



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

November 29, 2016

Via Electronic Mail

The Honorable Larry Gonzales, Chair
The Honorable Van Taylor, Vice-Chair
Commission Members
Texas Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

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

Dear Representative Gonzales, Senator Taylor and Distinguished Commission Members:

On behalf of the American Psychological Association (APA), I would like to share our responses to certain recommendations outlined in the Texas Sunset Advisory Commission's staff report on the Texas State Board of Examiners of Psychologists (TSBEP) dated November 2016. APA is the professional organization representing more than 117,500 members and associates engaged in the practice, research and teaching of psychology. APA works to advance psychology as a science and profession and as a means of promoting health, education, and human welfare. APA's Practice Directorate works closely with our state affiliates, like the Texas Psychological Association, to further those goals at the state level.

Of the five issues or recommendations outlined in the Commission's sunset review staff report, APA would like to provide its comments on the fourth and fifth recommendations listed, namely:

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

Finally, this letter explains APA's support for the Psychology Interjurisdictional Compact as advocated by the Texas Psychological Association (TPA).

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5800
(202) 336-6123 TDD

E-mail: practice@apa.org
Web: www.apa.org

- ***How Should the Texas Board of Examiners of Psychologists be Structured***

The sunset review staff report's recommendation concerning the structure of TSBEP does not clearly articulate whether the Commission feels that the board ought to be consolidated in some fashion with other state professional licensing boards. The staff report seems to suggest that TSBEP might be consolidated with other boards to share administrative functions and resources rather than psychology being consolidated with other professions into an omnibus board. But the staff report also states that the Commission would defer making a recommendation about the board's structure pending the current sunset review of other health care licensing boards.

However, on November 15, 2016, the Commission released a separate staff report on the *Health Licensing Consolidation Project*. In that report, it explicitly recommends 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.

But 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, TSBEP is now slated for consolidation because it employs only 14 staff persons.

In addition, there are at least two other areas identified as reasons for consolidating TSBEP 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 licensing consolidation staff 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, APA 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., PhD or PsyD) 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 recommended by the Commission staff, 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, APA urges the Sunset Advisory Commission to reconsider its recommendation outlined in the Health Licensing Consolidation Project to consolidate TSBEP under TDLR, and let TSBEP continue to benefit the public with its expertise as an independent board.

- ***How Does the Recent Court Decision Affect the Practice of Psychology In Texas***

APA wholeheartedly 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. We have previously provided comments directly to TSBEP as to what language we recommend ought to be included in any revision to Section 501.003 of the Texas Psychologists' Licensing Act (Tex. Occ. Code §501.001 to §501.505), citing to provisions from the APA Model Act for State Licensure of Psychologists (2010) and the ASPPB Model Act for Licensure and Registration of Psychologists (2010). A copy of that letter is attached as an exhibit.

It is important that the definition acknowledge the ability of psychologists to diagnose and treat as part of the legal scope of practice. It should also include mention of the ability of licensed psychologists to provide supervision of those activities enumerated in the definition. Simply put, we encourage TSBEP to incorporate the definition of "practice of psychology" as it reads in the APA and ASPPB Model Acts.

- ***Psychology Interjurisdictional Compact (PSYPACT)***

We are also aware that TPA has encouraged the Commission to consider inclusion of the PSYPACT proposal as part of the state Psychology Practice Act. This proposal would facilitate a lawful regulatory mechanism that would facilitate qualified, licensed psychologists in states that have adopted PSYPACT to engage in telepsychological practice and to create a more uniform temporary, in-person practice provision across state lines. APA supports this proposal as creating a lawful, ethical means for allowing psychologists to provide services to patients who may be in other jurisdictions while ensuring that psychology licensing boards can effectively protect its constituents in ensuring that those who are providing psychological services either virtually or temporarily are qualified to do so.

The Honorable Larry Gonzales, Chair
The Honorable Van Taylor, Vice-Chair
Commission Members
November 29, 2016
Page 5

We would be happy to provide any assistance to the Sunset Advisory Commission, TPA, TSBEP, Texas legislature and other stakeholders on developing the proposed statutory language.

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 Deborah Baker, JD, Director of Legal & Regulatory Policy by telephone at (202) 336-5886 or by email at dbaker@apa.org.

Sincerely,

A handwritten signature in black ink that reads "Katherine C. Nordal". The signature is written in a cursive, flowing style.

Katherine C. Nordal, Ph.D.
Executive Director for Professional Practice

cc: Gregory Simonsen, PhD, President
Texas Psychological Association

David White, Executive Director
Texas Psychological Association

Darrel Spinks, Executive Director
Texas State Board of Examiners of Psychologists