



Physicians Caring for Texans

December 6, 2016

Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

via email to: sunset@sunset.texas.gov

RE: Sunset Staff Report on the Texas State Board of Examiners of Psychologists

Dear Director Levine:

The Texas Medical Association (TMA) is a private, voluntary, nonprofit association of more than 49,000 Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, its mission is to “Improve the health of all Texans.” TMA’s diverse physician members practice in all fields of medical specialization, including psychiatry.

TMA appreciates this opportunity to provide comments for the Sunset Advisory Commission’s (Sunset Commission’s) consideration relating to the Texas State Board of Examiners of Psychologists (Psychologist Board). TMA applauds the diligence of the Sunset staff in its comprehensive review of the Psychologist Board.

TMA’s comments focus on the recommendations in the Sunset Staff Report regarding the definition of “practice of psychology” in light of the recent *Serafine* decision from the Fifth Circuit.¹ TMA understands the staff report’s concern about the implications of that decision on the Psychologist Board’s enforcement capabilities against those persons not currently licensed. TMA supports the staff recommendation for an open process to develop alternative definitions for the definition of “practice of psychology” for consideration by the Texas Legislature when it convenes in January. TMA believes that in order for the process to be truly open, and in order to develop a definition that, it is hoped, can withstand both legislative and judicial scrutiny, a range of stakeholders, including TMA, needs to be involved in the process. More specifically, TMA supports the staff report’s recommendation that the Psychologist Board solicit input from stakeholders and hold at least one public meeting to discuss possible language and stakeholder concerns; TMA looks forward to participating in this process. Furthermore, TMA supports the staff report’s recommendation that stakeholders be allowed to submit their own recommended

¹ *Serafine v. Branaman*, 810 F.3d 354 (5th Cir. 2016).

definitions to the committees and to the Sunset Commission. TMA plans to submit its own recommendations relating to the definition of “practice of psychology” to the Sunset Commission and to the committees.

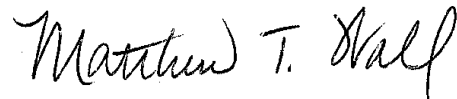
From TMA’s perspective, it is vitally important that any proposed definition be narrowly tailored to address the very specific concerns raised by the Court in *Serafine*. The *Serafine* opinion provides several guidelines for consideration in this open process. These guidelines include the use of certain terminology in the context of political speech; and the types of activities to which the Psychologists’ Licensing Act should not apply. TMA believes that this open process should be guided by two fundamental purposes: to make every effort to stay true to the *Serafine* holding by crafting a definition that comports with existing caselaw standards while avoiding negative impacts on existing statutory law; and to refrain from utilizing this process as an opportunity to expand the scope of practice for psychologists (which was not the subject of the *Serafine* case).

TMA appreciates the opportunity to submit these comments to the Sunset Commission. TMA would welcome the opportunity to provide further input on these issues as the staff and members of the Sunset Commission address them before and during the upcoming session of the Texas Legislature. If you have any questions, please contact either of the undersigned at TMA’s main number, (512) 370-1300.

Sincerely,



Donald P. Wilcox
Vice President and General Counsel
Texas Medical Association



Matthew T. Wall
Assistant General Counsel
Texas Medical Association