceedings had two exceptions: an anticompetitive action and a civil rights proceeding. These provisions remain unchanged today.

At the meeting of the PPAC, both sides requested that TMA file a brief in support of their respective positions. The defendants argued that the anticompetitive action exception did not fit this case because it did not reach the threshold of an antitrust action, as only one physician was
allegedly discriminated against. The market for patients to choose a heart surgeon allegedly was not affected. Also, the defendants argued that the Texas Health and Safety Code medical committee provision keeping medical committee records and proceedings confidential should apply. Neither an anticompetitive nor a civil rights exception is included in that medical committee provision.

On June 19, 2014, TMA filed an amicus curiae brief in the case. TMA’s brief argued that plain language of the statute provides an exception to the confidentiality and privilege associated with peer review when a judge makes a preliminary finding that a proceeding or record of a medical peer review committee is relevant to an anticompetitive, not antitrust, action.

TMA’s brief also argued that the legislative history of, and public policy behind, this exception indicates that the facts alleged in this case are precisely those meant to be addressed by this statute. The record reflects that the trial judge in this case made the required preliminary finding and ordered production of some of the proceedings and records of the medical peer review committees involved, as required by the statute. The record also indicates that the judge was presented evidence outside of the contested peer review records and proceedings, which provided an extra check to the potential overuse of the exception. Therefore, there is no need to exercise court’s jurisdiction in this case and grant the petition.

On June 27, 2014, the court requested briefing on the merits. MH’s brief was filed on Aug. 27, 2014. Dr. Gomez’s brief was filed on Oct. 27, 2014. MH’s reply brief was filed on Nov. 26, 2014

Oral arguments were made on Feb. 25, 2015. TMA was in attendance. Dr. Gomez filed a post-submission brief on Mar. 10, 2015. MH filed a response to that brief on Mar. 20, 2015.

On May 26, 2015, the court issued an opinion. The court adopted the logic TMA put forward in its amicus brief and held that the anticompetitive action exception is broader than an antitrust claim such that an individual physician can pursue a claim against a hospital.

Interestingly, the court went on to discuss how confidentiality would work if a committee was both a “medical committee” and a “medical peer review committee”: “records and proceedings of a dual medical committee and medical peer review committee do not enjoy any greater confidentiality under §161.032(a) than they do under §160.007(b).” Therefore, doctors in future lawsuits of this nature will have the benefit of the broader anticompetitive action claim no matter which peer review confidentiality section the hospital claims applies.

A jury trial in the case was held from Mar. 17, 2017, through Mar. 27, 2017. The jury deliberated for two days and delivered its verdict on Mar. 29, 2017. The jury found that MH defamed Dr. Gomez and awarded Dr. Gomez $6.4 million, including $1 million in punitive damages. In May 2017, the state district court judge, who presided over the trial, affirmed the jury verdict by entering an order in Dr. Gomez’s favor that awarded more than $6 million in damages. A notice of appeal was filed on Aug. 10, 2017. A post-judgment mediation was unsuccessful.

After appeal to the First Court of Appeals, TMA submitted its amicus brief on October 23, 2018. In the brief, TMA noted practical concerns on health care facilities abusing qualified privilege to engage in anticompetitive and retaliatory behavior against physicians. TMA further pointed out to the appellate court that MH’s defamatory statements are not privileged or subject to any qualified privilege. Finally, the brief reiterated the point that the jury found evidence of actual malice, which defeats any privilege defense. The parties presented oral argument on Oct. 30, 2018.
After oral argument and all briefs were submitted, the First Court of Appeals issued its opinion on Aug. 15, 2019, in favor of Dr. Gomez, upholding the trial court’s judgment and finding no reversible error. On Dec. 2, 2019, MH filed a petition for review with the Texas Supreme Court.

2. **Noel Dean v. Darshan Phatak, MD**

(Regarding whether a physician who met the standard of care, but later changed his autopsy finding, can be held liable for the earlier finding)

This is a civil rights case against a physician practicing as a medical examiner in Harris County. Darshan Phatak, MD, is employed as an assistant medical examiner with the Harris County Institute of Forensic Sciences, which contracts to provide autopsy services in Harris County. Dr. Phatak performed the autopsy of a certain deceased woman and determined the cause of death to be “homicide” by gunshot wound. Following this determination, the deceased’s husband was arrested and tried for murder. The accused’s murder trial ended in a hung jury. After the trial, the chief deputy medical examiner, in reevaluating the evidence, performed an additional test in relation to the decedent and the gun wound – a gun-to-wound examination – and as a result, the medical examiner’s office changed the cause of death determination in the autopsy report from “homicide” to “undetermined.” Because of this change, the prosecutor dropped the charges, and the accused filed a civil rights suit in federal court against, among others, Dr. Phatak in his individual capacity.

The basis for the lawsuit is that, pursuant to the fourth, sixth, and 14th amendments to the U.S. Constitution, the accused had a right to be free from an intentionally falsified autopsy report, and the accused is asserting just that: that Dr. Phatak intentionally falsified the autopsy report. This assertion is based on the alleged fact that Dr. Phatak allowed a detective to influence the autopsy determination; that he failed to fully consider that the deceased had suicidal thoughts; and that he failed to perform a gun-to-wound comparison. Dr. Phatak has maintained he did not conspire with detectives to falsify the report and has also maintained that nothing in his examination was extraordinary or unusual – he claims he followed protocol.

The federal district court has refused to recognize the defense of qualified immunity to which Dr. Phatak, a governmental employee, should be entitled. In an order on a motion for summary judgment, the court found that, viewed in the light most favorable to the plaintiff, a reasonable juror could conclude that a “reasonable medical examiner would have understood that intentional fabrication of evidence violated a defendant’s right to be free of a wrongful prosecution that caused his pretrial arrest and other deprivations of liberty.” The trouble is that the court’s articulation of the clearly established right – to be free from intentional fabrication of evidence – is far too broad and thus interferes with Dr. Phatak’s right to exercise his medical judgment. It is undisputed that Dr. Phatak followed the protocols of the medical examiner office. The fact that Dr. Phatak relied on reasonable medical judgment and medical standards offered no protection, according to the court. Essentially, the court imposed a higher “standard of care” with its holding.

TMA gathered the support of the American Medical Association, the National Association of Medical Examiners, the College of American Pathologists, and the Texas Society of Pathologists, and filed a joint amicus brief to the U.S. Fifth Circuit Court of Appeals. The brief discussed the importance of medical examiners and that, because of their important function, they should not be held to a higher standard of care than what is ordinarily required of physicians.

On Dec. 6, 2017, the Fifth Circuit held oral arguments. On Dec. 20, 2018, the Fifth Circuit issued a decision vacating the district court’s denial of qualified immunity based on a procedural technicality.
Specifically, the Fifth Circuit determined that the district court’s order and analysis cites allegations in the pleadings (written statements) but did not reference actual “evidence” in the record. Without identification of summary judgment evidence, the Fifth Circuit determined it could not make a reasoned decision to affirm or deny qualified immunity. Accordingly, the Fifth Circuit remanded the case to the district court to reconsider the motion and instructed the district court to specifically reference summary judgment evidence in its order. As of January 2020, no new decisions have been issued by the district court or the Fifth Circuit.

3. Ruben Aleman, MD v. Texas Medical Board
(Regarding the Texas Medical Board’s sanction authority)

On Feb. 26, 2019, TMA filed an amicus brief with the Texas Supreme Court in support of Ruben Aleman, MD, urging reversal of a trial court order affirming the Texas Medical Board’s (TMB’s) assessment of an administrative penalty in the amount of $3,000 for Dr. Aleman’s alleged violation of the Texas Medical Practice Act.

Specifically, TMB alleged Dr. Aleman failed to comply with Texas Health and Safety Code §193.005(h), which requires an attending physician for a deceased person completing medical certification on a death certificate to submit information and attest to its validity electronically using the Texas Electronic Death Registry (TEDR). On July 29, 2011, a mortician presented Dr. Aleman with a physical, paper certificate of death for a deceased patient and requested that Dr. Aleman sign the medical certification portion of the certificate. Dr. Aleman signed the paper certificate with a pen. By signing the paper certificate of death with a pen, Dr. Aleman was unable to sign the certificate of death electronically using the TEDR. The board initiated a formal complaint with the State Office of Administrative Hearings (SOAH) against Dr. Aleman for allegedly violating the Medical Practice Act by purportedly failing to comply with §193.005(h) of the Health and Safety Code’s requirement that the death certificate be signed electronically.

In response, Dr. Aleman argued that:

1. Failure to submit the electronic signature was not “unprofessional conduct” as intended under the Medical Practice Act;
2. The alleged violation of Health & Safety Code §193.005(h) is not related to the practice of medicine for the purpose of TMB’s enforcement jurisdiction but just an unrelated administrative violation;
3. The sanctions the board imposed were excessive and arbitrary; and were assessed in retaliation for Dr. Aleman not accepting an agreed order relating to the alleged violation, and
4. SOAH lacked jurisdiction over the formal complaint because of the board’s failure to comply with a certain statutory notice requirement.

The trial court affirmed TMB’s order, except to the extent that the board’s order waived a statutory notice requirement (the trial court held the failure to meet the requirement was procedural and not jurisdictional). On May 18, 2016, Dr. Aleman appealed to the Texas Third Court of Appeals, which affirmed the trial court’s judgment. On May 15, 2017, Dr. Aleman filed a petition for review with the Texas Supreme Court. Oral arguments were heard on Jan. 22, 2019.

TMA filed an amicus brief on Feb. 26, 2019, focusing on whether TMB abused its disciplinary powers by imposing sanctions higher than the lower-end sanctions applicable to first-time violators and in excess of the standard sanctions mandated by the board’s own rules. Specifically, the board’s rules, 22 Tex. Admin. Code, §190.14, state:
The standard sanctions outlined in paragraph (9) of this section provide a range from “Low Sanction” to “High Sanction” based upon any aggravating or mitigating factors that are found to apply in a particular case. The board may impose more restrictive sanctions when there are multiple violations … or … any aggravating factors. … The minimum sanctions … are applicable to first time violators. …The following standard sanctions shall apply to violations of the Act.

The following shows the low- and high-end sanctions for failure to electronically sign a death certificate:

<table>
<thead>
<tr>
<th>Sanctions</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to electronically sign a death</td>
<td>Remedial plan: 4 hours of ethics/risk management; $500 administration fee</td>
<td>Agreed order: 8 hours of risk management; 4-8 hours of medical ethics; $2,000 administrative penalty; take the JP exam</td>
</tr>
<tr>
<td>certificate under Health and Safety Code</td>
<td></td>
<td></td>
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<tr>
<td>Chapter 193</td>
<td></td>
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</tr>
</tbody>
</table>

Instead of issuing a low-end sanction, which is “applicable” to first-time violators, TMB issued the following sanctions: (1) pay a $3,000 administrative penalty; (2) take and pass the Medical Jurisprudence Exam; (3) complete 16 hours of continuing education (with at least eight hours each in the areas of ethics and risk management); and (4) distribute copies of the board’s final order to health care entities where Dr. Aleman has privileges. Notably, this is higher than the maximum sanctions identified for this type of alleged violation – no aggravating factors were identified in the board’s final order or SOAH’s findings of fact and conclusions of law. During oral argument, TMB argued that the low-end sanction was only applicable to informal settlement discussions; however, this is not what the plain language of §190.14 states.

On May 24, 2019, the Supreme Court of Texas issued its opinion affirming the court of appeals’ judgment in part, reversing it in part, and rendering judgment vacating the sanctions imposed against Dr. Aleman. Justice Lehrmann delivered the majority opinion while Justices Blacklock and Brown concurred, and Justice Boyd filed a dissenting opinion (which would have affirmed the TMB disciplinary decision). Specifically, the majority held that a physician’s act of completing the medical certification for a death certificate manually rather than by using the approved electronic process does not constitute a “prohibited practice” under §164.052 of the Medical Practice Act, and §164.051 in turn does not authorize the board to take disciplinary action against a person for such conduct. In other words, requiring electronic certification may address inefficiencies in the process, but it in no way addresses fraud or deception, according the Supreme Court. In reversing the sanctions order, the Supreme Court noted that it failed to see how disciplining a physician for failing to comply with the electronic certification requirement comports with the express policy behind the Medical Practices Act “to protect the public interest” by “regulat[ing] the granting of [the] privilege [of practicing medicine] and its subsequent use and control.” (Tex. Occ. Code §151.003).

4. **Evelyn Kelly, Individually and on Behalf of the Estate of David Christopher Dunn, v. Houston Methodist Hospital**

(Regarding necessity and constitutionality of the Texas Advance Directives Act)

On Oct. 12, 2015, Aditya Uppalapati, MD, admitted David Christopher Dunn to Houston Methodist with diagnoses of, among other things, end-stage liver disease, the presence of a malignant pancreatic neoplasm with suspected metastasis to the liver, complications of gastric outlet obstruction secondary to his pancreatic mass, hepatic encephalopathy, acute renal failure, sepsis, acute respiratory failure, multi-organ failure, and gastrointestinal bleed.
Shortly after Mr. Dunn’s admission, Dr. Uppalapati advised his family that his condition was irreversible and progressively terminal. Mr. Dunn’s treating physicians concluded he was suffering from the treatment necessary to sustain his life, and with no expectation for improvement, life-sustaining treatment was medically inappropriate for him. As a result, Mr. Dunn’s attending physicians and patient care team recommended to his divorced parents that aggressive treatment measures be withdrawn and that only palliative or comfort care be provided. The parents disagreed on the recommendation and plan, and since Mr. Dunn did not have an advance directive in place, was not married, and had no children, his parents became his surrogate decisionmakers.

On Oct. 28, 2015, the matter was referred to the Houston Methodist Biomedical Ethics Committee for consultation, in accordance with the procedures specified by Health & Safety Code §66.046. Over the next days, hospital representatives exhausted efforts to transfer Mr. Dunn to another facility. Testimony demonstrated that Houston Methodist representatives contacted 66 separate facilities requesting transfer. Potential transfer facilities were provided with the patient’s demographic information and recent clinical information so a transfer determination could be made. All 66 facilities declined the transfer.

On Nov. 20, 2015, attorneys purportedly acting on behalf of Mr. Dunn filed a state court suit in Harris County District Court seeking injunctive relief (despite the fact that Mr. Dunn had been determined mentally incapacitated since his admission to the hospital). It should be noted that former State Sen. Joe Nixon, one of the primary sponsors of 2003’s House Bill 4 (relating to professional liability insurance reform), was representing the plaintiff. In the filing, counsel sought a temporary restraining order preserving the status quo of the life-sustaining treatment being provided to Mr. Dunn while an alternative facility could be located. Additionally, the filing sought a declaration that Houston Methodist’s implementation of §166.046 (the statute regarding procedure if not effectuating a directive or treatment decision) violated the due process rights afforded to Mr. Dunn by the both the Texas and the United States constitutions. On the same day and without the necessity of a hearing, Houston Methodist voluntarily agreed to a temporary restraining order preserving the status quo by continuing life-sustaining treatment to Mr. Dunn, and extending the statutory 10-day period by an additional 14 days in order to continue efforts to locate a transfer facility.

The temporary injunction hearing was scheduled for Dec. 3, 2015. Prior to the temporary injunction hearing, Houston Methodist formally appeared in the matter. In its pleading, Houston Methodist requested an abatement of the matter, which necessarily acted as a prolonged extension of Houston Methodist’s agreed provision of life-sustaining treatment, while guardianship issues of an incapacitated Mr. Dunn, the current plaintiff, could be resolved through the probate court system. The court agreed with the assessment of Mr. Dunn’s incapacity and executed an order of abatement, the form of which was agreed to by counsel for all parties. Notably, in the order of abatement, Houston Methodist voluntarily agreed to preserve the status quo by continuing all life-sustaining treatment.

On Dec. 23, 2015, Mr. Dunn succumbed to his terminal illnesses and passed away. It is undisputed that from the day of his admission until the time of his death, Houston Methodist provided continuous life-sustaining treatment to Mr. Dunn. In fact, following his death, Mr. Dunn’s mother wrote, “We would like to express our deepest gratitude to the nurses who have cared for Chris and for Methodist Hospital for continuing life sustaining treatment of Chris until his natural death.”
On Jan. 8, 2016, the court lifted the stay and allowed substitution of the parties as Mr. Dunn had passed (allowing Ms. Kelly, Mr. Dunn’s mother, to substitute as the plaintiff). The suit continued and alleged that the statute failed to provide adequate constitutional protections for her son in the process that culminated in the determination by the hospital ethics committee that life-sustaining treatment was medically inappropriate. Specifically, the plaintiff alleges that §166.046 violates procedural due process by (1) failing to provide the patient or the patient’s decisionmaker an opportunity to be heard, (2) failing to provide a reasonable opportunity to prepare for a hearing, (3) failing to provide reasonable notice of the reasons why removal of life-sustaining treatment is to occur, and (4) failure to utilize an impartial tribunal to make the decision to withdraw life-sustaining treatment. The plaintiff also argues that §166.046 violates substantive due process in that it deprives an individual of rights protected under the U.S. Constitution. Among these rights, according to the plaintiff, is the right of the individual to make his or her own life-related medical decisions.

TMA filed an amicus brief in the trial court that provided background information regarding the Texas Advance Directives Act and explained why medical futility laws are necessary to maintain the integrity of the medical profession. The trial court ruled on summary judgment against plaintiff with a conclusion that it lacked jurisdiction over Mr. Dunn’s claims due to his death. On Nov. 7, 2017, the plaintiff appealed to the Court of Appeals in Houston (First District). The court set oral argument for March 19, 2019.

On March 5, 2019, TMA joined in the filing of an amicus brief with the Texas Alliance for Patient Access, Texas Alliance for Life, Texas Catholic Conference of Bishops, Texas Baptist Christian Life Commission, Texans for Life Coalition, Coalition of Texans with Disabilities, Texas Hospital Association, Texas Osteopathic Medical Association, and LeadingAge Texas. The brief, submitted by Wallace Jefferson (former chief justice of the Texas Supreme Court), reiterates the points in the trial court brief, among other that: (1) §166.046 is constitutional; (2) dispute resolution laws are necessary to maintain the integrity of the medical profession; (3) a private physician’s treatment decision does not constitute state action; (4) the medical-futility procedure only rarely contradicts a patient’s wish for further intervention; and (5) while §166.046 gives attending physicians a safe harbor, it does not mandate a specific course of action.

On March 29, 2019, the Court of Appeals issued its decision affirming the trial court’s order dismissing the claims for lack of subject-matter jurisdiction by concluding the case was moot. Justice Julie Countiss wrote that “no action inconsistent with Dunn’s alleged desires regarding his medical treatment was ever taken and he was not actually deprived of any constitutionally-protected right” when Houston Methodist invoked the law. Moreover, because Mr. Dunn had succumbed to his terminal condition, there could no longer be a “risk of mistake or unjustified deprivation of life.”

On June 14, 2019, the plaintiff filed a petition for review with the Texas Supreme Court. The court denied the plaintiff’s Petition on Oct. 4, 2019, and then denied the plaintiff’s motion for rehearing on Dec. 16, 2019.

5. The Pinkerton Law Firm, PLLC v. University Cancer Center, Inc.
(Regarding whether a physician’s debt collection action against a law firm falls under the Texas Citizens Participation Act)

Mark D’Andrea, MD, is a radiation oncologist who practices in Harris County and has privileges at many facilities, including the University Cancer Center (UCC). In connection with a 2010 benzene-exposure lawsuit against BP, the Pinkerton Law Firm entered into a letter of protection (LOP) agreement with UCC to provide certain health care services at UCC for the law firm’s
clients related to the benzene exposure. An LOP is a letter sent to a medical professional by a personal injury lawyer representing a person injured in an incident, such as an auto accident, work injury, or fall. An LOP guarantees payment for medical treatment from a future lawsuit settlement or verdict award.

Pinkerton entered a LOP with UCC to provide health care services for the firm’s clients who had allegedly been exposed to the cancer-causing agent “benzene” during a massive release of toxic chemicals at a BP refinery outside of Houston. The law firm agreed to pay a $40 fee to UCC per client referred for its services and entered into a global LOP for each client for the cost of the services provided. In return, the firm would use the medical records from UCC to support its case against BP.

Ultimately, the suit with BP settled. Pinkerton, however, did not honor the LOP with UCC. In August 2018, UCC filed a lawsuit against the firm for failure to honor the LOP, asserting claims for breach of contract and quantum meruit.

Pinkerton filed a motion to dismiss UCC’s claims under the Texas Citizen’s Participation Act (TCPA), which is an anti-SLAPP statute – “SLAPP” is an acronym for “strategic lawsuit against public participation.” The TCPA provides a mechanism for early dismissal of lawsuits based on a party’s exercise of the right to free speech, right of association, and right to petition the government. The purpose of the TCPA, like other anti-SLAPP statutes, is to honor first amendment constitutional protections, including the right to petition, the right to association, and the right of free speech, while also protecting the rights of a person to file a meritorious lawsuit. If the TCPA applies (which the firm argues it does), the plaintiff must meet a higher evidentiary threshold to avoid dismissal of his case.

In its motion to dismiss, Pinkerton argued several reasons why the TCPA should apply to UCC’s claims. First, the law firm argued that the LOP involved its right to petition. Specifically, Pinkerton claimed the LOP “pertains to” a judicial proceeding, i.e., the firm’s participation in litigating the BP case. Second, Pinkerton claimed that UCC’s case relates to the firm’s exercise of free speech. Free speech in the context of a TCPA motion to dismiss has been defined to mean “a communication made in connection with a matter of public concern.” A “matter of public concern” has been defined as an “issue related to” a “health and safety concern,” “economic well-being,” or a “service in the marketplace.” Pinkerton argued that UCC’s breach of contract and quantum meruit claims against it – claims that relate to the provision of health care services – relate to matters of public concern, including “health and safety concerns,” “economic well-being” concerns, and “services in the marketplace.”

UCC responded to Pinkerton’s motion to dismiss. Regarding the TCPA claim, UCC argued this is a debt collection matter, which falls within the commercial dispute exemption of the TCPA. Neither UCC providing services under the LOP, nor UCC’s lawsuit, involved protected speech by Pinkerton intended to reach the firm’s clients – instead, it was just a commercial transaction between the parties.

Ultimately, the trial court agreed with UCC, dismissing the law firm’s motion to dismiss. The firm appealed the trial court’s decision.

On June 3, 2019, TMA filed its amicus brief in support of UCC. There has been substantial criticism on the unfair expansion of the TCPA to matters that were not intended to be the subjects of a TCPA motion to dismiss. TMA urged that this case is another example where someone is arguing to improperly expand the TCPA. This would leave physicians vulnerable financially when they accept LOPs from attorneys and provide health care services. Specifically, TMA...
argued that a debt-collection action is not “based” on a “communication” as defined in the TCPA and that the business dispute falls under the commercial speech exemption from the TCPA.

On Aug. 9, 2019, the court informed the parties that it would not hear oral argument, and the case would be submitted before a panel consisting of Justice Lloyd, Justice Goodman, and Justice Landau on Sept. 17, 2019. On Jan. 9, 2020, the Court of Appeals issued a decision in favor of UCC, affirming the lower court decision to deny Pinkerton’s motion to dismiss.

6. **Patients Medical Center v. Facility Insurance Corporation**

   (Regarding which party bears the burden of proof when appealing a workers’ compensation medical fee dispute resolution finding)

   Patients Medical Center provided inpatient surgical services for an injured worker in September 2009. The center was later paid $2,354.75 by Facility Insurance Corporation, an amount below the rate prescribed by the Texas Department of Insurance, Division of Workers’ Compensation (DWC), Outpatient Hospital Fee Guideline. Facility Insurance contended an informal network contract was applicable (*an alternative manner to determine fees if appropriately agreed to by the parties – here it was not*), and its claim adjustor applied network discounts. Patients Medical Center determined no informal network contract was applicable to the underlying claim, and it timely filed a request for medical fee dispute resolution with DWC to determine proper payment.

   On March 13, 2013, DWC issued its medical fee dispute resolution findings and decision. DWC found Facility Insurance had failed to provide the required notice of its intent to access an informal or involuntary network. It accordingly reviewed the claim and determined Patients Medical Center was entitled, under the DWC Outpatient Hospital Fee Guideline, to an additional payment of $20,495.78. Dissatisfied with this decision, Facility Insurance demanded a contested-case hearing at the State Office of Administrative Hearings (SOAH) to challenge the DWC order. The SOAH judge found that Facility Insurance had the burden of proof in the contested case, and after a hearing, the judge found that Facility Insurance failed to meet its burden of proof and affirmed the DWC order.

   Facility Insurance appealed to Travis County District Court. The court found the SOAH judge’s decision and order was supported by substantial evidence and affirmed the SOAH decision, consequently affirming the DWC order. Facility Insurance appealed again to the Third Court of Appeals in Austin.

   The Third Court of Appeals reversed the trial court’s decision and remanded the case back to the trial court for another hearing on the matter, ruling that the SOAH judge should have placed the burden of proof on the Patients Medical Center. The medical center ultimately filed a petition for review, which was granted, bringing this matter before the Texas Supreme Court.

   On Nov. 6, 2019, TMA filed its amicus brief in support of Patients Medical Center, making two arguments. First, the Third Court failed to show a justification for overturning the SOAH judge’s decision and order was supported by substantial evidence and affirmed the SOAH decision, consequently affirming the DWC order. Facility Insurance appealed again to the Third Court of Appeals in Austin.

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As of January 2020, the Texas Supreme Court had not issued a decision on this case.

7. **Lewis v. Cook Children’s Medical Center**  
(Regarding the Texas Advance Directive Act)

Ms. Lewis is the mother of a 10-month old girl who was born premature and suffers from a host of medical conditions, including a rare heart defect known as Ebstein’s anomaly. Among the many complications caused by her conditions, the most significant is that she cannot properly get oxygen from her lungs into her bloodstream. She has spent her entire life hospitalized in Cook Children’s cardiac intensive care unit. She requires full mechanical ventilator support to breathe, as well as constant sedation to ensure she does not interfere with the support. Cook Children’s doctors have concluded she has no hope of recovery and no possible surgical interventions would improve her condition or ease her suffering.

Cook Children’s has informed Ms. Lewis of its physicians’ conclusion that continued medical intervention is inflicting pain on the child without any corresponding therapeutic benefit. Ms. Lewis has stated that she disagrees and believes the girl will recover. Cook Children’s has contacted dozens of doctors and hospitals across the country, and none have disagreed with Cook Children’s conclusion or been willing to accept the girl as a patient.

Pursuant to the Texas Advance Directives Act, Cook Children’s submitted the issue to its ethics committee, which concluded there was no medical benefit to continuing treatment. To alleviate the girl’s suffering, it would be in her best interest to cease medical intervention and allow her to die naturally.

Ms. Lewis was informed of the ethics committee decision on Oct. 30, 2019, and the girl was scheduled to be removed from the ventilator on Nov. 10, 2019. On that date, a temporary restraining order was issued to delay the removal.

On Dec. 11, 2019, TMA with the Texas Alliance for Life, Texas Catholic Conference of Bishops, Texans for Life Coalition, Coalition of Texans with Disabilities, Texas Alliance for Patient Access, Texas Osteopathic Medical Association, Texas Hospital Association, LeadingAge, and Tarrant County Medical Society, filed an amicus brief in support of the Texas Advance Directives Act, setting forth how it provides families and physicians with a framework for resolving difficult end-of-life decisions.

On Jan. 2, 2020, Ms. Lewis’ request for an injunction was denied in Tarrant County district court. Ms. Lewis appealed to the Second Court of Appeals in Fort Worth. On Jan. 3, 2020, the court ordered Cook Children’s to not withdraw treatment during the pendency of the appeal. The court ordered Ms. Lewis to file her brief by Jan. 16, 2020, and for Cook Children’s to file its response by Jan. 27, 2020.

8. **Community Health Choice v. Dr. Courtney Phillips**  
(Regarding whether HHSC must award a managed care contract to an eligible health plan owned and operated by a hospital district)

On Oct. 1, 2018, the Texas Health and Human Services Commission (HHSC) issued a request for proposal for the STAR+PLUS contract, for 13 service areas. STAR+PLUS is a Medicaid managed care program for individuals with disabilities or are age 65 or older. Community Health Choice submitted proposals for the Harris and Jefferson service areas; Community First Health submitted a proposal for the Bexar service area. On Oct. 29, 2019, HHSC announced its intent to
award contracts for the Medicaid STAR+PLUS program to seven managed care organizations (MCOs), which included neither Community Health Choice nor Community First Health.

In November 2019, Community Health Choice filed a lawsuit in Travis County District Court, alleging HHSC violated the requirement of Tex. Gov’t Code §533.004(a) that a managed care contract be with an MCO owned and operated by a hospital district. As Community Health Choice was the only MCO for the Harris and Jefferson service areas owned and operated by a hospital district, it should therefore have been awarded a contract. Community First Health subsequently intervened in the lawsuit, making a similar argument for a Bexar service area contract.

HHSC responded that Community Health Choice’s claims are barred by sovereign immunity and are also mooted by HHSC signing the STAR+PLUS contracts with the seven awarded MCOs. HHSC also asserted that in its evaluation of the submitted proposals, Community Health Choice’s proposals were ranked last for both the Harris and Jefferson service areas; they also did not comply with the terms and conditions that MCO are subject to under §533.004(b).

On Jan. 2, 2020, TMA joined with the Teaching Hospitals of Texas on an amicus brief in support of the hospital district health plans. The brief explains the role of hospital districts in treating a disproportionate share of uninsured patients and the legislative history of the statute at issue – specifically, that the legislative intent behind §533.004 was to ensure that these safety-net providers had access to the financial support of a managed-care contract.

As of January 2020, the Travis County District Court had not reached a decision.

D. COMMENTS TO ADMINISTRATIVE AGENCIES


In April 2018, the Health and Human Services Commission released and solicited comments on draft rules intended to implement Senate Bill 1107 (2017 legislative session), regarding telemedicine. Like the Medicaid benefits policy on telemedicine published one month prior, these draft rules made many changes to reflect the intended expansion under SB 1107. Some parts of the draft rules, however, did not accurately follow the provisions of the bill.

TMA, along with the Texas Association of Obstetricians and Gynecologists, Texas Academy of Family Physicians, and Texas Pediatric Society, commented that the rules should adhere to the bill’s provisions. TMA’s comments reiterated that Texas statute requires HHSC to pay for telemedicine under Medicaid for services that otherwise satisfy applicable requirements. The comments also stated there should be greater clarity regarding patient site restrictions and that notice to a patient’s primary care provider is conditional upon that patient’s consent.

As of January 2020, HHSC had not officially proposed these rules. TMA staff will continue to monitor the progress of these rules.

2. Texas Office of Inspector General Solicitation for Feedback on OIG’s Determination of Administrative Actions or Sanctions

In May 2018, the Texas Office of the Inspector General (OIG) published a solicitation for feedback regarding its current rules relating to the criteria it uses to determine administrative sanctions or actions to impose for provider violations, as found in 1 Tex. Admin. Code.
§371.1603(f)-(h). In June 2018, TMA provided recommendations for improvements to those
considerations. Generally, TMA’s comments focused on making the process fairer and ensuring
all relevant considerations would be made in imposing sanctions against a provider.

TMA’s comments included clarifying already listed considerations that were ambiguous,
following statutory language, adding consideration of mitigating factors, and limiting
consideration of aggravating factors in a way that ensures only relevant aggravating factors are
considered.

In 2019, OIG proposed draft rules relating to administrative actions and sanctions, including
criteria OIG uses to determine administrative actions or sanctions to impose for alleged provider
violations. TMA provided a comment letter in response and met with OIG in August 2019. OIG
was favorable to many of TMA’s comments and suggestions. As of August 2019, formal
proposed amendments have been published relating to this rule. TMA staff is monitoring any
further development of what may be amendments to these rules. See No. 25 below for further
information on TMA’s comment letter to OIG following its 2019 proposed draft rules.

3. Texas Department of Licensing and Regulation Proposed Rules Relating to the Regulation of
Lay Midwives (16 Tex. Admin. Code §§115.1, 115.70, 115.100, 115.111-115.115, 115.117-
115.119; §115.90)

In September 2018, the Texas Department of Licensing and Regulation (TDLR) proposed rule
changes relating to the department’s regulation of lay midwives. Among other things, the
proposed rules altered definitions relating to a midwife’s collaboration and consultation with
other health care professionals and amended requirements relating to the transfer of care of a
patient from a midwife to a physician or another professional.

TMA in conjunction with District XI of the American Congress of Obstetricians and
Gynecologists and the Texas Association of Obstetricians and Gynecologists responded with
comments in opposition to certain parts of the proposed rule amendments. TMA’s comments
encouraged the rules be further amended to clarify the meaning of certain terms, to be internally
consistent, and to require transfer or referral to Texas-licensed physicians (as opposed to a
physician licensed in any state). TMA further encouraged TDLR to incorporate references to the
Global Practice Standards for Midwifery, to require transfer to physicians under certain
circumstances, and to require midwives to do more to record their care for patients and to transfer
those records when a physician assumes responsibility for the patient.

In April 2019, TDLR adopted amendments to the rules. TDLR agreed with some of the changes
and disagreed with others.

4. Texas Health and Human Services Commission Proposed Rules Concerning Medicaid
Managed Care Organization Access Standards (1 Tex. Admin. Code §§353.2, 353.411,
353.423)

The Health and Human Services Commission proposed rules in October 2018 regarding Medicaid
managed care. These proposed rules touched on network adequacy, access and expedited
credentialing standards for managed care organizations participating in the Medicaid program.

TMA joined the Texas Pediatric Society, Texas Academy of Family Physicians, and Texas
Association of Obstetricians and Gynecologists in commenting in response to these rules. TMA’s
comments encouraged HHSC to amend the proposed rules to establish clear and well-defined
standards and to create in the rules a comprehensive body of standards by incorporating standards
articulated or developed in other documents. TMA further asserted that the rules as proposed failed to meet the agency’s own recommendations for and stakeholder expectations about clear, well-defined network adequacy standards because the rules provided only ambiguous references to standards or criteria for compliance.

In April 2019, HHSC adopted the final rules. HHSC accepted most of TMA’s comments regarding clarifications of the proposed rules’ confusing language but declined to amend the rules to set forth clear and specific requirements for MCO networks.


In October 2018, the Texas Department of Insurance (TDI) published proposed changes to rules relating to the notification requirement for HMO terminations. Specifically, the proposed change would strike the minimum 90-day notice requirement for HMO terminations, as well as other language that provides important regulatory guidance on the implementation of certain provisions of the Texas Insurance Code.

The Texas Medical Association, Texas Orthopaedic Association, Texas Pediatric Society, Texas Society of Anesthesiologists, Texas Association of Obstetricians and Gynecologists, Texas Society of Pathologists, Texas Ophthalmological Association, Texas Radiological Society, and Texas Ambulatory Surgery Center Society responded with joint comments in strong opposition to the proposed changes. TMA’s comments encouraged TDI to maintain the minimum 90-day notice requirement for a variety of reasons, including that the rule is necessary to implement state statute and that it has been a longstanding part of TDI regulations.

In May 2019, TDI withdrew its proposed rules.


In November 2018, the Health and Human Services Commission proposed rule changes relating to supplemental payments to eligible teaching hospitals owned and operated by nonstate governmental entities. HHSC further solicited comment regarding expanding funding to hospitals owned by nongovernmental entities.

TMA commented to express support of adequate funding for graduate medical education (GME) and expanding the state’s GME capacity. TMA expressed the need (1) to increase the state’s physician workforce concomitant with population growth through the training of residents in the state and (2) for an adequate number of GME positions to ensure the increasing number of Texas medical school graduates have a reasonable opportunity to remain in the state for training. TMA thus supported HHSC’s expanded supplemental payments and further expressed support for possible expansion of payment to nongovernmental hospitals.

As of Jan. 25, 2019, HHSC finalized its proposed rules and expanded funding to nonstate government-owned and operated teaching hospitals. Subsequently, HHSC proposed expanding funding to hospitals owned by nongovernmental entities in the May 10, 2019, *Texas Registrar* (44 Tex. Reg. 2323-2422). TMA submitted comments in support of the expansion. HHSC adopted the proposed amendment expanding funding to hospitals owned by nongovernmental entities on July 19, 2019 (44 Tex. Reg. 3625-3626).

In December 2018, the Texas Medical Board proposed rules relating to its regulation of certified medical radiological technicians and noncertified technicians (NCTs). The proposed changes made more significant changes to the regulation of noncertified technicians.

TMA’s comments in response to these proposed rules focused on regulations relating to NCTs. TMA explained that a physician’s use of NCTs is an effective way to meeting high clinical demands while managing costs of providing services to patients, and thus encouraged TMB to simply its regulation of and training requirements for NCTs. This included eliminating the requirement in the proposed rules for NCTs to pass the jurisprudence exam and ensuring the application and approval procedures are easy, transparent, and efficient.

In April 2019, TMB adopted the proposed rules. The board rejected TMA’s suggestions.

8. **TMA Comments to the Texas Medical Board Regarding the Corporate Practice of Medicine and Unauthorized Practice of Medicine**

During the Texas Medical Board’s public comment period associated with its December 2018 full board meeting, TMA submitted written comments regarding violations related to the prohibition on the corporate practice of medicine and the unauthorized practice of medicine. Specifically, TMA wrote to encourage and facilitate discussion regarding the ability of a physician to submit complaints relating to a nonprofit health corporation’s (NPHC’s) violation of certain laws prohibiting interference with a physician’s professional judgment. TMA noted that although there is a complaint form for licensees, there appears to be no avenue for a complaint against an entity like an NPHC. TMA further encouraged TMB to clarify on TMB’s website and complaint form that the board has cease-and-desist authority to enforce unauthorized practice of medicine.

As of January 2020, TMB had not responded to TMA’s comments. During the 2019 legislative session, TMA supported successful legislation (House Bill 1532) to require the changes urged in TMA’s earlier letter. As of January 2020, TMB had not yet taken steps to implement the legislation. On the TMB website, the complaint form only contemplates a complaint about a physician. Also, TMB has neither proposed nor adopted rules on this subject.


The Health and Human Services Commission in December 2018 proposed rule changes that would serve to inform stakeholders and Laboratory Services Section (LSS) customers that future changes to the public fee schedule would be posted on the LSS website. In response to these proposed changes, TMA submitted comments in support of the intent to increase transparency of fee changes. TMA further recommended that the department provide automatic email notification of changes to the fee schedule through an email subscription management system. TMA recommended that these automatic notices announce of final and adopted changes as well as the proposed changes. TMA asserted this procedure would more properly effectuate the department’s goals.

The commission adopted its amended rules on April 26, 2019, without incorporating TMA’s recommendations. The rules became effective May 2, 2019.

10. **Joint Comments to Health and Human Services Commission Relating to Medicaid Reimbursement for Telemedicine Medical Services**
In January 2019, TMA and the Texas Association of Health Plans, Texas Hospital Association, Texas Association of Community Health Plans, and Texas Pediatric Society submitted joint comments to HHSC to encourage the commission to update its billing policies relating to telemedicine.

The joint comments grew out of a series of summit meeting among the organizations to identify ways to improve the Medicaid program. TMA and the other organizations encouraged HHSC to bring its telemedicine payment policies in line with state law by allowing payment for all services that could be provided through telemedicine. HHSC had told TMA staff it was reviewing each service one at a time to examine its compatibility with telemedicine. TMA encouraged HHSC instead to identify only those codes that could not be compatible with telemedicine to avoid stifling the increased access to services that telemedicine could afford.

During the 2019 legislative session, TMA advocacy resulted in new legislation directing HHSC to expand the number of telemedicine medical services for which Medicaid fee-for-service and Medicaid MCOs will be able to pay. Other reforms included removing burdensome and unnecessary administrative prerequisites for Medicaid payment of telemedicine medical services. As of January 2020, HHSC had not proposed rules to implement this legislation.


In January 2019, the Texas Medical Board proposed rules relating to a physician’s delegation of authority. In the first set of changes, TMB proposed rules that would impose a reporting requirement on a physician who delegates an act to an individual who is otherwise unregulated (i.e., who does not have an occupational certification or license issued by a state agency). TMA expressed strong opposition in response to these proposed rules on the basis that they are not in compliance with statutory authority, leave many questions unanswered, lack an adequate framework, and may have unintentional consequences.

TMA explained in its comments that compliance with the rule proposal would be extremely difficult because it was unclear exactly what TMB expected these physicians to do. The proposed rules state only that a physician delegating an act to these unregulated professionals has a responsibility to “report” the professionals. The rules do state that the reporting obligation would relate to discipline or termination of the professional, but it is not clear whether this is the only thing to be reported, nor is it clear what type of discipline should be reported. TMA further explained that because the proposed rules would impose such a significant burden, it would have the consequence of either discouraging discipline of these professionals, or discouraging the delegation in the first place. TMA encouraged TMB to withdraw the proposed rules and hold a stakeholders meeting.

The proposed rules also related to delegation of radiological procedures to midlevel providers. Here again, the intent of TMB’s proposed rules was not clear, and TMA commented to encourage TMB to hold a stakeholders meeting to ensure the proposed rules would not disrupt collaborative team-based practice.

As of March 2019, TMB had not finalized these proposed rules. Prior to the submission of TMA’s comments, TMB did notify TMA that it would hold a stakeholders meeting on the second set of rules relating to delegation of radiological procedures. The board held a stakeholders meeting on June 4, 2019, after which it republished the rules for comments. TMA submitted another comment letter in response on Jun. 10, 2019. In response to TMA’s letter and other feedback, the board withdrew the proposed rules in August 2019.
TMB held another stakeholder meeting on Sept. 20, 2019, and formal proposed rules were published on Nov. 8, 2011. TMA responded with a comment letter in December 2019. TMA’s comments noted several concerns with the proposed rules. Among these are that the rules are unnecessary in light of existing delegation rules, would increase physician liability, would add to existing administrative burdens, and are confusing in their language regarding levels of training and scope of practice. As of January 2020, TMB had not adopted these rules.

12. Texas Department of Insurance Proposed Rules Relating to Utilization Review

In January 2019, the Texas Department of Insurance proposed rules concerning notice of determinations made in utilization review and written procedures for appeals of adverse determinations by utilization review agents. Specifically, the rules would require expedited appeals for denials of prescription drugs or intravenous infusions for which an enrollee is receiving benefits under the health insurance policy, and for adverse determinations of a step therapy protocol exception request under Ins. Code §1369.0546.

TMA commented to express strong support for the amendments, noting that the rule changes would be in line with recently enacted legislation. TMA stated that the proposed amendment would aid the regulated community and enrollees in understanding statutory requirements for expedited appeals, thereby increasing the value of important consumer protections in law.

On July 26, 2019, TDI adopted the rules without substantive amendment.


The Texas Board of Chiropractic Examiners (TBCE) proposed rule amendments on March 8, 2019, that would change the services for which a chiropractor could advertise and would clarify requirements for a chiropractor’s obtaining an acupuncture permit. The rule changes would remove from rule a reference to the statute that defines a chiropractor’s scope of practice. TMA submitted comments in opposition to the proposed rule amendments. In those comments, TMA argued that the reference to the underlying statute helps ensure chiropractors’ advertised services are within the chiropractic scope of practice, and that removing that reference would result in an express authorization to allow misleading advertising. “In other words,” TMA argued, “a chiropractor would be able to advertise claims for chiropractic services to treat ailments or injuries that the chiropractor has no statutory authority to treat.”

TMA also reiterated its opposition to rule amendments relating to acupuncture on the grounds that TBCE has no statutory authorization to permit its licensees to perform acupuncture.

TBCE adopted its rules without changes on May 31, 2019.


In March 2019, the Department of State Health Services (DSHS) published draft rules that would address the prescription and use of epinephrine auto-injectors in institutions of higher education. Similar rules were already in existence relating to epinephrine auto-injectors in school districts and open-enrollment charter schools. The underlying statutes for the prescription and use of epinephrine auto-injectors in institutions of higher education and school districts are very similar but contained one pertinent distinction with respect to who could issue the prescription. While the
underlying statute permits health professionals other than physicians to issue prescriptions for epinephrine auto-injectors to school districts and open-enrollment charter schools (as long as they have been delegated prescriptive authority under Chapter 157, Occupations Code), the underlying legislation applicable to public institutions of higher education (Senate Bill 1367, 2017 legislative session) requires that these entities get prescriptions for epinephrine auto-injectors from only physicians.

In its draft rules, DSHS failed to note this distinction. TMA submitted brief comments to encourage the department to ensure its rules were in accordance with applicable state law. The draft rules were never published as official proposed rules.

During the 2019 legislative session, the legislature passed House Bill 4260, allowing a physician, or an individual with delegated prescriptive authority, to prescribe to a private or independent institution of higher education. On Nov. 29, 2019, DSHS published proposed rules to implement SB 1367 and HB 4260. In January 2020, TMA submitted comments proposing a clarification to reflect the respective prescriptive authority under SB 1367 and HB 4260.

As of January 2020, DSHS had not published adopted rules.


In April 2019, the Texas Medical Board proposed rules that would provide two methods for an out-of-state physician to be approved to practice in the event of a disaster. One method is hospital-to-hospital credentialing, which will not require the physician to apply for and obtain a license. This method will allow qualified out-of-state physicians to come to Texas and practice medicine at a Texas-licensed hospital at the request of that facility. The second method allows a qualified out-of-state physician to obtain a limited emergency license if the physician has been requested by a Texas sponsoring physician to assist in the disaster or emergency.

TMA commented not only to express the intent and purpose behind the proposed changes but also to encourage TMB to revise the rules to ensure clarity, accuracy, and consistency. TMA further encouraged TMB to hold a stakeholder meeting to solicit additional feedback on the proposal.

In July 2019, TMB published adopted rules for §172.20 and §172.21, accepting some of TMA’s suggestions but characterizing them as nonsubstantive.

16. Texas Medical Association Comments to the Centers for Medicare & Medicaid Services Regarding Due Process Protections in the Conditions of Participation

TMA submitted comments to the Centers for Medicare & Medicaid Services (CMS) to encourage amendment of the Medicare Conditions of Participation to allow for greater due process protections for physicians practicing in hospitals. TMA promoted changes in response to three specific issues: (1) the hospital bearing the burden of proof and persuasion in proving up charges regarding privilege decisions for physicians on the medical staff, (2) physicians having an appeal mechanism to a physician board to challenge adverse privilege recommendations, and (3) a prohibition on waiving due process in any contract.

In June 2019, CMS responded to TMA’s comments directly, stating that similar issues have been raised in the past and that after thorough consideration and examination, it determined there is insufficient evidence that addressing TMA’s issues would directly or adversely impact the health
and safety of patients and the quality of care provided in the hospital. CMS invited TMA to submit any peer-reviewed literature or evidence that would indicate these factors would have a negative impact on health or safety in hospitals, upon which time it would reconsider the issue.

TMA is in the process of providing a reply to CMS.


In June 2019, the Texas Medical Board published draft rules in advance of an enforcement stakeholder meeting held at the board’s offices. Among the draft rules being considered were rules the board previously had proposed formally in January 2019. The rules would impose ambiguous requirements on physicians to report to TMB regarding disciplinary or other actions taken against otherwise unregulated individuals to whom those physicians delegate medical acts (§193.5). In February 2019, TMA submitted comments opposing those rules, and in June, TMA reiterated its opposition in response to the draft version of those rules. TMA’s opposition was unchanged because the draft rules were unchanged from the version formally proposed in January. In essence, TMA commented, the rules have no statutory basis and are so ambiguous that compliance would be difficult and would lead to unnecessary enforcement actions.

TMB’s June draft rule publication also included amendments to rules relating to prescriptive authority agreements (§193.8). The draft rule amendments would eliminate from rules important details about minimum requirements for prescriptive authority agreements. TMB asserts that rules that merely repeat underlying statute are superfluous. TMA commented in opposition to these draft rule changes, arguing that having a comprehensive source of rules is helpful for physicians and members of the public who want to understand all applicable regulations on a topic. TMA thus encouraged the board to maintain the rules and to ensure the rules were comprehensive and consistent with statute.

Next, TMB put forward two alternative draft rules relating to the regulation of nonsurgical medical cosmetic procedures (§193.17). While both alternatives discussed requirements for providing notice to the public regarding complaint procedures applicable to these procedures, the second alternative additionally included a much more extensive overhaul of the regulation of these procedures. TMA commented to state its preference for the alternative that merely clarified notification requirements. In those comments, TMA expressed support for a notification requirement that was clear, easy to comply with, and consistent with other existing requirements relating to posting a notice in a physician’s office.

Finally, in §165.5, TMB’s draft rules would amend provisions relating to notification requirements upon a physician’s retirement or departure from a practice. TMA encouraged TMB to clarify that electronic means of notification should be in accordance with applicable state and federal law, to add more setting-specific exceptions, and to add a good cause exception.

In July 2019, TMB published proposed rules amending §§165.5, 193.8, and 193.17. TMB also withdrew proposed rules amending §193.5, which had been published in January 2019, as discussed above (however, TMB later would again publish proposed rules for §193.5 in November 2019, as set forth below). For the proposed rules amending §§165.5, 193.8, and 193.17, TMA submitted comments on July 31, 2019, reiterating many of the concerns expressed in its response to TMB’s June draft rules.
On Sept. 6, 2019, TMB published its adopted rules for §§165.5, 193.8, and 193.17. For the notification requirements in §165.5, TMB accepted some of TMA’s requested clarifications regarding references to other authorities but rejected TMA’s proposed substantive revisions. For the proposed elimination of details about minimum requirements for prescriptive authority agreements in §193.18, TMB (erroneously) stated it had received no written comments and adopted the repeal. For §193.17, TMB disagreed with TMA’s comments and adopted the proposed rules without revision.


The Texas Office of Inspector General published draft rules in June 2019. The draft rules were the next step in making amendments to sections of rule that govern how the office determines appropriate administrative penalties following a Medicaid overpayment. Previously, the office had solicited input on how the rules could be improved, and TMA submitted comments in May 2018 (see D.2).

The draft rules reflected many improvements in the regulations as suggested by TMA. In its comments in response to these rules, TMA expressed support for the improvements and made these further suggestions as to how the rule could be improved: allowing any provider to enter into an installment agreement for repayments, adding consideration of good cause for failing to make certain payments, clarifying parts of the rule that are ambiguous, adding consideration of certain mitigating factors, and maintaining mentions of certain due process protections in the rule.

On Dec. 13, 2019, OIG published proposed rules for §§371.1603 and 371.1715. Among other changes, the proposed rules added more remedial measures that may be considered as mitigating factors and set forth statutory due process protections. TMA will submit comments on the proposed rules in January 2020.

19. Texas Department of Insurance Solicitation for Comments on Issues for Discussion Regarding Senate Bill 1264 and Subsequent Rulemaking on SB 1264

In June 2019, the Texas Department of Insurance distributed notice of a series of issues it identified for discussion at a stakeholder meeting regarding the recently enacted Senate Bill 1264. The issues the department identified included the nonemergency disclosure exception to the bill’s prohibition on balance billing, the procedural fairness of the deadline for arbitration decisions, the use of access plans to ensure consumers are protected from balance billing that results from gaps in a health plan’s network, and benchmarking. The department further asked whether additional issues needed to be considered in the implementation of SB 1264.

On July 15, 2019, TMA and eight specialty societies jointly filed a 15-page comment letter in response to TDI’s stakeholder meeting notice/information request. Regarding the disclosure exception, TMA commented on the timing of the advance notice, the information that should be included in the notice, and whether a disclosure would ever be provided under duress. In response to the arbitration issue, TMA provided information on the arbitration system in New York and comments on opportunities to rebut information in arbitration and on arbitrator fee issues. TMA commented that HMOs should hold enrollees harmless in situations resulting from gaps in its coverage. TMA also contended TDI should develop rules requiring health plan issuer/administrator submission of claims to the benchmarking database selected by the commissioner, and also make it clear that TDI is responsible for providing data points from the benchmarking database to the arbitrator. Finally, TMA also recommended that TDI consider bundling of claims, exclusivity of arbitration factors, and global billing factors.
On July 29, 2019, TMA representatives attended the stakeholder meeting to discuss the issues
described above. TMA President David Fleeger, MD, provided oral testimony. As follow-up, on
Aug. 8, 2019, TMA submitted an additional briefing to TDI arguing that TDI did not have
jurisdiction or authority to regulate the practice of medicine but must refer any alleged physician
billing violations to the Texas Medical Board.

On Sept. 27, 2019, TDI proposed rules implementing the following components of SB 1264: (1)
the arbitration and mediation processes under SB 1264, (2) TDI’s complaint resolution process,
(3) explanation of benefit requirements under SB 1264, and (4) requirements related to
benchmarking under SB 1264. On Oct. 28, 2019, TMA and 11 other societies submitted a joint
71-page letter, expressing general concerns that TDI’s rule proposal: (1) omitted details necessary
to make the arbitration a meaningful and workable process for Texas’ physicians, and (2)
included language that would unnecessarily increase the costs/burdens of arbitration and/or
reduce access to the arbitration process. Additionally, TMA’s joint comment letter contained
numerous specific objections to the rule proposal’s language and offered alternative language. On
Oct. 23, 2019, TMA Council on Legislation Chair Debra Patt, MD, provided testimony at the TDI
hearing on the formal SB 1264 rule proposal.

On Dec. 3, 2019, TDI filed an adoption order for its previously proposed rules. In it, TDI made
some changes/clarifications recommended by TMA (e.g., TDI [1] clarified that the arbitration
process is a document-review process – not an in-person process – and [2] removed its proposed
requirement to use best efforts to resolve a claim dispute payment through a health benefit plan
issuer’s internal appeal process before a party requests arbitration). However, the rules as adopted
continue to contain much problematic language (e.g., requiring payment of arbitrators upon
assignment by TDI and imposing a 20-day waiting period after initial payment before arbitration
may be initiated). The rules as adopted also omit TMA-recommended language that would have
promoted access to the arbitration process. For example, TDI declined to adopt the language
regarding reasonable arbitrator fees.

On Dec. 18, 2019, TDI issued an emergency adoption for its rules implementing SB 1264’s
exception to the prohibition on balance billing. This emergency rule and the related form are
effective Jan. 1, 2020. This rule and related form were published for formal notice and comment

On Dec. 18, 2019, TMB issued “TMB Guide Statement on TDI Rules Related to Senate Bill
1264,” which explains, among other things, that “[p]hysicians and practitioners, under the
authority and oversight of TMB, who seek to exercise the exceptions to the prohibitions against
balance billing must comply with all provisions of SB 1264, including as interpreted by TDI
rules.” The TMB Guidance Statement also explains TMB’s enforcement authority related to
violations of SB 1264 and notes that “TMB will work on development of rules consistent with
TDI’s rules.”

20. Texas Department of State Health Services Request for Feedback on Informal Rule Proposals
on §157.133, Requirements for Stroke Facility Designation, 2019 Resource Document

In October 2018, TMA and the Texas College of Emergency Physicians, Texas Neurological
Society, and Texas Society of Anesthesiologists provided joint comments to the Department of
State Health Services on draft rules regarding stroke facility designation requirements. In August
2019, DSHS put forth a second round of draft rules for comment. On Sept. 9, 2019, the
associations jointly responded, thanking DSHS for incorporating several of the 2018
recommendations, and urging that the draft rules be amended to include the remaining 2018
recommendations. As of January 2020, DSHS had not officially published proposed rules for §157.133.


In October 2018, TMA, the Texas College of Emergency Physicians, and the Texas Orthopaedic Association provided joint comments to the Department of State Health Services on draft rules regarding stroke facility designation requirements. In September 2019, DSHS put forth a second round of draft rules for comment. On Sept. 30, 2019, the associations jointly responded, thanking DSHS for incorporating several of the 2018 recommendations, and urging that the draft rules be amended to include the remaining 2018 recommendations. On Sept. 20, 2019, DSHS published proposed rules for §157.125, which were adopted without amendment on Nov. 29, 2019.

22. Texas Medical Board Guidance Letter Regarding HB 2174’s 10-day Limit on Opioids

In August 2019, the Texas Medical Board offered initial guidance related to the state’s new 10-day limit on opioids, which was created by House Bill 2174, 2019 Texas Legislature. On Sept. 21, 2019, TMA submitted to TMB, jointly with the Texas Orthopaedic Association, a request for additional clarification. While noting that TMB’s guidance was helpful in that it answered the question as to whether a follow-up prescription could be written for an episode of care, it also implied that a follow-up prescription could be written only if the patient sees the physician in person, contradicting HB 2174. As of January 2020, TMB had not responded to TMA’s request or published proposed rules on this subject.

23. Texas Medical Board Proposed Rule Amendment to 22 Tex. Admin. Code §165.1 Regarding Retention of Medical Examination Records of a Sexual Assault Victim

On Sept. 6, 2019, the Texas Medical Board proposed an amendment to §165.1 to add a requirement that physicians retain forensic medical examination records of a sexual assault victim for 20 years from the date of the examination, in accordance with House Bill 531 (2019 legislative session). On Oct. 3, 2019, TMA submitted comments on the proposed rule and noted three major issues with the proposed language being inconsistent with the underlying statute. First, it is unclear in the extent of the record that needs to be maintained, i.e., whether it is just the forensic medical examination record or all the ensuing related treatment of the patient. Second, it incorrectly begins the retention period on the date of examination versus the date of the record’s creation, as specified in the statute. Third, it is broader in scope than the statute, which contains language limiting its applicability to examinations conducted under the Code of Criminal Procedure, i.e., those paid for by law enforcement for purposes of an investigation or prosecution. On Nov. 1, 2019, TMB published the adopted rule. Though stating that it disagreed with TMA’s comment, TMB nevertheless modified the language of §165.1 to simply reference the underlying statutory requirements.

24. Texas Department of State Health Services Request for Feedback on Informal Rule Proposals Regarding MEDCARES Grant Program

In September 2019, the Texas Department of State Health Services requested stakeholder feedback on proposed rules for the MEDCARES Grant Program. On Oct. 7, 2019, TMA jointly responded with the Texas Pediatric Society, noting that the draft rules (1) conflict with scope of practice laws in Texas, (2) are not well-tailored to the use of the grant outlined in the underlying statute and a related legislative report, and (3) contain terms that are confusing or are inconsistent

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with the statute and report. As of January 2020, DSHS had not published proposed rules or otherwise responded to the comments.


On Oct. 4, 2019, the Texas Board of Chiropractic Examiners published proposed rules allowing it to provide informal letter opinions about scope of practice. TMA responded with a comment letter on Oct. 24, 2019, objecting to the proposed rule, based on it conflicting with statute – specifically, sections of the Occupations Code setting forth TBCE’s rulemaking role in clarifying scope of practice, which the legislature passed to stop the TBCE practice of issuing informal opinions. As of January 2020, TBCE had not taken further action on the proposed rule.

26. Texas Medical Board, TMA Comments on Topics Discussed at Oct. 9, 2019, Opioid Workgroup

On Oct. 9, 2019, the Texas Medical Board held an Opioid Workgroup meeting, which TMA representatives attended. Following the meeting, on Oct. 24, 2019, TMA submitted its recommendations in three areas: (1) defining acute, chronic, and post-operative pain; (2) interpreting and enforcing Prescription Monitoring Program checks and e-prescriptions; and (3) interpreting and enforcing opioid CME legislation. As of January 2020, TMB had not published any proposed rules on these topics.


On Nov. 8, 2019, the Texas Medical Board published proposed rules amending §193.5, Physician Liability for Delegated Acts and Enforcement, and §193.13, Certified Registered Nurse Anesthetists. TMB also proposed a new §193.21, Delegation Related to Radiological Services. TMA submitted a comment letter on Dec. 2, 2019. For §193.13, TMA noted that the proposed language about a physician “ensuring” and being “ultimately responsible” is inconsistent with the underlying statute and the recent attorney general opinion that was a basis for the revisions. For §§193.5 and 193.21, TMA opposed the proposed rules and requested their withdrawal, for four main reasons. First, Chapter 157 of the Medical Practice Act already provides clear language on supervision and delegation. Second, the rules impose unnecessary documentation requirements. Third, the rules contain inappropriate liability language. Lastly, the rules contain confusing language that blurs scope lines and fails to clearly articulate the responsibility of the physician. As of January 2020, TMB had not taken further action on the proposed rules.

28. Texas Medical Board Proposed Amendment to 22 Tex. Admin. Code §193.17

On Nov. 8, 2019, the Texas Medical Board published proposed rules amending §193.17, Nonsurgical Medical Cosmetic Procedure. The expressed purpose behind the amendment was to add language clarifying the responsibilities of delegating physicians and providers while providing nonsurgical cosmetic procedures in medical spas. TMA and the Texas Society of Plastic Surgeons responded jointly on Dec. 6, 2019. Though thanking TMB for holding several stakeholder meetings on different informal versions of the proposed rules, TMA noted a concern that the proposed language still contains several ambiguities, drafting errors, and potential scope of practice conflicts that require further stakeholder feedback, as well as additional clarity in the language. Accordingly, TMA asked TMB to withdraw its proposed rule and continue to seek feedback from stakeholders to better clarify the physician’s responsibilities and notification requirements, refine the definitions to prevent unintended scope of practice conflicts, and
carefully review the rule to correct drafting errors. As of January 2020, TMB had not taken any subsequent actions on the proposed rules.

29. Texas Department of State Health Services State Plan for Alzheimer’s Disease 2019-2023, and Stakeholder Meeting

On Nov. 19, 2019, the Department of State Health Services held a meeting to present its recently released Texas State Plan for Alzheimer’s Disease 2019-2023 and receive stakeholder input. TMA representatives attended the meeting, and TMA submitted a comment letter on Dec. 19, 2019. TMA raised concerns with the language in the state plan regarding “best practices,” “validated standards” and stakeholder responsibility for implementation of the plan. TMA also noted that the 2019 legislature set forth specific instructions for the state plan, which the plan does not include or contradicts. As of January 2020, DSHS had not responded to TMA’s comments.

30. Texas Department of Insurance, Division of Workers’ Compensation Proposed Amendment of 28 Tex. Admin. Code §129.5, Work Status Reports

On Oct. 11, 2019, the Texas Department of Insurance, Division of Workers’ Compensation, proposed amendments to conform §129.5 to the changes made by House Bill 387 (2019). HB 387 allows a treating doctor to delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse. TMA provided comments on Dec. 19, 2019, requesting that DWC clarify an introductory clause – specifically, to clarify whether the authorization of the delegation is governed by the licensing statute of the physician or the delegatee. As of January 2020, DWC had not published adopted rules for §129.5.

31. Centers for Medicare & Medicaid Services Proposed Amendments to the Stark Law

In October 2019, the Centers for Medicare & Medicaid Services published proposed rules amending the physician self-referral law (Stark Law). The stated purpose of the changes is to adapt the rules to health care’s shift to coordinated care and alternative payment models. In December and January, TMA submitted comments on the proposed amendments, joining letters submitted by the Partnership to Empower Physician-Led Care (PEPC) and the Physicians Advocacy Institute (PAI), and submitting its own letter on the proposed rules relating to health information technology. In general, PEPC, PAI, and TMA’s comments encouraged CMS to adopt requirements that would be complementary to existing requirements in federal health law, and thus avoid adding to physicians’ existing regulatory burdens. As of January 2020, CMS had not published adopted rules.

32. Office of Inspector General, U.S. Department of Health and Human Services Proposed Amendments to the Antikickback Statute

In October 2019, the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) published proposed rules amending the antikickback statute. The stated purpose of the changes is to adapt the rules to health care’s shift to coordinated care and alternative payment models. In December and January, TMA submitted comments on the proposed amendments, joining letters submitted by the Partnership to Empower Physician-Led Care (PEPC) and the Physicians Advocacy Institute (PAI), and submitting its own letter on the proposed rules relating to health information technology. In general, PEPC, PAI, and TMA’s comments encouraged HHS-OIG to adopt requirements that would be complementary to existing requirements in federal health law, and thus avoid adding to physicians’ existing regulatory burdens. As of January 2020, HHS-OIG had not published adopted rules.
E. Letter Briefs to the Texas Attorney General

**Texas Optometry Board Opinion Request to the Office of the Attorney General Regarding the Applicability of Tex. Occ. Code §351.408 to Physicians’ Optometrist Employees**

In September 2019, the Texas Optometry Board (TOB) submitted an opinion request to the Texas attorney general on the authority of the board over activities of (1) licensed optometrists employed by physicians and of (2) retailers of ophthalmic goods leasing space to physicians that employ optometrists – specifically, on the applicability of an exception to TOB’s authority in Tex. Occ. Code §351.005 for physicians and persons working under a physician’s supervision. In its letter request and accompanying brief, TOB argues that optometrists, as independent licensees, do not fall within the meaning of supervised persons under §351.005.

MA filed a letter brief to the attorney general on Oct. 30, 2019, arguing that including physicians’ optometrist employees within §351.005’s exception is consistent with both the plain language and legislative history of the Optometry Act.

As of January 2020, the attorney general had not released an opinion on this issue.
Resolution 101-A-19, introduced by the Lone Star Caucus, was referred to the TMA Board of Trustees. It addresses moving all meetings of the Texas Medical Association from a Friday-Saturday format to a Saturday-Sunday format.

The resolution recommended that (1) all meetings of TMA be moved to a Saturday-Sunday format from the current Friday-Saturday format, and (2) this resolution be referred to the Board of Trustees to study the feasibility and economic impact on physicians and the association and report back to the House of Delegates in 2020.

**Status**
The board directed staff to prepare a report on the feasibility and economic impact on the association were the resolution passed. A report pertaining to the association’s expenses was reviewed at the 2020 TMA Winter Conference meeting. The board approved submitting this report to the house, however, it did not make a recommendation for or against altering the current Friday-Saturday meeting format, as the report could not predict how a schedule change would alter attendance at meetings.

**Key Points**
“All meetings of the association” are defined as Fall Conference, Advocacy Retreat, Winter Conference (hereinafter, collectively, “leadership conferences”), and TexMed. Average annual expenses for all conferences for the past five years is $506,000. See Figure 1 for direct conference expenses 2015-19.

- A format change would not impact revenue projections for any of the conferences.
- To evaluate impact on expenses, the board reviewed five years of expenses for food and beverage, sleeping rooms, audiovisual equipment and labor, travel, collateral production, staff time/labor, and marketing.
- Expense areas that could see a financial impact include:
• Sleeping rooms. Rates could fluctuate $5-$10 per night, in either direction. Based on average room nights paid for by the association over the past two years, this could increase or decrease costs by $1,200 per leadership conference, and by $4,500 for TexMed. In all cases, that equates to less than 1.5% of total meeting cost.

• Audiovisual costs. There would be no impact for leadership conferences. However, TexMed audiovisual costs are governed by a contract with Freeman AV through TexMed 2022, which stipulates overtime rates for all technician labor on Saturday and Sunday. Based on the past two years’ labor hours, a date pattern shift could increase labor costs by approximately $8,500 per year, or 6.5%. This equates to 2.1% of the total TexMed expenses.

• Due to existing contracts, the earliest meeting that could be moved to the Saturday-Sunday format is the 2022 Winter Conference.

• One unknown factor is how the format change would impact attendance, specifically for delegates, and therefore whether the House of Delegates would meet quorum to conduct business on Sunday morning.

Conclusion

A format change is feasible as early as the 2022 Winter Conference. Economic impact to the association would be minimal, with the largest impact on TexMed. Impact on delegate attendance could affect the association’s ability to conduct business on Sunday morning.

Since feasibility for and impact on individual physicians are not addressed in this summary, the board approved that the speakers conduct a straw poll of TMA members during Annual Session 2020 to determine delegate sentiment on a Saturday-Sunday meeting schedule.
REPORT OF COMMITTEE ON MEMBERSHIP

Subject: Membership Development

Presented by: Sara W. Dyrstad, MD, Chair

TMA Membership. TMA ended 2019 with 53,588 members, a net gain of 954 members and a year-over-year membership increase of 1.8%. Residents increased by 902 members or 13.9%. Students also increased by 473 members or 7%.

2019 Accomplishments:
- Reached 53,588 members;
- Maintained retention rate of 93%; and
- Delivered 75 Ambassador presentations, primarily through county medical societies.
- The Texas Medical Association Leadership College celebrated its 10th year. The program now has 184 graduates and a strong alumni group that is tapped regularly for leadership positions.
- The Texas Medical Association Women in Medicine Section (renamed the Women Physicians Section) was established at TexMed 2019 to strengthen female physicians’ engagement and representation in organized medicine through the development of relevant policy, programming, and services.

2020 Membership Recruitment and Retention Plans and Goals. TMA membership development staff are committed to increasing membership and market share. TMA staff will continue in-the-field recruitment efforts including frequent and consistent local and peer-to-peer outreach, assistance to county societies, and better targeting and messaging to various membership segments.

TMA 2020 membership goals:
- Increase membership in the association to 54,556, an increase of 968 members or 1.8%; and
- Retain 93% of recruitable members.

Key Priorities. Of note is the ongoing engagement of the Committee on Membership in addressing TMA priorities and the needs of various membership segments. Identified priorities include the following:

Women Physicians Section. Better serving the unique needs of women in medicine remains a top priority. The section is committed to leveraging its current momentum and expanding opportunities for women physicians to engage and grow professionally. The section plans to meet regularly during TMA conferences with the meeting format to include a combination of section business, an educational presentation, and opportunities for networking. The section has also expressed a desire to broaden its reach at the regional and county levels by supporting county medical societies in providing high-quality professional development education and networking activities locally.

Physicians in Employed Settings. An ad hoc Committee on Employed Physicians studied and made recommendations on how to better serve this key membership segment and increase the value of TMA membership. Should the House of Delegates approve these recommendations, TMA staff will help implement the priorities and services outlined.

Leadership Development. This year, TMA will launch a second cohort known as the Lifelong Leadership cohort. The Lifelong Leadership program will tailor content to those whose age or years in practice make them ineligible to participate in the existing TMA Leadership College geared at young physicians.
Participation will be application- and fee-based, with tuition fees. The Lifelong Leadership curriculum will address leadership concerns likely to surface later in a physician’s career: strategic planning and fiduciary responsibility, ethical decision making, physician burnout, human resource management, and mentorship, among others.

**2019 Recruitment and Retention Campaigns.** Annually, TMA membership development and marketing staff develop a marketing plan meant to help maintain the visibility of the Texas Medical Association including the value, benefits, and services. Key recruitment and retention campaigns are noted here.

In addition to personalized emails, digital marketing channels including Facebook and Google ads were successful marketing tools for TMA in 2019 and will continue in 2020.

**Texas Medicine Today.** This campaign provided nonmembers with a three-month trial subscription to TMA’s daily members-only e-newsletter. Each issue arrived once a week and contained the top stories from the week prior, content marketing and ads featuring TMA services, practice management consulting case studies, and a “join today” call to action. During the first quarter, the target was former members. In the third quarter, the targets were those who have never been a member. A total of 246 new physician and resident members can be attributed to this campaign.

**Google Ads.** The campaigns highlighted TMA membership, services, practice compliance, and education. Ads for publications, on-demand programming, and general “free CME” performed very well, especially in the last quarter.

In 2019, more than 7.3 million ad impressions (from TMA and third-party contracts) have been viewed by site visitors. Top-performing membership, services, and education ads are shown here. All performed better than the platform benchmark of a 0.08% click-through rate. A total of 493 new physician and resident members can be attributed to these Google campaigns.

**Win Back Campaign.** A template email was created to be personalized and used by each field representative to reach out to potential members in their assigned areas. Each field rep was the sender rather than TMA, and a more informal, conversational-style message was used to see how it affected open rates.

The campaign ran the last quarter of the year and proved to be successful in open rates, click-through rates, nonmember data cleanup, and lead generation. A total of 173 new physician members can be attributed to this campaign. Feedback from physicians has been positive, with many expressing thanks for TMA taking the time to reach out and for the chance to have questions answered. Due to the success of this campaign, it will be part of regular outreach efforts.

**Facebook Ads.** The first campaigns highlighted practice management services. The practice management ads were shown 24,590 times, had a click-through rate of 2.03% (above the industry average on Facebook of 0.90%), and resulted in 67 new members at a very cost-effective cost per website click of 34 cents. The industry average cost per click on Facebook is $1.72.

The second set of ads featured TMA help with regulatory and compliance burdens. The ads were shown a total of 24,273 times, had a click-through rate of 1.35%, and resulted in 41 new members. A total of 108 physician and resident members can be attributed to the Facebook campaigns. TMA staff will continue to evaluate previous and current Facebook ads to best design campaigns that highlight TMA benefits and services, and that promote membership in 2020.
Newly Licensed. This campaign targets physicians for the year following licensure. This campaign is primarily a print campaign due to the lack of email addresses for this population. However, digital ads are also now targeted to reach these physicians “where they are” online. First-class postcards contain a URL directing members to custom landing pages with more details and information on highlighted benefits.

Staff track response rates, conversion rates, cost per join, and average number of pieces (postcards) to conversion. In 2019, TMA added 306 new physician and resident members from the Newly Licensed mail campaign. The average cost per join went down from $67.17 in 2018 to $50.31 in 2019 due to a collateral revamp. Staff will continue to monitor and make adjustments to this campaign each year to refine messaging and reduce costs.
REPORT OF BOARD OF COUNCILORS

Subject: Distinguished Service Award, Josie R. Williams, MD

Presented by: Steven M. Petak, MD, Chair

Acting upon a nomination by the Lamar-Delta County Medical Society, the Board of Councilors selected Josie R. Williams, MD, to receive the association’s Distinguished Service Award. The award will be presented on Friday, May 1, 2020, at the opening session of the House of Delegates.

Taking the lead role in improving the quality of care has been a cornerstone of Dr. William’s career in medicine. Retired since 2015, she has been a physician in private practice, hospital administrator, military nurse, nursing administrator, associate professor, and quality institute director, among other professional roles. In addition, she served as TMA’s 143rd president in 2008-09. She has been a TMA member for 44 years, and a member of the Brazos and (currently) Lamar-Delta county medical societies.

Dr. Williams, who board certified by the American Board of Internal Medicine, received her medical degree in 1975 from The University of Texas Health Science Center at San Antonio Medical School, following distinguished service as a registered nurse in the U.S. Air Force. As a nurse, she served at Ellsworth AFB in South Dakota and Bergstrom AFB in Austin, where she was chief nurse and received a commendation medal for her work. After medical school, she returned to the Air Force for her internal medicine residency and gastroenterology training at Lackland AFB, graduating as colonel, USAF Medical Service Corps Reserve. This led to a practice in gastroenterology in Paris, Texas, with various leadership roles at her local hospital.

Both individual patients and populations of patients have benefited from Dr. Williams’ years of service. Interested in public health, she received advanced training in health care delivery improvement in Salt Lake City in 1997, followed by a master’s in medical management from Tulane University in 1998. This led to a host of public service appointments at the national and state level over the next 15 years related to quality, physician performance improvement, and patient safety. Among these, she was medical director of the Texas Health Quality Alliance, 1998-2001, and co-chair of the American Medical Association Physician Consortium for Performance Improvement, 2001-06. She also published more than 25 journal articles.

In 2002, Dr. Williams founded the Rural and Community Health Institute, the internationally recognized KSTAR Physician Assessment Program, and Institute for Healthcare Evaluation at the Texas A&M Health Science Center, serving as director of these programs until 2008, then codirector until 2012, and remaining involved until her retirement. She also was an associate professor of internal medicine and family and community medicine. She was named a Distinguished Alumnus (2001) and to the Academy of Distinguished Former Students of the College of Science (2010) at Texas A&M. Dr. Williams has a long history of involvement with TMA. She served on the Board of Trustees (2001-10) and on the Texas Delegation to the AMA (1994-2008). She also served on TMA councils, committees, and sections on legislation, socioeconomics, quality, physician services, physician payment, organized medical staff, hospital medical staff, rural health, and town/gown relations.

This 2020 Distinguished Service Award tops off Dr. Williams’ legacy of excellence long recognized at TMA. She received a TMA commendation for services on the Organized Medical Staff Section in 1997 and the TMA C. Frank Webber, MD, Award in 2002. In 2009, she was honored with a Texas Legislature resolution of TMA Leadership Appreciation, and 2012 she received the TMA Young at Heart Award.
REPORT OF BOARD OF COUNCILORS

Subject: County Medical Societies Constitution and Bylaws

Presented by: Steven M. Petak, MD, Chair

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**Ector County Medical Society Constitution and Bylaws**

TMA Office of the General Counsel staff reviewed Ector County Medical Society Constitution and Bylaws and recommends that the TMA Board of Councilors approve Ector CMS Constitution and Bylaws with the interpretation provided below.

The TMA Board of Councilors interprets Section 1.208 of the TMA Bylaws to mean that the description of residents voting in and holding resident positions delineates specific exceptions to a general prohibition against residents voting and holding office. Accordingly, residents may not be elected as a county medical society delegate or alternate delegate.

**Tarrant County Medical Society Constitution and Bylaws**

The TMA Board of Councilors has approved amendments to the Tarrant County Medical Society Constitution and Bylaws.
Background

In 1976, the TMA House of Delegates established the Impaired Physicians Committee and charged it with studying the impairment problem in Texas. The committee also was to devise mechanisms for the identification, treatment, and long-term follow-up of Texas physicians with diseases and illnesses that compromised their ability to practice medicine. Since that time, the committee’s duties have expanded to include education and prevention of illness. The name was changed to Committee on Physician Health and Rehabilitation in May 1978. In 2013, as a result of advanced understanding of physician health and wellness, the committee’s name was changed to the Committee on Physician Health and Wellness (PHW).

§10.621 Committee on Physician Health and Wellness. It shall be the duty of this committee to promote healthy lifestyles in Texas to medical students, residents, and physicians; to provide advocacy and support for and education on physician wellness; and to promote prevention of potentially impairing conditions. The committee shall be required to report its activities to the Board of Councilors. The committee shall maintain liaison with the Texas Medical Board and the Texas Physician Health Program. The committee shall be responsible also for making recommendations to the Council on Legislation in instances where there are needed changes in the laws relative to physician wellness and potentially impairing conditions.

Committee Functions

The function of the Committee on Physician Health and Wellness is three-fold: (1) to promote healthy lifestyles to Texas medical students, residents, and physicians, (2) to provide advocacy and support for and education on physician wellness, and (3) to promote prevention of potentially impairing conditions. The following items represent some of the PHW Committee’s activities that meet its charge from the House of Delegates and TMA goals.

- Produce and maintain programs and brochures to educate Texas physicians about ethical aspects of physician well-being, stress, potentially impairing conditions, and other relevant topics [1993];
- Encourage county medical societies, hospitals, medical schools, and residency training programs to utilize PHW resources in their educational programs [1993];
- Help hospitals meet The Joint Commission standard related to physician health [2001];
- Continue to have a close liaison with the TMA Alliance and encourage it to offer educational programs to its membership;
- Maintain close liaison with the Texas Medical Board (TMB) and Texas Physician Health Program (TXPHP) [TMB since formation of committee; TXPHP since it was created in 2009]; and
- Report activities to the TMA Board of Councilors in accordance with TMA policy.

The PHW Committee’s commitment to the health, well-being, and effectiveness of Texas physicians contributes to the health and welfare of all Texas citizens. These ever-increasing activities are offered to physicians throughout the state, as well as to hospitals, medical staffs, and other organizations.
Ad Hoc Committee on Education

The education team consists of 35 practicing, academic, and/or retired physicians. The education team responded to 44 live CME presentation requests in 2019. In 2018, the committee approved free educational live presentations for medical schools and residency programs. A total of eight free health and wellness educational presentations were given to residents and/or medical students at seven Texas academic medical centers in 2019 (up from two requests in 2018). In addition to these requests, the education team oversees the development and review of PHW continuing medical education activities.

Ad Hoc Committee on Physician and Trainee Health and Wellness

The committee recognizes that physicians, students, and trainees (residents and fellows) work and train alongside biomedical and health professions colleagues within learning health care systems. As a part of the committee’s outreach program to promote well-being within learning health care systems, the inaugural Physician Health and Wellness Exchange was developed.

2019 Annual Physician Health and Wellness Exchange

More than 80 Texas physicians, residents, medical students, health and wellness providers, academic medical center faculty, and staff representing seven Texas institutions participated in the inaugural PHW Exchange on March 3 in Houston at Baylor College of Medicine. Activities included a continuing medical education program, poster session, and Think Tank discussion. During the Think Tank, facilitators and participants addressed the health and wellness needs in learning health systems. Most participants described the conference as “very helpful and useful” and are looking forward to the next exchange in San Antonio at UT Health San Antonio Long School of Medicine on Saturday, Oct. 24, 2020. Activities will include:

- Continuing education programming,
- Workstation exercise session and/or kitchen workshop,
- Poster session,
- Think Tank discussion,
- TMA medical student resolution workgroup, and
- Training session for speakers.

Upcoming Projects

The committee has provided additional educational resources online regarding well-being, dimensions of meaning in work, burnout, stress, work-life integrations, fatigue, mental/emotional quality of life, and physical quality of life. As a part of the committee’s endeavors to establish a statewide collaboration to address the gaps in resources, authors from Baylor College of Medicine, McGovern Medical School at UTHouston, UT Southwestern, and Texas A&M College of Medicine summarized the committee’s findings and recommendations in a manuscript that will be submitted to an outside journal.
2019 AMA ANNUAL MEETING

More than 100 Texas physicians, residents, and medical students, representing the Texas Medical Association and its various sections, and national specialty societies participated in the June 8-12 American Medical Association meeting in Chicago. When Texas delegation members left the gathering, they had installed Fort Worth allergist and former TMA president Sue Bailey, MD, as AMA president-elect and Russell W.H. Kridel, MD, a facial plastic surgeon from Houston, as chair-elect of the AMA Board of Trustees.

Elections and Appointments

Dr. Bailey was elected unanimously as president-elect. G. Sealy Massingill, MD, was appointed to the Council on Long Range Planning and Development by the AMA Board of Trustees. Greg Fuller, MD, a family physician from Keller, was elected to the governing council of the Integrated Physician Practice Section. Myphuong “Theresa” Phan, MD, MPH, a resident at Dell Family Medicine in Austin, was elected vice speaker of the Resident and Fellow Section. Five Texas medical students won officer positions in Region 3 of the Medical Student Section: vice chair: Rebecca Haines, Texas A&M University College of Medicine; secretary-treasurer: Jimmy Bunch, Texas Tech University Health Sciences Center School of Medicine; legislative chair: Rajadhar Reddy, Baylor College of Medicine; legislative vice chair: Joseph Camarano, The University of Texas Medical Branch School of Medicine; and community service chair: Natasha Topolski, McGovern Medical School at UTHealth.

Dallas psychiatrist Les Secrest, MD, chaired the Reference Committee on Science and Technology during the meeting; Melissa Garretson, MD, of Fort Worth, a delegate from the American Academy of Pediatrics, served on the Reference Committee on AMA Finance and Governance; Dr. Fuller served on the Reference Committee on Medical Service; and Austin emergency physician Robert Emmick Jr., MD, served on the Committee on Rules and Credentials.

AMA House Still “No” on Single Payer

Dr. Bailey, serving in her fourth term as speaker of the house, had barely gavelled the assembly together when several dozen sign-carrying activists – including some physicians and medical students – barged into the hall and took over the rostrum, chanting “AMA, get out of the way.” The contingent served as uninvited emissaries from a larger contingent of several hundred protestors who were marching outside the hall on behalf of “Medicare for All.”

Three days later, the question of how to provide health care to the nation’s 30 million uninsured arose again in the same room – this time in a manner more typical of House of Delegates proceedings. The house had just adopted a report from the AMA Council on Medical Service that called for AMA to advocate expanding eligibility for plans sold via the Affordable Care Act, as well as the amount of the premium tax credits and cost-sharing supports available.

A group of medical student delegates then proposed that the house remove all opposition to single-payer systems from existing AMA policy “while preserving support for pluralism, freedom of choice, freedom of practice, and universal access for patients.” The students argued that the growing number of national...
politicians and organizations that support various versions of Medicare for All would eschew the views of an organization that so blatantly opposed that approach. But the establishment pushed back. “We ought to put a stake in the heart of single payer,” former AMA President Donald Palmisano, MD, of Louisiana urged the delegates.

“The Texas Medical Association has strong policy that states we will not look at any single payer system,” said Beaumont anesthesiologist Ray Callas, MD, speaking for the Texas delegation. “I cannot go back to Texas and tell our physicians that AMA will take part in discussions about single payer.” The delegates voted down the medical students’ proposal 292-254. But the final tally showed the strength of their position among established physicians in the house, as the students collectively hold no more than 29 voting seats in the assembly.

“Irreducible Differences in Moral Perspectives”
Should it be called “aid in dying” or “physician-assisted suicide?” Is it ever morally acceptable for physicians to relieve their patients’ suffering permanently? Does it matter that five states and the District of Columbia have legalized the practice?

The House of Delegates has wrestled with these difficult questions since 2016, repeatedly refusing to agree with the AMA Council on Ethical and Judicial Affairs (CEJA) that the association should hold fast to the ethical guidelines against physician-assisted suicide originally adopted in 1994. CEJA tried a Solomonic approach at the 2019 annual meeting – and it worked.

“While supporters and opponents of physician-assisted suicide share a common commitment to compassion and respect for human dignity and rights,” the council wrote in its report to the house, “they draw different moral conclusions from the underlying principle they share.”

On a vote of 360-190, the delegates agreed with CEJA’s plan to retain the term “physician-assisted suicide” to describe the practice; keep the 1994 policy that states, in part, “Physician-assisted suicide is fundamentally incompatible with the physician’s role as healer”; and reiterate an existing CEJA opinion that states, in part, “Physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities.”

Policy
The Texas delegation scored some serious victories in the policy arena. They include:

- A commitment for AMA to study changes to laws and regulations to reduce the burden and financial risk that Medicare’s Quality Payment Program puts on physicians, especially those in small and rural practices;
- A directive for AMA to “work with relevant stakeholders” to support extending Medicaid coverage to 12 months postpartum;
- A request for AMA to push the Centers for Medicare & Medicaid Services (CMS) to update the practice expense component of Medicare’s relative value unit system “so it accurately reflects current physician practice costs”; and
- New AMA policy recommending that physicians use the term “intellectual disability” instead of “mental retardation” in clinical settings.

Other Business of the House
Delegates addressed various other economic, legislative, and public health topics. The house:

- Celebrated the installation of Atlanta psychiatrist Patrice Harris, MD, as the new AMA president;
• Determined, in the words of Dr. Kridel, that government regulators should “pull back the curtain on pharmacy benefit managers” and the role they play in prescription drug pricing and availability;
• Voted to ask CMS to eliminate Medicare’s 48-hour observation period and “observation status in total”;
• To enthusiastic applause, voted for AMA to push for laws and regulations that give states incentives to eliminate nonmedical exemptions for mandatory childhood vaccinations;
• Said states should allow “mature minors” to override their parents’ refusal for vaccinations;
• Called for more federal, state, and local resources for preventing, detecting, and responding to the rising threat from vector-borne diseases;
• Directed AMA to study the factors behind physicians’ and medical students’ outsized susceptibility to depression, substance use, and suicide;
• Said AMA should support making “naloxone rescue stations” for opioid overdoses available publicly across the country, similar to automated external defibrillators;
• Directed AMA to work with the American Board of Medical Specialties (ABMS) to push for implementation of the Vision for the Future Commission’s recommendations on continuing board certification (ABMS’ new term for the revamped maintenance of certification process);
• Voted to study ABMS’s use of physicians’ fees to advertise to the public about the value of board certification;
• Rejected a call for AMA to advocate for limited primary care licenses for medical school graduates who do not match for or who have not completed residency training;
• Adopted policy stating that physicians can delegate the task of obtaining informed consent to “other qualified members of the health care team,” but physicians retain ultimate responsibility for the process;
• Called for AMA to develop a national education campaign on the dangers of distracted driving;
• Supported required warning labels on all nicotine vaping products; and
• Voted to oppose removing infants from their mothers based solely on a single positive prenatal drug screen.

2019 AMA INTERIM MEETING

Nearly 100 Texas physicians, residents, and medical students representing the Texas Medical Association and its various sections, and national specialty societies participated in the Nov. 16-19 AMA meeting in San Diego. Ten Texas medical students and residents won leadership posts at the meeting, and two Texas physicians announced they will run for AMA office at the June 2020 meeting.

Elections

Ten residents and medical students from Texas won leadership elections in San Diego. For the AMA Resident and Fellow Section: Michael Metzner, MD, a general surgery resident in San Antonio, was reelected as the section’s delegate in the AMA House of Delegates; and Dr. Phan and Jerome Jeevarajan, MD, of Houston, were elected as alternate delegates. Drs. Phan and Jeevarajan both have served as AMA and TMA leaders since they were medical students. For Region 3 of the AMA Medical Student Section: Swetha Maddipudi, a second-year student at UT Health San Antonio Long School of Medicine, is the new chair-elect; Matthew Hidalgo, a third-year student at The University of Texas Rio Grande Valley School of Medicine, is the new membership chair; James Bunch, a second-year student at Texas Tech University Health Sciences Center (TTUHSC) School of Medicine, will serve as the region’s delegate to the AMA house. Elected as alternate delegates were: Josh Bilello, a second-year student at The University of Texas Medical Branch School of Medicine; Abhishek Dharan, a second-year student at TTHUSC Paul L. Foster School of Medicine; Rajadhar Reddy, a second-year student at Baylor College of Medicine; and Ikram Rostane, a first-year student at the McGovern Medical School at UTHealth.
One year ago, the AMA house declared e-cigarettes and vaping “an urgent public health epidemic.” As a mysterious vaping-related lung disease spread around the country, the delegates went further at this meeting. They urged the federal government and the states to ban all e-cigarettes and vaping products except those Food and Drug Administration (FDA)-approved items prescribed by physicians to help their patients stop smoking.

“AMA physicians stepped up to address the vaping epidemic by calling for a ban until the FDA can adequately address their safety and potential use as smoking cessation devices,” said John Carlo, MD, of Dallas, a member of the AMA Council on Public Health and Science.

The delegates went after traditional “combustible” tobacco products as well, expanding AMA’s campaign against flavored tobacco specifically to include menthol. More than 20 million Americans – including 85% of African American smokers – currently smoke menthol cigarettes, which are reportedly harder to quit.

MIPS Plan Rejected
Led by the Texas delegation, the house rejected as inadequate a plan to improve Medicare’s Quality Payment Program (QPP) and its highly flawed Merit-Based Incentive Payment System (MIPS) track.

“Quite simply, this program is not working,” Dr. Callas told delegates. “Now entering its fourth year, it has not been proven to improve quality or reduce costs, but it has been proven to harm physicians in solo and small practices nationwide. And this report does not commit our AMA to fight for the structural and operational changes that are needed to fix it.”

The house voted unanimously to send the report back to the AMA Board of Trustees for more work. The report was the board’s response to resolutions submitted over the two previous meetings of the house by the Texas, Pennsylvania, and Florida delegations. Those resolutions asked AMA to advocate for very specific changes that would relax the financial and paperwork burdens that MIPS and QPP impose on practicing physicians.

TMA physician leaders and staff complained that the AMA report glossed over most of the states’ requests, and its only substantive provision was a lukewarm directive to support legislation that “supplements budget neutrality” rather than eliminate it and do away with payment penalties.

“The report does state that our AMA supports changes that would allow small practices to ‘succeed’ in MIPS,” Dr. Callas said. “But you can’t succeed in MIPS and get a bonus unless another practice fails and pays a penalty. Budget neutrality undermines practice viability, demoralizes us, and threatens access to care.”

As they wait for a new report – likely to come in June 2020 – TMA, AMA, and many other state associations and national specialty societies will continue to fight for MIPS reform. “Physicians need relief now,” Dr. Callas added.

Texans Shine Brightly
Two Texas physicians played key roles in crafting the policy adopted at the meeting by serving on House of Delegates reference committees. E. Linda Villarreal, MD, an internist from Edinburg, served on the Reference Committee on Medical Practice and Insurance; and Little Elm internist John Flores, MD, worked on the Reference Committee on Legislation.
Two Texas physicians laid out their credentials for elected AMA positions. Tyler anesthesiologist Asa Lockhart, MD, announced he is running for the AMA Board of Trustees, and Cynthia Jumper, MD, an internist from Lubbock, said she is seeking reelection to the AMA Council on Medical Education. Those elections will take place at the June 2020 meeting of the house, where two more Texans will take big steps upward: Dr. Bailey will be installed as the AMA’s 175th president, and Dr. Kridel is scheduled to become chair of the Board of Trustees.

The AMA house:
- After years of wrangling over the issue, finally adopted a Council on Ethical and Judicial Affairs report outlining physicians’ duty to “recognize when they are and when they are not able to provide appropriate care for the patient in front of them or the patients in their practice as a whole”;
- Called on AMA to develop model state legislation and to work for federal legislation to ban conversion therapy for sexual orientation or gender identity;
- Directed AMA to study the best means for “expediting entry of competently trained international medical graduates” into practice in this country;
- Expanded AMA’s telemedicine policy to stop the insurance company practice of paying for telemedicine services only if they are provided by certain physicians;
- Supported arbitration between pharmaceutical companies and payers – rather than price controls – to address rising drug prices;
- Voted to oppose organizations that “board certify” physician assistants and other nonphysicians in a way that misleads the public about those practitioners’ qualifications;
- Said AMA should work with Medicare to develop more robust risk-adjustment methods for alternative payment models;
- Directed AMA to encourage all U.S. medical schools to adopt a pass/fail grading system for nonclinical courses;
- Called on Medicare to reverse its recent decision that would allow general supervision, rather than direct supervision, of inpatient radiation therapy and hyperbaric oxygen services;
- Rejected a call to support national benzodiazepine-specific prescribing guidelines for physicians;
- Said state licensing agencies should allow physicians 10 years – rather than the current seven – to complete all required state licensing examinations;
- Voted to create a task force to study the public health effects of legalized cannabis and cannabinoids; and
- Supported sunscreen giveaway programs “in public spaces where the population would have a high risk of sun exposure.”
REPORT OF TEXAS DELEGATION TO THE AMA

TEXDEL Report 2 2020

Subject: AMA Membership, Representation, and Delegation Leadership

Presented by: David N. Henkes, MD, Chair

As of Jan. 24, 2020, American Medical Association membership in Texas totaled 19,081 compared with 18,002 at year-end 2018, an increase of 1,079 members. The physician category (which includes nondues-paying retired, exempt, and honorary in addition to dues-paying active physicians) saw an increase of 158 members for a total physician membership of 10,573; resident members increased by 381 for a total resident membership of 4,412; and student members decreased by 121 for a total student membership of 3,435.

Representation in AMA

With the increase in membership, the Texas Delegation to the AMA saw an increase of one elected delegate and alternate delegate to the AMA House of Delegates; 20 physician delegates now represent Texas. Numerous Texas physicians and medical students hold positions of leadership within the AMA organizational structure: Susan R. Bailey, MD, was elected as president-elect; Russell W.H. Kridel, MD, will serve as chair of the Board of Trustees; and G. Sealy Massingill, MD, was appointed by the AMA Board of Trustees to serve on the Council on Long Range Planning and Development. Texans serving as ex officio members of the AMA House of Delegates are AMA past presidents J. James Rohack, MD, and Nancy W. Dickey, MD.

Additional Texas physicians holding elected or appointed positions on AMA entities are:

- John T. Carlo, MD, Council on Science and Public Health;
- Jose M. de la Rosa, MD, chair, Academic Physician Section;
- Hilary Fairbrother, MD, chair, Young Physicians Section;
- John G. Flores, MD, member-at-large, Organized Medical Staff Section Governing Council;
- Cynthia A Juniper, MD, Council on Medical Education;
- Greg Fuller, MD, member-at-large, Integrated Physician Practice Section;
- Monique A. Spillman, MD, PhD, Council on Ethical and Judicial Affairs; and
- Ken Mattox, MD, member, Senior Physicians Group Governing Council.

Texans serving as resident representatives are Michael Metzner, MD, regional delegate, and Myphuong “Theresa” Phan, MD, MPH, and Jerome Jeearajayan, MD, as alternate regional delegates.

Texans serving as student representatives are Region 3 Chair-Elect Swetha Maddipudi, UT Health San Antonio Long School of Medicine, MS2; Region 3 Membership Chair Matthew Hidalgo, The University of Texas Rio Grande Valley School of Medicine, MS3; Region 3 delegate James Bunch, Texas Tech University Health Sciences Center (TTUHSC) School of Medicine, MS2; Region 3 alternate delegates Josh Bilello, The University of Texas Medical Branch School of Medicine, MS2; Abhishek Dharan, TTUHSC Paul L. Foster School of Medicine, MS2; Rajadhar Reddy, Baylor College of Medicine, MS2; and Ilkram Rostane, McGovern Medical School at UTHealth, MS1B.
In addition to the 19 delegates and alternate delegates representing the Texas Medical Association in the AMA House of Delegates in 2018, many other Texas physicians serve in the AMA house as specialty society delegates and alternate delegates. They are:

- C. Bob Basu, MD, alternate delegate, American Society of Plastic Surgeons;
- Donna Bloodworth, MD, alternate delegate, American Academy of Pain Medicine;
- Sue Bormstein, MD, delegate, American College of Physicians;
- Tilden L. Childs III, MD, delegate, American College of Radiology;
- Ronald J. Crossno, MD, alternate delegate, American Academy of Hospice and Palliative Medicine;
- Gary Dennis, MD, delegate, National Medical Association;
- Daniel Dent, MD, delegate, American College of Surgeons;
- Seema Desai, MD, alternate delegate, American Academy of Dermatology;
- John Early, MD, delegate, American Academy of Orthopaedic Surgeons;
- Hilary E. Fairbrother, MD, delegate, American College of Emergency Physicians;
- Melissa J. Garrettson, MD, alternate delegate, American Academy of Pediatrics;
- Osvaldo Steven Gigliotti, MD, alternate delegate, Society of Cardiovascular Angiography and Interventions;
- John N. Harrington, MD, delegate, American Society of Ophthalmic Plastic and Reconstructive Surgery;
- Lisa Hollier, MD, alternate delegate, American College of Obstetricians and Gynecologists;
- Lynne M. Kirk, MD, delegate, American College of Physicians;
- Robert C. Kramer, MD, alternate delegate, American Society for Surgery of the Hand;
- Rashmi Kudesia, MD, alternate delegate, American Society for Reproductive Medicine;
- Keagan H. Lee, MD, alternate delegate, United States & Canadian Academy of Pathology;
- Jonathan D. Leffert, MD, delegate, American Association of Clinical Endocrinologists;
- David Lichtman, MD, delegate, American Society for Surgery of the Hand;
- Alnoor Malick, MD, delegate, American College of Allergy, Asthma & Immunology;
- G. Sealy Massingill, MD, delegate, American College of Obstetricians and Gynecologists, and Council on Long Range Planning and Development;
- Susan Dixon McCammon, MD, delegate, American Academy of Otolaryngology-Head and Neck Surgery;
- Kevin McMains, MD, delegate, American Rhinologic Society;
- Daniel M. Meyer, MD, alternate delegate, American Association for Thoracic Surgery;
- Vineet Mishra, MD, alternate delegate, American Vein and Lymphatic Society;
- Hernando J. Ortega Jr., MD, MPH, delegate, Aerospace Medical Association;
- Ray D. Page, DO, delegate, American Society of Clinical Oncology;
- Mary Dale Peterson, MD, alternate delegate, American Society of Anesthesiologists;
- Carlos J. Puig, DO, delegate, International Society of Hair Restoration;
- Daniel Shoor, MD, alternate delegate, Aerospace Medical Association;
- Divya Srivastava, MD, alternate delegate, American College of Mohs Surgery;
- Susan M. Strate, MD, alternate delegate, College of American Pathologists; and
- Crystal C. Wright, MD, alternate delegate, American Society of Anesthesiologists.

**2020 Officers**

At the Texas Delegation’s Jan. 24, 2020, meeting, David N. Henkes, MD, was reelected chair; Michelle A. Berger, MD, and Gary W. Floyd, MD, were reelected co-vice chairs; and Ray Callas, MD, and Gregory M. Fuller, MD, were reelected as at-large members of the Delegate Review Committee.
The International Medical Graduate (IMG) Section was established by the House of Delegates to provide a direct means for international medical graduates to participate in the activities of the association. Its purpose is to enhance TMA outreach, facilitate communication and interchange with IMGs, promote TMA membership growth, enhance the ability of IMGs to provide their perspective to TMA and the House of Delegates, and facilitate the development of information and educational activities on topics of interest to IMGs.

Section Activities
The IMG Section meets two times annually, during Winter Conference and TexMed. Additionally, the section hosts a mixer at Winter Conference the evening prior to its business meeting. The section mixer gives members time to network and remind attendees about the business meeting the next morning.

Every odd year the section has governing council elections at its business meeting at TexMed. During TexMed 2019, the following section members were elected for a two-year term:

- Chair-elect: Marcial Andres Oquendo Rincon, MD;
- Secretary: Goddy T. Corpuz, MD;
- Delegate: Anupama Gotimukula, MD;
- Alternate Delegate: Suresh Kumar, MD; and
- Members at Large: Arathi Shah, MD, and Jenny Jacob, MD.

The section has taken a keen interest in working towards greater international medical graduate membership within TMA as well as member involvement within the section. During their meeting at Winter Conference, section members discussed recruitment, retention, and involvement activities.

The section also created an award that recognizes IMG physicians who have taken steps beyond their regular workday to improve the health of their community. The section announced the award in 2018 and accepted nominations through January 2019 for the inaugural award. The chair of the IMG Section presented the inaugural award during TexMed 2019 to Nick Schroff, MD, for his outstanding volunteer service outside his practice.

Looking Ahead
The section will focus on increasing IMG membership, engagement, and meeting participation. The section also plans to provide educational programming relevant to its members.
The Medical Student Section (MSS) was established by the House of Delegates to shape the future of medicine in Texas by active medical student involvement in the affairs of the various Texas county medical societies, the Texas Medical Association, and the American Medical Association. Its purpose is to foster dialogue between individuals and organizations within medicine, promote and aid in programs that may serve to unify and give direction to health-related activities at all levels of education, and provide a good and useful service to the medical students in Texas.

Membership
Medical student TMA membership reached an all-time high in 2019. As of Dec. 31, student membership was 7,139, a 467-student increase over the same time in 2018. The 2019 total includes the new Texas Christian University medical school, which enrolled 100% its students in TMA. Of the 13 Texas medical school chapters, 10 have joined TMA at 100% membership. TMA is anticipating medical school growth within Texas to reach 15 schools by 2020.

Leadership
With the continued addition of new medical schools in Texas, the section has seen tremendous growth in student participation and interest in leadership positions. In 2019, this was even more evident when more than 100 students applied for approximately 60 available TMA board, council, and committee positions.

During their Executive Council meeting at 2020 Winter Conference, members appointed the following executive council positions for a one-year term that begins after the conclusion of TexMed 2020:

- Alternate delegate, Texas Delegation to the AMA: Faith Mason, MS4 (UTMB), and Ankita Brahmaroutu, MS4 (A&M).

During their business meeting at TexMed 2019, members elected the following students to a one-year term on the MSS Executive Council, beginning after the conclusion of TexMed 2020:

- Chair: Amanda Arreola, MS4 (UTRGV);
- Vice chair: Sarah Miller, MS3 (UTRGV);
- Secretary: Swetha Maddipudi, MS2 (UTSA);
- TMA delegate co-chairs: Pruthali Kulkarni, MS4 (TCOM), and Gretta Smith, MS4 (A&M); and
- AMA delegate co-chairs: Donald Egan, MS3 (UTSA), and Lauren Fuller, MS4 (Baylor).

Additionally, several Texas students served at the national level. The following students were elected to national positions during AMA’s Annual and Interim meetings in 2019:

- Region 3 vice chair (A-19): Rebecca Haines, MS4 (A&M);
- Region 3 outreach and community service chair (A-19): Natasha Topolski, MS2 (McGovern);
- Region 3 legislative chairs (A-19): Rajadhar Reddy, MS2 (Baylor), and Joseph Camarano, MS3 (UTMB);
• Region 3 chair (I-19): Swetha Maddipudi, MS2 (UTSA);
• Region 3 membership chair (I-19): Matthew Hidalgo, MS3 (UTRGV);
• Region 3 secretary (A-19), delegate (I-19): James Bunch, MS2 (TX Tech);
• Reg 3 alternate delegates (I-19): Josh Bilello, MS2 (UTMB); Abhishek Dhara, MS3 (PL Foster);
  Rajadhar Reddy, MS2 (Baylor); and Ikram Rostane, MS1 (McGovern).

Several students from Texas also were appointed or elected to leadership positions in various AMA-MSS standing committees, as well as those of other state and national specialty societies.

During the MSS Business Meeting at TexMed 2019, the section named 12 members to be part of the Leadership Honor Society, which recognizes fourth-year medical students who have actively participated in Texas organized medicine.

Advocacy

MSS delegates from across the state collaborated to write and submit 18 resolutions to the House of Delegates at TexMed 2019. Fourteen were adopted or adopted as amended. Among the resolution topics were risks of direct-to-consumer genetics tests, tax exemption for feminine hygiene products, and restricting electronic cigarettes sales to minors.

With the legislature in session in 2019, Texas students turned their attention to advocacy issues of importance to medical students. Approximately 200 students converged in Austin for 2019 First Tuesday events sponsored by TEXPAC. First Tuesdays was a valuable experience in the art of lobbying and a great example of medical students taking the future of their profession into their own hands.

Awards

The MSS Executive Council recognized The University of Texas Rio Grande Valley School of Medicine as the 2019 Chapter of the Year. Michael Bagg, UT Health McGovern Medical School, was named Student of the Year. Linda M. Siy, MD, Fort Worth, was selected as the recipient of the 2019 C. Frank Webber, MD, Award, for providing outstanding service to the TMA Medical Student Section. These awards were presented during TexMed 2019.

Chapter Service

Multiple chapters participated in one or more of TMA’s outreach programs: Walk With a Doc, Be Wise – ImmunizeSM, and Hard Hats for Little Heads.

The TMA Foundation awarded multiple grants to chapters for these projects within their communities:

• Alliance Refugee Wellness Fair (Baylor);
• Dell Medical Student Flu Crew (Dell);
• Frontera de Salud: Improving Border Health with Medical Student-Community Health Worker Alliance (McGovern);
• Feed my Sheep Mobile Pediatric Clinic (A&M);
• Breast cancer screening in underserved populations (TX Tech);
• Smoking Cessation Program at The Free Clinic (TX Tech);
• Refugee Resettlement Needs Assessment (Baylor);
• Healthy Minds, Health Bodies (Baylor);
• Community Week Health Fair (A&M);
• UTHHealthCares, 3rd Annual Health Fair at UT Physicians Jensen Clinic (McGovern);
• 4th Annual HOPE Health Fair (UTMB); and
• Smoking Cessation Program and lung cancer screenings in a Dallas homeless population (UTSW).
Chapters also coordinated or participated in local events such as human trafficking training, gun violence prevention and awareness, and Head Start physicals. McGovern chapter members helped coordinate and run a Mock House of Delegates, an educational session where students were invited to participate as a delegate debating and dissecting resolutions from past conferences as well as participate in a Mock Reference Committee. TMA leaders were invited to participate as well as students from nearby medical schools Baylor College of Medicine and The University of Texas Medical Branch. Additionally, UT Health San Antonio students implemented curricular changes at their school to include resolution writing as an advocacy tool within its ethics curriculum.
The Resident and Fellow Section (RFS) was established by the House of Delegates to encourage participation in shaping the future of medicine in Texas by active involvement in Texas county medical societies, the Texas Medical Association, and the American Medical Association. Its purpose is to foster dialogue between individuals and organizations within medicine; promote and aid in programs that may serve to unify and give direction to health-related activities at all levels of education; and provide a good and useful service to the residents and fellows in Texas.

Membership
Resident membership reached an all-time high in 2019. As of Dec. 31, resident membership was 7,853, a 820 increase over the same time in 2018. The increase in residents can be attributed to the number of programs now participating at 100% membership. These programs provide rosters and contact information that TMA otherwise would not have, enabling TMA to identify and communicate with these residents.

Section Activities
The RFS meets three times annually in conjunction with all TMA meetings. During winter and fall conferences, the RFS has joint meetings with the Young Physician Section (YPS). These joint meetings continue to be well received and attended. Additionally, the RFS and YPS host a mixer at all three conferences, which are also very popular.

During their meeting at TexMed 2019, RFS members elected the following residents to a one-year term on the RFS Executive Council:

- Chair-elect: Collin Juergens, MD;
- Secretary: Amir Ahmadian, DO;
- TMA delegates: Michael Dakkak, DO; Ronak Ghiya, MD; Jayapradha Kasaraneni, MD; Hussain Saleem Lalani, MD; Matthew McGlennon, DO; and Cristina Penon, MD; and
- TMA alternate delegates: Ivan Becerra, MD, and Jennifer Fan, MD.

The section meeting at 2019 Fall Conference featured an overview of TMA’s efforts during the 2019 Texas legislative session presented by TMA advocacy staff. TMA President David Fleeger, MD, also spoke regarding benefits and involvement, and how members are able to make an impact.

During its 2020 Winter Conference meeting, the section discussed resolutions introduced by section members. The section elected Kayla Riggs, MD, as TMA Board of Trustees resident representative and Matthew McGlennon, DO, to the resident alternate delegate position on the TMA Delegation to the AMA.

During the AMA RFS meeting at the AMA 2019 Interim meeting, Michael John Metzner, MD, was elected to be a delegate, and Myphuong “Theresa” Phan, MD, MPH, and Jerome Jeevarajan, MD, were elected to be alternate delegates.
Planned Activities

TMA provides free early career education for residents to help navigate contracts, develop negotiation skills, and much more. In addition to the live programing TMA currently offers, TMA will also produce online modules in 2020.

The section plans to continue conducting joint meetings with the YPS, improving the educational speakers offered at meetings, and increasing attendance and engagement.
The Texas Medical Association Young Physician Section (YPS) met in conjunction with the Resident and Fellow Section (RFS) twice in the course of 2019-20, at the TMA fall and winter conferences. Joint meetings with the RFS continue to be well-received and attended. The 2019 Fall Conference meeting featured a presentation on TMA engagement and leadership by TMA President David Fleeger, MD, as well as a legislative update from TMA advocacy staff.

During the 2020 Winter Conference meeting, announced candidates for the YPS position on the TMA Board of Trustees were presented, and AMA-YPS delegates were elected to one-year terms:

- Gates Colbert, MD (reelected);
- Matthew Brooker, DO (reelected);
- Marcial Oquendo, MD (reelected); and
- Brett Cooper, MD.

The remaining members of the Executive Council are listed below along with their terms:

Officers (one-year terms):
- Chair: Gates Colbert, MD;
- Chair-elect: Samuel Mathis, MD; and
- Immediate past chair: Jessica Best, MD.

TMA delegates (two-year staggered terms):
- Eman Attaya, MD (2019-21);
- Clay Cessna, DO (2018-20);
- Gates Colbert, MD (2019-21);
- Sara Woodward Dyrstad, MD (2018-20);
- Jennifer Liedtke, MD (2018-20);
- Sachin Mehta, MD (2018-20);
- Jason McKnight, MD (2019-21); and
- Jacob Stetler, DO (2019-21).

TMA alternate delegates (two-year staggered terms):
- Andy Chen, MD (2018-20);
- William Fox, MD (2018-20);
- Stephen Herrmann, MD (2019-21);
- Ann Hughes Bass, MD (2019-21);
- Samuel Mathis, MD (2018-20);
- Kanchan Phalak, MD (2019-21);
- Joshua Reed, DO (2019-21); and
- Jimmy Widmer, MD (2018-20).
The Council on Health Care Quality oversees and supports the direction for the Texas Medical Association’s activities including policy and advocacy on quality improvement, patient safety, performance measurement, and clinical effectiveness. The council has been very active in several educational, programmatic and strategic activities, summarized below.

**Centers for Medicare & Medicaid Services’ Quality Payment Program**
The Medicare Access and CHIP Reauthorization Act (MACRA) was enacted in 2015. Since that time, the council aggressively reviews and responds with opportunities for physician advocacy and education on the Quality Payment Program (QPP). The QPP is an annual quality program that affects Medicare Part B payment two years later. The Centers for Medicare & Medicaid Services (CMS) administers the QPP by using a framework of integrated policies to implement the two payment tracks required by MACRA: The Merit-Based Incentive Payment System (MIPS) and advanced alternative payment models (APMs). The objective of the program is to incentivize physicians to improve care, reduce costs, and advance health care information. The QPP undergoes annual updates and changes via the federal rulemaking process, a mechanism through which the federal government takes public input into consideration to finalize rules and regulations and implement policies that govern the program each year. The 2020 calendar year is the 4th year of the QPP. TMA’s focus is to help physicians navigate the program and avoid annual Medicare payment penalties, currently still achievable for most physicians who submit data. However, in 2022, CMS will reach full MACRA implementation stage, which will include more challenging performance requirements for practicing physicians to avoid a 9% payment penalty, likely resulting in Medicare pay cuts to numerous physician practices across the state and for some practices, penalties may be incurred annually.

Outside of the limited data presented in the 2017 QPP experience report published in March 2019 and 2018 QPP performance data infographic published this January, CMS has not published any data to date (at the time of this report) that demonstrate whether the QPP is meeting its aims as envisioned by MACRA and Congress, such as improving the care and population health of Medicare beneficiaries, lowering Medicare costs, and minimizing burden on practicing physicians. Instead, what has been proven over the last two years is that the program disproportionately harms physicians in solo and small practices nationwide, as it is these physicians who suffer and get hit with the payment penalty the most and are funding MIPS bonuses for other practices under MACRA’s budget neutrality requirement. Considering that TMA survey data show that 73% of Texas physicians are in solo and small practices, this issue is of significant concern to TMA. In addition, maximum Medicare bonus payments of only 1.88% in 2019 and 1.68% in 2020 are not an appropriate return on investment for many physicians and do not sufficiently facilitate the transition to APMs and value-based care in general.

It is important to note that TMA supports voluntary participation in MIPS and APMs, advocates for fair and ethical program policies, and appropriate financial risk levels for advanced APMs. Given that an overwhelming majority of Texas physicians are required to participate in the program, TMA places a strong emphasis on weighing in annually on CMS’ QPP proposed rules in accordance with TMA Policies 265.017 Pay-for-Performance Principles and Guidelines, 195.033 Medicare Payment Incentives and Penalties, 118.002 Health Information.
Technology – Electronic Health Records and Personal Health Records, 115.015 Accountable Care Organizations, 195.032 Federal Physician Compare Website, TMA survey data, and adopted resolutions by the House of Delegates, such as Resolution 316-A-19 Determinants of Health. In response to CMS’ proposed rules for the 2020 QPP performance year, and as part of TMA’s ongoing advocacy and policy analysis, staff from the TMA MACRA Task Force, with input from the councils on Health Care Quality and Socioeconomics and ad hoc Committee on Health Information Technology, composed a 57-page TMA comment letter to recommend improvements to the policies governing the program this year. TMA also contributed to the 2020 QPP comment letters by the American Medical Association (AMA) and the Physicians Advocacy Institute to amplify the association’s recommendations.

The 2020 QPP final rule was published in November 2019 and although TMA’s 2020 QPP comment letter was effective for some policies, CMS finalized flawed methodologies, complex policies, and more rigorous data requirements against TMA recommendations resulting in significant concern to the association. In addition, many program and scoring policies continue to disadvantage physicians and favor certain practices by size, model type, setting, and capabilities in health information technology and data analytics. Certain policies also penalize physicians who disproportionately treat patients from disadvantaged populations or who are impacted by socioeconomic variables or social determinants of health. TMA remains concerned about data requirements for measures that are not meaningful to physicians, lack of appropriate risk adjustment for quality and cost measures, lack of accounting for social risk factors, annual changes to EHR requirements and system updates, MIPS budget neutrality requirement, and no-to-minimal return on investment to participation. In addition, the level of financial risk required to earn 5% bonus payments under the APM track is not appropriate for many practices, and the overall limited number of APMs available to physicians, including specialists, remains an issue and shortcoming of the QPP resulting in many practices having no choice but to remain in the MIPS track.

Furthermore, performance scores are publicly reported on Medicare’s Physician Compare website. TMA asserts that scores derived from flawed data are very misleading to the public and harmful to physicians. Overall, while some physicians experience “success” in the program, current QPP policies have the potential to tarnish physician reputations, undermine practice viability, risk physicians’ continued participation in Medicare, and threaten access to care for Medicare beneficiaries.

In 2021, CMS will shift physicians from MIPS to a new reporting structure called MIPS Value Pathways (MVPs) to facilitate the transition to APMs. CMS claims MVPs will reduce reporting burden and move away from siloed activities and measures toward an aligned set of measure options more relevant to a clinician’s scope of practice that is meaningful to patient care. However, TMA stated to CMS in its 2020 QPP comment letter that the association is not convinced the new structure is much different than the existing MIPS program, will likely not improve quality outcomes or reduce costs, and believes administrative and cost burdens have the potential to increase. For example, TMA anticipates changes to existing reporting methods, such as requiring physicians to submit data only through electronic means or registry vendors, and that system updates to accommodate the new MVP framework within electronic health records (EHRs) would involve costs that EHR and other health information technology vendors would likely pass on to physician practices. In addition, because MVPs would include predefined sets of clinical measures and improvement activities, physicians would lose the freedom to choose their own configuration of measures and activities. Such a proposed change would require physicians to have to pay to collect and submit data on measures and activities that may not have any value to their practices and patients and make QPP performance feedback meaningless. TMA’s 2020 QPP comment letter offered explicit guiding principles to define and develop MVPs and provided numerous comments and recommendations to help shape MVP policies the association believes would result in significant improvements to the program, increase physician engagement, and accelerate the movement to value-based care and APMs for physicians who wish to do so. In the 2020 QPP final rule, CMS reported it
would work with the physician community to refine the new MVP framework and present more detailed
MVP policy proposals during the next federal rulemaking cycle for the 2021 QPP performance year.

Council Action in Response to TMA President’s 2019 QPP Report
Separate from the federal rulemaking process, TMA President Report 2 Improving the QPP and
Improving Patient Access was unanimously approved at the 2019 TMA House of Delegates and was
referred to the Councils on Health Care Quality and Socioeconomics for action under the TMA Audit
Trail Process. The report recommended that 1) TMA strongly advocate for Congress to make
participation in MIPS and APMs under the QPP completely voluntary; 2) TMA strongly advocate for
Congress to eliminate budget neutrality in MIPS and finance incentive payments with supplemental funds
that do not come from Medicare Part B payment cuts to physicians and other clinicians; 3) TMA call on
CMS to provide a transparent, accurate, and complete QPP Experience Report on an annual basis so the
association can analyze the data to advocate for additional exemptions, flexibilities, and reductions in
reporting burdens, administrative hassles, and costs; 4) TMA establish formal policy that the CMS
increase the low-volume threshold for the 2020 QPP and future years of the program for all physicians
but continue to offer them the opportunity to opt in or voluntarily report; 5) TMA establish formal policy
that CMS preserve patient access by exempting small practices (1-15 clinicians) from required
participation in MIPS but continue to offer them the opportunity to opt in or voluntarily report; and 6) the
Texas Delegation to the AMA ask the AMA House of Delegates to adopt similar policy and calls to
action.

In June 2019, the TMA Policy Compendium was updated with the adopted policy, and while TMA
included comments about these policies in the association’s 2020 QPP comment letter, the majority of the
recommendations were outside the scope of federal rulemaking as Congressional action would be
required to make these technical changes in MACRA and the QPP. For this reason, the Texas Delegation
submitted a resolution to the 2019 Annual Session of the TMA House of Delegates with the same
recommendations. However, because two separate resolutions advocating for significant changes to the
QPP were previously submitted by the Pennsylvania and Florida delegations and referred for study,
TMA’s QPP resolution was referred for study as well. At the 2019 Interim Session in November, the
AMA Board of Trustees presented a comprehensive report on the QPP but TMA found the report to be
inadequate. With TMA leading the charge, the report was ultimately rejected by the AMA House of
Delegates and referred back to the AMA Board of Trustees for further consideration, with new
recommendations likely to come in June 2020. TMA will continue to advocate for real reforms, monitor
and track QPP implementation, and will inform membership of the latest developments and ongoing
advocacy through TMA communication channels.

QPP Education and Resources
Due to the complexity of the QPP along with annual changes that occur as a result of federal rulemaking,
developing physician education and resources to help physicians learn about and stay abreast of program
requirements remains a top priority of the council. Under the direction of the council, staff from the TMA
MACRA Task Force will continue to participate in workgroups facilitated by the Physicians Advocacy
Institute (PAI) to update and produce in-depth educational materials for the 2020 performance year that
will help physicians and groups succeed in the QPP and avoid Medicare payment penalties. In addition,
TMA continues to offer a comprehensive array of education and resources to help physicians learn about
and navigate the QPP. All information is located on the TMA MACRA Resource Center, including:
where to get MACRA CME at no cost, information about TMA’s MACRA readiness assessment and
customized on-site assistance by TMA Practice Consulting, free access to a separate MACRA QPP
Resource Center and physician education initiative located on the PAI website (created with input from
TMA), free QPP education and technical assistance by the TMF Health Quality Institute (TMF), a list of
MACRA resource centers by national specialty societies; a list of federally funded initiatives that offer
education and technical assistance to help physicians transition to MIPS or APMs at no or low cost, and
TMA PracticeEdge services for physician-led accountable care organizations and value-based
arrangements. Lastly, the council will continue to provide physician education on MACRA and the QPP
during its annual quality track at TexMed 2020 and offer CME credits at no cost to all attendees. All QPP
education offerings, clinical tools, resources, and technical assistance are routinely promoted via TMA
communication channels.

TMA Resolutions Referred to the Council
TMA resolutions 108-A-19, 213-A-19 and 316-A-19 were referred to the council for consideration and
action.

Resolution 108-A-19, Initial Assessment and Treatment Recommendation by Specialists, resolved that
TMA recognize that the best practice of patient care dictates that it is the responsibility of the physician to
develop the diagnosis and treatment in the evaluation of a patient, while it is recognized under limited
circumstances that an initial evaluation may be conducted by a nurse practitioner or physician assistant.
The resolution was "referred for study and report back". The council along with the Interspecialty Society
Committee reviewed and discussed the resolution at fall and winter conferences and the resolution was
referred for further study to the council and Interspecialty Society Committee with a report back at

Resolution 213-A-19, Complying with Value-Based Care Quality Measures for Medication Adherence,
resolved that TMA work with payers to identify standard methodologies that address quality measure
requirements for medication adherence in response to marketplace influences beyond the
physician/providers control. The council discussed the resolution and recommended advocacy letters.
TMA sent formal letters advocating for standard methodologies and improvements to value-based care
quality measures for medication adherence. Formal letters were addressed to the U.S. Department of
Health and Human Services, Centers for Medicare and Medicaid Services, Center for Medicare and
Medicaid Innovation, National Committee on Quality Assurance, Blue Cross Blue Shield of Texas,
United Healthcare, Aetna, Humana, and Cigna. TMA further urged all payers and organizations to adopt
formal policy that ensures the use of only those quality measures that physicians can reasonably influence
and control, and that accurately reflect the quality of care they provide to their patients.

Resolution 316-A-19, Determinants of Health, resolved that TMA: 1) Educate physicians about the social
determinants of health for the purpose of assisting physicians to better understand their impact on patient
health outcomes and wellbeing; 2) Educate state and federal policy makers, business leaders, and
governmental and commercial payers about the influence of social determinants of health on overall
health care quality and health care costs; 3) Collaborate with innovative public and private partnerships to
address social determinants of health and advocate for their adoption by state policy makers; and 4)
Advocate that governmental and commercial payers modify existing performance and quality programs
reflect the higher expected health care utilization and cost of population at greater risk of exposure to
social determinants of health and appropriately risk adjust physician compensation to reflect these higher
costs.

The council and TMA has undertaken numerous initiatives related to Social Determinants of Health
(SDOH), including: 1) offered continuing medical education on SDOH at the general session at Fall
Conference 2019 to educate physicians on their impact on health outcomes; 2) partnered with The
Physicians Foundation and The Health Initiatives to conduct a study on SDOH; 3) advocated that CMS
adopt new policies to implement risk adjustment methodologies related to SDOH and account for social
risk factors in the QPP and Medicare payment; 4) advocated that Texas Medicaid pursue a federal waiver
to broadly implement SDOH initiatives within the Medicaid program, including payment for physicians
and health systems that implement strategies to address SDOH; 5) actively participated in an SDOH Learning Collaborative convened by a large health foundation, Texas Medicaid, and Medicaid managed care plans; and 6) met with commercial health plan representatives to discuss how plans use SDOH data in their value-based payment initiatives. Additionally, TMA has testified before multiple state legislative and interim hearings on the need to better address SDOHs as part of Texas’ efforts to improve health outcomes while lowering health care costs. The council will include a presentation at the Quality Track at TexMed 2020 to educate physicians about SDOH and offer free CME to attendees. Over the next year, advocacy and education relating to SDOH will remain a high priority.

Subcommittee on Quality Programs and Clinical Measures

At winter conference 2019, the council formed the Subcommittee on Quality Programs and Clinical Measures. The vision of the subcommittee is to establish TMA as a meaningful and influential player in the value-based care delivery in Texas. Its goals are to 1) create stronger relationships with both the employer community and the medical directors of health plans in Texas; 2) explore the health purchasing goals of large Texas employers; 3) learn and educate physician members about existing quality programs and value-based models used in health plans, Medicare and Medicaid; 4) distinguish between the types of measures used to access healthcare quality and make recommendations based on measures that are most important in improving health status; 5) evaluate and recommend opportunities to streamline and reduce duplicative clinical measure sets; and 6) advocate for quality health care for all patients. This includes attention to methodology of performance measurement programs.

Over the past year, the subcommittee held employer panel meetings on health care value-based purchasing with the Teachers Retirement System of Texas, HEB and its Total Rewards and Magenta Health, City of Plano, Catalyst Health Network, Southwest Benefits Association, Dallas-Fort Worth Business Group on Health, and the Texas Business Group on Health. The purpose of the meetings was to obtain employer insights on value-based purchasing, gain a deeper understanding of their expectations of physicians and the type of data they seek, and how TMA can best collaborate with them to achieve the shared goal of improving the health of all patients. In addition, to obtain input from the broader employer community, the council collaborated with the Texas Business Group on Health to survey 320 employers on value-based purchasing in Texas.

Lastly, the subcommittee met with administrators from UT Physicians in Houston to learn about their experience and challenges with managing multiple quality measures across public and private payers and the impact it has on their organization. Comments and insights received were highly informative and helped to inform the subcommittee’s work to develop a solution to this issue. After exploring approaches to standardizing measures, the subcommittee evaluated the Core Quality Measures Collaborative (CQMC), met with a representative from America’s Health Insurance Plans (AHIP) about the collaborative, and recommended that the council consider membership.

Core Quality Measures Collaborative

At the urging of the subcommittee the council evaluated the CQMC. The collaborative is a broad-based coalition of health care organizations convened by AHIP. The membership includes CMS, National Quality Forum (NQF), health insurance providers, national medical associations (e.g. AMA, AAFP, ACP, etc.), consumer groups, purchasers and employer group representatives, and other quality collaboratives to recommend core sets of measures by clinical area to assess the quality of American health care. CQMC aims are to 1) identify high-value, high-impact, evidence-based measures that promote better patient outcomes, and provide useful information for improvement, decision-making and payment; 2) align measures across public and private payers to achieve congruence in the measures being used for quality improvement, transparency, and payment purposes; and 3) reduce the burden of measurement by
eliminating low-value metrics, redundancies, and inconsistencies in measure specifications and quality measure reporting requirements across payers.

The CQMC began in 2015 and launched its first core quality measure sets in 2016. The association informed TMA members of the first-ever standardized quality measures sets across payers through an article in the April 2016 issue of Texas Medicine magazine. After four years, the CQMC is under new leadership by AHIP, CMS and NQF, and is in the process of reconvening workgroups for the next iteration of core quality measures sets for publication later this year. The council believes TMA’s presence in the collaborative will give the association a crucial seat at the table to select quality measures, align quality measures across payers, and reduce physician burden. At winter conference, the council sought approval for TMA to become a member organization of the CQMQ and the Board of Trustees approved it. At the time of this report, TMA was accepted and admitted into the CQMC as a nonvoting member, but will be able to participate in its workgroups that select measure sets for different specialties. Of note, TMA is the first state medical association to join the collaborative. Given that the AMA is a voting member, AHIP informed TMA state medical associations that join the collaborative are encouraged to provide feedback on voting to the AMA.

TMF Health Quality Institute

In 2019, the TMF Health Quality Institute was awarded a new five-year contract by CMS to serve as the state’s Quality Innovation Network-Quality Improvement Organization. Under this contract, TMF Networks provide Texas physicians no-cost technical assistance and education on quality improvement and patient safety topics through the following networks: nursing homes and skilled nursing facilities; community coalitions; patients, families and caregivers; quality improvement initiative; and Medicare’s QPP. Of note, TMF has a robust QPP network and works with physicians and clinicians to help them transition to MIPS and successfully advance through the program’s performance categories by providing technical assistance, education, outreach, and distribution of learning modules at no cost. At the council’s urging, TMA continues to collaborate with and promote services provided by TMF, connecting members to free assistance that helps them improve patient and quality outcomes, as well as navigate Medicare requirements to avoid payment penalties and maximize value-based payments.

CMS Qualified Entity “The Health of Texas”

In 2017, The University of Texas School of Public Health (UTSPH) in Houston was approved by CMS to establish a Qualified Entity (QE) to research claims data by Medicare and other payers to evaluate physician performance and regional variations in Texas. Cecilia Ganduglia-Cazaban, MD, DrPH, codirector of the UTSPH Center for Health Care Research Data and her staff routinely present at council meetings to update members on the QE’s research progress and to collect feedback. UTSPH is in the process of finalizing data for the new The Health of Texas website to make research data accessible to physicians and the public. TMA will inform membership of the new website through TMA communication channels. Council member Marina C. George, MD serves on the QE’s physician workgroup to provide physician input and guidance for the QE’s ongoing research and will keep the council apprised of QE updates and solicit physician feedback, as needed.

HHS Quality Summit and Health Quality Roadmap

At winter conference, TMA member Robert David Martinez, MD, Executive Vice President, Chief Medical Officer, and Chief Physician Executive of DHR Health System in Edinburg presented to the council about the U.S. Department of Health and Human Services Quality Summit and its ongoing work to develop a Health Quality Roadmap for the federal government. Dr. Martinez is one of 15 non-governmental health care industry leaders and the only participant from Texas who was chosen out of 300-plus applicants to serve on the Quality Summit to offer insights into the modernization of HHS’ quality programs. Council members were informed that HHS is working to align and improve reporting
on data and quality measures across Medicare, Medicaid, the Children’s Health Insurance Program, the Health Insurance Marketplace, the Military Health System, and the Veteran’s Affairs Health System. The council provided input and offered feedback and will track HHS’ quality activity and inform membership of pertinent information, as needed.

TMA Value-Based Payment Initiatives Workgroup and Prior Authorization Task Force
Under the auspices of the TMA Board of Trustees, the workgroup on Value-Based Payment (VBP) Initiatives and Physician-Led Community-Based Health Care Delivery Models was revived and a new Prior Authorization Task Force was formed. The VBP workgroup comprises chairs or designees from select TMA components, county medical society leadership, and physicians with expertise in physician led ACO models. The revived workgroup will continue to survey Texas’ VBP landscape; refine proposed Community-Based ACO principles to meet Texas’ diverse geographic and specialty needs; develop a Community-Based-ACO concept paper for consideration by HHSC; recommend potential educational, training, and technical assistance tools to help TMA members transition to and succeed in a VBP arena; and identify potential VBP policy recommendations for consideration by the TMA House of Delegates. Council chair Jeffrey B. Kahn, MD and council member Ajay K. Gupta, MD serve on the workgroup and will keep the council apprised of their work and obtain input and feedback, as needed. The Prior Authorization Task Force comprises chairs or designees from select TMA councils and interested county medical societies to strategically prepare solutions for advocacy that address and mitigate the burden of prior authorization. Council member Nishant B. Jalandhara, MD serves on the task force and will keep the council apprised of their work and obtain input and feedback, as needed.

TMA Publications on Health Care Quality

TexMed 2020 Quality Quick Tips and Quality Track
Through generous sponsorship from the TMF Health Quality Institute, the council will again host quality activities at TexMed 2020 which include quality quick tips (mini presentations at the Physician Lounge) and a four-hour quality track with CME credits at no cost to attendees. Dr. Kahn will chair the quality track. Quality quick tips will provide a “best practices” exchange in the field of quality improvement. The quality track will provide physicians with current information on changes in the health care landscape nationally and in Texas. The program will begin with a presentation on improving health care quality across the continuum of care and where physicians can get support and guidance. Additional speakers will address social determinants of health and their implications on health outcomes, an initiative to align quality measures across payers, Texas Medicaid and value-based care initiatives, value-based purchasing by employers, and include practice strategies for successful participation in innovative health care delivery models. In addition, through the TexMed 2020 meeting app, quality and practice management resources will be available to provide physicians with information about education and clinical tools on quality that they can use throughout the year to establish protocols and improve health care for their patients.
At TexMed 2019, the House of Delegates amended Resolution 212-A-19, submitted by the Harris County Medical Society, and adopted it as follows:

RESOLVED, That the Texas Medical Association study ways to protect the relationship of physicians and their patients after inpatient hospital referrals and report back to the TMA House of Delegates at its annual 2020 meeting; and be it further

RESOLVED, that TMA study ways to improve the representation of all practice types of physicians through hospital medical staff bylaws to include the business associate agreement, if any.

The resolution was referred to the Council on Health Service Organizations.

The council is reaching out to the TMA ad hoc Committee on Physician Employment, the American Medical Association Organized Medical Staff Section, and legal counsel with expertise on hospital medical staff issues to determine what information and assistance are available on these topics. Additionally, possible legal and other solutions are being researched to (1) prevent interference with a patient-physician relationship, and (2) increase independent physician representation on hospital medical staff boards.

A report with the findings of the council’s study will be provided at TexMed 2021.
Update on CME Providers in TMA’s Intrastate Accreditation Program

In 2019, 12 organizations received accreditation decisions. Eleven were granted full accreditation (two earned six years’ accreditation with commendation). One organization was placed on probation with full accreditation contingent upon improvement as demonstrated in a follow-up progress report. Organizations receiving accreditation with commendation were Driscoll Health System, Corpus Christi; and Hendrick Health System, Abilene. TMA’s Subcommittee on Accreditation, a team of 12 physicians and CME professionals, conducted the surveys and submitted reports to the committee for accreditation decisions.

Cook Children’s Medical Center, Fort Worth, voluntarily withdrew CME accreditation from TMA. The organization was granted Joint Accreditation. Joint-accredited organizations are accredited by the Accreditation Council for Continuing Medical Education (ACCME). Joint Accreditation for Interprofessional Continuing Education offers organizations the opportunity to be simultaneously accredited to provide dentistry, medicine, nursing, optometry, pharmacy, physician assistant, psychology, and social work continuing education through a single, unified application process, fee structure, and set of accreditation standards.

TMA’s current roster of CME-accredited organizations includes 52 organizations. The breakdown for type of organization is as follows: 39 hospitals or hospital systems, one physician group, three state specialty societies, one state agency, two regional health education centers, one university student health center, one quality improvement organization, one hospice, one regional medical staff organization for emergency services, one county medical examiner’s office, and one regional advisory council in emergency preparedness.

Texas CME Professional Development Conference

TMA offers an annual two-day conference for physicians and staff who plan and implement continuing medical education activities. The conference provides updates on CME issues, trains CME providers to meet accreditation requirements, and provides networking opportunities for CME providers. The 2019 Texas CME Professional Development Conference was held June 19-21 at the Sheraton DFW Airport Hotel and was attended by 113 CME professionals. The first day of the conference focused on preparing CME professionals to align CME programs with Maintenance of Certification (MOC), to demonstrate outcomes by aligning CME activities to the Centers for Medicare & Medicaid Services Merit-Based Incentive Payment System and Texas Health and Human Services Commission Waiver Measures, to use education technology tools during CME activities that support adult learner needs, to use a variety of communication tools for improving collaboration and value-building with multiple stakeholders, and to improve CME operational efficiency through process mapping. New in 2019, the last day of the conference was focused on the participants’ continuing professional development (CPD). Participants created value statements to highlight the “why” behind the work they do, explored the competencies required for success in CME, and received resources to conduct a self-assessment and create a CPD plan.

The 2020 Texas CME Professional Development Conference is scheduled for June 17-19 at the Embassy Suites by Hilton San Antonio Landmark.
Accreditation Council for CME Opened Call for Comment About Proposed Standards for Integrity and Independence in Accredited Continuing Education

ACCME’s goal is to streamline, clarify, and modernize the standards, and to ensure their continued relevance and effectiveness in the changing health care environment. First adopted in 1992, the standards were last updated in 2004. Over the past 15 years, the standards have become a national and international model, adopted by accreditors across the health professions. ACCME Standards for Integrity and Independence in Accredited Continuing Education (renamed in the proposal from the Standards for Commercial Support: Standards to Ensure Independence in CME Activities) are designed to create a clear, unbridgeable separation between accredited education and industry marketing and to ensure that accredited CE serves the needs of patients and the public.

The proposed revisions are the result of a year-long, inclusive review. To oversee the review, ACCME convened the Task Force on Protecting the Integrity of Accredited Continuing Education, with members representing diverse perspectives, including accredited continuing education providers and the public. The task force and ACCME leadership engaged with stakeholders in a variety of forums to identify new and existing challenges related to managing the complex issues of disclosure, conflicts of interest, and commercial support in a rapidly evolving health care environment. The proposed, revised ACCME Standards for Integrity and Independence in Accredited Continuing Education are based on the feedback ACCME received from the continuing education stakeholder community.

ACCME invited stakeholders to submit comments about the proposed revisions from Jan. 7-Feb. 21, 2020. The ACCME Board of Directors will review the responses to the call for comment at its March 2020 meeting. After the board makes modifications and adopts the revised standards, ACCME will release a transition plan for the accredited continuing education community.

CME in Support of MOC

Collaborations are in place with the American Board of Anesthesiology, American Board of Internal Medicine, American Board of Ophthalmology, American Board of Otolaryngology – Head and Neck Surgery, American Board of Pathology, and American Board of Pediatrics. Additionally, an ACCME and American Board of Surgery (ABS) collaboration (announced in 2019) that will enable accredited CME providers to register activities for ABS Continuous Certification will launch in 2020. Accredited providers will be notified when the details of the collaboration are available.

In November 2019, ACCME and the Royal College of Physicians and Surgeons of Canada announced a new collaboration to expand opportunities for Royal College fellows to earn MOC Program Section 3 credits by participating in accredited CME activities that meet MOC requirements. Previously, the Royal College recognized accredited CME activities in the ACCME system as meeting the requirements for MOC Section 1 (Accredited Group Learning Activities). This new recognition will further expand choice and flexibility for Royal College fellows. Activities that are available Nov. 1, 2019, to June 30, 2022, are eligible. Royal College fellows will report their participation directly to the Royal College. CME providers will not need to report participant information.
The Committee on Child and Adolescent Health presents the following informational report regarding the committee’s recent activities.

During the fall committee meeting, the group agreed to explore the following items: childhood obesity, nutrition, and physical activity; physicians’ skills in assessment and counseling adolescents on sexual health; suicide in adolescent and young adult populations and resources to reduce risk and promote mental health; and use of e-cigarettes and vaping products by children, adolescents, and young adults. The committee intends to explore options to provide TMA members with essential information or continuing education opportunities related to these topics.

The committee completed sunset review of the following TMA policies:

- 55.002 Comprehensive School Health Education in All School Districts,
- 55.005 Human Sexuality and Family Life as Mandated Health Education Curriculum,
- 55.016 Sexuality Education,
- 55.019 School Health Education,
- 55.035 Right to Confidential Care,
- 55.018 Mass School Audiometric Screening,
- 135.017 ImmTrac,
- 260.064 Family Comes First, and
- 260.084 Fireworks Education.

The committee has been called on to discuss or respond by email to state and federal proposals or calls for comment on such topics as implementation of state legislation to address school safety, mental health services, revisions to state guidelines regarding curriculum on physical and health education, and School Health Advisory Committee roles and responsibilities.

The committee members have been a resource to the TMA Division of Communications in developing responses to media inquiries and in child health initiatives such as concussion awareness. The members promoted use of the Me&My Doctor blog, resulting in pieces addressing vaping, concussion, smartphone and social media use, adolescent well visits, heat safety, and physical exercise.

Several members explored the idea of a collaborative summit to address school health issues. Although the summit was not feasible, they remained committed to engaging with other health and educational organizations as health-related issues surface in Texas.
The Committee on Reproductive, Women’s, and Perinatal Health presents the following informational report regarding the committee’s recent activities.

During the fall committee meeting, the group reviewed proposed priorities and agreed to: (1) explore developments in research on placenta health, and (2) address effects of implicit bias on ethnic and racial disparities in maternal and infant health. The committee intends to explore continuing education opportunities related to these topics.

Based on latest information on congenital syphilis from the Texas Department of State Health Services, committee members identified a need to update TMA webpage information and inform members of recent legislative change to testing requirements for pregnant women. Immediately following the fall meeting, TMA members received an advisory notice in *Texas Medicine Today* based on the committee’s guidance, corresponding to updates to the TMA webpage.

The committee prompted efforts to share information regarding new testing for X-ALD and the associated billing process for the Texas Newborn Screening Program. The TMA Newborn Screening Resource Center was updated accordingly.

Committee members continue to participate in leadership roles in statewide advisory or collaborative efforts that address maternal mortality and morbidity, women’s health programs, newborn screening, and perinatal quality initiatives. Members and consultants are serving on the following groups: Texas Alliance for Innovation on Maternal Health, Texas Collaborative for Healthy Mothers and Babies, Texas Maternal Mortality and Morbidity Review Committee, Texas Newborn Screening Advisory Committee, and Texas Perinatal Advisory Council.

The committee has been called on to jointly discuss or respond by email to state and federal issues, including implementation of state legislation to address expanded postpartum care, newborn hearing screening, and maternal and neonatal levels of care designations. The committee members have been a resource to the TMA communications division in responses to media inquiries and women’s health initiatives in the news.
Subject: Patient-Physician Advocacy Update

Presented by: Shannon Hancher-Hodges, MD, Chair

The Patient-Physician Advocacy Committee presents the following informational report regarding the committee’s recent activities.

Amicus Curiae “Friend of the Court” Brief Vetting
The committee reviewed and provided input on numerous amicus curiae (“friend of the court”) brief requests. These requests were received from physicians seeking TMA briefs in support of their lawsuits on a variety of topics, ranging from restrictive covenants to Texas Medical Board disciplinary actions. The committee provided recommendations to TMA’s Office of the General Counsel (OGC) for use in OGC recommendations to the chair of the TMA Board of Trustees.

Texas Medical Board
The committee invited Texas Medical Board (TMB) representatives to its meetings to learn more about its processes and procedures and to offer improvements. The committee met with the board’s executive director on various occasions to discuss a variety of concerns, ranging from recent legislation related to opioid prescriptions to the need for a TMB complaint form for lodging complaints against nonprofit health care corporations certified by TMB (formerly known as 5.01[a] corporations).

State Office of Administrative Hearings Issues
The committee discussed concerns related to challenges faced by physicians who are successful before the State Office of Administrative Hearings and received updates regarding one physician’s lawsuit on this topic. The committee reviewed draft bill language prepared by TMA staff to address concerns brought before the committee and recommended that the House of Delegates adopt new policy relating to overturning and vacating certain temporary suspensions or restrictions of an individual’s medical license by the Texas Medical Board.
The Texas Medical Association Insurance Trust (TMAIT) operates under the authority of an eight-member board: five trustees appointed by TMA and three trustees elected by trust subscribers. The five appointees include the executive vice president of TMA and a member of the TMA’s Young Physician Section. During 2019, the trustees met in person in January, May, and September in conjunction with TMA conferences and the House of Delegates meeting. The trustees also held an annual three-day planning session in July.

The Board of Trustees is assisted by the TMAIT Advisory Committee, composed of nine TMA physicians and a TMA Alliance member appointed by the trustees to review claims and underwriting decisions appealed by the membership. The advisory committee, which includes a variety of medical specialists, provides a member the opportunity for a panel of his or her peers to review insurance carrier decisions concerning underwriting and claim matters. The advisory committee is one of the principal strengths of TMAIT, as it gives each member a forum for further consideration of decisions that affect insurance coverage.

To expand the insurance market for the trust and our members, in 2000 TMAIT established its own insurance agency, TMAIT Financial Services, Inc., to assist those members who feel they need to shop for coverage. Through the agency, we are able to offer a TMA member any insurance plan available on the open market.

TMAIT maintains a 20-person staff at TMA’s Austin headquarters. TMAIT staff are involved in every phase of the program: marketing, enrollment, billing, and claims assistance. With direct access to all membership information, TMAIT staff can supply an immediate response to a member’s inquiry about insurance benefits. Staff are assisted by actuarial, legal, financial, tax, and technology advisors who offer advice on a broad range of technical issues. Staff serve as a liaison between the membership and the insurance carriers, and provide a member service that generally is not available to an individual purchasing coverage through the commercial insurance market.

The TMAIT association group life, business overhead, and long term disability (LTD) plans are underwritten by Prudential Insurance Company of America. The association group health insurance plans are underwritten by Blue Cross and Blue Shield of Texas. In addition to providing financial security, the insurers are important members of the TMAIT administrative team. Working in partnership with the trustees, the advisory committee, and TMAIT staff, the insurers provide TMAIT the high level of insurance expertise and administrative assistance required to operate a cost-effective, state-of-the-art insurance program. TMAIT staff communicate throughout each day with our insurance representatives; this close contact allows TMAIT to provide first-class service to its membership.

Through the combined resources of TMAIT and the agency, we are able to offer TMA members access to an extremely broad range of insurance products — from the cost-effective association group insurance plans offered through the trust to individual insurance products tailored to specific needs.

2019 Financial Results
Overall, the insurance program experienced a gain of about $2.7 million in 2019 compared with a gain of about $4.8 million in 2018. The results by plan, with comparative information for 2019, are presented below.
The life insurance plan experienced a gain of about $2.7 million for 2019 compared with a gain of about $500,000 in 2018. There were 20 death claims in 2019 compared with 23 in 2018. The total payments in 2019 were $1.2 million compared with $4.6 million paid in 2018.

The business overhead plan experienced a loss of about $325,000 during 2019 compared with a gain of about $675,000 during 2018.

• The LTD plan experienced a small loss of $525,000 in 2019 compared with a $3.5 million gain in 2018. After three consecutive years in which only eight new claims were incurred, the LTD plan experienced a sharp increase with 16 new claims in 2019.

• In 2019, the health plans produced a gain of about $900,000 compared with a loss of $250,000 in 2018. This represents the first year with a significant gain since 2008.

In years like 2019 when the experience is favorable, gains are credited to the trust’s Premium Stabilization Fund (PSF), providing added security and stability for the insurance program. At the close of the 2019 policy year (Oct. 31, 2019), the insurance program had a combined PSF balance of $78 million.

2019 Program Initiatives and Accomplishments

TMAIT’s partnership with the TMA Education Center to fund no-cost or reduced cost access to TMA’s online CME courses has been a success for TMA members and TMA.

TMAIT launched a new website in August 2019. The new segment-based design encourages members to explore the site and broaden their perception of the value TMA Insurance Trust offers.

Beginning in August 2019, TMAIT offered a 25% “Thank You Credit” for TMA Member Long-Term Disability Insurance and TMA Member Business Overhead Expense plans. This credit is equal to a 25% discount on member insurance premiums.

TMAIT was recognized by the Professional Insurance and Marketing Association (PIMA) for excellence in marketing at the 2019 Marketing Methods Competition. PIMA convenes the leaders and leading companies in affinity benefits distribution and direct marketing. TMAIT was awarded the Gold Award for our 2018 Affordable Care Act (ACA) open enrollment marketing campaign.

2020 Initiatives

To increase engagement with residency programs in the state, TMAIT will pay for TMA and county medical society dues for resident physicians throughout Texas. As of March, TMAIT has paid for the resident dues for The University of Texas Medical Branch at Galveston, Houston Methodist, UT Southwestern Medical Center, The University of Texas Health Science Center at Tyler, and JPS-Fort Worth.

From Feb. 1 through March 31, 2020, TMAIT offered $20,000 of guaranteed issue critical illness insurance.

The Affordable Care has prevented new enrollment in the association group health plans since Nov. 1, 2013. Fortunately, the ACA allowed us to “grandfather” coverage for members who began participation prior to that date. While operating on a closed group basis presents significant challenges, those plans remain financially viable and continue to provide the same quality coverage they have in the past. The association group health plans and the assistance we provide in securing coverage in the individual and small group markets have allowed our staff to maintain a high level of expertise in the health insurance business. This places TMAIT and the agency in a great position to respond to any changes that may arise from any changes to the ACA or expansion of association health plans.
Subject: Audit Trail of 2018 Financial Statements and 2019-20 Operating Budgets

Presented by: E. Linda Villarreal, MD, chair

Audit of 2018 Financial Statements

The Audit of 2018 Financial Statements report was presented to the TMA Board of Trustees at its Sept. 13, 2019, meeting. Independent auditor Holtzman Partners, LLP, determined the consolidated financial statements “present fairly, in all material respects, the consolidated financial position of the Texas Medical Association and the Texas Medical Association Board Administered Organizations . . . in accordance with accounting principles generally accepted in the United States of America.” Copies of the audit report are available in the association’s offices for review by any TMA member.

2019 Operating Budget

For 2019, operating income was $26,787,916 and operating expenses were $26,904,050. At year-end, total actual operating income for the year exceeded the budgeted operating income by $176,856 (0.66%). Total actual operating expenses were over budget by $207,990 (0.78%), resulting in an actual net operating deficit of $116,134. This actual net operating deficit was greater than the budgeted net operating deficit by $31,134. An unaudited report on 2019 operations is attached.

The Audit of 2019 Financial Statements report by Holtzman Partners, LLP, will be completed and presented to the Board of Trustees at its 2020 fall meeting. The board will present the audit reports to the House of Delegates in 2021.

2020 Operating Budget

In December 2019, the Board of Trustees approved a 2020 operating budget projecting an income of $27,073,000 and expenses of $27,073,000, with a 2020 capital expenditure budget of $620,000. The operating budget will be presented to the house by Board of Trustees Chair E. Linda Villarreal, MD. The board also approved direct financial support of related organizations in 2020 as follows: TEXPAC request for support totaling $390,000; TMA Alliance request for support totaling $268,000; TMA Foundation request for support totaling $115,000; and Association Management Services request for support totaling $1,155,000. Offsetting these expenses are projected 2020 Association Management Services fees totaling $1,172,250; corporate contributions of $71,000 to TEXPAC; and $15,000 in grant revenue received for TMA Foundation programming.

The 2020 expense budget of $27,073,000 represents an increase of $376,000 from the final 2019 expense budget of $26,697,000. Supporting this expense budget is a projected income budget of $27,073,000. This represents an increase of $461,000 from the final 2019 income budget of $26,612,000. As a result, a break-even budget is projected for 2020.

The 2020 budgeting process included a review of all programmatic activities. TMA’s relevance and value to its members were used as benchmarks for evaluating programs and determining which areas to expand or reduce. As containing expenses for approved programs becomes increasingly difficult, programmatic growth must be restrained or new sources of income identified. The 2020 Operating Budget adopted by the board is attached.
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<th>Income</th>
<th>Total Income</th>
<th>Contingency Fund Income</th>
<th>Building Fund Income</th>
<th>Actual Income</th>
<th>Budgeted Income</th>
<th>Variance</th>
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</tr>
<tr>
<td>Public Health - Quality - Science</td>
<td>$84,750</td>
<td>$79,500</td>
<td>$5,250</td>
<td></td>
<td>6.60%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information Systems</td>
<td>$23,192</td>
<td>$19,000</td>
<td>$4,192</td>
<td></td>
<td>22.08%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td>$17,964</td>
<td>$29,000</td>
<td>$(11,036)</td>
<td></td>
<td>(38.08%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boards, Councils, Committees</td>
<td>$9,625</td>
<td>$9,625</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>$26,954,534</strong></td>
<td><strong>-$</strong></td>
<td><strong>$166,618</strong></td>
<td><strong>$26,787,916</strong></td>
<td><strong>$26,611,060</strong></td>
<td><strong>$176,856</strong></td>
<td><strong>0.66%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expense</th>
<th>Total Expense</th>
<th>Contingency Fund Expense</th>
<th>Building Fund Expense</th>
<th>Actual Expense</th>
<th>Budgeted Expense</th>
<th>Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational Support Activities</td>
<td>$4,904,971</td>
<td>$359,986</td>
<td>$4,544,983</td>
<td>$4,337,160</td>
<td>$207,823</td>
<td>4.79%</td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>$2,998,416</td>
<td>$2,998,416</td>
<td>$3,016,290</td>
<td>($17,874)</td>
<td>(0.59%)</td>
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<td></td>
</tr>
<tr>
<td>Advocacy and Public Policy</td>
<td>$2,562,873</td>
<td>$2,562,873</td>
<td>$2,376,870</td>
<td>$196,003</td>
<td>7.72%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership Recruitment &amp; Retention</td>
<td>$2,381,138</td>
<td>$2,381,138</td>
<td>$2,375,680</td>
<td>$5,458</td>
<td>0.22%</td>
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<td></td>
</tr>
<tr>
<td>Building Operations</td>
<td>$2,372,542</td>
<td>$2,372,542</td>
<td>$2,278,940</td>
<td>$93,602</td>
<td>4.11%</td>
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<td></td>
</tr>
<tr>
<td>Information Systems</td>
<td>$1,887,265</td>
<td>$1,887,265</td>
<td>$1,790,680</td>
<td>$96,585</td>
<td>5.03%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Related Organizations</td>
<td>$1,874,781</td>
<td>$1,874,781</td>
<td>$1,824,570</td>
<td>$50,211</td>
<td>2.77%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TexMed and Conferences</td>
<td>$1,594,609</td>
<td>$1,594,609</td>
<td>$1,492,850</td>
<td>$101,759</td>
<td>6.43%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td>$1,389,084</td>
<td>$1,389,084</td>
<td>$1,386,480</td>
<td>$2,604</td>
<td>0.19%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>$1,196,359</td>
<td>$1,196,359</td>
<td>$1,196,000</td>
<td>$359</td>
<td>0.03%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Health - Quality - Science</td>
<td>$1,077,069</td>
<td>$1,077,069</td>
<td>$1,114,360</td>
<td>$(37,291)</td>
<td>(3.35%)</td>
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<td></td>
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<tr>
<td>Health Policy - Regulation</td>
<td>$944,526</td>
<td>$944,526</td>
<td>$1,055,280</td>
<td>$(110,754)</td>
<td>(10.76%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marketing and Member Services</td>
<td>$818,863</td>
<td>$818,863</td>
<td>$909,460</td>
<td>$(89,597)</td>
<td>(9.96%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Education</td>
<td>$501,761</td>
<td>$492,390</td>
<td>$9,371</td>
<td></td>
<td>1.90%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boards, Councils, Committees</td>
<td>$453,482</td>
<td>$522,390</td>
<td>$(68,908)</td>
<td></td>
<td>(13.19%)</td>
<td></td>
<td></td>
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<tr>
<td>Educational Programs</td>
<td>$228,279</td>
<td>$508,150</td>
<td>$(281,871)</td>
<td></td>
<td>(54.47%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Expense</strong></td>
<td><strong>$27,264,038</strong></td>
<td><strong>$359,988</strong></td>
<td><strong>$26,904,050</strong></td>
<td><strong>$26,696,060</strong></td>
<td><strong>$207,990</strong></td>
<td><strong>0.78%</strong></td>
<td></td>
</tr>
</tbody>
</table>

| Net Income (Loss)                            | $ (309,504)   | $(359,988)               | $166,618             | $(116,134)    | $(85,000)       | $31,134  |            |
| Realized Investment Gain (Loss)              | $1,823,688   | $174,274                | $1,649,414           |              |                |          |            |
| Unrealized Gain (Loss) on Investments        | $2,627,214   | $672,798                | $1,954,416           |              |                |          |            |
| Other Gain (Loss)                            | $(5,294)     | $(5,294)                 |                     |              |                |          |            |
| **Net Balance**                              | $4,136,104   | $(359,988)               | $1,013,690           | $3,482,402    |                |          |
# Texas Medical Association 2020 Operating Budget

<table>
<thead>
<tr>
<th>Income</th>
<th>2020 Budget</th>
<th>2019 Budget</th>
<th>Change</th>
<th>% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Recruitment and Retention</td>
<td>$16,747,000</td>
<td>$16,823,000</td>
<td>($76,000)</td>
<td>(0.5%)</td>
</tr>
<tr>
<td>Insurance Royalty Income</td>
<td>2,237,000</td>
<td>2,185,000</td>
<td>$52,000</td>
<td>2.4%</td>
</tr>
<tr>
<td>Building Operations</td>
<td>1,732,000</td>
<td>1,643,000</td>
<td>$89,000</td>
<td>5.4%</td>
</tr>
<tr>
<td>Related Organization Support</td>
<td>1,187,000</td>
<td>1,187,000</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Marketing and Member Services</td>
<td>1,129,000</td>
<td>1,294,000</td>
<td>($165,000)</td>
<td>(12.8%)</td>
</tr>
<tr>
<td>Communications</td>
<td>926,000</td>
<td>857,000</td>
<td>$68,000</td>
<td>7.9%</td>
</tr>
<tr>
<td>Organization and Support Activities</td>
<td>819,000</td>
<td>601,000</td>
<td>$218,000</td>
<td>36.3%</td>
</tr>
<tr>
<td>Investment Income</td>
<td>665,000</td>
<td>399,000</td>
<td>$266,000</td>
<td>71.0%</td>
</tr>
<tr>
<td>Education Center</td>
<td>444,000</td>
<td>579,000</td>
<td>($135,000)</td>
<td>(23.3%)</td>
</tr>
<tr>
<td>Conferences</td>
<td>416,000</td>
<td>416,000</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Information Technology</td>
<td>254,000</td>
<td>229,000</td>
<td>$25,000</td>
<td>10.9%</td>
</tr>
<tr>
<td>Continuing Medical Education</td>
<td>202,000</td>
<td>202,000</td>
<td>$0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Governance</td>
<td>151,000</td>
<td>68,000</td>
<td>$83,000</td>
<td>122.1%</td>
</tr>
<tr>
<td>Advocacy and Public Policy</td>
<td>138,000</td>
<td>110,000</td>
<td>$28,000</td>
<td>25.5%</td>
</tr>
<tr>
<td>Legal</td>
<td>27,000</td>
<td>29,000</td>
<td>($2,000)</td>
<td>(6.9%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expense</th>
<th>2020 Budget</th>
<th>2019 Budget</th>
<th>Change</th>
<th>% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization and Support Activities</td>
<td>$3,520,000</td>
<td>$3,621,000</td>
<td>($101,000)</td>
<td>(2.8%)</td>
</tr>
<tr>
<td>Communications</td>
<td>3,278,000</td>
<td>3,203,000</td>
<td>75,000</td>
<td>2.3%</td>
</tr>
<tr>
<td>Advocacy and Public Policy</td>
<td>2,744,000</td>
<td>2,699,000</td>
<td>45,000</td>
<td>1.7%</td>
</tr>
<tr>
<td>Building Operations</td>
<td>2,380,000</td>
<td>2,279,000</td>
<td>101,000</td>
<td>4.4%</td>
</tr>
<tr>
<td>Information Technology</td>
<td>1,898,000</td>
<td>1,823,000</td>
<td>75,000</td>
<td>4.1%</td>
</tr>
<tr>
<td>Membership Recruitment and Retention</td>
<td>1,782,000</td>
<td>1,814,000</td>
<td>($32,000)</td>
<td>(1.8%)</td>
</tr>
<tr>
<td>Related Organization Administration</td>
<td>1,741,000</td>
<td>1,674,000</td>
<td>67,000</td>
<td>4.0%</td>
</tr>
<tr>
<td>Marketing and Member Services</td>
<td>1,682,000</td>
<td>1,725,000</td>
<td>($43,000)</td>
<td>(2.5%)</td>
</tr>
<tr>
<td>Governance</td>
<td>1,535,000</td>
<td>1,295,000</td>
<td>240,000</td>
<td>18.5%</td>
</tr>
<tr>
<td>Legal</td>
<td>1,483,000</td>
<td>1,413,000</td>
<td>70,000</td>
<td>3.5%</td>
</tr>
<tr>
<td>Public Health - Quality - Science</td>
<td>1,198,000</td>
<td>1,182,000</td>
<td>16,000</td>
<td>0.5%</td>
</tr>
<tr>
<td>Health Policy - Regulation</td>
<td>1,161,000</td>
<td>1,052,000</td>
<td>109,000</td>
<td>10.4%</td>
</tr>
<tr>
<td>Conferences</td>
<td>894,000</td>
<td>867,000</td>
<td>27,000</td>
<td>3.1%</td>
</tr>
<tr>
<td>Continuing Medical Education</td>
<td>343,000</td>
<td>336,000</td>
<td>7,000</td>
<td>2.1%</td>
</tr>
<tr>
<td>Education Center</td>
<td>229,000</td>
<td>508,000</td>
<td>($279,000)</td>
<td>(54.9%)</td>
</tr>
<tr>
<td>Non-Cash Depreciation Expense</td>
<td>1,225,000</td>
<td>1,196,000</td>
<td>29,000</td>
<td>2.4%</td>
</tr>
</tbody>
</table>

| Net Budget Surplus                          | $0          | $ (85,000)  | $ 85,000   | 1.4%        |
REPORT OF BOARD OF TRUSTEES

BOT Report 15 2020

Subject: Investments

Presented by: E. Linda Villarreal, MD, chair

The Texas Medical Association and Separate Fund Investments

Members of the TMA Board of Trustees also serve as trustees or as the board of trustees for two library funds, two student loan funds, one student and resident loan fund, the Physicians Benevolent Fund, and the TMA Special Funds Foundation. The investment portfolios for TMA, and for the funds for which members of the TMA Board of Trustees serve as trustees or as the board of trustees, are invested by the Board of Trustees by way of designated investment managers. The board acts on recommendations of its Investments Committee, which meets three times a year. The committee and the board review quarterly reports from TMA’s investments monitor, The Quantitative Group at Graystone Consulting. The Quantitative Group is the investment monitor for TMA funds and all funds managed by TMA. The committee and the board review quarterly composite reports prepared by The Quantitative Group and presented by W. Joseph Sammons, The Quantitative Group Senior Vice President, and Ronald Kern, The Quantitative Group Executive Director. The board establishes investment performance objectives for the investment portfolios of TMA and seven separate funds and sets policy for the mix of investment media (equities, fixed income, alternative mutual funds, and cash equivalents).

The Dec. 31, 2019, net assets of the funds managed by these investment managers were reported as follows: TMA, $34,409,614; Texas Medical Association Library, $2,866,544; Annie Lee Thompson Library Trust Fund, $3,829,014; May Owen Irrevocable Trust, $3,158,846; Dr. S. E. Thompson Scholarship Fund, $6,230,375; Physicians Benevolent Fund, $4,803,760; and Texas Medical Association Special Funds Foundation, $2,871,091.

Dec. 31, 2019 Investment Manager Performance Report

Since Dec. 31, 1993, the composite annualized performance for all equity investments has been 8.74% versus the equity composite index annualized rate of return of 9.37%. The one-year rate of return was 27.87% versus the equity composite index return of 29.31%. Equity investment allocation by manager is approximately 30% at Luther King Capital Management, 65% at iShares blended mutual funds, 3% in Dodge & Cox International Stock Fund, and 2% in the Invesco Developing Markets mutual fund.

The composite annualized performance for all fixed income investments has been 5.28% versus the Barclays Aggregate annualized return of 5.46% for the period of June 30, 1992 through Dec. 31, 2019. The one-year rate of return was 6.64% versus the index return of 8.72%. Fixed income investment allocation by manager is approximately 50% at Vaughn Nelson, 21% in the Metropolitan West Intermediate Bond Fund, 15% in the JP Morgan Strategic Income Bond Fund, and 14% in the FPA New Income Bond Fund.

Alternative mutual fund investments have experienced an annualized return of 7.04% versus the HFRI Fund of Funds Composite Index annualized return of 7.35% for the three-year period through Dec. 31, 2019. The one-year rate of return was 20.02% versus the benchmark return of 7.77%. Alternatives investment allocation by manager is 100% in the FPA Crescent Fund.
The TMA Board of Trustees declared March 29, 2020, that a national disaster, the COVID-19 pandemic, was occurring and called itself into session as a disaster board according to the TMA Bylaws 4.202:

4.202 Function as disaster board. In the event a catastrophe of national proportions such as war prevents the House of Delegates from acting, the Board of Trustees shall have the authority to receive and act on the reports of officers, boards, councils, and committees; to legislate; to elect and install officers; and to approve the president-elect’s nominees for council positions in accordance with regulations applying to the House of Delegates. In case of national catastrophe, the Board of Trustees shall be considered a disaster board and shall be called into session.

The disaster board voted on April 5 to cancel TexMed 2020 and suspend the TMA House of Delegates annual meeting, either virtual or in person, until an appropriate time when the COVID-19 crisis has subsided enough that the house is able to discharge its duties.

During this time, the disaster board took several actions on behalf of the house. This report is a summary of those actions.

Election of Uncontested Candidates
On May 2, the disaster board met in person and through teleconference to transition TMA leadership and allow the organization to move forward appropriately and deliberately. After confirming with the caucus chairs that there were no more candidates for uncontested races, the board voted to elect by acclamation uncontested positions, including TMA president-elect, secretary/treasurer, speaker, vice speaker, board of councilors, and Texas delegates to the American Medical Association. At this time, the board also confirmed the nominations of new council members.

Virtual TMA House of Delegates Meeting and Virtual Elections of Contested Candidates
TMA speakers and staff met regularly to consider and prepare for a 2020 meeting of the house using electronic virtual programs. TMA staff developed a robust, secure system to allow electronic, remote elections by credentialed delegates. Further, TMA staff explored options to allow an electronic virtual House of Delegates meeting to conduct limited essential business. On June 28, the disaster board, acting on behalf of the TMA House of Delegates, approved conducting a limited 2020 House of Delegates meeting using virtual meeting technology to allow delegates remote access for contested elections and action on essential house business. The board also closed nominations on contested elected positions.

Adoption of House Standing Rules and Creation of Formal House Advisory Body
Speaker Report 2 2020, House Standing Rules, previously submitted for the planned House of Delegates meeting in May 2020, creates basic standing rules as authorized in the TMA Bylaws 3.73.

3.73 Standing Rules. The House of Delegates shall have the authority to establish standing rules. The house shall be guided in its actions by its standing rules and this Constitution and Bylaws. In all instances not covered by this Constitution and Bylaws or its own standing rules, the American Institute of Parliamentarians Standard Code of Parliamentary Procedure shall govern.
Included in the standing rules in Speaker Report 2 2020 is the allowance for written testimony on business items for reference committee consideration. Accepting written testimony for a virtual house meeting would allow more TMA members to take part in the policymaking process by giving them the ability to submit testimony on their own time. In addition, Speaker Report 2 authorizes a House of Delegates advisory body, composed of caucus and section chairs, to support house efforts and provide guidance for planning a virtual meeting. At the June 28 meeting, the board approved the adoption of Speaker Report 2 2020.

House Standing Rules – Special Circumstances
Since a virtual TMA House of Delegates meeting had not occurred previously, the technology, rules, and bylaws to support this type of meeting had not been defined. Therefore, on June 28 the disaster board authorized and adopted the speakers’ right to create House Standing Rules – Special Circumstances, to be developed in conjunction with the House of Delegates advisory body for the 2020 House of Delegates meeting.

Limited Essential House Business
Due to the constraints of a virtual meeting and the complex requirements for parliamentary consideration of business, the speakers recommended limiting 2020 House of Delegates business to essential or consent items, based upon criteria developed in conjunction with the House of Delegates advisory body. The speakers recommended that informational reports and reports considered by the speakers and advisory body as uncontroversial be placed on the reference committee agenda for consideration, and resolutions be tabled to the 2021 house meeting. On June 28, the disaster board approved limiting 2020 house business to essential or consent items based upon these criteria.

First Approval of TMA Constitutional Amendments
Amending TMA’s Constitution is a two-year process, requiring approval of the amendment at two sequential annual sessions. At the first session, the amendment must be approved by a majority vote. At the second session, the approval must be by two-thirds vote, and the amendment must have been published in Texas Medicine and mailed to each House of Delegates member and county society prior to the annual meeting, according to Article XIII of the TMA Constitution:

**Article XIII. Amendments.** The House of Delegates may amend this Constitution by a two-thirds affirmative vote of its members present and voting at any annual session, provided that the proposed amendment shall (1) have received majority approval at the preceding annual session, (2) have been published in Texas Medicine, and (3) have been sent officially to each member of the House of Delegates and each component county society at least two months before the meeting at which final action is to be taken.

TMA’s 2020 annual session would have addressed two reports relating to constitutional amendments for three TMA member organizations: The Women Physicians Section, at-large members, and the proposed LGBTQ Health Section:

- Council on Constitution and Bylaws Report 1 2020, Amendments to the Constitution, Article V, House of Delegates: recommending amendment of the TMA Constitution to include House of Delegates representation for the Women Physicians Section and the at-large members.
- Council on Constitution and Bylaws Report 3 2020, Amendments to Bylaws and Constitution Establishing an LGBTQ Health Section: recommending (1) amendment of the TMA Bylaws to establish an LGBTQ Health Section, and (2) amendment of the TMA Constitution to include section representation in the House of Delegates.

On May 17, the disaster board, acting in lieu of the delayed House of Delegates, approved the constitutional amendments recommended by the Council on Constitution and Bylaws. This initiated the two-year process to amend the TMA Constitution, which would require a second round of approvals at the 2021 Annual Session. The disaster board took this action so as not to delay the proposed amendments until 2022, acknowledging that final approval of these amendments still rests with the full House of Delegates.