



TOTA

TEXAS OCCUPATIONAL THERAPY ASSOCIATION, INC.

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**Comments to the Texas Sunset Advisory Commission regarding
the Health Licensing Consolidation Project
December 8, 2016**

Thank you for this opportunity to comment on the recommendations of the Health Licensing Consolidation Project as they apply to the Executive Council of Physical Therapy and Occupational Therapy Examiner (ECPTOTE) and the Texas Board of Occupational Therapy Examiners (TBOTE). We support Recommendation 4.1 from the original report on the Executive Council of Physical Therapy and Occupational Therapy Examiners (ECPTOTE) and the Texas Board of Occupational Therapy Examiners (TBOTE) and oppose including those entities in a consolidation within the Texas Department of Licensing and Regulation.

Recommendation 1.1 says each health profession will have a governor-appointed advisory board responsible for developing all practice-related rules as these “require the experience and expertise of highly-trained members of that profession.” The all-public member Texas Department of Licensing and Regulation (TDLR) Commission would have to adopt these rules or return the rules to the advisory board. TDLR could not amend them.

However, last session when the Speech Language Pathologists were transferred to TDLR, their statute was changed to have their board appointed, not by the Governor, but by the presiding officer of the Texas Commission on Licensing and Regulation (Section 401.102, Occupations Code). Although Section 51.2031 of the Occupations Code gives the Advisory Board authority to propose rules that the commission either adopts or returns to the advisory board for revision, this authority expires September 1, 2019. We foresee the same thing happening to any board transferred to TDLR.

There has been much concern expressed about the ruling in *North Carolina Board of Dental Examiners v. Federal Trade Commission*. These concerns do not apply to ECPTOTE. Since its creation in 1993, the Council has included more public members on the board than professional members. Therefore the concern of a

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board being controlled by the licensed profession and not qualifying for state action immunity and facing anti-trust violations is minimized.

Regarding the need to require licensees and applicants to undergo a fingerprint background check: TBOTE was advised by their Assistant Attorney General that they did not have the statutory authority to require fingerprinting. In their Self Evaluation Report, TBOTE requested the Sunset Commission recommend a change to the practice act to allow for fingerprinting. This was included in the Staff report as Issue 3.3 and adopted unanimously by the Sunset Commission on 8/22/16.

Concern was expressed that potential staff turnover poses a risk to agency functions. We disagree. TBOTE's OT Coordinator of 14 years retired in 2014, but was replaced by an equally qualified individual. The staffing change was well-planned and well-executed and did not create any risk to licensees or the public that the agency is created to protect. There is no reason to think any future retirements or resignations will not be handled in a similarly professional manner.

From a historical perspective, it is interesting to note that in 1983, the Legislature established the Texas Advisory Board of Occupational Therapy and attached it to the Texas Rehabilitation Commission. In 1993, as a result of the Sunset process, the Advisory Board was taken out from under TRC and the Texas Board of Occupational Therapy Examiners was created along with the Executive Council of PT and OT Examiners to carry out administrative functions and oversee the activities of the boards.

Now you have before you a recommendation to once again create an Advisory Board of Occupational Therapy and place it under another umbrella agency in spite of the evidence that the current board is functioning efficiently and effectively. I strongly encourage you to not undo what has worked successfully since 1993.

Thank you. I can be contacted at mary@tota.org or a 214-384-8834.