

State Office of Administrative Hearings

OCT 16 2014



Cathleen Parsley
Chief Administrative Law Judge

October 16, 2014

Mr. Ken Levine
Director, Sunset Advisory Commission
1501 North Congress
6th Floor, Robert E. Johnson Building
Austin, Texas 78701

Hand Delivery

Dear Mr. Levine:

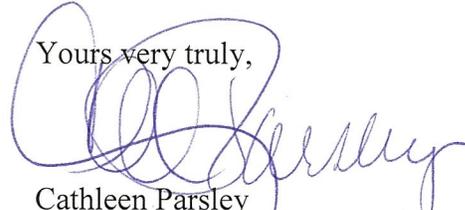
Thank you for the opportunity to comment on the Sunset Staff Report on the Health and Human Services Commission and System Issues. We offer our comments on Issue 11 pertaining to the credible allegation of fraud (CAF) hold hearings.

We recognize that the Sunset staff's effort is to streamline the CAF hold hearings. The lack of clarity and specificity as to the burden of proof and what constitutes a credible allegation of fraud led to uncertainty for the parties and complicated the determinations by SOAH's Administrative Law Judges.

The report cites the emergency suspension hearings of the Texas Medical Board and the Texas Board of Nursing (BON) as examples of proceedings that quickly address significant and ongoing risks, and recommends shorter payment hold hearings using a probable cause standard. In the BON probable cause hearings related to drug or alcohol misuse by a nurse, the legislature has provided a legal presumption that the nurse is a continuing and imminent threat to the public welfare. (In other BON probable cause hearings, the staff must prove the continuing and imminent threat element, which increases the hearing time.) The presumption means that no evidence has to be taken on the issue, which significantly streamlines the hearings. Although we have no position on their use and discuss them here only because of the manifest intention that the CAF hold hearings be limited in time and scope, established legal presumptions about what constitutes a credible allegation of fraud, or what factors give rise to a presumption of fraud, and what constitutes a financial risk to the state, would assist in ensuring that the hearings be shorter and more concise as to the elements to be proven.

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Thank you again for allowing us to offer our comments. Please let us know if you have any questions or if we may provide additional information.

Yours very truly,

Cathleen Parsley
Chief Administrative Law Judge