



June 28, 2016

Sunset Advisory Committee
PO Box 13066
Austin, TX 7871

Chairman Gonzales and Members of the Sunset Advisory Committee;

The Texas Dental Hygienists' Association ("TDHA") as a committed partner with the TSBDE would like to provide the following responses to oral testimony shared at the June 23, 2016 Sunset hearing.

Sunset Report Issue 1.1

Reduce the size of the board from 15 to nine members and adjust its composition to consist of four dentists, two dental hygienists, and three public members.

TDHA agrees with the recommendation to reduce the size of the board from 15 to 9 members. TDHA recommends that the composition of the board to be 4 dentists, 3 dental hygienists and 2 public members. The voice of the dental hygiene profession has always been under-represented on the state board. With dentist members as the outstanding majority, significant rulemaking has been pursued and adopted this past year related to business practices and dentists' self-interest. The focus of the board should always be the protection and safety of the public, not representation and protection of organized dentistry. Retaining a majority of dentists will continue to perpetuate the same situation over the next twelve years.

The Federal Trade Commission's guidance on self-interested boards provides that regulatory boards on which a controlling number of decision makers are active market participants in the occupation are potentially in violation of federal antitrust laws. This opinion was upheld by the United States Supreme Court's (*N.C. Dental Bd. Of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 2015) where the FTC determined that the North Carolina State Board of Dental Examiners violated antitrust laws by preventing non-dentists from providing tooth-whitening services in competition with the state's licensed dentists.

During the last year the TSBDE allowed dentists to overstep their authority on the board by formulation of a new Rule for the utilization of lasers by dental hygienists. Current statute allows dental hygienists to practice under general supervision of a dentist in Texas. The new laser Rule allowed the controlling majority of dentists on the board to limit this procedure, so that it can only be done by a hygienist when a dentist is present. This decision was made despite evidence that general supervision was in current

statute and posed no threat of harm to the public. Such a decision demonstrates the inherent conflict of interest when one profession regulates another profession whose members they employ.

Sunset Report Issue 1.2

*Allow the board's statutory advisory groups to expire and direct the board to **establish clearer processes for stakeholder input in rule.***

TDHA opposes the elimination of the Dental Hygiene Advisory Committee (DHAC). While the goal of diversifying stakeholder input is worthwhile, delegating complete autonomy to the board to decide when, if, and the manner in which feedback is solicited requires a significant assumption that the board will indeed do so in good faith. Without a statutorily guaranteed advisory committee, the level of commitment to seeking feedback from dental hygienists would instead be dictated by current board members and staff, and would likely change from year-to-year.

The board professionally licenses only two providers-dentists and dental hygienists. Currently, dentists comprise a significant majority of the board. Maintaining a codified advisory committee provides greater opportunity to weigh in on matters impacting the dental hygiene profession, especially as the role of dental hygienists continues to evolve.

A better alternative would be for the board to more fully utilize the committee. For example, other states have delegated various responsibilities to dental hygiene committees, including, but not limited to, the initial review of applicants for dental hygiene licenses, submissions relating to continuing education requirements, and disciplinary matters involving dental hygienists. A few specific examples include: in Iowa, the dental hygiene committee is empowered to promulgate all rules pertaining to dental hygiene; in Maryland, all matters pertaining to dental hygiene must first be brought to the committee for its review and recommendations; in Florida, the committee is expected to develop all dental hygiene rules to submit to the board for approval. At least fourteen other states have similar dental hygiene advisory committees associated with dental boards. Maintaining the committee in no way prevents the board from seeking feedback from other stakeholders, and in fact, TDHA fully supports efforts to do so.

TDHA appreciates the opportunity to provide our additional comments in response to the Sunset hearing on June 23, 2016. Thank you on behalf of our organization for carefully considering the State Board of Dental Examiners, its impact on all stakeholders, and the mission to protect the public it serves. We look forward to continued dialogue and are available to address any questions you may have.

Sincerely yours,



Lynda Beam

Lynda Bean, RDH, BSDH
TDHA President

TDHA is an organization of licensed dental hygienists whose main purpose is to serve the citizens of Texas with quality dental health services. The focus is primarily on prevention of oral disease and the maintenance of good oral health.

Lynda Bean



June 23, 2016

Chairman Gonzalez and Sunset Commission Members,

My name is Lynda Bean. I have been a licensed dental hygienist in Texas since 1988 and currently work as an adjunct faculty member at Temple College in the Dental Hygiene School. I am the president of the Texas Dental Hygienists' Association and am presenting testimony on behalf of our association.

Our association is in favor of reducing the Texas State Board of Dental Examiners from 15 to 9 members according to the Sunset Advisory Commission Staff recommendations. The reduction would allow for the board to work in a more efficient manner while reducing the financial impact to the agency budget. In addition to reducing the size of the board, the Texas Dental Hygienists' Association would like to see changes in the overall composition of the board members to reflect the current and projected ratios of licensed stakeholders. According to the TSDBDE website, there are currently 14,615 active dental license holders residing in Texas and 12,112 active dental hygiene license holders residing in the state. Projections by the Health Resources and Services Administration show that licensed Texas dental hygienists will actually out number licensed Texas dentists within the next 10 years. Currently, the ratio is 8 dentists, 2 dental hygienists, and 5 public members on the board of 15 members. Our recommendations would be for a board of nine to consist of 4 dentists, 3 dental hygienists, and 2 public members.

The Texas Dental Hygienists' Association is opposed to the Sunset Advisory Commission Staff's recommendation to allow the current Dental Hygiene Advisory Committee appointments to expire. We recognize the recent underutilization of the committee by the Dental Board. One such example of underutilization is the board failing to engage the committee in the rulemaking actions regarding laser usage by dental hygienists as an adjunctive procedure to periodontal therapy. Maintaining the committee would allow the board to focus on the public's protection while dental hygiene practice related issues could be investigated with consistency often missed due to frequent staff turnovers at the agency.

Our association is opposed to the Sunset Advisory Commission Staff's recommendation to eliminate dental assistant certification for the delegated duties of coronal polishing, pit & fissure sealant applications, nitrous oxide monitoring, and the exposure of dental radiographs. We do agree that the current system of certification is confusing, inconsistent, and expensive but feel strongly that in order to provide protection to the public, an improved form of certification must remain in place. Both dentists and dental hygienists receive competency based education on all of these procedures and must be licensed to perform or delegate the procedures. We are also concerned with the consistency and

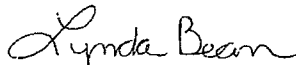
legitimacy of proposed on the job training of dental assistants by their dentist employers for these procedures.

The Texas Dental Hygienists' Association is in favor of the Sunset Advisory Commission Staff's recommendations outlined in Issues 3 and 4 of the report. We are also in favor of the staff's recommendation for Issue 5 to continue the State Board of Dental Examiners for the next 12 years to allow continued public protection in all matters related to the practice of dentistry and dental hygiene in Texas.

Finally, our association would like to address the question posed for occupational licensing in the Sunset Advisory Commission Staff Report on page 20. Specifically "Does the program provide the least restrictive form of regulation needed to protect the public interest?" The practice of dental hygiene in Texas is over-regulated with antiquated statutes and rules which do not protect the public but instead control permitted dental hygiene procedures and protect the perceived financial interests of the dentists while blocking care to many of our state's most vulnerable residents. These restrictions prevent Texas dental hygienists from practicing to the full extent of their education in many nontraditional settings such as long-term care facilities, Head Start centers, homebound patients' residences and remote areas of the state. Dental hygienists are primary care providers who are an essential entry point to the healthcare system and should be allowed to work within collaborative agreements with dentists to treat these patients within the current scope of practice.

Thank you to the Commission for their thoughtful consideration of the Texas Dental Hygienists' Association's positions on the Sunset Advisory Commission's Staff report.

Sincerely yours,



Lynda Bean, RDH BSDH
TDHA President

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April 22, 2016

Mr. Ken Levine, Director
Sunset Advisory Commission
PO Box 13066
Austin TX 78711

Dear Mr. Levine,

On behalf of the Texas Dental Hygienists' Association, (TDHA) thank you for allowing us to respond to the recently-released Sunset Staff Report regarding the State Board of Dental Examiners. We share the concern of the board and commission for the safety and welfare of the public.

Issue 1

Key Recommendation 1: Reduce the size of the board.

TDHA is in favor of reducing the size of the board, for the reasons elaborated in the report. However, to more proportionately represent the number of licensed dentists (17,540) and dental hygienists (13,740) and to consider future projections for the next decade, the composition of the smaller board should be 4 dentists, 3 dental hygienists and 2 public members. The shortage of dentists in Texas is projected to intensify during the next decade and the number of dental hygienists will increase faster than the number of dentists. The Health Resources and Services Administration projects that the current dentist shortage will substantially worsen in the next decade (1) and in Texas within that decade more than a third of general dentists will be at or past retirement age. (2)

Key Recommendation 2: Allow the board's advisory groups to expire.

TDHA is opposed to eliminating the Dental Hygiene Advisory Committee. Although the report has identified the important issue that the committee has been relatively inactive in the past few years, eliminating the advisory committee altogether is not the appropriate remedy. While the goal of diversifying stakeholder input is worthwhile, delegating complete autonomy to the board to decide when, if, and the manner in which feedback is solicited requires a significant assumption that the board will act in good faith. Without the advisory committee, the level of commitment to seeking feedback from dental hygienists would be dictated by current board members and staff and would likely change from year to year. Maintaining the Dental Hygiene Advisory Committee provides a greater and more consistent opportunity for stakeholders to weigh in on matters impacting the health of the public and the dental hygiene profession. A better alternative would be for the board to more fully utilize the committee by delegating more responsibilities to the committee, such as initial review of applicants for dental hygiene licenses, review of submissions relating to continuing education and disciplinary matters involving dental hygienists, as well as proposing rules to the full board.

(1) U.S. Department of Health and Human Services, Health Resources and Services Administration, National Center for Health Workforce Analysis, National and State-Level Projections of Dentists and Dental Hygienists in the U.S., 2012-2015.

- (2) Texas Department of State Health Services, Health Professions Resource Center , "Trends, Distributions, and Demographics: Dentists (General) 2014" <http://www.dshs.state.tx.us/chs/hprc/Publications/2014FactSheets.aspx>

Issue 2

Key Recommendation: Discontinue the board's dental assistant certificate programs.

TDHA is opposed to eliminating all dental assistant certificate programs. TDHA agrees the present system is expensive, confusing and inconsistent. The Association recommends the certificate programs be combined and streamlined into one easily understood certification process for all dental assistants who perform any of the four currently-regulated procedures. TDHA believes the public will be at risk if all dental assistants are on-the-job trained or if the decision to require national credentialing or CODA-accredited education for dental assistant employees is left up to the dentist. In addition it should be noted that certification of formal training of dental assistants in the four areas of x-ray, pit and fissure sealant, coronal polishing and nitrous oxide monitoring was instated originally because it was strongly believed harm could be done to patients by these procedures being incorrectly performed. There also was concern dentists would not have the time to adequately train employees each time a new assistant was hired, thus putting patients at risk. The current formal training for the procedures require a board approved course and examination for taking x-rays, an 8-hour course for sealants, an 8-hour course for coronal polishing and an 8-hour course for nitrous oxide monitoring. It is difficult to see how dentists would be able to provide comparable training on-the-job for each dental assistant employed.

Issue 3

TDHA is in favor of both key recommendations.

Issue 4

TDHA is in favor of the four key recommendations.

Issue 5

TDHA is in favor of continuing the State Board of Dental Examiners for 12 years in order to protect the public.

Finally, TDHA would like to address one of the Sunset questions posed for occupational licensing as found on page 20 of the report. Specifically, the question is: Does the program provide the least restrictive form of regulation needed to protect the public interest?

The practice of dental hygiene in Texas is over-regulated with antiquated statutes and rules which do not protect the public, but rather control what dental hygienists can do and where they can do it so that the financial interest of dentists is protected.

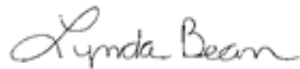
1. Dental hygienists, with some very limited exceptions, cannot treat a patient unless a dentist has seen the patient first. This restricts hygienists from practicing to the full extent of their

education and licensure in long term care facilities, assisted-living facilities, schools, Head Start centers, homebound patients' residences, and remote areas of the state. Dental hygienists are primary care providers who are an essential entry point to the health care system and should be able to work in collaborative agreements with dentists to treat these patients within their current scope of practice and refer patients when needed. Dental hygienists also should be able to have collaborative agreements and provide preventive care in remote sites, using "telehealth" technology to confer with dentists, arranging further treatment as needed. Direct access to dental hygiene services is especially critical for vulnerable populations such as children, the elderly, the poor, and the geographically isolated who often struggle to overcome limited transportation options, lack of insurance coverage, and other barriers to oral health care. Direct access to the preventive services provided by dental hygienists is cost effective, will save taxpayer dollars, and should be welcomed in a state facing financial issues and budgetary shortfalls.

2. Dental hygienists in Texas are not allowed to administer local anesthesia to their patients who are experiencing pain during dental procedures. This is the standard of care in 44 other states and the evidence is clear this is a safe procedure when hygienists are properly educated. The public is not at risk, as shown by decades of experience in other states, some since 1971. This is over-regulation and the law should be changed but organized dentistry in Texas has policy against allowing hygienists to administer local anesthesia and they have been successful in defeating legislation to allow it. The argument they present to legislators is that it is not safe for the public, although all the evidence is to the contrary.

Thank you for consideration of our concerns. Please feel free to contact me if you have any questions or need additional information.

Sincerely yours,



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TDHA is an organization of licensed dental hygienists whose main purpose is to serve the citizens of Texas with quality dental health services. The focus is primarily on prevention of oral disease and the maintenance of good oral health.

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