



# Texas Psychological Association

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[www.texaspsyc.org](http://www.texaspsyc.org)

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November 14, 2016

Sunset Commission  
Robert Romig  
Project Manager – Texas State Board of Examiners of Psychology  
PO Box 13066  
Austin, Texas 78711

Dear Mr. Romig

On behalf of the Texas Psychological Association, we want to thank you and your team for the work you and your team accomplished in reviewing the Texas State Board of Examiners of Psychology. We commend your thoughtfulness in reviewing the TSBE and the psychology profession. After reviewing your report, the Texas Psychological Association would like to provide comments and concerns regarding your recommendations.

## **Issue 1: *The Board's Oral Examination Is an Unnecessary Requirement for Licensure.***

### **Position: AGAINST**

#### **Rationale:**

The report recommends the elimination of the oral exam as a requirement for licensure. We understand the high pass rate might have led to the conclusion that this test lacks validation. However we feel this is a vital step in protecting the public prior to gaining full licensure. Your statistics indicate that over the last 3 years the success rate is 97%. However, in 2016, the most recent year we have actual data, 10% failed to pass this face-to-face test. This ultimately prevented non-qualified individuals from practicing in this state and providing sub-par service to the public. Based on comments of the examiners, many failures are related to crisis intervention decisions that could have serious consequences for Texans. Physicians currently take a 3-step licensure examination with multiple practice components that are similar to our oral exams. Highly qualified and trained professionals who engage the public in highly complex treatment modalities require significant testing to vet their abilities to perform those tasks. A competency exam to measure critical skills is vital to the protection of the citizens of Texas. We believe our licensure requirements, including an oral exam, best measures both psychological knowledge and proficiency of practice.



**Issue 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.***

**Position: AGAINST**

**Rationale:**

TPA believes that a formal post-doctoral training experience is of great value to the profession of psychology and to the state. First, as you noted, there are currently only 15 states that do not require a post-doctoral training year. This leaves 35 states that see the value of this type of training experience. We disagree with your assertion that the public does not benefit from the extra protection of this specialized training. The level of experiences of a pre-doctoral internship vs. post-doctoral training is vastly different. Both provide practical experience and serve the client well, but as in the medical model residency programs, the postdoctoral fellowship provides the psychologist specialized training. This specialized training in fields such as neuropsychology, forensic psychology, child psychology, and school psychology result in more focused, in-depth training which benefits all citizens who need to receive mental health services.

The belief that post-doctoral training creates a bottleneck for psychological services and causes trainees to repeat training is incorrect. The training in post-doctoral work is not comparable to pre-doctoral training. It is more specialized. Also, one of the biggest struggles regarding post-doctoral training was recently managed by the legislature. We believe that it has not been the training requirements creating the bottleneck, but the prohibition of the delegation of services by licensed psychologists. The state legislature heroically managed this issue during the previous two legislative sessions when they passed HB 808 and HB 1924. These bills allow licensed psychologists to delegate appropriate work to pre-doctoral interns and post-doctoral fellows. We believe that these significant changes will increase the number of post-doctoral opportunities in this state and allow increased psychological services to Texans. So, as you can see, the delay in the provision of services has already been dealt with while continuing the exemplary training requirements that the TSBEP demands. We encourage the legislature to keep the licensure requirements for both pre-doctoral and post-doctoral training.

**Issue 3: *Key Elements of the Board's Licensing and Regulatory Function Do Not Conform to Common Licensing Standards.***

**Position – SUPPORT**

**Rationale:**

The Texas Psychological Association agrees that these recommendations would improve the role of the TSBEP in regulating the practice of psychology.

**Issue 4: *Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.***

**Position – SUPPORT**

**Rationale:**

We agree completely with this recommendation that the state should continue to regulate the profession of psychology.

However, we would not support changes to the structure of the TSBEP. We are led to believe that your recommendation will be to strip TSBEP of its independent status and place the duties of licensing psychologists under a generalist umbrella board. We strongly oppose this action for precisely the reasons you list in your report. Licensed psychologists provide a wide range of psychological services to vulnerable populations in Texas. The TSBEP has served the citizens of Texas for over 65 years as an independent board and should continue to operate in that manner. Our profession will aggressively oppose attempts to consolidate the TSBEP under an umbrella board with risks of decreased enforcement and regulation.

In addition, psychology is a doctoral level profession. As with all other doctoral level healthcare professions, the nature of the assessment, diagnosis, and treatment of patients is multidimensional and complex. Psychologists' specialized training and interventions require a highly specialized and independent board. The state would never consider placing lawyers or physicians under an umbrella board. Like psychologists, their training and expertise is too specialized. All doctoral healthcare boards have an independent board. Having a licensing board with a specialized and educated management staff along with the expertise of professional board members will assure that qualified individuals are protecting the public.

Another issue that this report overlooks is that of both federal and state confidentiality laws. Currently, both the TSBEP and its licensees must abide by HIPAA, HITECH, state confidentiality laws, and the APA ethics code and confidentiality standards. In order to protect the privacy of the public, board staff must have special training and understanding of these privacy laws. Being intermingled with a larger agency and converting the TSBEP to an advisory board will not provide the privacy protection or the specialized knowledge base of psychological services that are necessary to protect the citizens of this state. The TSBEP is more similar to the Texas Medical Board because of the multiple psychological licenses with specialty areas of practice that it regulates.

We are aware that you have recommended that the master's level mental health professionals be transferred from DSHS (HHSC) to TDLR. You mention in your report that moving to an umbrella board would speed up the process and reduce waiting times for complaints and other professional issues. While this may have been a problem for the HHSC, it is not a problem for the TSBEP. Questions and complaints are dealt with in a timely fashion for both licensed psychologists and members of the public.

Please see the attached chart comparing our complaint resolution times to other state licensing boards. The TSBEP is the best option regarding mental health.

## **Issue 5: A Recent Court Decision opens the Door to Unlicensed Practice of Psychology**

### **Position – SUPPORT/AGREE**

#### **Rationale:**

We agree that the profession is in a precarious position due to the ruling from the US Court of Appeals for the 5<sup>th</sup> Circuit. A new definition for the profession must be finalized so we can once again protect the public by enforcing the practice and title of the psychological profession. There is an important and necessary word that must be included in any definition of the practice of psychology. That word is **diagnosis**. Diagnosis is a critical component of the specialized work that psychologists do on a daily basis. Social workers are authorized to diagnose in their license act. Psychologists have significantly more training in mental health than social workers. In addition, psychologists are one of the named professions in Medicare to provide diagnosis and treatment of Medicare patients. If diagnosis is excluded from any definition regarding the practice of psychology, it would certainly create a bottleneck and delay of services for those individuals who are at most risk and suffer the greatest with mental health problems. It would clearly increase the mental health care workforce shortage. In fact, many physicians depend on psychologists to provide psychological diagnoses through referrals. Psychologists are highly trained in the assessment, diagnosis, and treatment of mental illnesses. This is the triad of activities that allow for the citizens of this state to be best served. On a broader community and state level, effective diagnosing by psychologists provides the state with necessary data for best use of funding and allocation of services to protect the public. Diagnosing is what a psychologist does and this should be codified into law.

As you indicated, the Texas Legislature will ultimately have to decide which definition best meets the needs of fulfilling the 5<sup>th</sup> Circuits requirements. You can be assured that TPA will work side-by-side with the TSBEP, other stakeholders in the definition, and the legislature as they proceed with defining the practice of psychology.

### **Additional Issues Not Included in the Sunset Commission Staff Report**

#### **PROPOSAL/ISSUE 6: Clarify the role of SOAH as final ruling for dismissal of board complaints**

A recent suit involving TSBEP and a licensee uncovered a procedural issue that could be adequately addressed with minor legislative clarification. The current statute (501.455) states that a licensee may request a hearing and the administrative judge at the State Office of Administrative Hearings (SOAH) shall hold the hearing and the administrative judge shall make findings of fact and conclusions of law and issue a *proposal* for a decision regarding the violation and proposed administrative penalty. The law

is lacking in wording regarding the finding of no violation, so the board is then still given leeway to administer penalties despite the SOAH judgment. When this occurred, legal costs for both the board and the licensee increased. The Medical Act addresses this issue more clearly and specifies that a proposal for penalty is referred back to the Medical Board, but a dismissal from SOAH serves as the final disposition. This is a fair and beneficial clarification to administrative rules for the practice. This clarification will minimize costly legal suits and will improve the procedures of complaints and dispositions made by the Board.

**PROPOSAL/ISSUE 7: *Include PSYPACT (The Psychology Interjurisdictional Compact)***

The inclusion of a statute that allows for an interjurisdictional compact would allow for an increase in access to care for rural population and address the demand to provide and receive psychological services via electronic means (telepsychology). It would authorize both telepsychology and temporary in-person, face-to-face practice of psychology across state lines in PSYPACT states, with oversight by the relevant state psychology boards. Only those states who agree to cooperate will be involved. It must be enacted into law at the state level to be viable and it will become operational when seven states have enacted PSYPACT into law (Arizona has been the first to do so). Once this happens, psychologists who wish to practice under PSYPACT must obtain (1) an E.Passport Certificate for telepsychology and (2) an Interjurisdictional Practice Certificate (IPC) for temporary in-person, face-to-face practice. These certificates allow for states to communicate and exchange information regarding licensure and disciplinary actions.

By far, the clearest benefit to the community is increased access to care. For patients/clients who relocate or travel often, they will now be able to maintain access to care from their treating psychologist. Texas psychologists who engage in forensic practices that may involve cases in other states will be allowed to practice on a time-limited basis with more ease than is currently available. Telehealth/telemedicine/telepsychology is the future trend and this cooperative program allows for expansion of services with this technology while ensuring a high degree of consumer protection across state lines.

**In closing**, we recognize and support the need for Sunset Review and the intent of the Sunset Commission to improve efficiency and maintain appropriate regulation and safety, while ensuring licensing standards for psychologists. We appreciate your endeavor to understand the TSBE and its effective role in the protection of the public and regulatory efficiency. Citizens struggling with mental illness deserve not only access to care, but access to QUALITY care. We hope you choose to uphold psychologists' high standards of training and retain the TSBE as an independent board, the best ways to protect the public and ensure provision of quality care to vulnerable Texans.

Sincerely,

Texas Psychological Association Board of Trustees





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## Health Professions Council Annual Report

Department of State Health Services (DSHS)  
 Division for Regulatory Services  
 Health Care Quality Section  
 Professional Licensing and Certification Unit  
 February 1, 2016

Entity	# Licensees	Average length of time required for jurisdictional complaint resolution
Advisory Board of Athletic Trainers	3,358	176 days
Chemical Dependency Counselor Licensing Program (LCDC)	10,445	317 days
Code Enforcement Office Registration Program	2,309	676 days
Contact Lens Permit Program	129	249 days
Council on Sex Offender Treatment	557	217 days
Texas State Board of Examiners of Dieticians	5,299	1,231 days
Dyslexia Therapists and Practitioners	954	0 days
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments	782	448 days
Texas State Board of Marriage and Family Therapists	3,511	639 days
Massage Therapy Licensing Program	30,697	162 days
Medical Radiologic Technologist Certification Program	30,221	413 days
Texas Board of Licensure for Professional Medical Physicists	647	385 days
Texas Midwifery Board	267	322 days
Offender Education Program	2,242	533 days
Optician Registry Program	98	86 days
Texas Board of Orthotics and Prosthetics	870	993 days
Perfusionist Licensing Program	382	186 days
Personal Emergency Response System (PERS) Provider Licensing Program	315	0 days
Texas State Board of Examiners of Professional Counselors	22,543	673 days
Respiratory Care Practitioner Certification Program	15,239	378 days
Sanitarian Registration Program	1,251	64 days
Texas State Board of Social Worker Examiner	23,797	911 days
State Board of Examiners for Speech-Language Pathology and Audiology	19,769	313 days

## Health Professions Council

Annual Report  
 February 1, 2016

Entity	# Licensees	Average length of time required for jurisdictional complaint resolution
Board of Nursing (RN)	285,945	106 days
Board of Nursing (LVN)	101,314	129 days
Board of Pharmacy	100,488	170 days
Texas Medical Board	85,244	225 days
Texas Optometry Board	4,409	156 days
Board of Dental Examiners	76,695	1,460 days
Funeral Service Commission	6,783	90 days
Board of Chiropractic Examiners	10,894	299.5 days
Board of Examiners of Psychologists	9,512	217 days
Board of Physical Therapy Examiners	24,429	127 days
Board of Podiatric Medical Examiners	1,613	398 days
Board of Veterinary Medical Examiners	8,935	220 days
Board of Occupational Therapy Examiners	13,986	114 days