

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, November 16, 2016 12:11:33 PM

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From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Wednesday, November 16, 2016 12:08 PM
To: Sunset Advisory Commission
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS STATE BOARD EXAMINERS MARRIAGE AND FAMILY THERAPISTS

First Name: Jodie

Last Name: Elder

Title:

Organization you are affiliated with: TCA

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Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Dear Sunset Advisory Commission,

The purpose of this correspondence is to offer feedback and comments on the Sunset Advisory Commission's Staff Report on the Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT), the Texas State Board of Examiners of Professional Counselors (TSBEPC), and the Texas State Board of Social Worker Examiners (TSBSWE).

First, I want to thank the Commission for their extensive and thorough review of the policies and procedures of the TSBEMFT, TSBEPC, and TSBSWE. The report addressed a wide array of issues and offered an in-depth examination of current policies and corresponding outcomes.

For the past three years, I have served as the Texas Counseling Association's Liaison to the TSBEMFT. Therefore, I attend all of their committee and full board meetings and have had an opportunity to intimately observe their processes over time. In addition, I am licensed as both an LMFT and as an LPC-S, so I have experience as an applicant and licensee under both of these boards. My comments will begin with issues about which I offer agreement and will conclude with additional perspectives which I would request the Commission consider before making final recommendations to the Texas Legislature.

Areas of agreement:

- 1) Complaint processes -- I agree that these three boards should use the most current criminal background check procedures and check the National Practitioner Data Bank to ensure that it is safe for applicants and licensees to practice with Texas residents, rather than relying on applicant self-report. Doing so would more effectively protect the public from potentially impaired or dangerous licensees.
- 2) Complaint processes -- I agree with giving the Executive Director of each board the power to dismiss nonjurisdictional and baseless complaints, prior to sending the complaints to the boards for review. I have observed the LMFT board follow this procedure on numerous occasions, and I agree that it saves time and resources. In my observation, many spurious complaints result from cases in which separation, divorce, and custody issues have not been resolved to the favor of one party. I feel that the Executive Director has done a

superb job of adeptly identifying and dismissing these cases, and I believe this same right should be extended to the Executive Directors of the TSBEPC and the TSBSWE. Doing so could help relieve the backlog of cases and reduce the time required to process complaints.

3) Ethics complaints – I agree that if additional violations are discovered in the course of a complaints investigation, respondents should be notified of these alleged violations in a timely manner so that they are able to prepare a response. Either opening a new, separate complaint case, or notifying respondents of the alleged violations prior to the board hearing their case, are both potential solutions that are more respectful to clinicians' needs to prepare an adequate response or defense.

4) Experience requirements -- I agree that the MFT statute should be changed to reduce the 750 required hours of direct relational clinical experience.

This requirement imposes an undue burden on prospective applicants and often acts as a barrier to licensure as an LMFT. While I do believe that some experience with couples and families should continue to be required in order to justify this specialized licensure, a requirement of 400-500 hours of supervised relational experience would suffice to ensure clinical skills with these populations.

5) Inactive status – I agree that placing monitoring and regulatory requirements on inactive licensees better protects the public. The TSBEMFT recently enacted rules that would require passing the Jurisprudence exam and completion of continuing education hours prior to returning to practice, and I believe that the same or similar rules should be enacted for professional counselors and social workers.

6) Academic and examination requirements – I agree that accepting degrees from CACREP programs would help expedite the processing of applications and allow for more efficient use of staff time. In addition, I agree that accepting both the NCE and the NCMHCE would increase licensure portability for professional counselors.

7) Experience requirements – I agree with the Sunset Commissions recommendation to allow supervisors to track licensees' practice locations and hours. As long as an appropriate supervisory contract is in place for each supervisor, the exact practice locations need not be reported to boards each time there is a change. Experience hours should be reported in aggregate at the conclusion of the required hours. These changes would reduce time needed to process applications, thus allowing applicants to become licensed and begin providing services to the Texas public more expediently, and freeing staff to prioritize enforcement and other duties.

Areas for further consideration:

While I understand that the Commission's review must inherently focus on reducing state expenditures and increase departmental efficiency, there are specific areas in which prioritizing these goals can corrupt the very processes that strive to protect the public, which is the primary aim of these three licensing boards.

1) Ethics complaints hearings – I agree that confidentiality should be carefully protected during complaints hearings, but I disagree with having all complaints heard in closed informal complaint resolution processes. As a practicing professional for over 10 years, I learn something almost every time I attend a complaints committee hearing. I have observed the LMFT board conduct these meetings in ways that are very respectful to both clinicians and complainants, while also educating the audience about ways to improve their practice. The boards valiantly view part of their charge as educating those entering the profession about potential pitfalls of practice, thus protecting the public in the long run. As a result they regularly hold meetings in university settings and welcome students in attendance. It is my understanding that this is exactly why they offer ethics continuing education credits for attendance to their complaints meetings, a practice with which I agree. I support the continuance of the open hearing of complaints and would suggest the board attorneys reiterate at the start of each meeting the need to protect confidentiality with the use of initials. I believe the Sunset Committee's recommendation to "abolish the boards' complaints and ethics committees" is akin to "throwing the baby out with the bathwater," as these are helpful and effective processes that can be improved but should not be omitted completely.

2) I do not agree with the proposal to relegate the three licensing boards to "advisory councils" under TDLR. Each board is currently comprised of over 50% practitioners. The purpose of this composition is to ensure that practicing professionals who are "in the trenches" and understand the complexities of mental health treatment are allowed to regulate their own licensees. Giving "the all public-member Texas Commission of Licensing and Regulation" the power to make decisions about ethical and licensing issues and stipulating that they request "input" from practitioners only when they feel necessary would not only not adequately protect the public, but it would also not be fair to the professional being sanctioned. In my observations, especially during complaint committee hearings, many times the public members of the complaints committee will actively defer to the practicing professionals because they feel more comfortable having someone with a more in-depth understanding of the circumstances make the sanctioning decisions. I agree completely with this deference to

practicing professionals, and I fear that having the TDLR public representatives in the position to make these decisions would belie the boards' purposes of protecting the public.

3) While I understand that uniformity in disciplinary actions could offer some protection to the state regarding litigation from licensees who feel they have been wronged, I disagree that a sanctioning matrix would increase protection of the public, which is the main charge of these boards. Innumerable factors have to be considered when deciding sanctions for violation of board rules, and I do not believe that a very "black and white," "input-output" model can be applied to the resolution of complaint cases. I have watched the LMFT board meticulously review and struggle with sanction decisions, as they carefully consider all mitigating factors. While they certainly do make an effort to apply consistent sanctions and do employ the sanctioning guidelines currently in the rules, they do not use a "cookie cutter" model for determining sanctions, nor do I believe they should. As an observer of their processes over the past few years, I believe the public is better protected by careful consideration of all factors by a complaints committee, which is comprised of practicing professionals who have a first-hand, intimate understanding of the practice of the professions which they regulate.

Any Alternative or New Recommendations on This Agency:

Finally, I would like to offer some suggestions regarding the future functioning of these boards. First, please allocate the licensing fee revenue to directly support the regulatory functions of the TSBEMFT and the TSBEPD.

This would allow these boards to continue to autonomously regulate these important mental health professions.

Second, I suggest the development of an independent mental health licensing agency. This solution represents a compromise between two inadequate solutions. The first option, leaving these three boards in DSHS, who must prioritize protecting the public from physical health threats, places the public at risk by not offering adequate resources to support the functioning of these boards. However, moving these boards to TDLR, the option proposed by the Sunset Committee, places the public at risk by having non-mental health professionals regulate the practice of mental health in Texas. Creating a completely separate licensing division, with staff specifically devoted to understanding and implementing the rules of these three boards, would most effectively protect the Texas public. Currently, staff are expected to wear too many hats and implement too many different regulations. Allowing them to focus their time on only the mental health boards would increase their efficiency, streamline processes, and ensure that mental health services are provided to the Texas public in an optimal manner.

Thank you for your time and consideration.

Sincerely,

Jodie Elder, LPC-S, LMFT

TCA Liaison to the TSBEMFT

My Comment Will Be Made Public: I agree