

Sunset Occupational Licensing Model: New Format

The licensing/regulation model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. The model reflects more than 30 years of experience reviewing regulatory agencies and identifying standards that guide their existence, oversight, and operations. The standards are not meant for across-the-board application, but may simply raise topics for consideration. Special circumstances may exist within agencies that make some standards impractical, requiring a complete understanding of the agency and the historical context of the issue in question. Standards should be applied only to fix a real or potentially real problem at the agency. Finally, the model is a work in progress. As new information comes in and standards are tested against reality, Sunset staff continues to update and expand the model.

Category	Subject	Standard	Explanation
Need for agency	Overall Need	Regulation should protect the public from a potentially serious threat to its health, safety, and welfare.	Regulation should be undertaken to protect the public from the unqualified practice of a profession, and not to protect the regulated group. An assessment must be made as to whether the threat is serious enough to warrant state regulation. Ultimately, drawing the line on the need to regulate is a judgment call and is determined by a combination of perceived threat, public expectations, common practice elsewhere, and resources available to regulate.
Need for agency	Overall need	Regulation should be implemented at the minimum level necessary to protect the public.	<p>Although a need to regulate may exist, the most stringent forms of licensing may not be necessary to provide acceptable protection. Only the least stringent level of regulation needed to protect the public should be implemented.</p> <p>Three categories of licensing exist. Registration is the lowest level of regulation. In its simplest form, registration requires a person to register with a state agency, which simply keeps a roster of practitioners. At times, the agency or statute may set minimum requirements that must be met before a person may be added to the list.</p> <p>Certification, the next level up, mandates that practitioners must meet certain minimum qualifications before using a title. Other persons may perform similar work, but are subject to agency enforcement action if they use the title. This type of regulation typically is set up in a “title act.”</p> <p>Licensing of practice is the most stringent regulatory approach, and involves regulation of the practice of the profession or occupation and often the title as well. For instance, only a medical doctor with specific qualifications can perform actions that are considered to fall within the practice of medicine. Professions regulated in this manner are operating under a “practice act.”</p> <p>Frequently, statutory language is inconsistent in the use of these terms. For example, certified public accountants are certified in their act, but the statute actually regulates both the practice and the title through licensure.</p>
Need for agency	Merge / transfer functions	Regulation of groups with highly similar practices and qualifications should be merged into one agency with a common board.	<p>Branches of a profession may try to distinguish between each other and lend legitimacy to their existence through a separate licensing act.</p> <p>Where practice and qualifications are highly similar, consideration should be given to merging regulation under a larger umbrella structure. This structure also provides opportunities for staff development and continuity in key licensing and enforcement functions that small agencies have trouble matching. This standard explains moving the regulation of barbers and cosmetologists to the Texas Department of Licensing and Regulation, as the Legislature did in 2005, and it was also used in a 2004 Sunset staff recommendation to consolidate the regulation of small health licensing programs.</p> <p>Consolidation often is very hard to achieve in practice. Efficiencies can still be gained by linking and sharing common administrative functions, as has been accomplished with the creation of the Health Professions Council in 1993. This agency provides a coordinating function between various health licensing agencies.</p>

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Need for agency	Merge / transfer functions	<p>An agency’s regulatory scope should not cover occupations, or include functions, that present possible conflicts of interest.</p> <p>If this situation exists, consider transferring the conflicting regulation or function to another agency.</p> <p>Or, if transfer is not feasible, ensure the agency’s organizational structure provides a sufficient barrier or other protections between the occupations.</p>	<p>Some licensing agencies regulate more than one occupation. These occupations should not have actual or substantial risk of, conflicting interests or regulation that could result in favoring one occupation at the expense of another, or harm the public interest.</p>
Need for agency	Merge / transfer functions	<p>An agency’s regulatory functions should have developed to the point of structured processes to deal with regulatory operations or be considered for transfer or attachment to another agency.</p>	<p>Some regulatory agencies may be too small and their regulatory mission too complicated for the regulatory program to become a stable and efficient operation. These agencies also have difficulty complying with the standard administrative requirements placed on all agencies or meeting their performance measures. In these cases, consideration should be given to transferring the function to another agency. The Department of Licensing and Regulation (TDLR) is a likely candidate to serve as a receiving agency given its umbrella structure. However, consideration should also be given to whether an umbrella agency already has too many programs under it and whether the Legislature would want to give it more.</p> <p>An example of an agency that was too small to adequately do its job was the Board of Tax Professional Examiners, which Sunset recommended for transfer to TDLR in 2008. Another small agency that was not performing well on its own was the Structural Pest Control Board. While staff recommended continuing the Board, the Sunset Commission voted to transfer its functions to the Texas Department of Agriculture in 2006.</p>
Need for agency	Merge / transfer functions	<p>Regulatory authority should be vested in a state structure that can provide unbiased and fair regulation to the benefit of the public.</p>	<p>A regulatory agency should be organized and structured in a way that protects the public. At times, the fundamental underpinnings of an organizational structure need to be examined to ensure unbiased regulation. Examples where this question has been raised include the State Bar and the Board of Law Examiners. Both of these structures, which operate with more insulation and independence than many state agencies, have been examined to determine whether regulation favors the legal profession more than the public.</p>
Overall structure	Regulatory structure	<p>The regulatory structure for a licensing agency, profession, or activity should be set up in a fashion similar to that used for other professions or activities related to the field or roughly similar in scope of authority.</p>	<p>Many agencies have similar regulatory missions with licensee groups and activities that fall into the same broad category. An example of this would be the health professionals (medical doctors, physician assistants, and acupuncturists) regulated under the Texas Medical Board. Often, it makes sense for the regulatory structure used for agencies such as these health-related professions to be roughly similar. Providing for consistency, when appropriate, helps ensure that related functions are treated in the same way.</p>

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Overall structure	Regulatory structure	The agency's enabling legislation should be consistent with the agency's actual operations.	<p>In some cases, an agency may change its operations for good reasons, but its enabling legislation may not change accordingly. To ensure lawful operation, an agency's statute and practices must be consistent.</p> <p>An example of the use of this standard existed in the regulation of water treatment specialists. This program was administratively transferred from the predecessor to what is now the Department of State Health Services to what is now the Texas Commission on Environmental Quality (TCEQ), with its creation in 1993; however, statutory authority for regulation remained under the former health agency. A Sunset Commission recommendation in 2001 squared up the legal authority with TCEQ's programmatic responsibility.</p>
Policy body	Composition	An occupational licensing board should be composed of as close to one-third public members as possible.	This standard is an across-the-board recommendation. The standard includes the possibility of more than one-third public members. If the industry is very dominant, more public members may be needed for balance, as was the case for the Commission on Private Security, before it was merged into the Department of Public Safety, and the Funeral Service Commission. A 1999 constitutional amendment had the effect of changing the size of many boards and commissions so that they no longer have to be divisible by three. In these cases, the standard is to ensure that public member representation is as close to one-third as possible. The key to keep in mind is to balance the need for expertise, generally provided by regulated practitioner members, and the dispassionate judgment provided by public members.
Policy body	Composition	An odd number of members should be included on a board.	The constitution requires that a board be composed of an odd number of members, and an extensive effort by the Sunset Commission and Legislative Council in 2003 resulted in changing existing boards with an even number of members to reflect this constitutional requirement. Boards with an even number of members could split votes evenly and hamper arrival at a clear decision.

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Policy body	Composition	<p>To the extent that reasonable size allows, all major groups with appropriate expertise should be represented on the board of a regulatory agency.</p> <p>The board should effectively lead the agency, develop policy, carry out regulation, and protect the public interest.</p> <p>Consideration may be given to whether a single official would be better suited for leading the agency.</p>	<p>Most regulatory agencies have policy boards to ensure balanced representation of the occupation’s interests and the public’s interest. This structure normally is used instead of a single head of agency because of the broad perspective and depth of expertise that a board brings to regulation. To take advantage of this structure, and ensure protection of the public’s interest, regulatory boards should have members from major regulated groups and have at least one-third public membership.</p> <p>In some instances, a single appointed official may provide better oversight instead of a policy board. This structure offers greater accountability to the Governor and Legislature, although this may come at the expense of the expertise and perspective provided by boards.</p> <p>In 2009, Sunset staff recommended replacing the Texas Transportation Commission with a single appointed commissioner. Another example is when the Board of Insurance was eliminated and replaced with a single Insurance Commissioner.</p>
Policy body	Compensation	<p>Travel reimbursement or other types of compensation paid to board members should follow reasonable standards.</p>	<p>Board members should be subject to reasonable standards for travel reimbursement, as set in the Appropriations Act. The common approach is for board members to be reimbursed for their travel-related expenses and not to receive other compensation, such as a “compensatory per diem” paid in addition to reimbursement for travel, hotel, and meals. This approach ensures that board members are treated equally across agencies with part-time boards and provides greater transparency for the actual cost of conducting board business.</p> <p>In some cases, however, board members may be compensated for work performed while serving as a board member. Consideration should be given to the appropriateness of such reimbursement and if the amount is reasonable for the work performed.</p>

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Policy body	Appointment	A free-standing regulatory agency typically should be governed by a board appointed by the Governor and confirmed by the Senate.	<p>In general, licensing agencies are headed by a policy body that is appointed by the Governor and confirmed by the Senate. This structure should be followed as a general principle.</p> <p>One item to note is that some agencies reviewed by Sunset have had board members appointed by the Lieutenant Governor or the Speaker of the House. Questions have been raised on the constitutionality of appointments by these legislative officers, especially the Speaker. Questions have also been raised when a legislative member serves on an executive body. These appointments may be more of a problem for boards that have final decision-making authority rather than an advisory function. For this reason, Sunset has addressed issues regarding legislative members in its reviews of the Texas Cancer Council and the Commission on State Emergency Communications, but not, for example, in its review of the Pension Review Board. However, with the strengthening of some of PRB's authority, the Legislature in 2013 removed the legislative members from the PRB.</p>
Policy body	Advisory committees	The need for advisory committees to fill representational gaps on the board or to provide special expertise to the agency should be evaluated.	<p>Advisory committees are one means of providing additional input to the agency, thereby broadening its policy perspective and enabling greater representation in agency policymaking. Advisory committees generally exist to advise the board, or decision makers, which retain final decision-making authority.</p> <p>If the agency lacks advisory committees, consider whether the agency, stakeholders, and public would benefit from the creation of advisory committees. Statutorily-created advisory committees often exist in larger umbrella agencies such as TDLR.</p> <p>On the other hand, if an agency has advisory committees, evaluate if they are still useful in their current form or should be abolished. Also, does the agency comply with standards in Government Code Ch. 2110 governing the creation and use of advisory committees? This general authority provides the flexibility needed to create advisory committees without the limitations of specific statutory requirements.</p> <p>When evaluating the need for advisory committees the following should be kept in mind.</p> <ul style="list-style-type: none"> • Board members should not be on advisory committees as voting members, as this hinders the committee's independence. • Advisory committees should be a workable size and should have members with the appropriate expertise. • To ensure appropriate accountability and operation, advisory committees should be appointed by the board with input from stakeholders. • Advisory committees are not subject to the constitutional requirement that governs the size of boards and commissions. <p>Consideration should be given to inclusion of public members on advisory committees and applying conflict-of-interest provisions to them if needed. Public members can help balance the perspective of the advisory committee; on the other hand, they may not add value if the committee provides highly technical advice and expertise. Conflict-of-interest provisions may prevent the problem of having lobbyists or association members using their appointment to further causes that may not be in the public interest. On the other hand, these provisions may limit expertise on bodies that are only advisory and do not have final decision-making authority.</p> <p>Generally, the Legislature has shied from reimbursing advisory committee members for travel expenses. However Ch. 2110.004, Government Code, allows for this as set in the Appropriations Act. Committee members provide a valuable service to the state and in some cases travel reimbursement may be reasonable.</p>

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Policy body	Stakeholder involvement	Getting stakeholders involved early in policy development is increasingly seen as another way to provide needed expertise and a perspective as an alternative to advisory committees.	<p>Early stakeholder involvement, like advisory committees, is a means of providing a broader perspective to agencies to help improve policymaking. Unlike advisory committees, however, early stakeholder involvement is designed to identify problems and deal with them as policies are being developed, before positions and approaches can become entrenched. It is also an open, inclusive process that strengthens policy development by helping ensure a more complete range of opinions on an issue and a better understanding of impact of the proposed policy changes. It also improves public buy-in in the policymaking process.</p> <p>Involving stakeholders early in developing policies can help agencies avoid problems that may not be apparent until they try to implement the changes. By actively seeking input in those formative stages, agencies are more likely to be aware of potential problems than if they passively await comments through the rulemaking process or if they rely on the more limited perspective of a set advisory committee. The involvement of stakeholders can be adapted to the variety of problems or policy issues encountered.</p> <p>To ensure a consistent, comprehensive approach regarding the use of stakeholder involvement, agencies may also be required to develop guidelines for this input, as was recommended for the Chiropractic Board in 2005. Agencies may also consider documenting the invitees and actual participants in stakeholder meetings to inoculate themselves against claims of trying to control the input it receives on policy matters.</p>
Policy Body	Miscellaneous	All Sunset across-the-board recommendations (ATBs) that apply to operation of the board and not mentioned elsewhere should be applied as appropriate.	These provisions are generally placed in every agency's statute unless doing so presents a problem, encompassing: conflicts of interest; the Governor's designation of the presiding officer; specific grounds for removal for board members; informing board members (and employees) on standards of conduct; training for board members; separation of board and staff functions; providing for public testimony at board meetings; required information on complaints; and alternative dispute resolution.
Policy Body	Miscellaneous	Committees of the board shall be composed only of board members to ensure accountability to the Governor for board actions.	<p>Board committees allow boards to divide their workload and to take advantage of specialization or expertise among the members. Board committees typically focus on issues and forward their recommendations to the full board for final action.</p> <p>Boards may sometimes provide for non-board members to serve on board committees as a way to provide additional expertise and a broader perspective to help guide their decision making. Such representation is generally discouraged because of undisclosed interests these non-board members may have in matters before the board. It is particularly troublesome to have such representation on board committees responsible for establishing policy, which require greater accountability to the Governor and Legislature. If non-board members are to serve on board committees, they should be specifically authorized in statute to do so, and they should be required to meet the same statutory qualifications as board members.</p> <p>Agency staff should also not serve on board committees because it creates an improper delegation of authority and does not necessarily provide additional advice and expertise on issues.</p>
Administration	Funding structure	A regulatory agency typically should deposit licensing fees in the General Revenue Fund. The agency should also receive its major state appropriations from General Revenue and not from dedicated funds in General Revenue or elsewhere.	<p>Typically, licensing agencies deposit licensing fees to General Revenue and receive their appropriations from that fund. The use of funds dedicated to the agency's use, either within or outside General Revenue, has largely been eliminated.</p> <p>The theory behind using General Revenue funds is that licensing agencies exist to protect the public, and general state funds should be used for that purpose. Concern with this approach is that, once revenues from licensing activities are commingled with other state funds, no assurance exists that those funds will be spent on an agency's licensing activities. In addition, the semi-independent, self-directed agencies challenge this standard by having the responsibility to collect and use funds for agency operations. Sunset, however, traditionally has given greater weight to funding licensing agencies from General Revenue, thus providing greater legislative oversight and focusing on the general public protection role of these agencies.</p>

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Administration	Funding structure	Revenue from an agency's licensing and enforcement activities should equal or exceed annual appropriations plus indirect appropriations made to other agencies on behalf of the licensing agency.	<p>Texas has moved towards this standard as funding has become more and more difficult to obtain. Indirect appropriations refers to appropriations that the Legislature makes to other state agencies to support the licensing agency. Licensing agencies generate funds from fees for applications, examinations, renewals, duplicate licenses, and sanctions, among other possibilities.</p> <p>Although agency fee collections should not greatly exceed total appropriations related to an agency, the practice has been to use these excess fees for other general purposes with no predisposition to lower fee levels. The effect has been to make agencies raise fees to cover anticipated cost increases even in cases where fees generate more revenue than needed to support the agency.</p>
Administration	Funding structure	A regulatory agency should receive sufficient revenues to provide adequate protection to the public.	Without proper funding, an agency cannot perform its public protection responsibilities. In such cases, consideration should be given to ways to increase funding, typically by increasing fees to cover costs.
Administration	Funding structure	A licensing agency should have authority to set fees. Consideration should be given to removing statutory caps on this authority.	<p>Some agencies have fixed fee amounts set in statute, an approach that requires legislative action before fees can be adjusted to cover changing circumstances.</p> <p>The Legislature has given many agencies authority to set fees as necessary without statutory caps, although it has traditionally looked with disfavor on doing so. The Legislature continues to exert control in these situations through the appropriations process (except for the self-directed semi-independent agencies). Agencies, on their own, typically do not control the revenue they receive from fees. Traditionally, they have had to identify the need for the revenue, gain agreement from licensees to pay the higher fee, and then secure legislative appropriations of the additional revenue. Additional safeguards may be added to ensure that the agency appropriately sets and uses these fees as intended by the Legislature.</p>
Administration	Coordination with other agencies	A small agency should coordinate with other agencies to obtain administrative services such as courier services, information services, accounting, and copying when such action will result in administrative efficiencies.	Many freestanding agencies are small and struggle to obtain and pay for administrative services that are more easily absorbed in the budget of a large agency. One way to approach this problem is for small agencies to join together to share administrative resources, where possible and cost effective. Some of the health licensing agencies, for example, have shared courier, copying, and information services through the Health Professions Council.
Administration	Coordination with other agencies	Where possible, a small agency should be collocated with other agencies of preferably similar missions to promote administrative efficiency.	<p>Collocation of small agencies with broadly similar missions makes it easier for them to share resources and information. Collocation is also desirable when a small agency is collocated with other agencies having dissimilar functions because resources can still be shared in many cases.</p> <p>As an example of collocation, many health licensing agencies are housed together in the William P. Hobby State Office Building.</p>
Administration	Standardization	Programs within an umbrella regulatory structure should be standardized to the extent possible.	<p>An umbrella licensing agency such as the Texas Department of Licensing and Regulation oversees a range of licensing and regulatory programs. The existence of multiple programs within one organizational structure presents the opportunity to standardize functions, such as licensing and enforcement. TDLR, for example, has a standardized central licensing function instead of replicating this function through each of its regulatory programs. Standardization promotes efficiency by reducing the number of administrative processes needed to arrive at the same outcome. It also promotes consistent treatment of licensees and applicants, resulting in processes that are fairer.</p> <p>Not all processes can be standardized because of unique circumstances that may exist in different programs. The reasons behind program differences, however, should be necessary and justifiable.</p>

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Administration	Coordination with other agencies	An agency should coordinate its regulatory activities with other agencies having overlapping responsibilities or interests.	<p>Regulation of an industry is sometimes divided between agencies. The funeral industry, for example, is regulated in several agencies, including the Texas Funeral Service Commission, the Department of Banking, and the Department of Insurance. In addition, engineers who practice architecture may be regulated by both the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners.</p> <p>Although consideration can also be given to combining such functions, agencies should coordinate their overlapping responsibilities where consolidation is impractical. One tool for accomplishing this end is a memorandum of understanding to guide and coordinate the efforts of the affected agencies.</p> <p>Licensing agencies must also coordinate with the Office of the Attorney General (OAG) to ensure that persons practicing or engaging in a particular business, occupation, or profession are in compliance with required child support. While OAG is responsible for the enforcement process, licensing agencies should have the capability to participate in the cooperative arrangement to take action, as needed, against a person’s license.</p>
Administration	Public information	Regulatory agencies should make consumer information available to the public.	<p>Regulatory agencies exist to protect the public, and the public should have access to general information about the profession and the operation of the agency.</p> <p>For example, information on the operation and practices of the funeral industry could help consumers understand their options and the agency’s responsibilities generally. Similarly, information about mental health services regulated by DSHS can help the public make more informed decisions in obtaining these services and seeking relief in the event of a complaint.</p> <p>A variety of techniques can be used to inform the public, including brochures, signs, and websites. An agency should make good use of all appropriate means to inform the public on important regulatory topics. Information should be easily accessible and in plain language.</p>
Licensing	General qualifications	Regulatory requirements and qualifications for licensure should be clear, easily determined, represent a current condition, and related to the practice of the profession.	<p>The statutes or policies of licensing and regulatory agencies should not require qualifications or requirements that cannot be concretely determined or that have little or no bearing on protecting the public. Some provisions to watch out for include the following:</p> <ul style="list-style-type: none"> • “Good moral character” should not be required because it is open to many interpretations and is not generally related to practice. (In its 2013 review of the Lottery Commission, Sunset eliminated references to “moral turpitude,” referencing instead criminal behavior reflecting that condition.) • Residency requirements have no bearing on competency or practice. • Age requirements, when set too narrowly, do not relate to practice. • Disqualifiers related to drugs or alcohol addiction should be stated in terms of current addiction and not a history of addiction.
Licensing	General qualifications	Qualifications should not unreasonably restrict entry into practice.	Regulatory provisions should not limit entry to the profession unnecessarily. For example, a potential licensee should not be required to obtain permission of someone else in the occupation as a qualification for licensure. Permission may not readily be granted by someone who sees the newcomer as a competitor. Additionally, in the past Sunset has removed application notarization requirements. State law already prohibits a person from knowingly making a false entry in a government record.

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Licensing	General qualifications	An agency’s application of qualifications related to felony and misdemeanor convictions should be guided by the standards contained in the Occupations Code, Chapter 53, “Consequences of Criminal Conviction.”	Chapter 53 of the Occupations Code sets out a licensing agency’s authority to suspend, revoke, or refuse licensure to an individual because of a felony or misdemeanor conviction or deferred adjudication. The agency can take adverse action if the felony or misdemeanor is related directly to the duties and responsibilities of the licensed occupation. In addition, a license shall be revoked on the license holder’s imprisonment. The agency must consider various factors to determine whether a criminal conviction directly relates to an occupation. The statute requires that each agency issue guidelines on this topic and specifies notice and judicial review requirements. Depending on the sensitivity of this issue to the agency, additional consideration may be given to establishing procedures for the agency to follow in using criminal conviction information in licensing decisions.
Licensing	General qualifications	An agency may conduct criminal background checks for license issuance or renewal.	<p>Agencies may require criminal background checks before a person is licensed or has a license renewed in a profession to ensure protection of the public’s health and welfare. Some agencies use a person’s name and birth date to conduct a background check, but this method is limited in its efficacy. Fingerprint checks are preferable for a number of reasons. DPS contracts with a vendor to operate fingerprinting facilities statewide, subject to the terms of the contract. DPS runs fingerprint checks through the state’s system to check the Texas record, and then sends the fingerprints to the FBI for conviction information from other states. Digital fingerprints are more complete, accurate, and timely than checks of names and birth dates. Agencies can be sure that fingerprint-based criminal histories belong to the applicant and updates are provided in real time. Digital fingerprints also are more efficient in that a one-time check is all that is needed to provide criminal history information going forward. As of 2013, at least 36 Texas agencies regulating professions or occupations performed fingerprint checks. In 2013, the Legislature added fingerprint checks for TDHCA’s manufactured housing division, the Texas Board of Architectural Examiners, and the Texas Board of Professional Engineers.</p> <p>Typically, an agency requires the applicant to pay the vendor directly resulting in no fiscal impact to the agency. An agency may experience additional costs associated with dealing with the criminal histories they receive.</p> <p>Not all licensed occupations or professions may need to have a criminal background check performed on a potential licensee. When determining if an agency should perform criminal background checks on a potential licensee, consider the type of work the licensee would be doing. For example, licensees who enter a person’s home or perform an act that could injure or otherwise harm a member of the public may need such a background check.</p> <p>Consideration may be given to establishing a declaratory order process as exists at the Board of Nursing for evaluating the criminal history of students or prospective students who notify the Board of the need for such an order — before they incur the time and expense of obtaining the required education.</p>
Licensing	General qualifications	Temporary permits should not be allowed except in very limited, controlled circumstances.	<p>A temporary permit authorizes the holder to practice before meeting all licensure qualifications. Such a license should be authorized only in very limited circumstances since the public is offered no assurance of competency.</p> <p>An example of this situation is in cases of catastrophes or natural disasters, when the immediate, short-term demand for practitioners outstrips the agency’s regular administrative processes. An agency may also grant temporary status to applicants while it completes the steps in the licensing process, but this is more typically handled through a provisional license process, described elsewhere in this model.</p>

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Licensing	General qualifications	An agency's application of qualifications related to military service members, military veterans, and military spouses should be guided by the standards contained in the Occupations Code, Chapter 55.	Chapter 55, Occupations Code provides for renewal exemption, deadline extension, alternative license procedure, expedited license procedure and renewal, apprenticeship requirement, and license eligibility requirements for active military, military veterans, or military spouses.
Licensing	Education	Educational requirements should be the minimum necessary to ensure competency of an entry-level professional.	The courts have held that a state can impose reasonable standards, including educational standards, as they relate reasonably to entry-level practice. While determining specific educational standards may be difficult, consideration can be given to determining if requirements present an unnecessary or unreasonable burden on applicants, especially those from other states.
Licensing	Education	Accrediting authority should not result in unduly restricting educational opportunities but should ensure a program to provide the necessary minimum level of competency to practice the profession. Accreditation standards should be limited to issues of direct relevance to overall program quality.	<p>Accrediting authority potentially could be used to limit acceptable programs to the benefit of current practitioners and the detriment of the public. The accreditation process should relate clearly to overall quality of the program.</p> <p>The standard for accrediting degree-granting schools and educational institutions is to rely on the process of the Texas Higher Education Coordinating Board to approve the institution (e.g., through regional accreditation by the Southern Association of Colleges and Schools) and to rely on a recognized national accrediting agency to accredit the schools' programs. This two-stage process ensures the soundness of the educational institution and the quality of its programs. It also provides a standard process for educational institutions and programs to be recognized by every state, removing the potential variability of requirements nationwide from having each state approve its own education programs.</p> <p>For non-degree-granting institutions, such as career or technical schools, the Texas Workforce Commission typically approves institutions with non-regional institutional accreditation sometimes used for eligibility purposes for federal funding.</p>
Licensing	Education	The licensing agency should not impose unnecessary barriers by limiting educational programs to a select number of schools.	<p>Generally, educational institutions should have the ability to apply for accreditation without being excluded by the agency. Such exclusion might result from favoritism toward other institutions, opinions about location or cost of the program, etc.</p> <p>Some educational institutions, notably career and proprietary schools, do not confer degrees, and thus cannot satisfy the requirements of institutional accreditation as overseen by the Coordinating Board. This situation may be appropriate for occupations for which a degree is not required for licensure.</p> <p>Interest in professionalizing an occupation may affect this accreditation process. When an occupation is seen as more technical or specialized, with increased opportunities for advancement through various degree programs (such as nurses), pressure may build to require the educational institution essentially to become a degree-granting institution, accredited through the Coordinating Board's process. Accreditation as a degree-granting institution, or being in the process of gaining such accreditation, may be a prerequisite to the regulatory agency recognizing the institution's programs as satisfying the educational requirements for licensure. It would also provide for students to build an academic record not just for satisfying degree requirements, but also for transferring credit hours to other educational institutions and for obtaining higher level degrees needed for professional advancement.</p> <p>Occupational licensing boards' practices may also affect the accreditation of out-of-state institutions providing distance education, creating additional hurdles for students of these programs. For example, students of these institutions may have to get licensed in a state where accreditation of the educational institution also serves as accreditation of the licensing board, and then transfer through an endorsement process to the state where they want to practice.</p>

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Licensing	Testing	The agency should adopt clear procedures governing all parts of the testing process, including test admission and administration.	<p>Clear procedures ensure consistent and fair treatment of applicants. These should include procedures for test admission and administration for all parts of the test.</p> <p>Admission procedures should incorporate a consistent policy for application deadlines, methods for determining the exact number and identity of applicants sitting for the exam before the exam date, and the requirement of some type of photographic identification of examinees.</p> <p>Procedures for administering the test should include definite time limits, testing officers and monitors, and prohibitions against using proctors who plan to sit for the exam in the future.</p>
Licensing	Testing	Test components should be fair and unbiased. Consideration should be given to eliminating or restructuring test components that tend to be subjective.	<p>Licensing agencies test applicants in a variety of ways. Three general types of testing exist: the written exam, usually multiple choice or short answer; the practical exam, in which the applicant demonstrates technical skills and abilities; and the oral exam, in which an applicant is interviewed to determine knowledge and skill levels.</p> <p>Experience over time has resulted in Sunset developing guidelines for the various test components. In general, testing preferences include the following:</p> <ul style="list-style-type: none"> • All parts of the exam should be up to date, unambiguous, clear, and related to testing competency in the field. • For the written exam, an agency should use a national or regional testing service and not prepare its own test. A testing service eliminates possible bias and uses validated questions. It also promotes standardization of licensing requirements nationwide and helps simplify the movement of licensed practitioners from state to state. An agency may have a compelling reason to develop its own test, however, such as in the licensing of attorneys, where laws vary from state to state. If so, the agency should develop a question bank to ensure consistent testing. In addition, multiple choice and short answer questions tend to be less subjective than essay questions. • Practical exams should be used with caution, since they can be subjective if not structured carefully. When they are used, practical exams should have written guidelines laying out acceptable methods of examination, clear criteria for performance, and clear definition of tasks to be performed. These elements promote consistency in judging performance as well as overall fairness of the exam procedure. • Oral exams should not be used except in rare cases. These exams, which typically involve board members as examiners, have a great potential for abuse. Different examiners may have latitude to judge the same answer differently, leaving room for bias and unfair testing. If oral exams are used, questions should be standardized and be addressed consistently to all examinees, and grading should be standardized to the degree possible. • Board members should be excluded from the testing process generally. If they cannot be excluded because of size of the agency or other factors, they should not be involved in all phases of testing such as test development, test administration, and test grading. • Where possible, fair grading should be promoted through the use of at least two examiners for any part of the exam and requiring that the name of the examinee not be known to examiners.

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Category	Subject	Standard	Explanation
Licensing	Testing	Licensing agencies should have confidence that tests and testing processes adequately ensure the readiness of applicants to become licensed practitioners.	<p>The testing procedure, taken as a whole should not have a failure or passing rate that is unreasonable. High failure rates indicate inadequate education or experience qualifications necessary for successful examination, or possibly an effort to limit entry to the profession. Low failure rates may indicate that the testing process is not a necessary or useful screening device.</p> <p>Grades should not be curved to accommodate fluctuations in exam scores. The competency level necessary to protect the public should be absolute and generally remain constant.</p> <p>Curving scores changes the standard that marks entry competency.</p> <p>The agency should have reasonable limits on the number of testing opportunities an applicant has to pass the licensing examination. For national examinations, these limits should reflect the requirements of the national testing service. However, exceptions to these limits may erode the integrity of the examination process in determining the readiness of persons seeking to become licensed practitioners.</p>
Licensing	Testing	Licensing agencies should have some assurance that practitioners are familiar with state law and regulations related to the profession.	<p>State laws and regulations can have a significant impact on practice, affecting licensure requirements, standards of conduct for practitioners, disciplinary procedures, and scope of practice questions. Familiarity with these laws and regulations can ensure that practitioners are aware of issues that can affect public safety and the status of their license.</p> <p>Agencies are typically given latitude as to how applicants should demonstrate this knowledge, through a ‘jurisprudence’ examination testing these elements is the most common approach. Agencies may also determine how best to develop and administer such an examination. The requirement for knowledge of state laws and regulations should apply both to in-state and out-of-state applicants for licensure.</p>
Licensing	Testing	The exam should be accessible to individuals with disabilities.	Exams should not exclude individuals because of disability, as long as those individuals qualify to sit for the testing procedure. This procedure should follow all legal guidelines related to equal opportunity and access.
Licensing	Testing	The exam process should be administered with enough frequency and in enough locations to accommodate demand.	<p>The public should have reasonable opportunity to take the exam. Frequency of exam administration and dispersion of exam location must be balanced between demand to take the test and funds available for its administration.</p> <p>As more licensing agencies rely on national examinations to measure competence of applicants, contracted testing centers, and online testing are seen as ways to administer examinations that ensure both timely and geographic access to applicants not just in Texas, but throughout the U.S.</p>
Licensing	Testing	Fees for both initial exams and retakes of the exam should not be refundable, except in cases of emergency circumstances and reasonable advance notice of withdrawal.	<p>The agency incurs an administrative cost for these procedures which should be covered by the examinee. In addition, the examinees take the exam more seriously knowing that fees will not be refunded. However, agencies should have the ability to recognize emergency circumstances, such as a death in the family.</p> <p>Also, an agency should be able to consider refunds if the applicant gives reasonable advance notice of withdrawal. This approach balances the needs of both the agency and the applicant.</p>
Licensing	Testing	The agency’s statute should provide for timely notice of examination results to a person taking an examination and an analysis to individuals failing the exam.	This provision ensures the timely reporting of examination results and that examinees are informed of the reasons for failing the examination. Such knowledge serves to provide examinees with timely results as well as assist the examinee to acquire skills and knowledge to pass the exam.

Sunset Occupational Licensing Model: New Format

Category	Subject	Standard	Explanation
Licensing	Experience	Experience requirements should be set to ensure competence and not limit entry to the profession.	Requirements on the type and length of experience should be reasonably related to ensuring that the applicant has the minimum necessary level of competence. Care should be taken to ensure that experience requirements are not excessive toward the end of limiting entry to the profession and that no additional requirements are imposed on persons from out of state that are not also imposed on in-state applicants.
Licensing	Experience	If the statute allows the agency discretion in the type or length of experience required or to waive experience, the agency should develop rules or written guidelines that clarify these requirements.	Written guidelines clarify the standards that applicants must meet and document these standards for the public. Legitimate reasons must exist for granting waivers, and this policy should be spelled out. One possible reason for granting a waiver, for instance, would be in the case of undue hardship.
Licensing	Experience	Any apprenticeship or internship requirements should not be unreasonably long and should not allow any entity other than the agency to set the qualifications of supervisors.	Although apprenticeships or internships are useful tools to gain experience, they should not be so long or burdensome that they discourage entry to the profession to benefit current practitioners. The agency should establish qualifications of supervisors to help ensure supervision aimed at the public interest and not at special interests of the profession.
Licensing	Experience	The agency should have procedures to verify validity of experience without biased evaluation, without delaying the application, and without performing unnecessary background checks.	Verification of experience should not be used as a way to delay or eliminate entry to the profession of a qualified applicant. Procedures should be in place to ensure that the applicant's experience is judged fairly and without long delays or unnecessary procedures.

Sunset Occupational Licensing Model: New Format

Category	Subject	Standard	Explanation
Licensing	Equivalency	<p>Statute should authorize the agency to recognize and accept occupational licenses issued by states or national organizations held by persons from out of state applying for a Texas license.</p> <p>The agency should have a fair, unbiased, process for evaluating the credentials and qualifications of persons from out of state applying for a Texas license.</p>	<p>Generally, agencies have a procedure to license out-of-state applicants without examination if the applicant holds a license from another state or a national organization. However, any out-of-state or national license or certification should meet, or be at least be equivalent to, state requirements.</p> <p>This policy protects the public interest and imposes uniform requirements on all applicants to ensure in-state practitioners are not unfairly favored over persons from out of state seeking Texas licensure. Also, licensed practitioners do not have to spend resources to retake an exam already passed in another state, or through a national organization.</p> <p>Historically, two approaches to licensing out-of-state applicants are endorsement and reciprocity. Licensure by endorsement requires an agency to review an applicant’s credentials to determine if they are substantially equivalent to the state’s requirements, before issuing a state license. Licensure by reciprocity means states enter into reciprocal agreements to recognize each other’s licenses. If appropriate, agencies can be authorized to use both endorsement and reciprocity.</p> <p>Increasingly occupations and professions are relying on national associations or organizations to develop standards for training, testing, and licensing individuals to practice. Relying on national standards allows state agencies to avoid having to separately evaluate the qualifications and fitness of each applicant coming from another state. State agencies may, or may not, recognize these national standards and licenses depending on how widely accepted these national standards are, and whether state-specific standards substantially differ from national standards.</p> <p>Typically, state licensing boards recognize standard education, examination, and experience requirements, so that a license is transferable to another state, as long as the person maintains a clean disciplinary record, has a clean criminal history, applies for licensure and pays all applicable fees, and demonstrates familiarity with Texas’ laws and regulations.</p> <p>However, some professions — especially those requiring significant localized knowledge, such as the practice of law — may not be appropriate for this equivalency standard. In these areas, states may conduct their own exam to ensure competence to practice.</p> <p>Board members should not be involved in personal interviews to determine equivalency for out-of-state applicants. Members may tend to introduce bias against additional licensees from out of state or tend to feel that other states’ processes are less satisfactory than those of its own state.</p>
Licensing	Equivalency	<p>Grandfathering individuals into practice can diminish protection to the public and should be avoided.</p>	<p>When licensing agencies are established, current practitioners are often “grandfathered” to continue practicing the profession without meeting new licensing requirements. This can have the effect of decreasing protection to the public since grandfathered individuals have not had to show they meet minimum requirements for licensure such as testing. Any grandfathered individuals should be required to demonstrate competence, just as other licensees must do, to protect the public from unqualified practitioners. Grandfathered individuals should have enough time to prepare for testing before being required to demonstrate substantial compliance with entry-level requirements.</p>
Licensing	Equivalency	<p>The agency should have the authority to grant provisional licenses to applicants who hold a current license in another state.</p>	<p>Provisional licenses allow license applicants who hold a license in another state to practice in Texas and earn a living while their credentials are being evaluated. Provisional licenses can be issued only if the individuals meet certain requirements such as passing a recognized examination and having a clean disciplinary history, which help protect the public. Any requirement for out-of-state applicants to be sponsored by a Texas licensee should be closely examined to see if it restricts entry to the state.</p>

Sunset Occupational Licensing Model: New Format

Category	Subject	Standard	Explanation
Licensing	Exemptions	Any exemptions from licensure or licensing requirements should be statutory, have a clear and reasonable basis, and not impair the health, safety, or welfare of the public.	<p>Licensing acts sometimes exempt certain classes of individuals from licensure. These exemptions should be carefully evaluated to ensure that they are reasonable and that exempted classes do not constitute an unreasonable danger to the public.</p> <p>Exemptions, however, affect who can work in a regulated area, and as a result, can be very difficult to ascertain through objective analysis without a high degree of technical expertise. To ensure careful scrutiny and approval, exemptions should be statutory. They should also have a clear basis for existing and should be worded in a clear and unambiguous way so that the scope of practice is clear.</p>
Licensing	Renewal	A regulatory agency should have a renewal process that helps ensure adequate oversight of persons or activities regulated.	<p>Typically, a regulatory agency requires periodic renewal of licenses and other authorizations to ensure that it maintains adequate control over the person or activity. Renewal processes enable an agency to keep proper track of those it regulates and to ensure that they meet ongoing regulatory requirements, such as continuing practice, obtaining continuing education, and not committing any disqualifying criminal offenses. Renewal also requires payment of a fee structured to help the agency recover its costs and not simply raise additional revenue.</p> <p>Most occupational licenses must be renewed each year, though two-year licenses are becoming more common as a way to ease administrative burdens on agencies. Licenses for medical doctors and pharmacists must be renewed every two years. Renewal periods for permitted activities are more variable, and typically relate to the nature of the regulated activity.</p> <p>Some agencies may allow licensees to go on inactive status, in which the typical renewal process is suspended for a time. Inactive status enables a person to temporarily leave a regulated field, avoiding the time requirement and expense of maintaining a license, and to return later without having to meet the strict requirements of being relicensed. While not uncommon among state agencies, allowing inactive status raises questions about the person's continuing ability to practice and the agency's ability to recover regulatory costs. Considerations to allay these concerns include limiting the time a person may be inactive, tracking persons on inactive status, recovering costs through a nominal administrative fee, and requiring persons returning to practice to meet continuing education requirements during the period of the inactive status.</p>
Licensing	Renewal	The statute of a licensing agency should require the policy body to adopt a system of continuing education.	Proper protection of the public is dependent on practitioners having a working knowledge of recent developments and techniques used in their professions. Continuing education provides one way of ensuring continued competence.
Licensing	Renewal	A licensing agency's statute should require an agency to develop fee and license expiration structures that provide financial incentives to renew on time by penalizing those who renew late.	<p>Penalties for late renewal and expiration dates for non-renewed licenses vary among state licensing agencies. This standard aims to ensure that agencies act properly to encourage the timely renewal of licenses. This standard also clarifies that a person holding an expired license may not engage in activities that require a license.</p> <p>In past Sunset reviews, this standard included a statutory formula to calculate late renewal penalties. Consideration may be given to changing this formula approach if it is causing problems. For example, the formula should not make the late renewal penalty onerous compared to other agencies' late penalties. Another approach that is less prescriptive only requires agencies to set late penalties at a level sufficient to provide licensees an incentive to renew on time. Statute would authorize agencies to establish a late renewal penalty structure in rule.</p> <p>Agencies, particularly those licensing the health professions, typically provide for licenses to expire after one year if a licensee fails to renew on time, requiring persons to be relicensed. Some agencies' statutes reflect a relaxation of this one-year standard, owing to a perceived hardship on their licensees having to submit to relicensure. Whatever interval is chosen should ensure adequate protection for the public.</p>

Sunset Occupational Licensing Model: New Format

Category	Subject	Standard	Explanation
Licensing	Renewal	A licensing agency should not require more information than necessary on the renewal form.	Information required on the renewal form should be sufficient to assess the applicant's satisfaction of renewal requirements without weighing down the process with red tape.
Licensing	Renewal	A licensing agency should have the authority to stagger renewal of licenses.	Staggering renewals encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. This promotes efficient use of agency personnel and reduces the need for seasonal employees.
Licensing	Renewal	Renewal dates should be scheduled to avoid holidays and major vacation periods.	Careful planning of renewal dates helps avoid backlogs and promotes efficiency.
Licensing	Renewal	A licensee's compliance history should be checked before license renewal.	Before renewing a license, a licensing agency should be aware of any compliance issues that a licensee might have and the licensee's efforts to resolve those problems. Existing compliance issues should be in process of resolution in an appropriate manner before a license is renewed. However, as a general rule, a bad compliance history should not be viewed as a potential disqualifier for renewal because the more appropriate approach would be for such disqualification to occur through the enforcement process.
Licensing	Renewal	An agency should have authority to charge for license renewal and for duplicate licenses.	An administrative cost is associated with producing these licenses. The licensee should bear this cost.
Enforcement	Practice	When appropriate, a regulatory agency should have clear standards of conduct or operation to provide a sound basis for acting on consumer complaints.	Standards of conduct define appropriate behavior for licensees. These standards give the public a measuring stick for judging appropriate behavior and a basis for complaining to the agency when these standards are not met. Standards of operation, defining how certain tasks should be accomplished, also are helpful to the consumer to determine whether a job was performed appropriately. These standards are most useful in situations where practitioners have close contact with the public and their behavior or practice of the profession can cause serious harm or have other serious financial or legal implications.
Enforcement	Practice	Rules restricting advertising and competitive bidding practices should be limited to prevention of deceptive and misleading practices.	The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such restrictions can affect public access to information regarding professional services. Rules should only address deceptive or misleading practices. This affords all licensees the opportunity to inform the public of their services and to bid on projects. Through this information, the public has greater knowledge of the range of individuals offering a service and a range of pricing for that service. The provision discourages a closed system where entrenched interests act to dominate the field in part by limiting awareness about competitors.

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Category	Subject	Standard	Explanation
Enforcement	Inspections	<p>The agency should have clear procedures, rules, and statutory authority for conducting inspections that help ensure standard treatment and timely compliance of regulated entities/individuals in correcting problems. The agency should have processes in place to evaluate the risk level of entities and individuals subject to inspection and target staff time and resources to the highest-risk areas.</p>	<p>Sunset’s experience with inspections has led to the following elements that typically should exist or be considered in a licensing or regulatory agency’s inspection procedures.</p> <p>The agency should have clear policies defining the records, inventories, and facilities subject to inspection. These policies keep both agency inspectors and regulated entities/individuals focused on priority areas of operation. The policies also discourage arbitrary and potentially unfair variation in subjects of inspection.</p> <p>The agency should have a process for following up on compliance issues discovered in the inspection process. The process should include informing the regulated entities/individuals in writing of compliance problems, providing a schedule for correcting these problems, and scheduling re-inspections as necessary. Sunset’s experience has led to risk assessment being an element that should exist or be considered for an inspections / compliance program, including the following:</p> <ul style="list-style-type: none"> • Requiring the agency to develop specific risk- factors and a risk-assessment plan for how it will use risk information. While the agency should have flexibility to add or change factors based on the particular occupation or activity being regulated, the following common risk factors should be considered: compliance history, information required to be reported to the agency that could indicate impending problems, recent complaints, criminal action or other serious incidents, media reports, and turnover of facility staff. • Providing the agency with the authority to require regular reporting by regulated entities/individuals to gather the information necessary to perform a risk assessment. • Using both announced and unannounced inspections. Announced inspections could be used as a privilege for regulated entities/individuals considered low risk; unannounced inspections could be instituted for high-risk entities/individuals. This approach was used in the review of TNRCC, the predecessor to the Texas Commission on Environmental Quality, in 2001. • Providing the agency flexibility in statute to schedule inspections as often as necessary and based on risk. Giving the agency this flexibility allows the inspection schedule to balance the highest priorities for inspection against staff resources available to conduct the inspections. If flexibility cannot be provided, the agency should still consider how risk assessment could help make more efficient use of resources. • Regularly updating risk assessments and adjusting inspections, technical assistance, and other use of staff time and resources accordingly. • Ensuring individuals or entities consistently identified as low risk still receive the minimum level of attention necessary to provide adequate ongoing oversight.

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Category	Subject	Standard	Explanation
Enforcement	Complaints – general	Consideration should be given to requiring a licensing agency to adopt rules or procedures that clearly lay out policies for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. The rules or procedures should provide that investigations be thoroughly documented. To the extent possible, complaint processes should be typical across agencies with similar missions.	The entire complaint process should be guided by clear rules or procedures. Sunset has found that some agencies have developed these guidelines, while others have not. Rules and procedures help ensure appropriate and consistent action by the agency, thereby protecting the public as well as the licensee. In general, complaint processes should be as standard as possible among agencies with similar missions.
Enforcement	Complaints – general	The agency’s statute should require information to be maintained on complaints.	<p>State agencies should maintain adequate information about complaints it receives. This provision tracks a Sunset across-the-board recommendation that requires files to be maintained on written complaints, though is broader to ensure that, at a minimum, files are developed and maintained on <u>all</u> complaints received by the agency. This provision would also ensure that all parties to a complaint are made aware of the status of the complaint until resolution, and agency policies and procedures pertaining to complaint investigation.</p> <p>The provision solves a historical problem in which licensing agencies often failed to maintain basic information on complaints filed against licensees. Lack of this type of information makes it difficult to track a licensee’s competence and to evaluate the performance of the agency in protecting the health, safety, and welfare of the public. The agency’s retention schedule should be consistent with this intent.</p>
Enforcement	Complaints – general	A regulatory agency should have a process to refer complaints not within its jurisdiction to the appropriate organization. The agency should keep track of non-jurisdictional complaints to have a full picture of the public’s problems and concerns in this regulatory area.	<p>Members of the public become frustrated when they cannot find the appropriate organization or resources to deal with regulatory problems.</p> <p>High quality service to the public requires that licensing agencies have procedures in place to refer complaints not within their jurisdiction to the appropriate organization.</p> <p>Although the agency may have no jurisdiction over some of the complaints received, these complaints should still be logged so that the agency has a complete picture of the public’s problems with this general area of regulation.</p>
Enforcement	Complaints – general	The agency should adjust staff to reflect any seasonal variations in complaints.	Some agencies experience significant peaks and valleys in complaints they receive. The agencies’ staffing arrangements should adjust to take account for the varying workload caused by these fluctuations. Seasonal and part-time employment could be considered as ways to address variations in complaint workload.

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Category	Subject	Standard	Explanation
Enforcement	Complaints – general	The agency should keep and report statistical information detailing the number, source, and types of complaints received and the disposition of complaints resolved.	<p>An agency should compile detailed statistics about complaints received and resolved each year and provide this information in a publicly available and aggregated form, whether an agency website or annual report. Tracking complaints helps an agency to promptly, consistently, and reliably address complaints. The analysis of complaint information is also useful as a way to identify regulatory problem areas. Sources of complaints could include the general public, the licensee population, other agencies or institutions, and the licensing agency itself.</p> <p>This information should include a separate breakdown of cases resolved each year, classified either as administrative violations that generally originate with staff, or as disciplinary cases that generally originate as a complaint by the public or other outside source.</p> <p>The information could include:</p> <ul style="list-style-type: none"> • The reason and basis for the complaint, especially distinguishing practice-related complaints brought by consumers from more administrative complaints typically brought by the agency. • The origin of the complaint. • The average time to resolve the case from the date the Board initially receives the complaint. • The outcome of the cases, including the number of cases dismissed and the reason for dismissal, and the number of cases resulting in disciplinary action. • The disciplinary action taken, and how that action was taken. • The number of non-jurisdictional complaints. • The number, type, and age of all open cases at the end each fiscal year.
Enforcement	Complaints – filing	The public, the agency, or a licensee should be able to file a written complaint against a licensee on a simple form provided by the agency.	<p>In the past, some agencies did not have the authority to file a complaint on their own initiative against a licensee. This lack of authority hampers the agency’s ability to protect the public.</p> <p>In addition, because the affected public may extend beyond the state’s boundaries, nonresidents should have the same protection from unqualified practice of the state’s licensees and should not be limited in their ability to file complaints.</p> <p>In general, complaints should be written and submitted on a standard agency complaint form. While telephone calls or anonymous calls generally do not provide sufficient basis and documentation to fully support a complaint, they may provide the basis for the agency to pursue further action. The form should request enough information to start an investigation, but not be so detailed or technical as to discourage complaints. Some agencies have required complainants to cite the statutory provision that is the basis of their complaint, which is generally beyond the public’s ability to provide. The form could be made available on the agency’s website, through email, or through regular mail. In the past, Sunset has removed requirements for complaint notarization, since it is viewed as a barrier to complaint filing.</p>
Enforcement	Complaints – filing	Complaints should be placed in priority order so that the most serious problems are handled first.	Addressing complaints based on seriousness places the agency’s attention where it is most needed.

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Category	Subject	Standard	Explanation
Enforcement	Complaints – investigation	In general, board members should not be involved in both the investigation of complaints and determining disciplinary action. Ideally, investigation of complaints and setting a complaint for hearing should be a staff function. If board members are involved in investigation, however, they should not take part in disciplinary proceedings.	<p>Board members that investigate complaints may develop biases about the validity of the complaints. Those biases may prejudice the outcome of later disciplinary action if the same board members participate in disciplinary processes. To avoid this type of situation, staff should investigate complaints and set complaints for hearing. Having been separated from in-depth exposure to the complaint in its investigation phase, the agency’s board can then act as an impartial judge in disciplinary proceedings.</p> <p>Sometimes staff resources may make it unreasonable for staff to handle all investigations, in which case board members may be involved. If so, these board members should recuse themselves in subsequent disciplinary proceedings to promote unbiased decision making.</p> <p>In addition, agencies regulating highly technical professions, such as medicine and dentistry, in which the staff is unlikely to have expertise, may get needed expertise from panels of experts who either volunteer or are paid to assist in the investigation before the matter goes to the board.</p>
Enforcement	Complaints – investigation	If the agency uses investigative or enforcement committees made up of board members, each committee should include at least one public member.	<p>In general, the process of using board members on enforcement committees is discouraged.</p> <p>These members must endorse a final action, and prior involvement in the case may prejudice that action. However, if board members must be involved in the investigative phase of a case, then any board member committee should also include a public member to help ensure a balance between occupational and public interests.</p>
Enforcement	Complaints – investigation	The agency should ensure that investigations are completed in a reasonable amount of time.	<p>Investigations that are unreasonably long can prolong potentially dangerous situations for the public and disrupt a licensee’s practice.</p> <p>Although some investigations require more time than others, the agency should monitor time elapsed to keep investigations within reasonable time limits.</p>
Enforcement	Complaints – hearings	The agency should use methods other than just hearings to resolve complaints. Such methods include informal settlement conferences and mediated settlement conferences. Agreements reached through these methods should be approved by the agency’s board.	<p>Formal hearings often require significant time and expense, both for the agency and the licensee. Texas has developed other means for resolving complaints short of formal hearings. These methods include informal settlement conferences (ISCs) and mediated settlement conferences conducted either by the agency or by the State Office of Administrative Hearings (SOAH). When possible, resolution through these less formal methods should be explored before using the full hearing process.</p> <p>The agency’s board should approve informal agreements. This approach ensures the board’s knowledge of staff decisions and appropriate oversight of staff operations.</p>
Enforcement	Complaints – hearings	An agency’s hearings should comply with the Administrative Procedure Act (APA).	<p>Chapter 2001 of the Government Code sets out minimum standards of uniform practice and procedure for state agencies. The agency’s hearings process should comply with these minimum standards. If an agency uses SOAH, hearings of that agency should follow APA guidelines as a standard practice.</p> <p>The APA also entitles a person who has exhausted all administrative remedies to judicial review.</p>

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Category	Subject	Standard	Explanation
Enforcement	Complaints – hearings	The agency’s statute or rules should provide for administrative dismissal of complaints.	<p>Agency staff should have the authority to dismiss complaints without having to involve the board. The board should be informed of all such dismissals, however. This approach saves board time in considering each complaint while still providing the board information on staff actions.</p> <p>Though expungement of dismissals is not considered standard practice, the Legislature has seen fit to add expungement procedures to the State Bar of Texas, the Board of Dental Examiners, and the Board of Professional Land Surveying. Expungement means that record of the case is removed from the licensee’s file, depriving the agency of information that may be useful if subsequent complaints are filed against the licensee. Another approach that may be considered is making dismissed complaints — especially if they can be judged frivolous — exempt from public disclosure under the Public Information Act. While such an approach would not limit the agency’s access to past complaint information that may be useful in subsequent complaints against the licensee, it would still deprive the public of a source of information for evaluating a licensee.</p>
Enforcement	Complaints – hearings	The State Office of Administrative Hearings (SOAH) should conduct a licensing agency’s complaint hearings, unless a compelling reason can be made not to.	<p>SOAH handles hearings for almost all licensing agencies as well as other agencies of state government. An agency uses SOAH for its administrative hearings if its own statute is silent on hearings procedure or mandates the use of SOAH, or if the agency wishes to contract with SOAH for assistance. Agencies may hold their own hearings if they have their own hearings examiners that are dedicated solely to the hearings process.</p> <p>SOAH offers a consistent standard of independence and professionalism in carrying out the hearings process. Agencies using SOAH have the opportunity to relinquish the final decision to SOAH, or to leave the final decision to its own board. If the decision is left to the agency’s board, the board may change SOAH’s findings of fact or conclusions of law only in limited circumstances where errors have clearly been made (Section 2001.058, Government Code), and must do so in writing.</p>
Enforcement	Complaints – sanctions	A licensing agency’s enforcement process should not make it overly difficult to bring disciplinary action.	<p>The burden for bringing disciplinary action should be reasonable and not set so high that its use is discouraged. In one situation, Sunset recommended that a statutory provision be changed to reduce the number of votes needed for a board to take disciplinary action.</p> <p>Another impediment may be increasing the burden of proof before disciplinary action may be taken. Examples include a requirement that a person knowingly or repeatedly violated a law or regulation or that a person be given the opportunity to cure they alleged violation before the agency may act.</p>

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Category	Subject	Standard	Explanation
Enforcement	Complaints – sanctions	<p>A regulatory or occupational licensing agency’s statute should authorize a full range of enforcement actions and sanctions for violations of the agency’s statute or rules.</p> <p>Agencies should have procedures to ensure that all sanctions are applied fairly and scaled to the nature of the violation. Authority to levy administrative penalties should be considered for a regulatory agency, if it does not already have such authority.</p>	<p>A regulatory or occupational licensing agency should have clear authority to enforce its rules and law. In addition, an agency’s range of enforcement penalties should conform to the seriousness of the offenses committed. However, in many cases regulatory agencies are not given a sufficient range of penalties to ensure that appropriate sanctions can be implemented for offenses committed.</p> <p>The general range of sanctions are: revoking a license or permit; suspending a license or permit; assessing an administrative penalty; refusing to renew a license or permit; probating a suspended license or permit; or issuing a reprimand.</p> <p>Consideration should be given to authorizing an agency to assess administrative penalties as an additional enforcement tool that the agency can use to encourage compliance without having to suspend or revoke a license. Over time, administrative penalties have been accepted as an enforcement tool for almost all regulatory agencies, with authority up to \$5,000 per day per violation common for most agencies. Higher penalty levels may be considered where more serious potential harm exists, but specific amounts should be based on a sound methodology and rationale beyond a basic “good government” argument.</p> <p>Probated license suspension allows a licensee to continue practicing the profession after being found in violation. To ensure that probation is not abused, the licensing authority should have the authority to impose conditions on probation, including additional continuing education, periodic visits or reports, and limitations on practice. Licensees should be notified in writing of the probation and the actions that they need to take during the probation period. Finally, the agency should track the progress of licensees to ensure compliance with terms of probation.</p> <p>Agencies should establish a schedule or guidelines, often called a penalty matrix, for the use of sanctions to help ensure that disciplinary action relates appropriately to the nature and seriousness of the offense. Such a matrix should also guide the determination of administrative penalty levels.</p> <p>In determining the type of sanction or the amount of an administrative penalty, agencies should base their decision on a variety of factors including a regulated entity’s compliance history, seriousness of the violation, and the threat to the public’s health, safety, and welfare, and any mitigating factors.</p>
Enforcement	Complaints – sanctions	Fines should be deposited to General Revenue to prevent allegations of conflict of interest.	Concern has been expressed in past Sunset proceedings that agencies might tend to abuse their authority to fine if these revenues could be used to supplement their funding. To avoid this situation, fines should be deposited to General Revenue and should not be accessible only to the licensing authority.
Enforcement	Complaints – sanctions	Consideration should be given to granting an agency authority to summarily suspend a license without an initial hearing if the agency regulates activities that can result in substantial and immediate harm to the public.	<p>Summary suspension (or temporary suspension) is useful in situations where substantial harm can result if an activity is not stopped immediately. Under this authority, a license may be suspended without a hearing, subject to subsequent hearings designed to ensure due process. In assessing the potential for substantial and immediate harm, consider the range of activities and the nature of the work of the profession. For example, the practice of engineering involves long-term planning and development of projects typically in a team approach that would tend to mitigate the risk of immediate harm by an individual licensee that would typically justify such strong action.</p> <p>However, some activities performed by individual engineers, such as foundation and windstorm inspections, can cause the kind of immediate harm that the regulatory agency should be able to effectively stop. In most cases, the potential for harm must be clear and substantial in order to recommend summary/temporary suspension authority.</p>

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Category	Subject	Standard	Explanation
Enforcement	Complaints – sanctions	Consideration should be given to granting civil or criminal penalty authority to licensing agencies in only limited situations.	<p>State licensing agencies are occasionally granted civil penalty authority. Generally, this authority pre-dates authority for agencies to assess administrative penalties, and is rarely added to agencies’ statutes these days. That does not mean, however, that it should be removed from these agencies’ statutes.</p> <p>Civil penalties allow the state to bring suit against potential violators to impose a monetary penalty, often structured to reflect a per day amount up to a certain limit that may be significantly higher than administrative penalties. These penalties can be effective deterrents, but, unlike administrative penalties, require a judicial proceeding that can be time consuming and costly. For that reason, civil penalties may best apply to violations where the potential for serious harm to the public justifies use of a larger, but costly and time- consuming remedy.</p> <p>Statutes of licensing agencies do not generally identify prohibited actions that constitute misdemeanors or felonies, which are typically punishable by incarceration, fine, or both. Although an agency’s statute may designate certain actions as criminal violations, such violations are generally pursued through law enforcement organizations and not through administrative agencies. Criminal penalties should exist only for agencies overseeing practices that can have dire consequences on the public health and welfare.</p>
Enforcement	Complaints – sanctions	Consideration should be given to authorizing some form of refund to an aggrieved party.	<p>The idea behind a refund is to return to the complainant money paid to a licensee found to violate the law or regulations. Common agency sanctions are designed to bring the licensee into compliance but not to repay aggrieved parties the funds they are out.</p> <p>A refund is sometimes granted in situations where a member of the public has been defrauded or subjected to a loss that can be quantified. For example, the Texas Department of Insurance has authority to order a refund to policy holders in certain circumstances where insurance companies have not made good on legitimate claims. The Dental Board may order a dentist who violates the Dental Practice Act to refund the fee to the aggrieved consumer. Generally, the losses suffered by the public from a licensee group must be easily determined and quantifiable for a refund to be applied reasonably.</p> <p>A refund should not assess damages, which are much more subjective in nature, requiring a separate determination that is much more of a judicial function. An alternative to giving agencies authority to require a refund is to allow them to consider such awards through their informal settlement process.</p>
Enforcement	Complaints – sanctions	An agency should be able to move expeditiously in dealing with unlicensed practice violations, either through injunctive relief in the courts or through administrative cease and desist orders.	<p>A licensing agency should have enforcement authority not only over its licensees, but over those who engage in the regulated practice without a license. The standard range of sanctions against licensees does not apply to such unlicensed activity. Injunctive authority provides for taking legal action against unlicensed violators without having to wait for law enforcement agencies, many of which have much larger concerns than unlicensed practice.</p> <p>Some agencies employ an interim step before an injunction, in which they issue a “cease and desist” order under their own authority. This type of action is administrative in nature, and does not have to work through the court system, but should include provisions to ensure due process for the alleged violator. An additional consideration to make cease and desist orders more enforceable may be to make violators of these orders subject to administrative penalties.</p> <p>The need for cease and desist authority must be clearly shown, preferably with specific examples showing real or potential harm. The use of cease and desist authority for broader regulatory purposes beyond unlicensed practice violations should be very carefully considered.</p>

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Enforcement	Complaints – sanctions	The agency should ensure compliance with its enforcement efforts.	The agency should develop a system to monitor compliance with requirements placed on license holders who are the subject of disciplinary action. For example, such a system should ensure that persons with a probated license suspension appropriately satisfy the terms of the probation, or that a person ordered to pay an administrative penalty actually does so. Failure to comply with agency enforcement orders could be a consideration for further disciplinary action.
Enforcement	Complaints – appeals	Board actions should be subject to review in district court under the substantial evidence rule.	<p>A respondent aggrieved by a board action should be able to appeal, typically in district court in Travis County. Two types of appeals processes are used in district court appeals of administrative actions (judicial review): substantial evidence and trial <i>de novo</i>. Under substantial evidence, the appeal allows for review of the case record to ensure that evidence presented bears out the ruling. The court will give deference to reasonable conclusions of the agency so long as they are supported by substantial evidence. The substantial evidence standard saves time and expense while generally providing a sufficient level of protection on appeal. The standard does, however, impose a greater burden on the agency to provide an accurate record. Under trial <i>de novo</i>, the court hears the case in its entirety, with evidence repeated anew and no deference given to the agency’s process. One possible consequence of shifting from a <i>de novo</i> to a substantial evidence review is the feared loss of a jury trial by the appellant.</p> <p>However, the standard for substantial evidence review is well established in Texas. The Administrative Procedure Act (APA) provides that substantial evidence, not trial <i>de novo</i>, is the standard for review of agency administrative decisions if an agency’s statute does not specify otherwise. Reflecting this standard, agencies regulating occupations, insurance, and utilities make decisions affecting individuals and businesses in significant ways and operate under substantial evidence.</p> <p>The rationale for this is that the success of these agencies and administrative processes generally, ultimately depends on limited judicial review, based generally on the following characteristics:</p> <ul style="list-style-type: none"> • a large volume of cases are likely to be processed annually; • the availability of intermediate administrative penalties moderates criminal penalties that may be too harsh; • the importance of speedy adjudications to the enforcement scheme; • the need for specialized knowledge and agency expertise in resolving disputed issues; • relative rarity of issues of law (e.g., statutory interpretation) requiring judicial resolution; • the importance of greater consistency of outcome (particularly as to penalties imposed), which could result from agency, as opposed to district court, adjudications; and • the likelihood that an agency will establish an impartial forum in which cases can be efficiently and fairly decided.
Enforcement	Complaints – public information	The agency should make enforcement information such as final disciplinary orders and sanctions available to the public.	Many licensing agencies make final disciplinary orders and sanctions readily available to the public. This practice should be encouraged to provide the public with information to make informed choices when obtaining services. Methods commonly used to disseminate disciplinary orders and sanctions include the agency website, press releases sent to media, national databases, agency newsletters, and responses to requests from the public.

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Enforcement	Complaints–public information	Licensing agencies should share appropriate enforcement information with national or federal data banks as well as appropriate state, federal, or local agencies.	<p>A number of data banks exist to collect information on disciplinary orders issued by various licensing agencies. These data banks help protect the public by making important information more widely available across the country. Many licensing agencies in Texas report information to these data banks.</p> <p>Sharing complaint information with other agencies involved with a licensee group also helps protect the public through greater availability of enforcement information and should be encouraged.</p>