



**TEXAS CHIROPRACTIC ASSOCIATION
PUBLIC COMMENT ON THE SUNSET ADVISORY COMMISSION
HEALTH LICENSING CONSOLIDATION PROJECT STAFF REPORT**

The Texas Chiropractic Association (“TCA” or the “Chiropractic Association”) is the essential voice for chiropractic in Texas. It is the oldest and largest professional association of Doctors of Chiropractic in Texas, and represents the interests of thousands of Doctors of Chiropractic and chiropractic patients.

TCA believes that Texans should have adequate access to the health care of their choice and supports the statutory authority of individual practitioners to examine, analyze, diagnose and treat the living human body by any method taught by an accredited chiropractic college and to make use of any method of examination or therapeutics taught by any accredited chiropractic college that is within the legal scope of chiropractic practice.

The Chiropractic Association commends the Sunset Advisory Commission staff on its studies and efforts to improve chiropractic regulation during this review cycle, and it sincerely appreciates the opportunity to provide feedback.

While TCA has been supportive of many of the Sunset staff recommendations pertaining to the Texas Board of Chiropractic Examiners (“TBCE”), TCA is fervently opposed to the recommendation in the Health Licensing Consolidation Project Staff Report (“Staff Report”) to consolidate TBCE and other health licensing boards under the Texas Department of Licensing and Regulation (“TDLR”).

TBCE includes six Doctors of Chiropractic (DCs), whose technical education, training and expertise are *critical* to the proper regulation of chiropractic.

In its Staff Report on the Executive Council of Physical Therapy and Occupational Therapy Examiners, the Sunset Advisory Commission said the Council’s “independent status provides for focused regulatory attention on these disciplines with needed expertise from practitioner board members in developing rules and regulations and enforcing requirements on violators.”¹

TCA agrees with this statement and believes it even more applicable to TBCE and its regulation of chiropractic. The practice of chiropractic is extraordinarily complex and has a substantial impact on public health. The recommendation for consolidation places chiropractic rulemaking and enforcement decisions in the hands of lay bureaucrats – jeopardizing expert regulation and discipline. For these reasons, it is necessary that the board regulating chiropractic be made up of professionals equipped both to promulgate rules that protect the public and to enforce those rules in a manner that maintains best practices and standard of care.

Under the proposal, “all rules relating to a profession’s scope or standard of care [would] be proposed by the advisory board and the Texas Commission on Licensing and Regulation [could] only adopt or return the proposal for further consideration.”ⁱⁱ Thus, while the proposal carves out a *meager* role for the advisory board, *actual* regulatory and rulemaking authority would be vested in a panel comprised entirely of laypersons.

Adopting or vetoing a rule is tantamount to writing it. TCA believes that the proper regulation of chiropractic requires more than just advisory input from practitioners. It demands meaningful, authoritative oversight from persons possessing chiropractic education, training and expertise.

Consolidation of TBCE appears to result in ZERO cost savings.

The Staff Report suggests that, beginning in FY 2021, consolidation of all nine occupational licensing programs will result in savings of \$281,047 per year.ⁱⁱⁱ However, the Behavioral Health Board Sunset Staff Report (which includes a recommendation for consolidation the behavioral health boards) shows that consolidating *only* those three boards into TDLR will result in savings of \$281,047 per year beginning in FY 2021.^{iv} Accordingly, *it appears consolidating TBCE and the other occupational licensing boards in “Phase Two” and “Phase Three” do not achieve any savings.*

The Staff Report also suggests all three phases of consolidation will result in a cost to General Revenue of \$1,815,618 from FY 2018 to FY 2020, but anticipates yearly savings of \$281,047 beginning in FY 2021.^v *At that rate the state will not achieve net savings on the proposed consolidation until FY 2027.* These distant savings are not substantial enough to justify such a drastic change to the state’s health occupation licensing boards and the regulation of over 108,000 licensees.

TDLR has not demonstrated it capable of regulating a profession as complex as chiropractic or that it is equipped to absorb more than 108,000 additional healthcare licensees.

TCA recognizes that TDLR is an exceptional agency, but never before has it been tasked with regulating a profession as complex as chiropractic or one that requires physician-level education and training. Recently, regulation of 13 health-related occupations consisting of roughly 67,700 licensees was transferred to TDLR,^{vi} but the transfer of all these programs to TDLR has not even been completed. Therefore, it is impossible to determine whether these transfers yielded significant and lasting benefits to Texans. The Sunset Advisory Commission even commented on this issue in discussing a proposal to transfer regulation of physical and occupational therapy to TDLR, stating, “the large expansion of regulatory authority bestowed on TDLR last session raises questions about its current capacity to take on more responsibility at this time.”^{vii}

Transferring an additional 108,000 licensees engaged in even more complex healthcare occupations to TDLR when it has yet to completely absorb and implement its regulation of 67,700 other licensees is misguided and premature.

The antitrust concerns cited by the Staff Report as justification for consolidation apply equally to all health licensing boards, and the case law in this area is still developing.

Sunset Advisory Commission staff briefly suggested *North Carolina State Board of Dental Examiners v. Federal Trade Commission* is part of the rationale for consolidating TBCE and the other independent health occupations boards included in the Staff Report into TDLR.^{viii} However, this argument rings hollow because the proposal excludes numerous other boards (including the Texas Medical Board, *which has been subject to FTC investigation*^{ix}). If antitrust concerns demanded the transfer of regulation from TBCE, the Board of Podiatric Medical Examiners, the Optometry Board and others to TDLR, it would also demand the transfer of regulation from the Medical Board, the Board of Dental Examiners, the Board of Nursing and the Board of Pharmacy to TDLR.

Dismantling most of the state's health occupational licensing programs on the basis of a single case (the ramifications of which are still being debated in the legal community) seems like an overreaction.

For the foregoing reasons, TCA strongly encourages the Sunset Review Commission to reject the Staff Report recommendation to transfer regulation of chiropractic from TBCE to TDLR.

TCA appreciates the opportunity to provide feedback on the Sunset Advisory Commission's Staff Report regarding the Health Licensing Consolidation Project.

ⁱ Sunset Advisory Commission *Executive Council and Texas Boards of Physical Therapy and Occupational Therapy Examiners Staff Report*, Page 28 (2016).

ⁱⁱ Sunset Advisory Commission *Health Licensing Consolidation Project Staff Report*, Page 11 (2016)

ⁱⁱⁱ *Id.* at 15.

^{iv} Sunset Advisory Commission *Texas State Board of Examiners of Marriage and Family Therapists; Texas State Board of Examiners of Professional Counselors; Texas State Board of Social Worker Examiners Staff Report*, Page 16 (2016).

^v Sunset Advisory Commission *Health Licensing Consolidation Project Staff Report*, Page 15 (2016).

^{vi} Sunset Advisory Commission *Executive Council and Texas Boards of Physical Therapy and Occupational Therapy Examiners Staff Report*, Page 30.

^{vii} *Id.*

^{viii} Sunset Advisory Commission *Health Licensing Consolidation Project Staff Report*, Page 12.

^{ix} See *Teladoc, Inc., et al. v. Texas Medical Board, et al.*, No. 16-50017, *Federal Trade Commission Amici Curiae Brief*, Page 2, Footnote 1 (5th Cir. 2016).