

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Texas Sunset Advisory Commission Staff Report – Texas State Board of Examiners of Psychologists
Date: Wednesday, December 07, 2016 9:01:43 AM

From: Lisa
Sent: Wednesday, December 07, 2016 8:44 AM
To: Sunset Advisory Commission
Subject: Texas Sunset Advisory Commission Staff Report – Texas State Board of Examiners of Psychologists

December 7, 2016

The Honorable Larry Gonzales, Chair
Sunset Advisory Commission
Robert E. Johnson Bldg., 6th Floor
1501 N. Congress Ave.
Austin, TX 78701

Re: Texas Sunset Advisory Commission Staff Report – Texas State Board of Examiners of Psychologists

Dear Chairman Gonzales:

I am a licensed psychologist in the state of Texas. I would like to provide comments on some aspects of the Sunset Advisory Commission's staff report, namely:

1. Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State board of Examiners of Psychologists Await Further Review
2. A Recent Court Decision Opens the Door to unlicensed Practice of Psychology

The Texas Board of Examiners of Psychologists Should Remain Independent:

On November 15, 2016, the Commission released a separate staff report on the Health Licensing Consolidation Project. In that report, it more explicitly articulates its recommendation that TSBEP, which is a currently independent, stand-alone licensing board, be consolidated along with a number of other professional health care licensing boards under a state agency (Texas Department of Licensing and Regulation [TDLR]). This would result in TSBEP becoming an advisory board, limited to rulemaking and when requested by TDLR, to advising the agency as to the investigation and prosecution of certain licensing complaints. All other functions, including evaluating candidates for licensure, would be handled by TDLR staff.

The criterion for identifying those boards which would be slated for consolidation under TDLR appears to be based solely on the staff size for an individual board, rather than the complexity of the discipline regulated by the board or whether a board actually suffers from a number of the problems identified in the report. So, for example, medicine, which oversees a

number of specialties, is not targeted for consolidation since its board has more than 20 employees. Even though psychology includes a number of specialties within its discipline like medicine, it appears to be a candidate for consolidation because it employs only 14 staff persons.

In addition, there are at least two other areas identified as reasons for consolidating TSBEPB that do not seem to justify the consolidation recommendation. One area is “unnecessary barriers to licensure.” This reason appears to be misleading as the purported barriers are addressed in the sunset review report with recommendations on how to eliminate any such barriers. And among those recommendations, consolidating TSBEP was not one. The second is “litigation poses greater threat to small agency operations,” citing the 2016 Fifth Circuit ruling in the Serafine case. It is not clear how the disposition of that case and the resulting damages award would be obviated in any way by consolidating TSBEP under the TDLR.

Unlike some of the other licensing boards identified, the report does not indicate that TSBEP has been slow to process licensure applications, or to prioritize or resolve licensing complaints. There is no allegation that TSBEP is not effectively fulfilling its mission of protecting the public. Since neither of the two justifications seems well supported, we do not believe that they outweigh our concerns about having a board with the full expertise necessary to regulate psychology.

Ultimately, I am opposed to consolidation of licensing boards. To protect the public health, safety and welfare, it is critical that the individuals knowledgeable about the particular profession make decisions about the critical regulatory and professional issues to ensure high quality care for the patients served by the profession. Whether consolidation results in combining several professions into a single omnibus board or limiting the licensing board to an advisory position, it would dilute the ability to appropriately protect the public. Psychology is a doctoral-level (e.g., Ph.D. or Psy.D.) profession mandating extensive education and training in biological, cognitive, emotional and social bases for human behavior and in diagnostic evaluation (including psychological and neuropsychological testing), research and ethics. In addition, an applicant for psychology licensure must undergo four to six years of rigorous and extensive didactic and supervised clinical experience.

Furthermore, psychologists are bound by strict patient confidentiality laws – both federal and state – which generally afford greater and different privacy protection to mental/behavioral health information as compared to other health information. Psychology also has a unique code of ethics. Understanding those legal and ethical obligations is a critical component of the licensing board’s functioning. To either combine professions into one regulatory board, or to delegate board functions such as the evaluating candidates for licensure or considering whether a licensing complaint has merit to administrative staff, deprives the public of the protection of a board fully expert in how to license and regulate the complex profession of psychology.

Other states have recently moved in the opposite direction from what the Commission recommends, recognizing the importance of licensing boards with expertise in the profession that it is regulating. For example, New Hampshire has recently moved from having psychologists regulated under an omnibus board for mental health professions to regulating them under a separate board for psychologists. In Colorado, psychology was a part of an omnibus mental health licensing board along with social work, marriage and family therapy, professional counseling, psychotherapy, and addiction counseling from 1988 until about 1998

when legislation was passed re-establishing separate, independent boards for psychology, professional counseling, social work, marriage and family therapy, psychotherapy, and addiction counseling. The prospect of an omnibus mental health licensing board has been considered in over a half-dozen jurisdictions in the past 15 or so years, but none of them adopted the omnibus board proposal.

It might be argued that in the arrangement proposed by the Commission, the value of TSBEP's expertise would not be lost because TDLR would consult with TSBEP when it needed TSBEP's expertise. The problem, however, is that lacking TSBEP's expertise in the nuances of professional psychology issues, TDLR would not have the expertise to readily identify when TSBEP's involvement is needed. Without expertise at that point, key issues may be missed – to the detriment of the public.

Therefore, I urge the Sunset Advisory Commission to reconsider the recommendation outlined in the Health Licensing Consolidation Project to consolidate TSBEP under TDLR, and let TSBEP continue to function as an independent board in order to best protect and benefit the public with its expertise.

The Practice of Psychology in Texas Includes Diagnosis:

I agree with the recommendation that TSBEP develop a carefully crafted statutory definition of what constitutes the practice of psychology as part of the proposed changes to the Psychology Practice Act. It is important that the definition acknowledge the ability of psychologists to diagnose and treat as part of the legal scope of practice. The definition also should include mention of the ability of licensed psychologists to provide supervision of those activities enumerated in the definition.

In summary, I am opposed to the separate staff report (released 11/15/16) recommending the consolidation of TSBEP under TDLR. I am in favor of a new definition of “psychologist” in Texas that acknowledges diagnosis as an essential component of the practice of psychology.

Thank you for the opportunity to provide comments on the Sunset review process for the Texas psychology practice act.

Respectfully submitted,

Lisa Kan, Ph.D.
Licensed Psychologist