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NATIONAL ACADEMY OF NEUROPSYCHOLOGY

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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:

Two hundred and twenty-seven (227) neuropsychologists in the state of Texas are members of the National Academy of Neuropsychology (NAN). It is on their behalf that we submit the following comments on some aspects of the Sunset Advisory Commission's staff report, namely:

1. The Board's Oral Examination is an Unnecessary Requirement for Licensure
2. Requiring a Year of Post-Doctoral Supervision is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas
4. Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State board of Examiners of Psychologists Await Further Review
5. A Recent Court Decision Opens the Door to unlicensed Practice of Psychology

The Oral Examination Protects the Public, and No Evidence Exists to Prove that This Contributes to Mental Health Care Provider Shortages in Texas (#1):

The Commission report is correct in noting that candidates who sit for the oral exam in Texas "have already exhibited minimum competency by meeting rigorous educational, training, and testing requirements." However, minimum competency in these areas does not necessarily translate to clinical competency in practice. Psychology is a profession that requires face-to-face interaction, and the oral exam serves to assess candidates' ability to interact with potential patients. Further, the oral exam assesses applied clinical skills, whereas other testing requirements for licensure in Texas only assess factual knowledge. Thus, the oral exam is equivalent to the Step 2 clinical skills assessment required for licensure as a physician. Medicine and psychology are both doctoral-level healthcare professions.

High pass rates on the Texas oral exam are a strong rationale for maintaining the oral exam, as the small percentage of individuals who do not pass this minimal competency assessment of clinical skills clearly were not detected at any other stage in the process of completing state licensure requirements. Although such individuals have been determined to meet *knowledge-based* requirements for the practice of psychology, they

likely are in need of remediation with regard to *applied clinical skills*, which is an essential component of the practice of psychology.

The Commission report argues that the oral exam is an unnecessary barrier to entry into the profession and notes that the oral exam may negatively impact billing. However, recent legislation passed in Texas now allows for both interns and postdoctoral fellows to bill for services while awaiting licensure. Additionally, there is no evidence to directly indicate that the \$320 oral exam fee has caused individuals to avoid the profession. The Commission report argues that individuals may lose out on job opportunities due to waiting for one of the twice yearly oral exam dates, but it is common practice in Texas for such individuals to be hired on the basis of *eligibility* for licensure and simply provide services under the supervision of a licensed psychologist while awaiting full licensure.

Therefore, NAN urges the Sunset Advisory Commission to reconsider the recommendation outlined in the Health Licensing Consolidation Project to eliminate the oral exam as a requirement for licensure in Texas, and allow TSBE to continue administering the oral exam for the protection of the public.

A Year of Post-Doctoral Supervision Protects the Public, and No Evidence Exists to Prove that This Contributes to Mental Health Care Provider Shortages in Texas (#2):

The Commission's arguments against the requirement for a full year of supervised post-doctoral practice do not properly recognize the more advanced nature of this training as compared to clinical training obtained earlier in training (e.g., practicum and internship). The Commission's report states that the requirement for a post-doctoral year "delays qualified individuals from becoming fully licensed psychologists," but in fact these individuals are not qualified without this higher level of clinical training. Clinical experiences during the process of obtaining the Ph.D. do not give students the opportunity to draw upon a complete knowledge base in their clinical work, as they are still enrolled in classes and learning new information to fulfill the requirements for the doctoral degree at that time. Only post-doctoral training allows psychology students to engage in clinical work with a complete knowledge base, which therefore enables a higher level of training focused less on mere skill development and more on clinical expertise at a more independent level. The fellowship year is an essential component of that training, just as residency years following the internship year are required for licensure as a physician.

Indeed, the current model for licensure as a psychologist in Texas is quite appropriately the same model used in the training of physicians, who similarly complete a four-year degree with some degree of clinical training incorporated into this time. Physicians then are required to obtain higher-level training through a postdoctoral residency, which includes an internship year as the first year and is required for licensure to practice independently. In fact, medical post-doctoral residencies range from 3 to 8 years in duration, thus representing a far more significant barrier to entry into those professions than does the requirement for one year of supervised post-doctoral practice for licensure as a psychologist. It also should be noted that some psychology Ph.D. programs in Texas, such as that at the University of Texas Southwestern Medical Center, offer a captive internship that is incorporated into the four-year Ph.D. curriculum, thus allowing students to obtain licensure for independent practice in as little as five years while still meeting all current requirements for licensure in Texas.

Further, as noted above, recent legislation passed in Texas now allows for postdoctoral fellows to bill for services. Thus, the requirement for post-doctoral supervision does not contribute to the mental health care shortage in Texas. There is no evidence to suggest that this requirement has caused individuals to avoid the profession or avoid moving to Texas.

Finally, post-doctoral supervision protects the public by ensuring that students receive sufficient clinical training and supervised experience prior to independently seeing patients. Students generally receive a very broad education in numerous areas of psychology through obtaining the doctoral degree, but few psychologists have a broad clinical practice. Thus, just as for medical specialties, supervised post-doctoral work prior to independent licensure ensures that psychologists are appropriately trained in the nuances of their particular specialty. The training experiences in the post-doctoral supervision year provide much-needed depth to the otherwise broad training psychologists receive in the course of receiving their doctoral degree.

Therefore, NAN urges the Sunset Advisory Commission to reconsider the recommendation outlined in the Health Licensing Consolidation Project to eliminate the post-doctoral supervision requirement for licensure in Texas, and allow TSBEPC to continue licensing psychologists in this manner for the protection of the public.

The Texas Board of Examiners of Psychologists Should Remain Independent (#4):

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 TSBEPC, 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 TSBEPC 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 TSBEPC 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 TSBEPC 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 TSBEPC under the TDLR.

Unlike some of the other licensing boards identified, the report does not indicate that TSBEPC has been slow to process licensure applications, or to prioritize or resolve licensing complaints. There is no allegation that TSBEPC 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, NAN is 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, NAN urges 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 (#5):

NAN agrees 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, NAN is opposed to items 1 and 2 of the Sunset Advisory Commission staff report. NAN also is opposed to the separate staff report (released 11/15/16) recommending the consolidation of TSBEP under TDLR. NAN is 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. If you have any questions or need further information, please contact William Perry at (303) 691-3694.

Respectfully submitted,



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President
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