SUNSET ADVISORY COMMISSION

SPECIAL-PURPOSE REVIEW OPTIONS

State Board of Veterinary Medical Examiners

2022-23

88TH LEGISLATURE

SUNSET ADVISORY COMMISSION

Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

Proposed Options to Address Systemic Issues at The State Board of Veterinary Medical Examiners

Background

The State Board of Veterinary Medical Examiners has undergone three Sunset reviews over the last six years. These reviews have repeatedly documented significant data collection, reliability, and analysis issues and poor enforcement procedures that have plagued the agency.

- In 2017, Sunset staff found the agency's enforcement database was rife with problems and significantly impeded its enforcement processes, stating the "lack of reliable data significantly limits the agency's ability to have a complete, reliable picture of its enforcement program."[1] Without this data, Sunset staff was unable to identify or analyze enforcement trends. Instead, Sunset staff focused on the fundamental, systemic problems that led to this lack of reliable data and the Sunset Commission made both statutory and management recommendations directing the agency to clearly define and consistently implement its enforcement procedures and improve its enforcement data tracking systems and processes. The 85th Legislature continued the agency for only four years and directed Sunset to perform a limited scope review to evaluate the ongoing appropriateness of the commission's statutory recommendations in 2021.[2]

- In fiscal year 2019, the State Auditor's Office (SAO) conducted a compliance review of the Sunset Commission's 2017 management recommendations. The compliance report noted the agency self-reported it had not implemented a database system but that it had implemented the recommended enforcement procedures; however, SAO reported that it determined the agency had not fully implemented the enforcement recommendations.[3]

- In 2021, the limited scope Sunset review found the agency had implemented all the Sunset Commission's previous statutory recommendations unrelated to the database and enforcement processes.[4] However, the review found the agency continued to struggle with poor data management, particularly its enforcement data.[5] The agency acknowledged its continuing difficulties with its data management and reported its efforts to procure a new database were ongoing.[6] As a result, the 87th Legislature passed Senate Bill 713 requiring Sunset staff to perform a special-purpose review of the agency in 2023, focusing on the agency's implementation of its new database system and its processes and procedures for collecting and analyzing data.[7]

- In November 2022, the special-purpose review found the agency had improperly contracted for a new database it never received and indications that the agency was continuing to struggle with data collection, tracking, reliability, and analysis.[8] Specifically, the review identified the agency had attempted and failed to secure an operable enforcement database on two occasions, costing the state over $183,000 since 2018. Although the agency has since testified it intends on joining the Versa database maintained by the Texas Health Professions Council, the agency has not worked with the Department of Information Resources (DIR), the state's official technology agency, to ensure the Versa database will serve the agency's long-term needs. And, as a legacy database system, DIR has expressed concerns that Versa may not be the best option long-term. In addition to Sunset staff's previously reported database contracting issues, without consulting DIR or an external party with needed expertise, the agency's intentions may ultimately result in increased costs and additional wasted state funds. As a result of these findings, the Sunset Commission directed staff to identify

options to address the systemic issues at the State Board of Veterinary Medical Examiners and submit them to the commission prior to its January 2023 meeting.

Ultimately, Sunset staff determined the systemic data management and reliability issues have undermined the agency's ability to implement an effective enforcement program. Data informed decisions are critical to ensuring the best and most impactful use of agency resources. However, the agency does not maintain accurate data and makes minimal use of the data it does have, limiting the effectiveness of its efforts. In addition, without identifying and addressing the problems with its enforcement procedures, the agency risks committing more state dollars to a legacy database system that threatens to simply recreate the broken enforcement system and allowing the systemic problems to continue.

The agency's unreliable and inconsistent data collection and management practices undermine enforcement efforts.

The agency's poor data collection and management practices continue to stimy effective regulation of licensees. As a result, the agency cannot meet basic expectations for investigations, complaint prioritization, and inspections, and the public and state leadership cannot stay informed and offer meaningful oversight. Until the agency addresses its lacking enforcement procedures, the agency will not have an accurate understanding of what data capabilities its new database needs.

- **Inconsistent classification of complaint data.** The agency lacks clear definitions and consistent procedures for collecting and recording key enforcement data. Each investigator tracks their assigned complaints in an Excel spreadsheet and assigns a descriptor for the case independent of any coordinated approach. The agency has used more than 130 unique descriptors to classify complaints, many of which are overlapping. For example, some complaints are classified broadly as "adherence to law" violations while other similar complaints are labelled as "criminal activity," "drug diversion," "arrest," "use of prescription drugs," and "substance abuse," all of which are violations of law. Moreover, since fiscal year 2021, the agency has stopped classifying many complaints and violations by any descriptor.

  If complaints are not consistently classified, any trend analysis will be flawed. So while the agency recently reports having increased its enforcement activity, the data is still unreliable, making meaningful analysis impossible — with or without a functioning database. The lack of reliable data and analysis also precludes meaningful oversight by the agency's board, state leadership, and the public. Consistently collecting and analyzing reliable complaint data would not only help improve enforcement efforts, but making this information publicly available would better inform licensees and the public about the agency's activities and performance.

- **Lack of complaint prioritization.** The agency does not prioritize complaints based on the severity of the complaint or any documented rubric, leaving each investigator to determine the priority of each case. Other state agencies, such as the Texas Board of Pharmacy, ensure the most serious complaints are prioritized over complaints that present lower risk to public safety. The agency has a backlog of serious, unresolved complaints against licensees involving harm to animals or drug diversion that the agency has no strategy for resolving. However, Sunset cannot accurately confirm the actual number based on the agency's unreliable data. The agency lacks a meaningful policy or documented procedure for evaluating the complaints that exist, so it is impossible to determine which complaints the agency should be prioritizing. Implementing a more structured and clear prioritization process for complaints would also ensure limited resources are used more efficiently.

- **Lack of data needed to perform risk-based inspections.** Many state agencies, such as the Texas Medical Board and the Texas State Board of Pharmacy, use available data to inform the risk levels

posed by licensees when determining their inspection schedule. Currently, the agency does not have all of the data needed to most effectively perform risk-based inspections. For example, state law does not require veterinary practices to be registered, so the agency does not know how many veterinary practices there are in Texas. Instead, the agency measures its inspections based on the number of licensees impacted, which may not give a complete picture of the impact of inspection efforts or need for additional resources. Additionally, while the agency considers some relevant criteria when determining which practices to inspect, the agency doesn't consider other important available data, such as statewide trends of drug diversion, the types of veterinary practices (large or small animal clinics), or geographic areas with a higher prevalence of complaints and violations against veterinarians. Instead, the agency tends to target its inspections in geographic areas to minimize travel costs.

- **Incomplete disciplinary information.** The agency does not maintain current disciplinary histories for all licensees on its website, and the agency does not publicize significant enforcement actions, such as temporary suspensions, that would help effectively inform and protect the public. In 2016, the Sunset Commission directed the agency to ensure its website accurately reflects the disciplinary status of its licensees and make all approved disciplinary orders easily accessible and readily available on its website. During the course of this review, numerous stakeholders shared instances where a veterinarian's profile did not reflect a documented disciplinary history. A review of the agency's data confirms the agency does not accurately maintain data on the enforcement histories of its licensees. Further, despite the previous Sunset recommendation, current agency policy requires the public to submit an open records request to access administrative penalties against licensees. Other state agencies, such as the Texas Medical Board, maintain up-to-date licensee enforcement histories and make enforcement actions taken against licensees publicly available online. Being able to access enforcement histories and having notice of significant activities, like recent temporary suspensions and final orders, allows the public to make informed decisions when selecting a licensee to provide animal care.

Sunset Staff Proposed Options

This report does not include definitive recommendations from Sunset staff but instead provides the following options and recommendations for consideration. While not exhaustive, the list of options below offers a starting point for the Sunset Commission and Legislature to consider in addressing the ongoing systemic issues at the agency. Options 1 and 2 are not mutually exclusive approaches to address the issues facing the agency, and elements of each option could be combined.

Option 1   Temporary attachment to the Texas Department of Licensing and Regulation.

Establish a temporary, four-year relationship between the Texas Department of Licensing and Regulation (TDLR) and the State Board of Veterinary Medical Examiners (Veterinary Board). TDLR would provide policymaking and administrative oversight, guidance, and support to the Veterinary Board. TDLR is well-versed in licensing, enforcement, and data management, experience the Veterinary Board currently lacks. Under this option:

- TDLR would temporarily receive the Veterinary Board for a four-year period ending September 1, 2027.

- The Veterinary Board's governing body would become an advisory board to TDLR.

- During the four-year temporary attachment, all current and any subsequent members of the governing board would serve as an advisory board to TDLR and the Texas Commission of Licensing and Regulation (TCLR) would have final rulemaking authority except where specifically noted.

- TCLR would not be able to adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of veterinary medicine unless the rule has been proposed by the advisory board. TCLR would adopt rules prescribing the procedure by which the advisory board may propose rules relating to the scope of practice of, a health-related standard of care for, or the ethical practices of the profession of veterinary medicine. TCLR would either adopt such rule proposals relating to standard of care or return the rule to the advisory board for revision.

- TDLR would not be responsible for providing any administrative support to the Veterinary Board, including payroll, human resources, or IT support.

- TCLR would retain authority for final adoption of all rules and would be responsible for ensuring compliance with all laws regarding the rulemaking process.

- Veterinary Board staff would shadow TDLR staff, who would provide guidance on licensing, inspection, and enforcement policies and procedures.

- The Veterinary Board would work with both TDLR and the Department of Information Resources (DIR), both of which would review and determine the Veterinary Board's database needs, and assist and advise the Veterinary Board on the procurement and acquisition of a suitable database.

- Prior to the 89th Legislative session, TDLR would be required to provide statutory recommendations designed to improve the Veterinary Board's operations to the Sunset Commission and the standing committees with jurisdiction over the Veterinary Board.

- The Sunset date for the State Board of Veterinary Medical Examiners would be changed from 2029 to 2027.

- The Sunset Commission would make a recommendation to the appropriative committees to request additional funding to support TDLR's expanded workload and authorize TDLR to pay an independent management consultant to assist in administering the Veterinary Board, at TDLR's discretion.

Sunset staff would work with the Veterinary Board, TDLR, and the Texas Legislative Council to ensure these statutory changes are properly included in the any resulting Sunset legislation.

Option 2   Establish a statutory interagency work group to provide guidance to the State Board of Veterinary Medical Examiners.

This option would create a statutory work group to assist the agency with developing, adopting, and implementing rules, policies, and procedures to address the agency's systemic data management issues, including helping procure an effective enforcement database system and improving enforcement procedures. The work group would be comprised of representatives of the following entities:

- Texas Department of Licensing and Regulation

- Texas Tech University System

- Texas A&M University

- Texas Medical Board

- Texas State Board of Pharmacy

- Department of Information Resources

The work group would be required to comply with the Texas Open Meetings Act and would expire after the next Sunset review concludes. The agency would be required to provide written quarterly reports to the Sunset Commission and to the standing committees with jurisdiction over the agency regarding the progress of the work group and the agency, including implementation of any resulting changes, beginning December 1, 2023, until September 1, 2027. Sunset staff would work with the agency and the Texas Legislative Council to ensure these statutory changes are included in the draft Sunset legislation as needed.

Option 3   Adopt the following recommendations to ensure the State Board of Veterinary Medical Examiners addresses the systemic data management and enforcement program issues.

The following recommendations focus on specific operational issues at the State Board of Veterinary Medical Examiners that should be addressed regardless of whether the Sunset Commission recommends additional changes, such as those proposed in Options 1 and 2. Sunset staff would work with the agency and the Texas Legislative Council to ensure these statutory changes are included in the draft Sunset legislation as needed.

3.1   **Enforcement database.** Require the agency to consult with DIR before purchasing a new database. The agency would be prohibited from purchasing a new database until it has worked with DIR to assess its current and future database needs and DIR determines and reports to the Sunset Commission that the proposed database meets those needs. The needs assessment must include a database capable of handling the processes and procedures implemented to address the systemic issues identified in this report both now and in the future. Prior to obtaining the proposed database, the agency would be required to certify in writing to the Sunset Commission that it has implemented the recommendations adopted by the commission and Legislature.

3.2   **Data collection and analysis.** Require the agency to develop consistent methods and procedures for collecting, tracking, and analyzing trends in complaints including the sources and types of complaints. The agency would establish clear categories for categorizing complaints and violations, such as standards of care and drug diversion, and analyze this data to identify trends. The agency would use this analysis to guide its enforcement efforts.

3.3   **Enforcement reporting.** Require the agency to provide enforcement activity data and information on its website. This recommendation would direct the agency to publish enforcement information, to provide board members, staff, stakeholders, and policymakers a more complete picture of the agency's enforcement efforts and performance. At a minimum, the agency should report:

- the number of complaints received in a fiscal year, distinguishing those received from the public from those initiated by the agency, for each type of license, certificate, or registration, further broken out by type of allegation;

- the outcome of cases resolved in a fiscal year for each type of credential, describing the type and number of disciplinary actions taken for each category of violation committed, and the number of cases dismissed and the basis for dismissal;

- the average time to resolve cases, as well as the range of time to resolve cases; and

- the number and age of all cases open at the end of each fiscal year.

Compiling and posting this information on the agency's website would help the agency and policymakers judge the performance of the agency and improve transparency to the public.

3.4 Complaints. Require the agency to prioritize complaints based on the risk they pose to the public. This recommendation would require the agency to adopt policies formally guiding prioritization of complaint investigations based on the risk the alleged violation poses to the public, using indicators such as repeat violations or the severity of the allegation. The agency would develop and implement complaint investigation priorities with stakeholder input as necessary. As a management action, the agency should also adopt policies to train intake staff, investigators, legal assistants, and attorneys on how to apply the new risk-based approach to their caseloads. Prioritizing complaints would ensure the most efficient allocation of resources toward the highest risk complaints.

3.5 Inspections. Require the agency to conduct risk-based inspections and adopt and implement a more comprehensive risk-based inspections process. Under this recommendation, the agency would adopt policies formally guiding the prioritization of inspections based on risk to the public. In establishing these policies, the agency would develop an assessment tool to determine how frequently and intensively staff must be involved in various inspections based on key risk factors, such as current violation trends, repeat violations, volume of complaints, and potential drug diversions. For inspections deemed low-risk, the agency would be authorized to use alternative inspection methods, such desk audits.

3.6 Disciplinary histories. Require the agency to maintain accurate licensee disciplinary history data and publish the information online. Under this recommendation, the agency would ensure it includes accurate enforcement history in its data collection and post detailed information regarding disciplinary actions on its website, including full versions of any finalized agreed orders and disciplinary actions taken against licensees, such as temporary suspensions. This recommendation would increase transparency and improve the ability of consumers to make informed decisions about hiring licensed animal health care providers by providing access to complete disciplinary information.

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¹   Texas Sunset Advisory Commission, *Implementation of 2017 Sunset Recommendations*, (Austin: Texas Sunset Advisory Commission, January 2019), pp. 34-35, accessed online January 6, 2023, https://www.sunset.texas.gov/public/uploads/files/reports/Implementation%20of%20 2017%20Sunset%20Recommendations.pdf.

²   SB 319, Acts of the 85th Texas Legislature, Regular Session, 2017.

³   Texas Sunset Advisory Commission, *Implementation of 2017 Sunset Recommendations*, (Austin: Texas Sunset Advisory Commission, January 2019), pp. 28-29, accessed online January 6, 2023, https://www.sunset.texas.gov/public/uploads/files/reports/Implementation%20of%20 2017%20Sunset%20Recommendations.pdf.

⁴   Texas Sunset Advisory Commission, *State Board of Veterinary Medical Examiners Sunset Staff Report with Final Results*, (Austin: Texas Sunset Advisory Commission, June 2021), p. 12, accessed online January 6, 2023, https://www.sunset.texas.gov/public/uploads/files/reports/ State%20Board%20of%20Veterinary%20Medical%20Examiners%20Staff%20Report%20with%20Final%20Results_6-30-21.pdf.

⁵   Ibid, pp. 22-23.

⁶   Ibid.

⁷   Article 4, SB 713, Acts of the 87th Texas Legislature, Regular Session, 2021.

⁸   Texas Sunset Advisory Commission, *State Board of Veterinary Medical Examiners Special-Purpose Review*, (Austin: Texas Sunset Advisory Commission, November 2022), pp. 11-12, accessed online January 6, 2023, https://www.sunset.texas.gov/public/uploads/2022-11/ State%20Board%20of%20Veterinary%20Medical%20Examiners%20Special-Purpose%20Review.pdf.

Sunset Special-Purpose Review Options of the
State Board of Veterinary Medical Examiners

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