

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, November 16, 2016 8:14:14 AM

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From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Wednesday, November 16, 2016 12:49 AM
To: Sunset Advisory Commission
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS STATE BOARD EXAMINERS MARRIAGE AND FAMILY THERAPISTS

First Name: Marvarene

Last Name: Oliver

Title: Professor

Organization you are affiliated with:

Email:

City: Corpus Christi

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:
November 16, 2016

To the Sunset Advisory Commission:

I am opposed to the move of the Texas State Board of Examiners of Marriage and Family Therapists as well as the Texas State Board of Examiners of Professional Counselors and Texas State Board of Examiners of Social Workers to the Texas Department of Licensure and Regulation. I am a Licensed Marriage and Family Therapist and a Licensed Professional Counselor. There are a number of serious concerns I have about the report from the Sunset Advisory Commission and about the proposed move to TDLR.

Issue One:

The Sunset Advisory Commission report charges that the behavioral health boards have “failed to effectively regulate these professions, putting vulnerable Texans at risk.” There is discussion of enforcement processes, delays, and backlogs in cases. However, at least in significant measure, the funding of these boards, sharing of staff, insufficient staffing, etc., are at least as much the problem in the boards being able to do their work as any problem with the boards themselves. For example, the Texas State Board of Examiners of Psychologists has 14 listed staff positions for approximately 9,500 psychology licenses of various types. In contrast, the DSHS had 23 full-time employees to perform the functions of the TSBEMFT, TSBEPCC, and TSBESW, which collectively have over 48,000 licensees. While these boards, collectively, collect nearly \$3 million in licensure and other fees, they are budgeted something less than half of fees collected. Lack of adequate funding and lack of fit with DSHS contribute significantly to the problems with criminal background checks, National Practitioner Data Bank checks, and ability to otherwise monitor out-of-state applicants addressed in other sections of the SAC report.

Recommendation 1.1 is of significant concern. The TDLR all-public member board would have to approve all MFT advisory board rules. Such a board could be influenced by outside parties and reject pro-competitive MFT scope of practice rules in favor of rules of larger or more politically powerful groups. In addition, licensees would lose the ability to have their cases heard by a board made up, in part, of other MFTs, thus losing the ability to have their actions addressed by their peers.

In addition, it is common to have licensure boards within an agency and there are no good examples given as to why this is a problem apart from issues of fit with DSHS's mission and strategic goals and objectives. These are not board issues. I also note that the staff report for psychologists, staff considers an umbrella agency structure but disparages such a structure in this report.

Issue Two:

There is, as yet, no evidence that TDLR will improve licensing and enforcement outcomes for the mental health professions. The newly created health professions division of TDLR has no track record for working with mental health professions. In addition, these three health professions have been selected because of lack of fit with DSHS rather than being moved to a more fitting regulatory structure.

As I indicated under Issue One above, abolishing boards' complaints and ethics committees removes the ability of licensees to appear before a group made up of their peers. I agree that board members should not be part of the investigation process. I also agree that boards should be required to delegate authority to staff to dismiss baseless and nonjurisdictional complaints. These should be staff functions in my opinion. However, the failure to establish appropriate policies within the agency is not as much a problem of the board as a failure of the system itself. I also agree that nonstandard enforcement processes are problematic, as are public shaming, lack of appropriate notice to licensees, and similar board actions. However, to remove decisions about whether or not an action is unethical from the authority of the relevant board is problematic and creates more risk to the public. The ethics of appropriate behavioral health care is not, unfortunately, clear-cut outside a very few explicit rules. It is for that reason we are required to take ethics courses, study decision-making models, complete continuing education regarding ethics, and regularly consult about ethical dilemmas where there is no one right or best answer. At best, TDLR would only be able to address very specific rules that do not address standards of care or ethical dilemmas where they occur. It is simply not possible to write meaningful rules that address all common ethical dilemmas. Professional judgement is required.

While I agree with many of the findings under Issue 2, it is both possible and preferable to address the concerns outlined in the SAC report while maintaining a fully functioning board and complaints/ethics committee.

It would be interesting to know whether case review of other non-DSHS health profession boards found inconsistent sanctions and failures to take action on cases where action should have been taken.

Issue Three:

While the Sunset Advisory Commission notes that the boards' statutes and rules are outdated and do not conform with model standards, no model standards for behavioral health regulation are cited. Perhaps more telling, education, experience, and supervision requirements are viewed as problematic because it makes it difficult to enter these fields. This is inconsistent with concern about the welfare of citizens. Behavioral health providers practice independently and it is critical that education, experience, and supervision necessary to practice be decided by those who are experts in the field. I also note that there are not problems noted with the MFT and SW boards with regards to rules. While I agree with many of the key recommendations cited in Issue 3, empowering TDLR to do "to" professionals what fully functioning boards should do on behalf of the profession weakens rather than strengthens protection of the public. I also believe that the failure to regularly replace board members at end of a single term (as opposed to extending tenure) contributes to boards not functioning well. This is not a problem caused by the boards themselves.

Specifically, I have serious concerns about protection of the public if requirements for direct clinical services to couples and families is completely removed from requirements for marriage and family therapists. Requirements for experience with couples and families is a standard for most marriage and family licenses. I do

agree that the requirement for 750 hours is excessive. While the Sunset Advisory Commission notes that only 11 other MFT regulatory boards require specifically couple and family hours, nearly all require specific marriage and family therapy practice and/or a degree or other specified training specifically in marriage and family therapy. Working with couples and families is not the same as working with individuals. The theoretical bases, interventions, and evidence-based practices important for working effectively with family systems are not required in counseling and social work programs unless a student completes a specific emphasis related to marriage and family therapy involving both coursework and experience with couples and families. Removing required couple and family hours will increase, not decrease, risk to clients. I have no objection to the hours being set by rule rather than statute; however, this is a decision that should be made by a board of professional clinicians and educators who are familiar with the field and not by the TDLR's governing board. While TAMFT is mentioned, there is no requirement that the all-public member commission would be bound by recommendations made by that professional association or that other professional associations (e.g., social work or counseling) would not be given voice in regulation of a separate profession.

In General

The previous Sunset Advisory Commission report pointed out that the mental health regulatory boards are not part of DSHS core mission. This has been an on-going concern since I served on a regulatory board many years ago. While I agree that the placement of the mental health boards in DSHS does not fit the Strategic and Operational Goals of the Department, consigning mental health provider regulation to the TDLR, without the ability of professionals to set rules, address ethical issues, or assess appropriate continuing education effectively takes professional status away from us. Self-regulation is a hallmark of a profession – professions monitor, enforce, and improve standards of training and competence of those who practice the profession. A move to TDLR is a move away from professionalism and the expectation thereof as well as a denial of the advanced training required to practice. It seems to contradict the reality that MFTs, LPCs, and SWs are mental health providers recognized by the federal government, state and federal agencies, in-patient treatment facilities, and third-party payors. Marriage and family therapists and clinical social workers, in particular, are designated as Core Mental Health Providers, along with psychiatrists, clinical psychologists, and psychiatric nurse specialists. Social work, counseling, and marriage and family therapy should have the same regulatory “status” as other health professions with the same ability to self regulate. Specific concerns about overreaching on the part of some (but not all) boards could be addressed without abolishing the boards.

As the Sunset Advisory Commission points out, DSHS does not have as a priority the regulation of health professionals and does not adequately address the needs of behavioral health boards. Lack of budget controls and inaccurate performance reporting are not issues of the boards, nor are issues about poor customer service. It appears that many of the issues identified are those determined to be about efficiency and lack of adequate resources within DSHS. It appears that marriage and family therapy, counselors, and social workers are being penalized and their professional stature endangered in large part because of the failure of a structure that has to do with DSHS.

While TDLR may have resources to address these latter issues, there is no adequate information about TDLR's ability to address the issues faced by behavioral health professions regulation, including protection of the public. There is, as yet, no information that indicates practitioners can provide input regarding “general investigative, enforcement, or disciplinary procedures for their professions” as indicated by the SAC report (pg. 14). Boards are made advisory, with even reimbursement of travel and expenses eliminated. The boards will no longer have the ability to license, determine appropriate education/supervision/continuing education, handle complaints or enforcement, or otherwise regulate the fields. There is no explanation of what “key practice-related responsibilities” (pg 14) entail apart from the ability of the board to have practice-related rule development authority, but even that would be subject to approval by an all public-member commission.

I am in opposition to licensees may be assessed fees to cover costs of transitions. Licensees have already more than paid for the costs of this process, should it occur, and should not be penalized for issues with regulation within the DSHS for which they have no responsibility or ability to impact or control. It is patently unfair to licensees.

I believe that the proposed change to TDLR, while perhaps providing some administrative benefits for the state, will ultimately not serve public health and safety nor the thousands of professionals licensed by these boards. I think such a move will damage possibilities for portability of licensure at a time when the population is very mobile and portability is more important than ever. I believe there is a possibility of negatively impacting licensees being able to

obtain jobs with the VA or provide other services that are regulated at a federal level because TDLR does necessary expertise in those areas.

Respectfully,
Marvarene Oliver, LMFT-S, LPC-S

Any Alternative or New Recommendations on This Agency: I recommend that the TSBEMFT remain a fully functioning professional board, preferably within a structure that is appropriate to mental health professional regulation and not within TDLR.

My Comment Will Be Made Public: I agree