

# SUNSET ADVISORY COMMISSION

## STAFF REPORT

*Texas State Board of Examiners of  
Marriage and Family Therapists*

*Texas State Board of Examiners of  
Professional Counselors*

*Texas State Board of Social Worker Examiners*

*Texas State Board of Examiners of Psychologists*

**2018–2019**  
**86TH LEGISLATURE**

# SUNSET ADVISORY COMMISSION

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**TEXAS STATE BOARD OF EXAMINERS OF  
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**TEXAS STATE BOARD OF  
SOCIAL WORKER EXAMINERS**

**TEXAS STATE BOARD OF  
EXAMINERS OF PSYCHOLOGISTS**

**SUNSET STAFF REPORT**

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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.**

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

*SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.*

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

*THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.*

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**SUMMARY OF SUNSET STAFF  
RECOMMENDATIONS**





# SUMMARY

This limited review of Texas' four behavioral health licensing boards — the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, Texas State Board of Social Worker Examiners, and Texas State Board of Examiners of Psychologists — follows up on the full Sunset review of these boards conducted in 2016–2017. At that time, the Sunset Commission adopted several recommendations to streamline and improve the operations and management of the boards — most notably, the recommendation to merge the four boards into a consolidated “umbrella” licensing agency, the Texas Behavioral Health Executive Council. These recommendations were drafted into House Bill 2898, but the bill failed to pass during the regular session of the 85th Legislature. The Legislature instead passed Senate Bill 20 during the First Called Session, which continued the four behavioral health boards as currently structured for two years and placed them under Sunset review again in 2019.

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*The state has failed to effectively regulate three of these professions, putting Texans at risk.*

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Sunset staff focused the current review on evaluating the appropriateness of the original recommendations adopted by the Sunset Commission. Staff evaluated the progress each board has made toward addressing the issues identified in the prior reports and found the boards are acting in good faith and have made notable strides in addressing the previously identified problems, such as altering their enforcement hearings to more effectively process complaints and protect confidential health information. However, significant problems and challenges remain that cannot be resolved within the current structure.

The independent psychology board is a well-functioning agency. However, with the continued administrative attachment of the marriage and family therapy, professional counseling, and social work boards to a large agency with higher priority responsibilities, the state has failed its citizens. This approach is still not working and fails to efficiently regulate these professions, putting vulnerable Texans at risk. The prior Sunset review identified severe operational dysfunction within these programs that stemmed from a variety of problems, including chronic staff shortages, lack of attention and resources from their administrative host agency, poor communication between host agency staff and board members, and mismanagement by the boards. The current attachment to the Health and Human Services Commission (HHSC) continues to impede the boards' ability to right their operations and respond to the growing backlog of licensing applications and enforcement complaints. For example, the professional counselor board still takes an average of 949 days to resolve a complaint and 107 days to process a licensing application, and continues to have nearly 700 backlogged complaints. As in prior reports, Sunset staff again concluded that an administrative attachment model does not and cannot work. The dysfunction created by such a model places the livelihoods of licensees in jeopardy and puts the public at risk.

Ultimately, Sunset staff considered the various options for transferring these programs and concluded the consolidated agency structure of the Behavioral Health Executive Council previously recommended by the Sunset Commission presents the best approach to align the regulation of these behavioral health professions and elevate the attention and oversight of these programs. Sunset staff looked for an agency structure that offered the most viable, cost-effective model with the least disruption to licensees and consumers and the greatest benefits to the public. The stand-alone psychology board offers a proven foundation that effectively regulates a closely-related behavioral health profession. The logical solution is to build on the success of the psychology board to create administrative efficiencies through functional alignment and economies of scale. More efficient and effective regulation of these professions will not only provide improved services and increased responsiveness to licensees, but also will better protect behavioral health care consumers.

At the same time, the proposed structure will ensure each individual board maintains a central role in regulating its profession. Each board would retain responsibility for guiding all matters related to their profession. No one group of practitioners would, or should, hold sway over any other group. The executive council would be composed of one public member appointed by each of the four boards and an independent presiding officer appointed by the governor, and would be responsible for standardizing regulatory procedures and guiding the operations of the agency. A shared staff would conduct licensing and customer service activities, perform complaint investigations and prosecutions, and provide all other administrative services for all the boards.

Beyond consolidating the four boards into a single behavioral health agency, the Sunset Commission's previous recommendations generally focused on removing unnecessary barriers to entry into these professions and giving each board more flexibility to manage its operations. Sunset staff found these recommendations continue to be appropriate. All four boards would benefit from adopting standard licensing practices, such as biennial license renewals and improved background checks. For the psychology board specifically, removing the statutory provisions authorizing an oral exam would align with the board's recent action to eliminate the unsustainable oral exam. In addition, regulation of psychologists would benefit from making the post-doctoral supervision experience requirement more flexible. Finally, Texas would benefit from the adoption of an interjurisdictional compact that could help address the shortage of mental health care providers in the state. The Sunset Commission also previously adopted 13 management actions the four boards have implemented or are in the process of implementing. The current status of the recommendations for the marriage and family therapy, professional counseling, and social work boards is shown in the chart on page 7, and the current status of the recommendations for the psychology board is shown in the chart on page 11.

The following material summarizes Sunset staff's current recommendations on the four behavioral health boards. For more detailed information on the original Sunset staff recommendations, Sunset Commission decisions, and legislative action, a 2017 *Staff Report with Final Results* for each board is available on the Sunset Commission's website.

## Issues and Recommendations

### *Issue 1*

#### **The Structure of the State’s Behavioral Health Licensing Agencies Is Antiquated and Inefficient.**

As found by the 2016 Sunset review, Texas continues to need to regulate the practice of psychology, marriage and family therapy, professional counseling, and social work, but regulating these professions through four separate, independent boards fails to meet the needs of consumers, licensees, and the state. In particular, administrative attachment of three of the boards to the Health and Human Services Commission has not fixed the numerous problems identified during the previous Sunset review that have led to massive backlogs and years-long delays in processing license applications and complaint cases. Using the well-functioning psychology board as a foundation, the four behavioral health boards would benefit from consolidation of their operations under a single agency to take advantage of administrative economies of scale, as well as shared efforts to regulate and promote the field of behavioral health.

#### **Key Recommendation**

- Consolidate the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.

### *Issue 2*

#### **Key Elements of the Behavioral Health Boards’ Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.**

Several licensing provisions in the behavioral health boards’ statutes, rules, and policies do not conform with model standards or common practices observed in other occupational regulatory agencies, presenting unnecessary hurdles to applicants and potentially reducing consumer safety. The boards rely on outdated modes for criminal background checks and do not proactively ensure out-of-state applicants are safe to practice in Texas. In addition, outdated and absent statutory authority prevents the boards from operating efficiently.

#### **Key Recommendations**

- Require the boards to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Authorize the boards to check for disciplinary actions in other states or from other licensing boards, and to pursue any necessary enforcement actions based on the results.
- Remove the statutory limitation currently restricting the boards’ authority to lower fees.

## ***Issue 3***

### **The Psychology Board's Oral Exam Is an Unnecessary Requirement for Licensure.**

An oral examination is an outdated licensing requirement that offers little value in assessing candidates' minimum competency to practice psychology. As a result of logistical hurdles related to the administration of the exam, the psychology board removed the oral exam as a licensing requirement in its rules in the fall of 2017. Licensure as a psychologist already requires a doctoral degree, passage of a national written examination and jurisprudence examination, and completion of 3,500 hours of supervised experience. Nationally, the psychology profession has moved away from using oral examinations, with few states continuing to use an oral exam.

#### **Key Recommendation**

- Eliminate the authority for the psychology board to administer an oral exam.

## ***Issue 4***

### **Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.**

Psychologist candidates must complete two years of supervised work experience before becoming fully licensed. Statute requires half of this experience to be completed after candidates receive their Ph.D. Current doctoral degree programs include substantially more practical experience than at the time Texas enacted this post-doctoral supervision requirement. Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set number of hours be completed solely in a post-doctoral setting. Today, 18 states and the American Psychological Association have adopted policies that do not distinguish between pre-doctoral and post-doctoral work experience. Requiring candidates to often repeat hours of experience earned during their degree program adds minimal protection and delays licensure of psychologists at a time when Texas faces a shortage of mental health care providers.

#### **Key Recommendation**

- Remove the requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

## ***Issue 5***

### **Key Elements of the Psychology Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.**

Sunset staff found some of the psychology board's licensing and enforcement processes do not match model standards or common practices observed in other regulatory agencies. For example, the two-step requirement to apply for a provisional license before applying again to become a licensed psychologist makes the process overly burdensome. The board also lacks certain tools, such as issuing remedial non-disciplinary sanctions and ordering show-cause hearings regarding competency, necessary to effectively enforce the psychology statute and board rules.

## Key Recommendations

- Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.
- Authorize the board to issue remedial plans to resolve minor complaints.
- Clarify the agency’s authority to require physical or mental evaluations for those suspected of impairments and hold related hearings for noncompliance.

## Issue 6

### Texas Should Adopt the Psychology Interjurisdictional Compact.

The Psychology Interjurisdictional Compact (PSYPACT) is an interstate compact designed to facilitate the practice of both telepsychology and the temporary in-person practice of psychology across state boundaries. PSYPACT’s flexibility and mobility support Texas’ efforts to encourage out-of-state licensees’ to come to Texas, which could help ease the growing shortage of mental health care providers. In addition, PSYPACT would help ensure state lines do not disrupt the ability of psychologists to continue to care for their existing clients. Texas psychologists could practice in other compact states while still residing and working in Texas, helping ensure Texas does not lose psychologists to other states.

### Key Recommendation

- Adopt the Psychology Interjurisdictional Compact.

## Fiscal Implication Summary

Overall, the recommendations in this report would result in much better regulation for the professions and reduced regulatory costs over time. However, accomplishing the necessary consolidation and transformation into the Texas Behavioral Health Executive Council (BHEC) recommended in Issue 1 will require an initial up-front investment. All other recommendations in this report would not have a fiscal impact to the state, with the boards recovering any costs or loss of revenue associated with the recommendations through adjustments in regulatory fees.

**Issue 1** — BHEC will require a one-time startup appropriation of about \$850,000 for database transfers, information technology, and employee startup costs and equipment, as well as a full-time equivalent employee (FTE) for an executive director for six months in fiscal year 2020. Meanwhile, the four behavioral health programs would need current operating funds to continue to function in place during fiscal year 2020.

In fiscal year 2021, BHEC’s first full year of operations, current appropriations and FTE positions for the behavioral health programs would be transferred from HHSC and the psychology board to BHEC. Some additional funding will be required going forward to replace administrative services previously provided by HHSC (such as legal and technology) without charge to the behavioral health boards’ budgets. In

### Texas Behavioral Health Executive Council

Fiscal Year	Cost to the General Revenue Fund	Change in the Number of FTEs From FY 2019
2020	\$857,073	+5
2021	\$0	+3
2022	\$0	+3
2023	\$0	0
2024	\$0	0

addition, BHEC will need three additional FTE positions for two years to address the boards' massive existing backlog of licensing applications and complaint cases. However, like the current behavioral health boards, BHEC would be statutorily required to generate sufficient revenue to cover its costs, offsetting any increased cost to general revenue.

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**STATUS OF 2016 SUNSET  
COMMISSION RECOMMENDATIONS**





**Status of 2016 Sunset Commission Recommendations**  
**Texas State Board of Examiners of Marriage and Family Therapists**  
**Texas State Board of Examiners of Professional Counselors**  
**Texas State Board of Social Worker Examiners**

**Issue 1 — The Structure of the State’s Behavioral Health Licensing Agencies is Antiquated and Inefficient.**

2016 Recommendation	Board	Status
<b>Change in Statute</b>		
1.1 Continue regulation of marriage and family therapists, professional counselors, and social workers by merging their programs with the psychology board to create the Texas Behavioral Health Executive Council.	MFT LPC SW	<b>Not implemented, recommendation still needed.</b> See Issue 1 of this report.

**Issue 2 — The Behavioral Health Boards’ Dysfunctional Enforcement Processes Fail to Adequately Regulate Licensees and Protect the Public.**

2016 Recommendation	Board	Status
<b>Change in Statute</b>		
2.1 Abolish the boards’ complaints and ethics committees and ensure board members are not involved in complaint investigations.	MFT LPC SW	<b>In progress.</b> Statutory change is no longer necessary. Each board has taken steps toward amending its rules to adopt a new enforcement process that removes board enforcement committees from the investigation and complaints resolution process. Under the proposed process, enforcement committees will function solely to consider and propose enforcement-related policy changes to the full boards.
<b>Management Action</b>		
2.2 Ensure the boards develop policies for prioritizing complaints and direct staff to prioritize complaint investigations based on these policies.	MFT	<b>Implemented.</b> The MFT board adopted a policy to prioritize complaints on July 15, 2017.
	LPC	<b>Implemented.</b> The LPC board adopted a policy to prioritize complaints on September 29, 2017.
	SW	<b>Implemented.</b> The SW board adopted a policy to prioritize complaints on December 9, 2017.
2.3 Direct the boards to develop policies to settle cases informally.	MFT	<b>In progress.</b> Since December 2010, the MFT board has authorized its executive director to close complaints that are non-jurisdictional or have no apparent violation. The board implemented a policy to settle cases informally in October 2017 and intends to amend its rules to institute informal settlement conferences as part of a comprehensive rule review in spring 2018.

2016 Recommendation	Board	Status
	LPC	<b>In progress.</b> In February 2017, the LPC board authorized its executive director to close complaints that are non-jurisdictional or have no apparent violation. The board has indicated it intends to amend its enforcement process to replace hearing cases in public complaint committee meetings with individual informal settlement conferences. These changes await completion of a comprehensive rule review, with rule changes to be proposed in spring 2018.
	SW	<b>In progress.</b> The SW board is currently reviewing comments to proposed rule changes to allow board staff to dismiss non-jurisdictional complaints with board approval. The board implemented a policy to settle cases informally in October 2017 and intends to amend its rules in spring 2018 to institute informal settlement conferences.
2.4 Update the boards' enforcement plans, including appropriate penalty matrices.	MFT	<b>Implemented.</b> The MFT board adopted a penalty matrix, as well as list of aggravating and mitigating factors, on July 15, 2017.
	LPC	<b>Implemented.</b> The LPC board adopted a penalty matrix, as well as a list of aggravating and mitigating factors, on February 9, 2018.
	SW	<b>Implemented.</b> The SW board adopted a penalty matrix, as well as a list of aggravating and mitigating factors, on December 9, 2017.

**Issue 3 — Key Elements of the Behavioral Health Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.**

2016 Recommendation	Board	Status
<b>Change in Statute</b>		
3.1 Conduct fingerprint-based criminal background checks of all licensure applicants and licensees.	MFT LPC SW	<b>Not implemented, recommendation still needed.</b> See Issue 2 of this report.
3.2 Check for disciplinary actions in other states or from other licensing boards as part of the license application and renewal process and pursue any necessary enforcement actions based on the results.	MFT LPC SW	<b>Not implemented, recommendation still needed.</b> See Issue 2 of this report.
3.3 Remove the "good moral character" standard as a criterion for marriage and family therapist applicants.	MFT	<b>Not implemented, recommendation still needed.</b> See Issue 2 of this report.
3.4 Remove the statutory limitation currently restricting the boards' authority to lower fees.	MFT LPC SW	<b>Not implemented, recommendation still needed.</b> See Issue 2 of this report.

2016 Recommendation	Board	Status
3.5 Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and allow the required hours to be established by rule.	MFT	<b>Not implemented, recommendation still needed.</b> See Issue 2 of this report.
<b>Management Action</b>		
3.6 Standardize conditions for inactive licensees.	MFT LPC SW	<b>In progress.</b> In fall 2017, board staff began comparing the three boards' rules related to inactive status and other licensure requirements. The boards received draft rule change proposals from staff on February 5, 2018 and are currently considering these proposals.
3.7 Remove unnecessary and restrictive education requirements for professional counselor applicants for licensure.	LPC	<b>In progress.</b> On September 29, 2017, the LPC board adopted policy changes to simplify coursework acceptance for licensure requirements, including accepting courses taken over 10 years prior to receipt of an application. The board intends to adopt these changes formally in rule, and to amend its rules to accept CACREP or similarly accredited degrees without transcript reviews and the National Clinical Mental Health Counseling Exam as part of a comprehensive rule review in spring 2018.
3.8 Reduce the burden of supervision requirements on licensees, supervisors, and staff.	MFT	<b>In progress.</b> In March 2017, the MFT board directed staff to improve supervision documentation, including eliminating site-specific information requirements, and to implement other streamlining measures. The board intends to propose these and other rule changes to reduce the burden of supervision requirements as part of a comprehensive rule review in spring 2018.
	LPC	<b>In progress.</b> In March 2017, the LPC board directed staff to improve supervision documentation, including eliminating site-specific information requirements, and to implement other streamlining measures. The board intends to propose these and other changes in rule to reduce the burden of supervision requirements as part of a comprehensive rule review in spring 2018.
	SW	<b>In progress.</b> In December 2017, the SW board adopted rule changes to allow supervision to occur in either one-on-one or group sessions, or in combination. The board also adopted a policy to allow more flexibility in the time to submit supervision verification forms. The board has not yet taken action on the recommendation to eliminate burdensome site-specific supervision notifications.
3.9 Implement expedited processing for military applications and renewals.	MFT	<b>Implemented.</b> The MFT board adopted rules to implement the expedited processing of military applications and renewals on March 26, 2017.
	LPC	<b>Implemented.</b> The LPC board adopted rules to implement the expedited processing of military applications and renewals on July 16, 2017.

2016 Recommendation	Board	Status
	SW	<b>Implemented.</b> The SW board adopted rules to implement the expedited processing of military applications and renewals on March 28, 2017.
3.10 Enhance the continuing education provider registries and comply with statute by approving continuing education courses.	MFT LPC SW	<b>In progress.</b> Each board is currently considering potential rule changes related to the process for approving continuing education providers and courses, but these changes await further review and action by the boards.

## **Status of 2016 Sunset Commission Recommendations Texas State Board of Examiners of Psychologists**

### **Issue 1 — The Psychology Board’s Oral Exam Is an Unnecessary Requirement for Licensure.**

2016 Recommendation	Status
<b>Change in Statute</b>	
1.1 Eliminate the statutory authority for the psychology board to administer an oral exam.	<b>Partially implemented, recommendation still needed.</b> See Issue 3 of this report.

### **Issue 2 — Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.**

2016 Recommendation	Status
<b>Change in Statute</b>	
2.1 Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.	<b>Not implemented, recommendation still needed.</b> See Issue 4 of this report.

### **Issue 3 — Key Elements of the Psychology Board’s Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.**

2016 Recommendation	Status
<b>Change in Statute</b>	
3.1 Remove the statutory limitation restricting the board’s authority to set fees.	<b>Not implemented, recommendation still needed.</b> See Issue 5 of this report.
3.2 Remove subjective licensure qualifications.	
3.3 Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.	
3.4 Authorize the board to provide biennial license renewal.	
3.5 Authorize the board to issue remedial plans to resolve minor complaints.	
3.6 Clarify the agency’s authority to require physical or mental evaluations and hold related hearings for noncompliance.	
3.7 Extend confidentiality of complaint and investigative information to applicants and non-licensees.	

2016 Recommendation	Status
<b>Management Action</b>	
3.8 Direct the board to remove the requirement for letters of reference.	<b>Implemented.</b> In May 2017, the psychology board, by rule, removed the requirement that applicants submit letters of reference as part of the license application.
3.9 Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint.	<b>Implemented.</b> In September 2017, the psychology board, by rule, clarified its policies to prevent any board member with a potential conflict of interest from participating in the resolution of a complaint. The board also eliminated its enforcement committee to further protect and separate the investigation process from the final decision making.

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

2016 Recommendation	Status
<b>Change in Statute</b>	
4.1 Continue the regulation of psychologists, merging the program with the other behavioral health boards to create the Behavioral Health Executive Council.	<b>Not implemented, recommendation still needed.</b> See Issue 1 of this report.
4.2 Update the standard across-the-board requirement related to board member training.	

**Issue 5 — A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.**

2016 Recommendation	Status
<b>Change in Statute</b>	
5.1 Direct the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology.	<b>Implemented.</b> In December 2016, the psychology board formed a working group to develop and propose three potential definitions of the practice of psychology. The psychology board reported the results of the working group to the Senate Health and Human Services Committee and the House Public Health Committee on February 10, 2017. The 85th Legislature passed House Bill 3808, which defines the practice of psychology.

**New Issues Adopted by the Sunset Commission**

2016 Recommendation	Status
<b>Change in Statute</b>	
Adopt the Psychology Interjurisdictional Compact in statute.	<b>Not implemented, recommendation still needed.</b> See Issue 6 of this report.

2016 Recommendation	Status
<b>Management Action</b>	
Direct the Texas State Board of Examiners of Psychologists to amend its rules to allow licensed specialists in school psychology to practice in both public and private schools.	<b>Implemented.</b> In November 2017, the psychology board adopted a rule that allows licensed specialists in school psychology to practice in both public and private school settings.
Direct the Texas State Board of Examiners of Psychologists to evaluate all rules in the context of the Supreme Court decision in <i>North Carolina State Board of Dental Examiners v. Federal Trade Commission</i> to ensure rules do not run afoul of the anti-competitive prohibitions of the Sherman Antitrust Act and clearly reflect state policies expressed by the Legislature in statute.	<b>Implemented.</b> In November 2017, the psychology board completed a comprehensive review of its rules for anti-competitive issues. In response to this review, the board amended its rules to allow licensed psychological associates to practice independently, without the supervision of a psychologist, if certain education and experience requirements are met.





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# **BOARDS AT A GLANCE**



# BEHAVIORAL HEALTH BOARDS AT A GLANCE

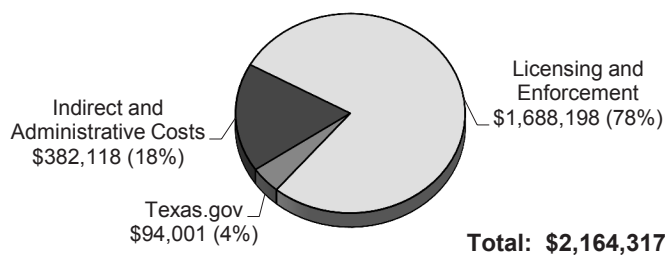
The Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners do not function as independent agencies. Rather, these behavioral health boards are administratively attached to the Health and Human Services Commission (HHSC), which provides administrative support to carry out the boards' functions. The mission of the boards is to protect public health and safety by licensing and regulating marriage and family therapists, professional counselors, and social workers. To meet this mission, each board carries out the following key activities:

- Issues and renews marriage and family therapist, professional counselor, or social worker licenses
- Investigates and enforces violations of the marriage and family therapy, professional counseling, or social work practice acts and board rules, and takes disciplinary action when necessary

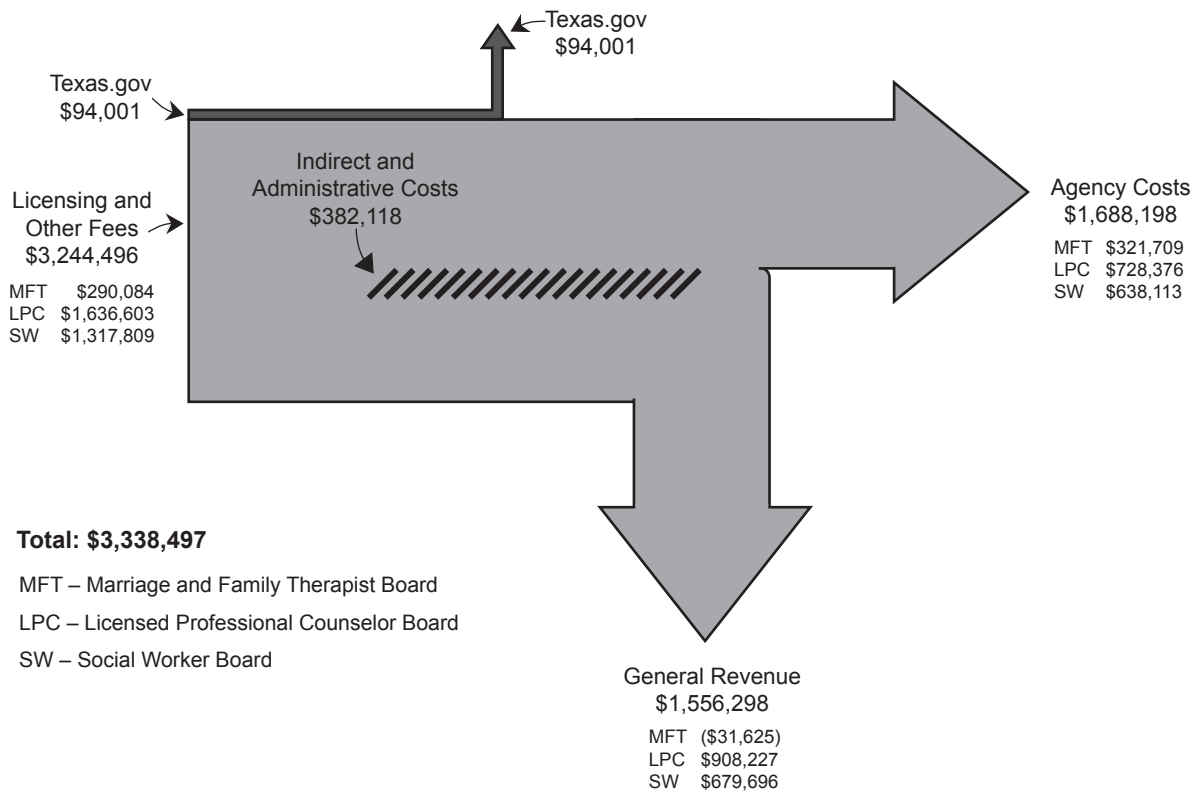
## Key Facts

- **Texas State Board of Examiners of Marriage and Family Therapists.** The board consists of nine members appointed by the governor. Five members must be current licensees, one of which must be a professional educator, and four members represent the public.
- **Texas State Board of Examiners of Professional Counselors.** The board consists of nine members appointed by the governor. Five members must be licensed professional counselors, three of whom must be in private practice and one of whom must be a counselor educator. Four members represent the public.
- **Texas State Board of Social Worker Examiners.** The board consists of nine members appointed by the governor. Two must be licensed clinical social workers, two must be licensed master social workers, and two must be licensed baccalaureate social workers. Three members represent the public.
- **Funding.** In fiscal year 2017, the three boards operated on a combined budget of about \$1.7 million. The pie chart, *Behavioral Health Boards Expenditures*, breaks out the boards' overall spending in fiscal year 2017. As shown in the graph on the following page, *Flow of Behavioral Health Boards Revenue and Expenditures*, the boards collected nearly \$3.25 million in licensing and other fees in the same year. After accounting for the boards' costs, the boards deposited excess revenue of about \$1.55 million to the General Revenue Fund.

**Behavioral Health Boards Expenditures – FY 2017**



### Flow of Behavioral Health Boards Revenue and Expenditures FY 2017



- **Staffing.** HHSC assigns about 40 full-time equivalent positions (FTEs) to perform all licensing and administrative functions for the three boards, but currently only 29 of those positions are filled.<sup>1</sup> HHSC assigns one employee to each board to serve as the board’s executive director. The other employees are not dedicated to a specific board, but rather perform licensing, enforcement, and administration functions for all three boards.
- **Licensing.** Staff process initial applications and renewals of licenses for the three boards. The table on the following page, *Behavioral Health Boards Licenses by Type*, shows the license types and requirements for each board, as well as the number of licensees regulated by each board at the end of fiscal year 2017.
- **Enforcement.** Staff also receives and investigates complaints filed against licensees, and the boards take disciplinary action against individuals found to be in violation of a board’s statute or rules. Disciplinary actions can range from administrative penalties to license revocation. In fiscal year 2017, the marriage and family therapist board resolved 101 complaints, resulting in six disciplinary actions and 18 warning letters; the professional counselor board resolved 183 complaints, resulting in 12 disciplinary actions and 34 warning letters; and the social worker board resolved 266 complaints, resulting in 26 disciplinary actions and 74 warning letters. Appendix A provides more detail on these complaints and disciplinary actions.

**Behavioral Health Boards Licenses by Type**

<b>Board</b>	<b>License Type</b>	<b>Requirement</b>	<b>Licensee<sup>2</sup> FY 2017</b>
Marriage and Family Therapist	Marriage and Family Therapist Associate	<ul style="list-style-type: none"> <li>• Graduate degree</li> <li>• 300-hour practicum/graduate school internship</li> <li>• National and jurisprudence exams</li> </ul>	522
	Marriage and Family Therapist	<ul style="list-style-type: none"> <li>• Associate requirements</li> <li>• 3,000 hours supervised experience</li> </ul>	3,086
Professional Counselor	Licensed Professional Counselor Intern	<ul style="list-style-type: none"> <li>• Graduate degree</li> <li>• 300-hour practicum</li> <li>• National and jurisprudence exams</li> </ul>	4,689
	Licensed Professional Counselor	<ul style="list-style-type: none"> <li>• Intern requirements</li> <li>• 3,000 hours supervised experience</li> <li>• Jurisprudence exam, if an exam was not taken within two years of application</li> </ul>	20,176
Social Worker	Licensed Baccalaureate Social Worker	<ul style="list-style-type: none"> <li>• Baccalaureate degree</li> <li>• National and jurisprudence exams</li> </ul>	5,103
	Licensed Master Social Worker	<ul style="list-style-type: none"> <li>• Graduate degree</li> <li>• National and jurisprudence exams</li> </ul>	11,319
	Licensed Clinical Social Worker	<ul style="list-style-type: none"> <li>• Licensed Master Social Worker requirements</li> <li>• 3,000 hours supervised experience</li> <li>• National and jurisprudence exams</li> </ul>	8,700

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<sup>1</sup> Prior to September 1, 2017, the boards were administratively attached to the Department of State Health Services, which similarly provided staff support to the boards.

<sup>2</sup> The number of licensed professional counselor licensees includes provisional licensees. The number of licensed baccalaureate social worker licensees includes temporary licensees and the number of licensed master social worker licensees includes advanced practitioner and temporary licensees.



# PSYCHOLOGY BOARD AT A GLANCE

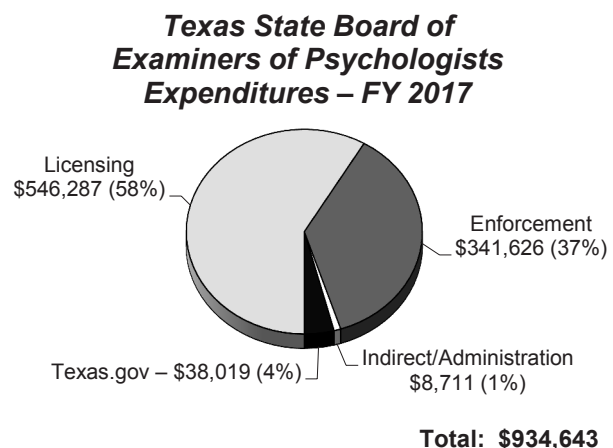
Since its creation in 1969, the Texas State Board of Examiners of Psychologists has engaged in the examination, licensing, and monitoring of individuals practicing psychology. The board's mission is to protect the public by ensuring psychological services are provided by qualified and competent practitioners who adhere to established professional standards. To achieve this mission, the board carries out the following key activities:

- Adopts rules governing the educational, experience, and examination requirements to be licensed, as well as the standards of care for providing psychological services in Texas
- Issues and renews licenses for psychologists, psychological associates, and licensed specialists in school psychology
- Enforces violations of the Psychologists Licensing Act and board rules by investigating complaints, taking action against violators, and monitoring compliance of disciplined licensees

The practice of psychology includes a wide range of services in a wide range of settings, but is generally focused on the interaction between the mind and a person's behavior. For example, a clinical psychologist evaluates and treats individuals for mental health disorders or provides group mental health therapy sessions. A quantitative psychologist performs statistical and analytical research into human behavior and cognition. An industrial and organizational psychologist studies human behavior in workplace settings and applies psychological principles to organizational management. Most psychologists are trained to provide a variety of cognitive and behavioral therapies and assessments.

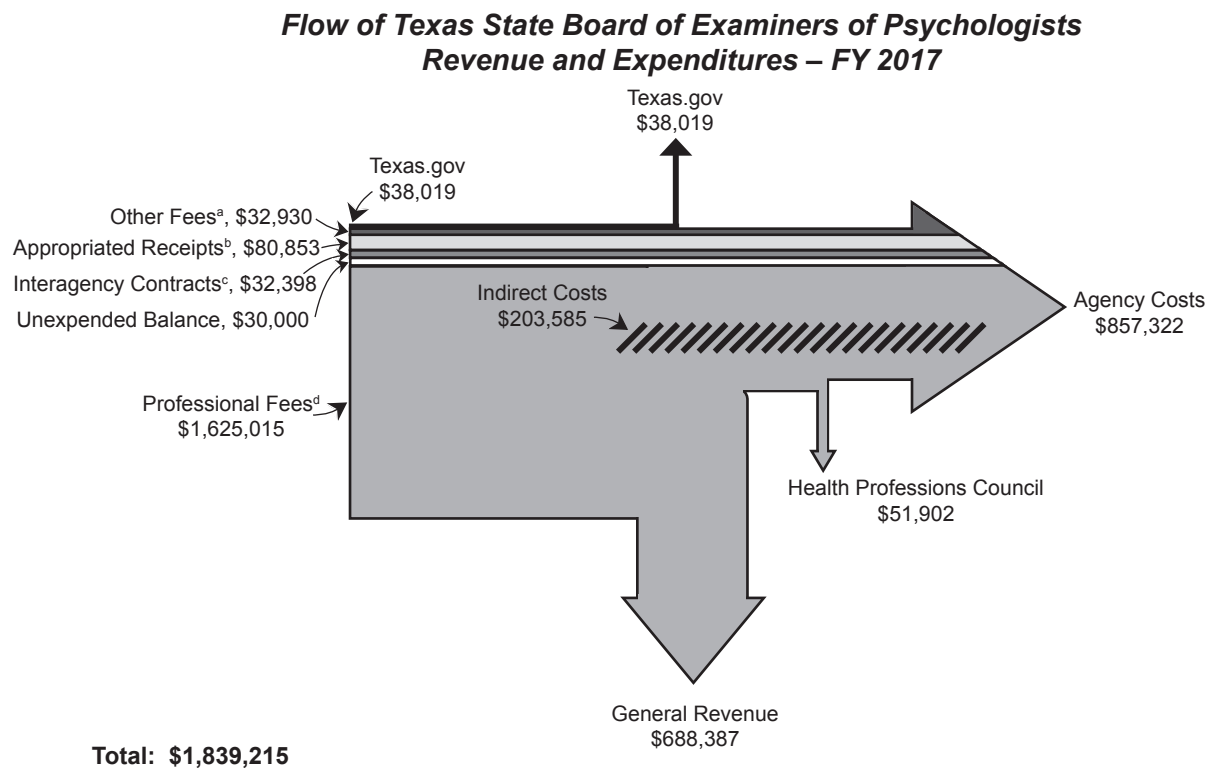
## Key Facts

- **Texas State Board of Examiners of Psychologists.** The board consists of nine members who serve staggered six-year terms: four psychologists, two psychological associates, and three public members. At least one of the psychologists or psychological associates must also be a licensed specialist in school psychology. The governor appoints board members, with the advice and consent of the Senate, and designates the presiding officer.
- **Funding.** In fiscal year 2017, the agency operated on a budget of almost \$935,000, with about 87 percent coming from general revenue funds generated through fees paid by licensees and applicants. The remaining revenue came from interagency contracts and appropriated receipts from fees for record collection and license verification. The pie chart, *Texas State Board of Examiners of Psychologists Expenditures*, breaks out the agency's spending by major program areas. Licensing program costs accounted for approximately 58 percent of expenditures.



Appendix B describes the agency’s use of historically underutilized businesses in purchasing goods and services for fiscal years 2015–2017.

The agency generates revenue through fees in excess of what is needed to cover agency expenditures, as shown in the chart, *Flow of Texas State Board of Examiners of Psychologists Revenue and Expenditures*. The agency generated approximately \$1.8 million in revenue in fiscal year 2017, primarily from licensing and other fees.<sup>1</sup> After accounting for the agency’s expenditures and indirect costs, the agency expects excess revenue of about \$688,000 to remain in the General Revenue Fund.



- <sup>a</sup> Includes administrative penalties, returned check fees, and credit card charge fees
- <sup>b</sup> Includes fees for copying records, sale of publications, and third-party reimbursements
- <sup>c</sup> Contract for budget and accounting services with the Texas Funeral Service Commission
- <sup>d</sup> Includes new licensing applications, renewal fees, exam fees, and late fees

- **Staffing.** In fiscal year 2017, the agency employed 14 staff at its office located in Austin. Appendix C compares the agency’s workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years. Additionally, the agency is a member of the Health Professions Council, which provides supplemental information technology staffing for the agency and other health professional licensing agencies.
- **Licensing.** The agency determines eligibility and processes initial applications and renewals for four license types: provisionally licensed psychologists, licensed psychologists, licensed psychological associates, and licensed specialists in school psychology. The table on the following page, *Psychology Licenses by Type*, shows the number of practitioners in each category regulated by the board in fiscal year 2017. Generally, all applicants for licensure must hold a master’s or doctoral degree focused in psychology, pass a national exam and a state jurisprudence exam, and complete a period of



supervised work experience. All licensees must renew their licenses annually and the agency audits 10 percent of renewals every quarter to ensure compliance with continuing education requirements.

**Provisionally Licensed Psychologist.** A candidate must have received a doctoral degree in psychology from a regionally accredited university and passed the national Examination of Professional Practice of Psychology and the board's jurisprudence exam. A provisional licensee may only practice psychology under the supervision of a licensed psychologist, typically while the provisional licensee works toward full, unrestricted licensure as a psychologist.

**Licensed Psychologist.** A provisional licensee may apply to become a licensed psychologist once the candidate has performed two years (approximately 3,500 hours) of supervised work — one year of which must occur after receiving the doctoral degree.

**Licensed Psychological Associate.** A candidate must have received a master's level degree or higher that is primarily psychological in nature; passed the national psychology exam and the jurisprudence exam; and completed 450 hours of supervised experience. An associate may only practice psychology under the supervision of a licensed psychologist, unless expanded levels of exam passage and hours of experience are met.

**Licensed Specialist in School Psychology.** Regulation of specialists in school psychology was transferred from the Texas Education Agency to the board in 1995. A candidate must hold a master's level degree or higher from a program accredited by the National Association of School Psychologists, or a program with sufficient training in psychological and educational foundations. In addition, a candidate must pass the National School Psychology Examination and complete 1,200 hours of internship, half of which must be in a public school setting. A specialist in school psychology may only practice in Texas public and private schools.

- **Enforcement.** The agency investigates complaints against licensees and takes disciplinary action for violations of statute or rule. The agency receives complaints from licensees or members of the public, and agency staff also initiate complaints. Complaints typically involve either administrative violations or violations of professional standards. The agency may impose administrative penalties, probation periods, continuing education, or monitoring requirements when a violation is found. For serious violations, the board may reprimand, suspend, or revoke a license. The table on the following page, *Texas State Board of Examiners of Psychologists Enforcement Actions*, details the type and disposition of complaints resolved for fiscal year 2017. Staff monitors licensee compliance with disciplinary actions to ensure the terms and conditions of board orders are met.

### **Psychology Licenses by Type – FY 2017**

<b>Type of License</b>	<b>Number of Licenses</b>
Provisionally Licensed Psychologists	230
Licensed Psychologists	4,900
Licensed Psychological Associates	950
Licensed Specialists in School Psychology	3,518
Total Licenses Issued	9,598
Number of Dual License Holders	1,169

**Texas State Board of Examiners of Psychologists  
Enforcement Actions – FY 2017**

<b>Disciplinary Action</b>	<b>Continuing Education Violation</b>	<b>Administrative Violation</b>	<b>General Therapy</b>	<b>General Forensic</b>	<b>Sexual Misconduct</b>	<b>Child Custody</b>	<b>School</b>	<b>Miscellaneous</b>	<b>Cease and Desist</b>	<b>Total</b>
Agreed Orders	0	2	0	0	0	0	0	0	0	<b>2</b>
Disciplinary Actions	2	1	3	2	2	4	0	0	0	<b>14</b>
Dismissed	90*	3	18	10	6	9	6	2	2	<b>146</b>
Resigned	2	0	0	0	2	0	0	0	0	<b>4</b>
Revoked	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>Total</b>	<b>94</b>	<b>6</b>	<b>21</b>	<b>12</b>	<b>10</b>	<b>13</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>166</b>

\* Ten were dismissed with fine.

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<sup>1</sup> During the 84th Legislative Session, the Legislature repealed a \$200 professional fee previously collected by the board and other licensing agencies, which decreased the amount of revenue collected by the board by around \$800,000.

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**ISSUES**



# ISSUE 1

## *The Structure of the State's Behavioral Health Licensing Agencies Is Antiquated and Inefficient.*

### Background

The Texas Legislature has established separate licensing and regulatory frameworks for the practice of psychology, marriage and family therapy, professional counseling, and social work, as described in the textbox, *Behavioral Health Boards*. Generally, these professions each involve the observation, evaluation, diagnosis, and treatment of emotional, cognitive, and behavioral disorders or other maladaptive behaviors. Each profession, however, focuses on a different aspect within the field of behavioral health. Independent boards oversee each profession and seek to protect the public by adopting rules, issuing licenses, investigating and resolving complaints, and enforcing their respective licensing acts.

#### ***Behavioral Health Boards***

**Psychology.** The Texas State Board of Examiners of Psychologists is a small, stand-alone licensing agency with 14 staff that regulates about 8,500 licensees. The practice of psychology focuses on the interaction of the mind and human behavior, including statistical and analytical research into brain development.

**Marriage and family therapy.** The Texas State Board of Examiners of Marriage and Family Therapists regulates about 3,600 licensees. Marriage and family therapy focuses on therapeutic treatment for individuals, families, or couples — alone or in groups — by applying family systems theories and techniques.

**Professional counseling.** The Texas State Board of Examiners of Professional Counselors regulates about 25,000 licensees. These practitioners focus on assessment and treatment of mental, emotional, and behavioral disorders to facilitate human development and adjustment.

**Social work.** The Texas State Board of Social Worker Examiners regulates about 25,000 bachelor, master, and clinical social work licenses. The practice of social work focuses on the application of social work theories to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, families, groups, and communities.

The marriage and family therapy, professional counseling, and social work boards do not function as independent agencies, hire their own staff, or direct the expenditure of funds. Instead, the boards are administratively attached to the Health and Human Services Commission (HHSC). HHSC provides facilities, administrative services, and staff from its regulatory division to carry out the boards' functions — primarily regulating almost 54,000 licensees. Before 2017, the boards were attached to the Department of State Health Services (DSHS).

These four boards underwent Sunset review in 2016. In addition to considering the need to continue to regulate these behavioral health professions, the Sunset Commission also considered the organizational structure that would provide the most effective and efficient regulation as directed by the Legislature.<sup>1</sup>

## Findings

### **The Sunset Commission’s recommendation to consolidate the four behavioral health boards into a single agency, the Texas Behavioral Health Executive Council, continues to be appropriate.**

The 2016 Sunset review found a continuing need to regulate all four behavioral health professions, but determined the administrative attachment of the marriage and family therapy, professional counseling, and social work boards failed to effectively regulate marriage and family therapists, professional counselors, and social workers, putting vulnerable Texans at risk.

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*The public would benefit from continued regulation of these behavioral health professions.*

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- **Inefficient licensing practices.** The licensing processes adopted by the three HHSC-attached boards set up unreasonable bureaucratic hurdles that created extra work for both staff and licensees and delayed issuance of licenses. For example, for the marriage and family therapy and professional counseling boards, staff had to review the transcript of each applicant, often researching the content of each course taken to determine if education requirements were met. Licensees under supervision were required to submit new paperwork each time they provided services in a different location, even if the patient and supervisor had not changed. Licensees whose paperwork had clerical errors faced having to repeat supervision hours disqualified by the board.
- **Broken enforcement process.** The boards’ enforcement processes failed to adequately regulate licensees and protect the public. Each board had unacceptable complaint resolution timeframes, ranging in fiscal year 2016 from 832 days to 1,105 days, as well as a languishing backlog of over 850 enforcement cases. As a result, some complainants and respondents waited two to three years to resolve a complaint. These delays not only placed licensees’ careers in limbo; potentially harmful practitioners were allowed to continue treating patients, placing the public at risk. Several factors contributed to these delays and backlogs, including staffing shortages and the boards’ complaint resolution processes that did not allow staff enough authority to dismiss baseless complaints and required all complaints to come before a public committee hearing. These hearings often seemed more akin to a public scolding than a quasi-judicial proceeding.
- **Failures of administrative attachment.** The 2016 review found the state’s approach of having these independent rulemaking boards administratively attached to another agency — at that time to DSHS — did not work. Numerous reports over the years, including previous Sunset reports, have highlighted concerns about independent boards administratively attached to an agency. The current administrative attachment of these boards to HHSC continues to impair the functioning of these programs. This structure places undue burdens on HHSC, preventing administrative streamlining and other process improvements, and limits the boards’ ability to address the backlogs. Further, the lack of statutorily clear roles blurs the

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*Administrative attachment of the behavioral health boards puts vulnerable Texans at risk.*

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lines of authority and accountability between HHSC and the boards. As a result, HHSC employees assigned to these programs essentially serve two (and sometimes three or four) masters, reporting to both the independent boards and HHSC.

As at DSHS before, regulation of these behavioral health professions continues to be dwarfed by larger responsibilities at HHSC. These three small licensing boards must compete with other higher priority programs — including Medicaid, SNAP food benefits, and TANF cash assistance for families — for HHSC's finite resources and attention. As a result, HHSC has been unable to adequately address the needs of the behavioral health boards. HHSC is attempting to fill vacant positions and adopt short-term measures to address the boards' backlogs, but it has not yet made notable increases in staff or resources to get these programs back on track, particularly over the long term.

Since the 2016 Sunset review, the behavioral health boards have made several regulatory process improvements related to management recommendations adopted by the Sunset Commission. Each board has streamlined its license application and eliminated unnecessary paperwork requirements. Each board has adopted policies to prioritize complaint investigations to focus on the most serious alleged violations and developed penalty matrices to provide clarity and consistency in disciplinary actions. The boards are also working toward making significant changes to their enforcement processes to eliminate the public complaints hearings and speed up enforcement resolution times. The boards expect to adopt these changes in 2018.

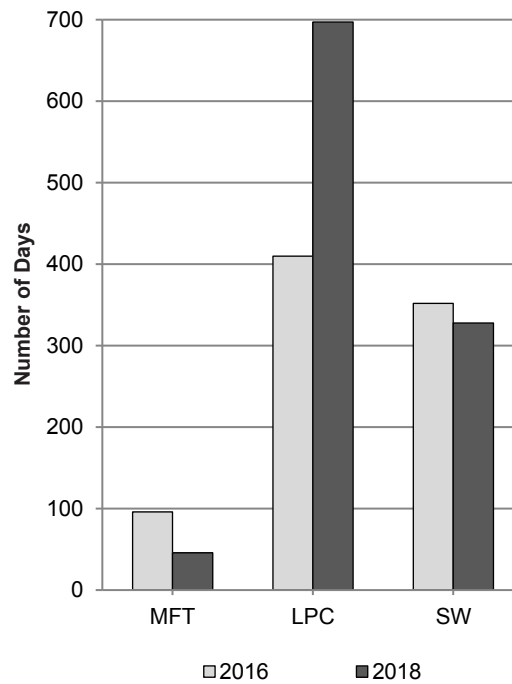
Despite these good faith efforts and reforms, the behavioral health boards continue to be mired in backlogs of both license applications and complaints, placing licensees in professional limbo and putting Texas consumers at risk. The backlog of license applications and complaint cases continues to be a millstone to the efforts of the boards and HHSC staff. As shown in the chart on the following page *Complaint Cases Backlog Comparison*, the boards' backlog of complaint cases has grown to 1,071 as of January 1, 2018, with only the marriage and family therapy board showing substantial progress in reducing its complaints caseload. While the boards have prioritized complaints with the highest risk areas for faster resolution, overall complaint resolution times in fiscal year 2017 remain concerning, ranging from an average 640 days at the marriage and family therapy board, to 874 days at the social work board, to 949 days at the counselor board. In addition, processing license applications takes around 30 days at the marriage and family therapy board, 65 days at the social work board, and 107 days at the counselor board. During the current review, Sunset again heard numerous complaints from licensees and applicants frustrated by months of waiting for their licenses to be approved or cases to be heard. Long license approval times place practitioners in limbo, preventing them from being able to find work or potentially losing job offers.

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*Despite good faith efforts, the boards continue to be mired in backlogs, placing licensees in professional limbo.*

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### Complaint Cases Backlog Comparison



	MFT	LPC	SW
<i>Total Cases</i>	46	697	328
<b>Cases Opened by Year</b>			
2017	35	283	117
2016	6	230	92
2015	4	97	80
2014	1	48	10
2013	0	21	9
2012	0	6	7
2011	0	4	4
2010	0	2	4
2009	0	2	4
2008	0	2	1
2007	0	2	0

#### A consolidated agency structure offers distinct advantages to the current behavioral health regulatory system.

The Sunset Commission’s 2016 recommendation to consolidate the four behavioral health licensing boards would improve their operations through economies of scale and better resource management.

- **Staff turnover.** Unlike larger agencies able to absorb and adjust to changing circumstances, smaller licensing boards have little to no flexibility when reacting to events such as loss of staff. When staff leave, these boards often lose years of training invested in those individuals, as well as key experience in the functions of the agency. By having a large staff specialized along functional lines, large agencies have the flexibility to reallocate resources across programs to maintain regulatory functions, while ensuring long-term institutional knowledge.

Over the past few years, the psychology board has seen larger than usual staff turnover and has had difficulty attracting talented new staff. In addition, several staff in key leadership positions at the psychology board are or will soon be eligible to retire, including the deputy executive director, chief financial officer, and the manager of the agency’s licensing program. The other behavioral health boards have also experienced several years of high staff turnover, with each departure setting back efforts to improve performance. Currently, only 29 of the 40 positions dedicated to support

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*The boards have experienced several years of high staff turnover, setting back efforts to improve performance.*

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the behavioral health boards at HHSC are filled, a staffing shortfall that has perpetuated for several years. The potential for retirements in leadership positions and ongoing struggles to retain experienced staff create a significant risk that the boards will lose vital institutional knowledge and suffer further setbacks in their ability to effectively regulate their professions.

- **Customer service.** These boards do not have dedicated customer service staff; instead, staff must divide their time between processing applications and responding to customer service inquiries. A common complaint Sunset heard during the psychology board review centered on the board's inability to provide consistent customer service and sometimes even basic information to licensees. Licensees at the other boards echoed these complaints. Many licensees expressed frustration at being unable to reach staff to learn the status of their license application or complaint case. Licensees also frequently mentioned being unable to get answers to basic licensing questions when the individual staff person assigned to those areas took leave for illness or other reasons. With limited staff, none of the boards has the luxury of having several staff assigned to each function, such as processing license applications or answering customer service inquiries. Instead, each employee is solely responsible for several tasks. This "silo" division of responsibilities creates the potential for gaps in service and other administrative problems.

- **Resource efficiencies.** Administrative functions of larger or "umbrella" licensing agencies are more efficient and keep better focus on core licensing and enforcement functions. Small, stand-alone licensing agencies like the psychology board must dedicate a greater portion of resources to administrative functions. Every state agency must perform basic functions to operate, such as accounting and information technology. Small agencies do not benefit from economies of scale available at larger agencies and therefore must dedicate a higher percentage of their budget and employee allotment to filling administrative roles — despite smaller agencies not having enough work for a full-time chief financial officer, general counsel, or information technology staff. Small agencies either pay for all of these costs, resulting in higher expenditures per licensee than larger agencies, or find patchwork solutions that are not always ideal arrangements for the state.

By having a sufficient staff specialized along functional lines, umbrella agencies have the flexibility to allocate resources across programs to maintain strong regulatory functions and long-term institutional knowledge. By operating more cost-effectively, larger umbrella agencies often have the resources to focus beyond basic administration, licensing, and enforcement duties to pursue more sophisticated technology or other services to improve operations.

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*Many licensees expressed frustration at being unable to learn the status of their license application or complaint.*

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*"Umbrella" licensing agencies are more efficient and can better focus on core licensing and enforcement functions.*

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**The Sunset Commission’s previous recommendation to include members of each behavioral health profession on the executive council presents unnecessary risks.**

The Sunset Commission’s recommendation to have each professional board appoint one of its professional members and one of its public members to serve on the proposed executive council with a governor-appointed public member to serve as chair should be amended to appoint only public members.

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*A public member oversight council would help prevent the state from being found in violation of anti-trust laws.*

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- Members of each of the behavioral health professions raised concerns throughout the Sunset process as well as during the 85th Regular and First-Called Special Sessions about the composition of the executive council. Their concerns centered on the fear that a shared executive council, where each board sends representatives, could result in the professional standards and rules of one profession being interfered with by the other professions. Although a majority of the executive council would have been public members, most of these public members would also have come from the professional boards. Stakeholders expressed misgivings about the ability of each profession to vote objectively on standards of practice and licensing and enforcement decisions of the other professions.
- Giving an executive council that includes professional members final authority over rules and enforcement decisions of their professions poses more risk of costly litigation than a purely public governing body. In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, the Supreme Court held that a state licensing board controlled or influenced by members of the profession being licensed does not qualify for state action immunity regarding rulemaking and enforcement decisions and may be sued for anti-trust violations for decisions that create an unreasonable restraint of trade.<sup>2</sup> A purely public member oversight council that has final authority over all rulemaking and enforcement decisions would help prevent the state from being found in violation of antitrust laws.

**The boards’ statutes do not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed reflecting “good government” standards designed to ensure open, responsive, and effective government. One such standard relates to board member training. The boards’ statutes contain standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, their statutes do not contain newer requirements, including creating a training manual for all board members and requiring board member training to include a discussion of the scope of and limitations on the board’s rulemaking authority.

## Recommendations

### *Change in Statute*

#### **1.1 Consolidate the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.**

Consolidation or transfer of programs, while having significant benefits, are difficult to accomplish. Successful implementation takes a solid statutory structure and direction, as well as an investment of funds. Further, the consolidated entity should be built on a stable, existing foundation. In this case, the Board of Examiners of Psychologists, as a well-run independent agency, provides that foundation.

The following material provides the necessary components for consolidating the functions of Texas' four behavioral health regulatory boards into the Texas Behavioral Health Executive Council (BHEC).

- **Individual boards' composition and authority.** The Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, Board of Social Worker Examiners, and Board of Examiners of Psychologists would each retain their current governor-appointed board, with each board's current composition.

Each board would retain responsibility for developing and guiding all matters relating to their respective professions, though not final adoption of rules. Their authority would include originating all rules related to standard of care and practice, license qualifications and competencies, examinations, criminal conviction guidelines, penalty matrices, and continuing education requirements. The boards would also participate as needed on enforcement panels and as expert witnesses for standard of care or ethics complaints.

- **Behavioral Health Executive Council composition and authority.** The executive council would be composed of five public members and four ex officio members. The governor would appoint an independent public member to serve a six-year term as the presiding officer of the council. Each of the four professional boards would appoint one of its public members to serve a two-year term with the ability to be reappointed. Each of the four professional boards would also appoint one of its professional members to serve as an ex officio, nonvoting member of the executive council to provide input and professional expertise. This public member oversight model would protect against encroachment between behavioral health professions and help safeguard Texas against antitrust litigation. Such a public oversight model has worked well at other state agencies, including the Texas Department of Licensing and Regulation.

However, as previously stated, the behavioral health professions would continue to provide the professional expertise needed for successful regulation. All existing rules of the professional boards would continue upon transfer to the executive council. The executive council would have approval authority over, but could not initiate, any changes in rules relating to scope of practice, standards of care, and other professional matters proposed by the independent professional boards. If the executive council failed to approve a rule, it would return the rule to the originating board with an explanation of the reasons for the denial. The executive council would initiate and have final authority for all rules relating to agency operations and standardized regulatory procedures (e.g., license application procedures and complaint intake and resolution) and other administrative rules. The executive council would set appropriate fees for licenses, renewals, or other services. The executive council would have final sanction and administrative penalty authority.

- **Staff responsibilities.** The executive council would hire the executive director of BHEC, and all staff would report to the executive director. The executive council would develop and implement policies that clearly define the respective responsibilities of the executive council and the staff of the executive council. Under a functional organization, staff would conduct licensing and customer service activities, perform complaint investigation and prosecution, and provide all administrative services such as accounting and human resources. Staff would consult with the boards or contract for expertise as necessary for practice-related licensing and enforcement matters.
- **Timeline.** The Behavioral Health Executive Council would be established on September 1, 2019. The Board of Examiners of Psychologists, Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners would transfer to BHEC no later than August 31, 2020. To support the transition of these programs without any loss of services, the Legislature would need to enact appropriation contingency riders to allow for interagency financial agreements between HHSC, BHEC, and the Board of Examiners of Psychologists for the 2020–21 biennium.
- **Incubation through the Texas Behavioral Health Incubation Taskforce.** A temporary Behavioral Health Incubation Taskforce would be established for fiscal year 2020, consisting of representatives from each of the boards being merged, as well as representatives from BHEC, HHSC, and the Texas Department of Licensing and Regulation (TDLR). The taskforce members would enter into a memorandum of understanding to allow the taskforce to aid and assist in the establishment of BHEC.

At a minimum, the taskforce would provide guidance on hiring the executive director of the executive council, coordinating the transition of data, revising existing rules to ensure alignment of administrative functions, developing function alignments in staff structure, establishing the necessary accounts and reporting requirements, and effectively engaging stakeholders in the transition process. TDLR and the taskforce would not administer any of the programs, but would lend expertise and input on the process of consolidating licensing programs efficiently.

- **Sunset provisions.** The enabling statute for BHEC should include the standard 12-year Sunset date of September 1, 2031. The Sunset provision for each consolidated board would be removed from the enabling statutes of each of these programs, as they would be subject to review under BHEC's Sunset provision.
- **Coordination of transition.** Each board and HHSC would provide the executive council or its designees access to all systems and information needed to effectively transfer the programs, including licensing, revenue, and expenditure systems; rights to service contracts and licensing agreements; use of online renewal and new application systems; and review and resolution of pending judgments and outstanding expenditures.
- **Technical drafting issues.** This recommendation would direct Sunset staff to work with staff from each of the boards, HHSC, and the Texas Legislative Council in the drafting of legislation to accurately account for any other legal and administrative aspects a merger of this size entails.
- **Board travel.** The members of the executive council and the four boards would receive reimbursement for travel and other necessary expenses incurred in performing official duties as allowed by the General Appropriations Act.

## 1.2 Update the standard across-the-board requirement related to board member training.

This recommendation would require the executive council to develop a training manual that each board and council member attests to receiving annually, and would require existing board and council member training to include information about the scope of and limitations on each board's rulemaking authority. The training should provide clarity that the Legislature sets policy and boards have rulemaking authority necessary to implement legislative policy.

## Fiscal Implication

Overall, the recommendations would result in better regulation for the professions and reduced regulatory costs over time; however, accomplishing the necessary consolidation and transformation will require an initial up-front investment. The Legislative Budget Board estimated the fiscal impact for such a consolidation under House Bill 2898, by Gonzales, during the 85th Regular Session. The Behavioral Health Executive Council will require a one-time startup appropriation of about \$850,000 for database transfers, information technology, and employee startup costs and equipment, as well as a full-time equivalent employee (FTE) for an executive director for six months in fiscal year 2020. Meanwhile, the four behavioral health programs would need current operating funds to continue to function in place during fiscal year 2020.

In fiscal year 2021, BHEC's first full year of operations, current appropriations and FTE positions for the behavioral health programs would be transferred from HHSC and the psychology board to BHEC. Some additional funding will be required going forward to replace administrative services previously provided by HHSC (such as legal and technology) without charge to the behavioral health boards' budgets. In addition, BHEC will need three additional FTE positions for two years to address the boards' massive existing backlog of licensing applications and complaint cases. However, like the current behavioral health boards, BHEC would be statutorily required to generate sufficient revenue to cover its costs, offsetting any increased cost to general revenue.

### ***Texas Behavioral Health Executive Council***

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Change in FTEs From 2019</b>
2020	\$857,073	+.5
2021	\$0	+3
2022	\$0	+3
2023	\$0	0
2024	\$0	0

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011, Texas Government Code.

<sup>2</sup> *N.C. State Bd. of Dental Exam 'rs v. Fed. Trade Comm 'n*, 135 S. Ct. 1101 (2015).



# ISSUE 2

## *Key Elements of the Behavioral Health Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.*

### Background

The mission of the marriage and family therapy, professional counseling, and social work boards is to protect the public's health and safety by ensuring their licensed professionals are qualified, competent, and adhere to established professional standards. To accomplish this mission, the boards oversee licensing of marriage and family therapists, professional counselors, and social workers, and enforce standards of care and practice by investigating complaints and taking disciplinary action when necessary.

The Sunset Advisory Commission has a long history of evaluating licensing agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed more than 100 reviews of licensing agencies, documenting standards to guide future reviews of licensing programs. While these standards provide guidance for evaluating a licensing agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the boards' statutes and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Finding

#### **The Sunset Commission's recommendations to align the behavioral health boards' licensing functions with model standards continue to be needed.**

In 2016, the Sunset Commission found several provisions in the behavioral health boards' statutes that do not conform to common licensing standards and could potentially present unnecessary hurdles to applicants or reduce consumer safety.

- **Insufficient criminal background checks.** Texas had nearly 54,000 people licensed by the three boards in fiscal year 2017. These licensees often practice in otherwise unregulated locations, including licensees' private offices, and their practice involves contact with vulnerable populations, such as minors, the elderly, and patients with serious behavioral health diagnoses. However, none of the boards use the most accurate and comprehensive means to ensure licensees do not have criminal histories that would place a client's health or safety at risk.

To help protect the public's safety, licensing agencies commonly conduct criminal background checks using the Department of Public Safety's fingerprint system, which accurately identifies each individual, provides automatic updates, and uncovers criminal history on applicants and licensees nationwide. The marriage and family therapy, professional counseling, and

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*The boards' nearly 54,000 licensees do not receive the most comprehensive criminal background checks available.*

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*Name-based criminal background checks do not fully assess an applicant's criminal history.*

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social work boards only require applicants and renewing licensees to self-disclose if they have a criminal history. The Health and Human Services Commission (HHSC) staff conduct name-based criminal history checks for all new applicants and for 10 percent of renewals. However, reliance on self-disclosure and follow-up with occasional name-based checks does not fully assess an applicant's history to ensure his or her safety to practice, as the system does not capture all local or out-of-state records. For example, the Texas boards would not know about a conviction for sexual assault in another state, unless disclosed. Requiring fingerprint checks for initial and renewing licensees would ensure assessment of each licensee's criminal history to better protect the public.

- **Underuse of outside disciplinary data.** Licensing agencies should consult available enforcement information compiled by national or federal data banks to monitor disciplinary actions against practitioners licensed or seeking licensure in Texas who are also licensed in other states. The intent is to ensure that a licensee's mobility cannot be used to evade discipline. Federal law requires state licensing agencies to report disciplinary actions taken against healthcare providers, including marriage and family therapists, professional counselors, and social workers, to the National Practitioner Data Bank.<sup>1</sup> The data bank provides agencies information necessary to decide if licensees disciplined in other states should be allowed to practice in Texas or if enforcement action is warranted based on violations that reflect a practitioner's inability to safely perform his or her job. Additionally, if an applicant holds another occupational license in Texas, especially another behavioral health-related license, an agency should ensure it knows about any enforcement actions on the individual's other licenses that would merit denial or sanctions on the license with that agency.

Currently, all three boards require licensees to self-report discipline by other states, but do not check the data bank for confirmation before awarding an initial license or renewal. As a result, the boards may award or renew licenses of practitioners who have faced enforcement actions in other states, up to and including license revocation, potentially putting Texans at risk. In addition, the marriage and family therapist and professional counselor boards do not have clear legal authority to discipline licensees for the full range of actions taken by other states or other licensing boards for conduct that would be actionable in Texas. Given the growing emphasis on licensure mobility, regulatory agencies should take proactive steps to ensure a licensee cannot evade discipline. Providing clear authority to monitor licensees for adverse actions taken by other states and agencies, and clarifying the boards' authority to discipline licensees based on these actions, would better ensure licensees do not pose a risk to the public.

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*The boards do not check national practitioner data banks for enforcement actions in other states.*

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- **Subjective qualifications for licensure.** Qualifications for licensure should not overburden applicants or unreasonably restrict entry into practice. Currently, the marriage and family therapist statute requires applicants for licensure to be of "good moral character."<sup>2</sup> While Texas wants licensees to have good character, the phrase "good moral character" is a subjective,



vague requirement that may be determined inconsistently. Removing the statutory requirement that applicants be of good moral character would be in line with current law that matches the practice of reviewing an applicant's criminal history and denying licenses based on criminal history related to the actual practice of the profession.

- **Restrictive fee authority.** A licensing agency should have authority to set its own licensing and renewal fees, subject to appropriative authority. Setting a fee floor in statute limits the agency's ability to lower fees in line with the agency's actual cost to adequately regulate the program. The marriage and family therapist, professional counselor, and social worker acts currently include a fee floor, which requires each board to set fees at or above amounts established in 1993.<sup>3</sup> Removing the statutory fee floor would improve fee management authority by ensuring the fees fully fund needed operations while also being fair to licensees.
- **Unnecessarily restrictive experience requirement.** The statutory requirement that a marriage and family therapist applicant provide a minimum of 750 hours of direct clinical services to couples or families creates a barrier to licensure. The requirement does not match practices in other states and is not needed to maintain portability and parity of the license. Both the Texas Association for Marriage and Family Therapy and the Texas Association for Marriage and Family Counselors have previously supported a decrease in the standard to 500 hours. Sunset staff found only 11 states that specifically require direct contact hours for couples and families, versus more general direct contact hours for couples, families, individuals, and children. Removing this fixed number of hours from statute and allowing the hours to be set by rule would allow for consideration of professional standards and the overall experience needs of the profession.

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*Excessive statutory experience requirements create a barrier to licensure.*

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## Recommendations

### ***Change in Statute***

#### **2.1 Require the boards to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.**

Under this recommendation, the boards would systematically phase in fingerprint-based checks through the Department of Public Safety. Applicants and licensees would use the state's fingerprint vendor to submit fingerprints. Prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints one time according to the boards' implementation timeframe. Applicants and licensees providing fingerprints would pay a one-time approximate \$40 cost.

#### **2.2 Authorize the boards to check for disciplinary actions in other states or from other licensing boards as part of the license application and renewal process and to pursue any necessary enforcement actions based on the results.**

This recommendation would allow each board to identify problems and take any necessary enforcement action based on actions taken by other states or other Texas licensing boards, so long as the conduct is also a violation of Texas law or board rule. This recommendation would direct the boards to query

the National Practitioner Data Bank when processing initial license applications and renewals, and to increase licensing fees if needed to cover the cost of the queries, which would be about a \$2 increase per licensee each year. Using the data bank would ensure each board facilitates safe care for Texans receiving behavioral health services.

**2.3 Remove the “good moral character” standard as a criterion for marriage and family therapist applicants.**

This recommendation would remove the subjective requirement that persons applying to the marriage and family therapist board for licensure be of “good moral character,” a standard that is unclear and difficult to enforce. The marriage and family therapy board would continue to receive and review criminal history information to determine the applicant’s eligibility for licensure according to requirements in Chapter 53 and Section 502.253, Texas Occupations Code, and associated rules.

**2.4 Remove the statutory limitation currently restricting the boards’ authority to lower fees.**

This recommendation would remove the fee floor currently listed in statute for the three boards to provide greater discretion to set fees, thus giving the boards increased autonomy to lower fees if the cost of administering regulation decreases.

**2.5 Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and authorize the marriage and family therapy board to establish the required hours by rule.**

This recommendation would replace the statutory provision requiring an applicant to have at least 750 hours of direct clinical services to couples or families with a provision that an applicant must have the number of direct clinical service hours as established by the marriage and family therapist board by rule. This recommendation would reduce barriers to entry into practice while maintaining portability and parity of Texas licenses.

**Fiscal Implication**

Requiring fingerprint-based criminal background checks would not have a fiscal impact to HHSC or the behavioral health boards but would require applicants and licensees to pay a one-time fee of about \$40 for a fingerprint background check through the Department of Public Safety. Any increased workload related to background checks could be handled with current resources. The boards currently generate sufficient revenue to cover their direct operating costs of \$3.4 million biennially as well as any potential additional full-time equivalent positions or cost increases related to these recommendations. In addition, the boards currently have sufficient fee authority, and HHSC would simply need a matching appropriation to recover costs if determined to be necessary, such as the \$2 costs for querying the National Practitioner Data Bank.

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1 Section 1921, Social Security Act (42 U.S.C. 1396r-2).

2 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 502.252(b)(5), Texas Occupations Code.

3 Sections 502.153(b), 503.202(b), and 505.203(b), Texas Occupations Code.

# ISSUE 3

## *The Psychology Board's Oral Exam Is an Unnecessary Requirement for Licensure.*

### Background

From 1987 to 2017, the Texas State Board of Examiners of Psychologists required candidates for licensure as a psychologist to pass an oral exam designed to test a candidate's competency to practice. The board hosted exams twice a year and contracted with currently licensed psychologists to serve as examiners. For the exam, candidates selected one of six practice areas on which to be tested and received a vignette describing a typical client or situation in that practice area. Two examiners then asked the candidate a series of pre-determined questions corresponding to nine content areas of professional skills.

In 2016, Sunset staff noted the oral exam offered minimal additional value in assessing applicants' competency to practice; created an undue barrier to entering the profession; and significantly strained agency resources. Since this time, the psychology board had to cancel its January 2018 oral exam after being unable to secure a location to host the exam. Faced with the inability to license new psychologists for over a year, the psychology board adopted a rule change in November 2017 removing the oral exam as a licensing requirement. Although the psychology board repealed its rule requiring an oral exam as part of its licensing process, statute continues to authorize the board to conduct an oral exam in the future should it choose.

### Finding

#### **The Sunset Commission's recommendation to eliminate the statutory authority for the oral exam continues to be appropriate.**

During the 2004 and 2016 Sunset reviews of the psychology board, the Sunset Commission concluded the oral exam added little value to evaluating applicants for licensure and instead found it to be a potentially subjective barrier to entry into the profession and a significant administrative burden on the agency.<sup>1</sup>

- **Minimal value.** The oral exam offers minimal additional value in assessing applicants' competency to practice. By the time candidates sit for the oral exam, they have already exhibited minimum competency to practice psychology. Every applicant for the oral exam has earned a doctoral degree in psychology — a six-year program of study that typically includes a year-long internship. Many candidates will have already completed the 3,500 hours of supervised practice required to become fully licensed. Candidates must also pass a national written exam — the Examination for Professional Practice in Psychology — that tests candidates' knowledge of psychological skills and practices, as well as a Texas-specific jurisprudence exam that evaluates knowledge of applicable state laws and ethics. Also, with extraordinarily high passage rates overall, the oral exam appears to be more a rite of passage than a meaningful assessment of a candidate's readiness to be licensed.

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*Education, training, and written exam requirements fully test entry-level competency for a license.*

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*Faced with a lack of a suitable location and examiners, the psychology board stopped requiring the oral exam in November 2017.*

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- **Significant administrative burden.** The oral exam has become an unsustainable burden to the agency and its applicants. Conducting the oral exam significantly strains agency staff and resources. In the last decade, the number of candidates applying to take the oral exam has grown significantly, while the size of the agency’s staff has remained constant. Meanwhile, resources to conduct the exam have become increasingly limited. The board conducts the exam in specialized facilities that include examination rooms with two-way mirrors for monitoring the test. In the fall of 2017, the University of Texas informed the board it could no longer use the university’s facilities to host the exam. Faced with a lack of a suitable testing location and a shortage of examiners, the psychology board changed its rules in November 2017 to no longer require the oral exam.
- **Declining use.** Other states’ psychology licensing boards have been steadily moving away from using oral exams. Only 14 states still required an oral exam. Of these states, only eight test candidates’ competency to practice; the other six use an oral exam merely as a method of testing jurisprudence. Discontinuing the oral exam could expand opportunities for the psychology board to share reciprocity with other states, and improve mobility for psychologists interested in practicing in Texas.

## Recommendation

### *Change in Statute*

#### **3.1 Eliminate the authority for the psychology board to administer an oral exam.**

This recommendation would enact a previous Sunset Commission recommendation as well as codify the board’s decision to not require an oral exam by removing the oral exam authority from statute. The board would retain its ability to require written exams in the future, which could include a written exam focused on assessing professional competency. The board would continue to comply with remaining statutory direction that exams focus on applicants’ knowledge of the profession and relevant state laws and rules. Eliminating the oral exam would bring the board in line with the licensing practices of other Texas professions and put Texas on par with the vast majority of states that do not require an oral exam for licensure as a psychologist.

## Fiscal Implication

This recommendation would not have a fiscal impact to the state as the psychology board no longer requires or conducts an oral exam.

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<sup>1</sup> Sunset Advisory Commission, *Texas State Board of Examiners of Psychologists Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, February 2004), 6.

# ISSUE 4

## *Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.*

### Background

To become a licensed psychologist in Texas, individuals must earn a doctoral degree in psychology, complete two years (3,500 hours) of supervised work experience, and pass national and state exams.<sup>1</sup> Statute specifies psychologist candidates may complete only half of the work experience (1,750 hours) during their doctoral degree program, typically through a supervised internship occurring within the last two years of the program. The remaining year must be completed after receiving their Ph.D, as a supervised provisionally licensed psychologist.

### Finding

**The Sunset Commission's recommendation to remove the unnecessary statutory requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D. continues to be appropriate.**

During the 2016 Sunset review of the psychology board, the Sunset Commission concluded requiring a full year of post-doctoral supervision placed an unnecessary burden on candidates, delaying their licensure at a time when Texas suffers from a shortage of mental health care providers, and was no longer a necessary or universally accepted requirement.

- **Delays licensure.** By requiring all psychologist candidates to complete a full year of supervised post-doctoral work experience, the Texas Psychologists' Licensing Act fails to consider a candidate's actual experience, delaying qualified individuals from becoming fully licensed psychologists. Individuals must repeat any supervised doctoral hours earned above the 1,750 hour cap in a post-doctoral setting before being licensed. This delay in licensure occurs while Texas, like the nation generally, faces a shortage of mental health care providers. The federal Department of Health and Human Services has identified 425 geographic areas in Texas, which are home to over 9.6 million Texans, without sufficient mental health care providers.<sup>2</sup> Requiring psychologist candidates to duplicate supervised work experience merely because it occurred before receiving their Ph.D. adds a delay to licensing qualified professionals that potentially contributes to this shortage.
- **No longer necessary.** The requirement to complete a specified amount of supervised work experience outside of a doctoral degree program has outlived its original purpose. Like most states, Texas adopted the supervision requirement several decades ago at a time when many doctoral degrees did not include substantial practical experience. Today, psychology doctoral

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*The post-doctoral supervision year delays licensing of needed mental health care providers.*

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programs include substantial amounts of direct practical experience. On average, psychology students earn about 2,000 hours of supervised work experience during the required doctoral internship at the end of their degree, with some earning significantly more.

- **National shift in supervision requirement.** Requiring a full year of supervised, post-doctoral practice is no longer a universally accepted requirement. Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set amount of

<b>States Without a Post-Doctoral Supervision Year</b>	
Alabama	New Mexico
Arizona	North Dakota
Connecticut	Ohio
Indiana	Pennsylvania
Kentucky	Utah
Maryland	Virginia
Massachusetts	Washington
Missouri	West Virginia
New Hampshire	Wyoming

supervised post-doctoral experience. In 2006, the American Psychological Association adopted a policy recommending states require only “supervised professional experience equivalent to two years of full-time training that can be completed prior or subsequent to the granting of the doctoral degree.”<sup>3</sup> Since then, a growing number of states have shifted away from requiring a post-doctoral supervision year. In 2016, Sunset staff identified 15 states that do not require a specific amount of supervised experience be earned after receiving a Ph.D. Instead, these states typically require a total amount of supervised work experience, allowing that experience to occur both during and after the degree program. Since the 2016 report, three more states have adopted this model, bringing the total to 18 states, as reflected in the textbox, *States Without a Post-Doctoral Supervision Year*.

## Recommendation

### Change in Statute

#### 4.1 Remove the requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

This recommendation would maintain the current statutory requirement that a psychologist candidate have at least two years of supervised experience to become a licensed psychologist. Candidates would still be required to earn a total of 3,500 hours of supervised experience. However, statute would authorize the psychology board to recognize all hours earned in a doctoral program as counting toward the two-year requirement. The board would retain authority to adopt rules regarding the nature of the supervised experience that would count toward the two-year requirement.

### Fiscal Implication

This recommendation would not have a fiscal impact to the state.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 501.252 (b), Texas Occupations Code; 22 T.A.C. Section 463.11.

<sup>2</sup> Bureau of Health Workforce Health Resources and Services Administration, U.S. Department of Health and Human Services, Designated Health Professional Shortage Areas Statistics, accessed January 2, 2018, <https://datawarehouse.hrsa.gov/Tools/hdwreports/reports.aspx>.

<sup>3</sup> American Psychological Association, Council Policy Manual, Board of Directors, “Doctorate as minimum entry into the professional practice of psychology,” (2006).

# ISSUE 5

## *Key Elements of the Psychology Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.*

### Background

The mission of the Texas State Board of Examiners of Psychologists is to protect the public's health and safety by ensuring providers of psychological services are qualified, competent, and adhere to appropriate professional standards. The agency accomplishes its mission through licensing psychologists, provisional psychologists, psychological associates, and specialists in school psychology, and by investigating complaints and taking disciplinary action when necessary.

The Sunset Advisory Commission has a long history of evaluating licensing agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed more than 100 reviews of licensing agencies, documenting standards to guide future reviews of licensing programs. While these standards provide guidance for evaluating a licensing agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Finding

#### **The Sunset Commission's recommendations to align the psychology board's licensing and regulatory functions with model standards continue to be needed**

In 2016, the Sunset Commission found several provisions in the board's statute that do not follow model standards and could potentially affect the fair treatment and efficient regulation of licensees.

- **Restrictive fee authority.** A licensing agency should have the authority to set appropriate fees to collect sufficient revenue to fund its operations. Setting a fee floor in statute limits an agency's ability to lower fees as conditions and policies change. Currently, statute prevents the psychology board from reducing certain fees below the amount set as of September 1, 1993.<sup>1</sup> As a result, among other set fees, the jurisprudence exam fee cannot be set lower than \$200, and the fee for full licensure as a psychologist cannot be lower than \$160. Removing statutory fee minimums would clarify the board's fee management authority to determine appropriate funding requirements, while still remaining accountable to the Legislature through the appropriations process.
- **Subjective licensure criteria.** Qualifications for licensure should not be subjective or unreasonably restrict entry to practice. Currently, statute requires provisional psychologists applying for the oral exam to be of "good moral character."<sup>2</sup> While Texas wants licensees to have good character, the

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*Qualifications for licensure should not be subjective or unreasonably restrictive.*

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phrase “good moral character” is not defined in the Psychologists’ Licensing Act, making it a subjective, vague requirement that may be inconsistently applied by the board. In practice, the agency generally relies instead on Chapter 53 of the Texas Occupations Code, which sets out more specific guidelines for denying a license based on an applicant’s criminal history.<sup>3</sup> Removing references to good moral character in statute and rule would better reflect the board’s current practice of reviewing applicants’ criminal histories under Chapter 53 and ensure, going forward, all applicants for licensure are objectively evaluated.

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*The board’s two-step process requires candidates to apply for licensure twice.*

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- **Unnecessary and burdensome license application requirements.** Licensure requirements should not arbitrarily burden applicants or create unreasonable barriers to entering the profession, and licensure processes should be designed to reduce administrative inefficiencies. Statute requires an inefficient and unnecessary two-step licensing process, which creates an unreasonable bureaucratic hurdle to licensure. Psychologist candidates must apply for licensure twice — once to receive a provisional license in order to take the national exam and again to attain full licensure once all other requirements have been met.<sup>4</sup> Currently, a provisionally licensed psychologist must hold a doctoral degree in psychology, meet character and fitness requirements, and pay a license fee. To become fully licensed, a provisionally licensed psychologist must pass the national exam and the board’s jurisprudence exam, complete a year of supervised work experience, and pay an additional license fee. For the agency, the process of tracking and maintaining multiple applications and licensure information for the same individual is duplicative and inefficient. Having a single, streamlined application to become a licensed psychologist would simplify the licensure process for applicants and alleviate administrative burdens on the agency. The agency could grant new licensees provisional status and specify the timeframe in which they must meet the requirements for full licensure.
- **Overly prescriptive license renewal requirements.** Regulatory agencies should have renewal processes that ensure adequate oversight of licensees and balance staff workload. While renewal processes help agencies ensure regulated individuals meet ongoing licensure requirements, like continuing education, having flexibility in timing of renewal can ease administrative burdens on agency staff. Currently, statute requires the board to annually renew licenses.<sup>5</sup> In recent years, other health licensing agencies have begun renewing licenses on a two-year cycle, including the boards overseeing physicians, pharmacists, and occupational therapists. Removing unnecessarily specific requirements for annual renewals would give the board more flexibility in considering staff and resource availability, and allow transition to a two-year renewal period in the future, if appropriate, without sacrificing oversight of license holders.

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*A two-year licensing renewal process would give the board more flexibility considering staff and resources.*

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Licensing agencies should also have clear authority to stagger renewals to prevent an influx of renewal applications overwhelming agency operations and jeopardizing timely processing. The board’s statute specifies the date on which particular licenses expire, but also authorizes the board to adopt



a system under which licenses expire throughout the year.<sup>6</sup> Currently, the board uses a staggered system for license expiration, but clarifying this in statute would provide better notice of renewal requirements to licensees.

- **Inadequate case resolution authority.** Authorizing an agency to issue remedial action plans provides a more complete range of enforcement actions and can promote fair and timely resolution of minor infractions. The board currently has authority to issue a full range of disciplinary actions based on the nature and severity of violations.<sup>7</sup> However, some minor, first-time violations may not necessarily warrant disciplinary action and could be more appropriately addressed through a non-disciplinary, remedial action. Other occupational licensing agencies, such as those regulating physicians and dentists, use similar remedial plans to address violations with low potential for patient harm. Authorizing the board to offer licensees a one-time remedial plan for minor violations would provide an additional option for resolving complaints quickly and effectively.
- **Unclear authority to require competency evaluations.** An agency should have clear authority to ensure compliance with enforcement efforts. Most agencies that regulate healthcare providers can require licensees to submit to physical or mental evaluations if there is probable cause of impairment due to a physical or mental health condition or substance abuse. Noncompliant licensees may then be ordered to show cause at a hearing as to why they should not be required to submit to a physical or mental evaluation and may face disciplinary actions for further noncompliance. Currently, statute allows the psychology board to request a licensee submit to a physical or mental evaluation.<sup>8</sup> If a licensee refuses to undergo an evaluation requested by the board, the agency may only require certain categories of licensees to attend a hearing to show cause.<sup>9</sup> This limits the board's ability to prevent potentially impaired practitioners from possibly putting patients at risk of harm. Clarifying statute will align the board's process with that of other occupational licensing boards and will affirm the board's authority to require physical or mental evaluations and to order hearings to show cause for noncompliance.
- **Narrow confidentiality for complaint information.** Agencies should make final enforcement information accessible to the public, but information relating to a complaint or investigation should not generally be subject to disclosure. Potentially injurious allegations may not be substantiated during an investigation, or the alleged misbehavior may not be within an agency's authority to discipline. Furthermore, requests for information related to an ongoing investigation may complicate or even prevent an agency's enforcement operations. Currently, the board's statute only recognizes confidentiality of complaint and investigatory information for licensees, despite the fact that the board may open investigations on applicants or other non-licensees, such as individuals practicing without a license.<sup>10</sup> By expanding the confidentiality of complaint and investigative information to applicants and non-licensees, the board's statute will be more consistent with regulatory standards.

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*The board should offer remedial plans for minor violations.*

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*Complaint investigation information should not be subject to disclosure.*

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## Recommendations

### *Change in Statute*

#### **5.1 Remove the statutory limitation restricting the board's authority to lower fees.**

This recommendation would remove the fee floor currently listed in statute. The board would have greater discretion to set its own fees, giving the agency increased autonomy over its funding structure while still being subject to legislative oversight through the appropriations process.

#### **5.2 Remove subjective licensure qualifications.**

This recommendation would remove the requirement for applicants to be of "good moral character," a vague, subjective, and difficult-to-enforce standard. The board would continue to receive and review criminal history information to determine an applicant's eligibility for licensure according to requirements in Chapter 53, Texas Occupations Code.

#### **5.3 Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.**

This recommendation would remove the statutory requirement for the board to issue a separate provisional psychologist license and replace it with the authority to grant provisional licensure status to applicants until they meet the requirements for full licensure. Under this recommendation, candidates would submit a single license application and pay a single application fee. The board would have authority to grant provisional status to those applicants who have received a Ph.D. in psychology but must still complete other licensure requirements, such as passing the national and jurisprudence exams. The board would also establish in rule a time limit for practicing under a provisional license without attaining full licensure. This recommendation would not alter the current requirements of provisionally licensed candidates or the requirements they must complete to gain full licensure. This recommendation would simply remove bureaucratic hurdles for both the applicants and agency staff and improve the efficiency of the agency's licensing process.

#### **5.4 Authorize the board to provide biennial license renewal.**

This recommendation would reduce staff time spent on renewing licenses without compromising agency oversight of licensees. This recommendation would also clarify the board's ability to stagger license renewals based on the license holders' birth month.

#### **5.5 Authorize the board to issue remedial plans to resolve minor complaints.**

This recommendation would provide the agency authority to resolve minor violations with a non-disciplinary remedial plan. In keeping with the process used by other licensing boards, this authority should be limited to once per licensee and only for violations that do not present a significant risk of harm to patients, such as basic record keeping violations. The board should specify the types of violations that are ineligible for resolution with a remedial plan, which must include any violations that could be appropriately resolved by license revocation or suspension. The agency should maintain information on the number of remedial plans entered into and the types of violations for which the plans were imposed.

## 5.6 Clarify the agency's authority to require physical or mental evaluations and hold related hearings for noncompliance.

This recommendation would clarify that, in conjunction with the agency's existing authority to request an applicant or licensee to undergo a physical or mental evaluation based on reasonable suspicion of impairment, the board would also be authorized to hold hearings and take disciplinary action against applicants and licensees for noncompliance.<sup>11</sup> Ultimately, this recommendation would better equip the board to address suspected impairment and protect the public.

## 5.7 Extend confidentiality of complaint and investigative information to applicants and non-licensees.

This recommendation would remove the reference to "license holder" from the board's confidentiality statute to extend confidentiality of complaint or investigative information to all individuals subject to the board's existing enforcement authority. This recommendation would bring the board's practices in line with other occupational licensing agencies.

## Fiscal Implication

These recommendations would not have a significant fiscal impact to the state. The board would be able to implement the recommendations with existing resources. The recommendation to eliminate the provisional psychologist license as a separate license would eliminate the fee authority for and revenue from that license, which was \$103,020 in fiscal year 2017. However, the board would retain authority to adjust its application fee for full licensure to prevent any loss of revenue. In addition, the board should see some savings in the form of administrative efficiencies by not having to process two separate applications for licensure.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 501.152(b), Texas Occupations Code.

<sup>2</sup> Section 501.255(a)(3), Texas Occupations Code.

<sup>3</sup> Chapter 53, Texas Occupations Code; 22 T.A.C. Section 469.7(e).

<sup>4</sup> Sections 501.252–.254, Texas Occupations Code.

<sup>5</sup> Section 501.301, Texas Occupations Code.

<sup>6</sup> Sections 501.301(a) and (b), Texas Occupations Code.

<sup>7</sup> Sections 501.401–.410 and .451, Texas Occupations Code; and 22 T.A.C. Sections 470.21–.22.

<sup>8</sup> Section 501.158(b), Texas Occupations Code.

<sup>9</sup> Ibid, (c).

<sup>10</sup> Section 501.205(a), Texas Occupations Code. A 2012 attorney general opinion interpreting the board's statute affirmed the limited applicability of confidentiality to licensees. Op. Tex. Att'y Gen. No. OR2012-05337 (2012).

<sup>11</sup> Sections 501.158(b) and (c), Texas Occupations Code.



# ISSUE 6

## *Texas Should Adopt the Psychology Interjurisdictional Compact.*

### Background

The Psychology Interjurisdictional Compact (PSYPACT) is an interstate compact designed to facilitate both the practice of telepsychology and the temporary in-person practice of psychology across state boundaries. PSYPACT becomes operational once seven states enact the compact legislation. At this time, three states — Arizona, Nevada, and Utah — have adopted the compact. Six states — Colorado, Georgia, Illinois, Missouri, Nebraska, and Rhode Island — have introduced legislation to adopt the compact, and the psychology boards in four states — Ohio, New Mexico, Texas, and Wisconsin — have endorsed the adoption of PSYPACT. The Texas State Board of Examiners of Psychologists voted unanimously to support PSYPACT in 2016.

The Association of State and Provincial Psychology Boards will administer the compact, through a fee assessed against member states. Once PSYPACT becomes operational, licensed psychologists in compact states can apply for one or more of the certificates required to participate in PSYPACT — the E.Passport to practice telepsychology and the Interjurisdictional Practice Certificate (IPC) for the temporary in-person, face-to-face practice of psychology for 30-days. Each state would continue to have disciplinary authority over licensees practicing within its borders; and compact states would exchange information regarding disciplinary action and license verification.

Texas currently allows licensed psychologists to provide telepsychology services to Texas patients, and allows out-of-state licensees to practice within Texas for up to 30 days per year, if the licensee requests and is granted a temporary license from the psychology board before providing services.<sup>1</sup>

### Finding

#### **The Sunset Commission's recommendation to adopt PSYPACT continues to be appropriate.**

In 2016, the Sunset Commission concluded Texas would benefit from the adoption of PSYPACT. The Commission found the compact would benefit both psychologists licensed in Texas and Texans seeking psychological services, while not affecting the way the practice of psychology is currently regulated by the state.

- **Increased access to care.** The overall purpose of PSYPACT is to increase mobility for licensed psychologists and facilitate better continuity of care when a patient travels or relocates. PSYPACT would help ensure state lines do not disrupt the ability of psychologists to continue to care for their existing clients. In addition, PSYPACT's flexibility and mobility support Texas' efforts to encourage out-of-state licensees to come to Texas, which could help ease the growing shortage of mental health care providers.
- **Increased reciprocity.** Texas licensees do not always receive the same ability or flexibility to practice in other states that Texas provides to out-

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*PSYPACT could help ease the growing shortage of mental health care providers.*

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of-state licensees. The Texas psychology board already allows psychologists licensed in other states to practice within Texas for up to 30 days per year under a temporary license, including by providing telepsychology. Many other states do not provide these same opportunities to Texas psychologists. Instead, to practice in another state, Texas psychologists must obtain and pay for dual-licensure or move to the state in which they wish to practice. PSYPACT would allow Texas psychologists to practice in other compact states while still residing and working in Texas, helping ensure Texas does not lose psychologists to other states.

- **Continuity of regulation.** Under PSYPACT, member states retain their ability to regulate telepsychology and face-to-face practice within their states. Texas would continue to have authority to discipline its licensees, and disciplinary actions taken against PSYPACT participants are shared between compact states. The compact also does not expand scope of practice for psychology.

## Recommendation

### *Change in Statute*

#### **6.1 Adopt the Psychology Interjurisdictional Compact.**

This recommendation would add the Psychology Interjurisdictional Compact language to statute, making Texas the fourth state to adopt the compact. PSYPACT would become operational after seven states join the compact. Licensed Texas psychologists would benefit from increased options to practice in person temporarily in other states and to provide telepsychology services. Texas consumers would benefit from an increase in available mental health care practitioners.

### **Fiscal Implication**

This recommendation would not have a fiscal impact to the agency or the state at this time. If seven states adopt the compact and it becomes operational, the psychology board estimates an annual administration fee of around \$6,000.

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<sup>1</sup> 22 T.A.C. Section 463.27.

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# APPENDICES





# APPENDIX A

## Behavioral Health Boards Enforcement Actions – FY 2017

	Marriage and Family Therapist	Professional Counselor	Social Worker
Total complaints received	60	309	150
Jurisdictional complaints received	54	302	149
Jurisdictional complaints resolved	101	183	266
Types of Complaints Received			
Advertising/mislabeling	3	7	2
Confidentiality	2	16	2
Criminal history	2	26	12
Fraud/deceit/bribery	3	14	11
Order non-compliance	0	2	1
Other	0	1	0
Practice without a license	3	27	20
Sexual misconduct	3	13	10
Standard of care/service/product	21	68	35
Unprofessional conduct	23	135	57
<b>Total</b>	<b>60</b>	<b>309</b>	<b>150</b>
Enforcement Actions Taken			
<i>Disciplinary Actions</i>			
Administrative penalty	0	0	1
Suspension	1	0	2
Probated suspension	3	6	21
Reprimand	0	3	0
Revocation	0	0	1
Voluntary surrender/surrender	2	3	1
<i>Non-Disciplinary Actions</i>			
Cease-and-desist letter	5	1	4
Complaint withdrawn	1	3	4
License expiration	3	17	19
No violation/not substantiated	67	109	139
Violation found but corrected	1	7	0
Warning letter	18	34	74
<b>Total</b>	<b>101</b>	<b>104</b>	<b>266</b>



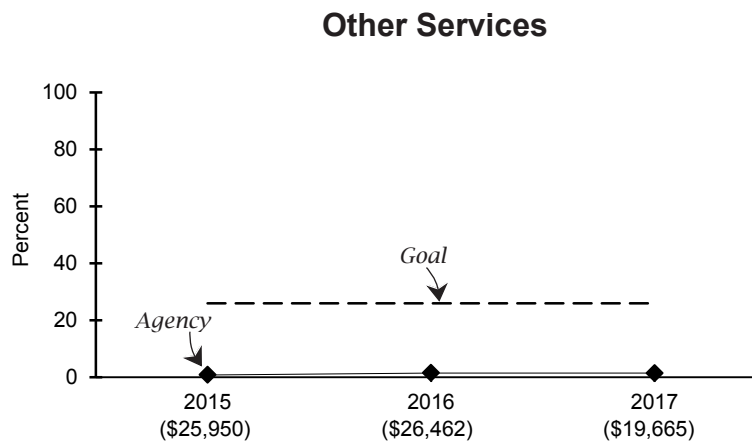
# APPENDIX B

## ***Texas State Board of Examiners of Psychologists Historically Underutilized Businesses Statistics 2015 to 2017***

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

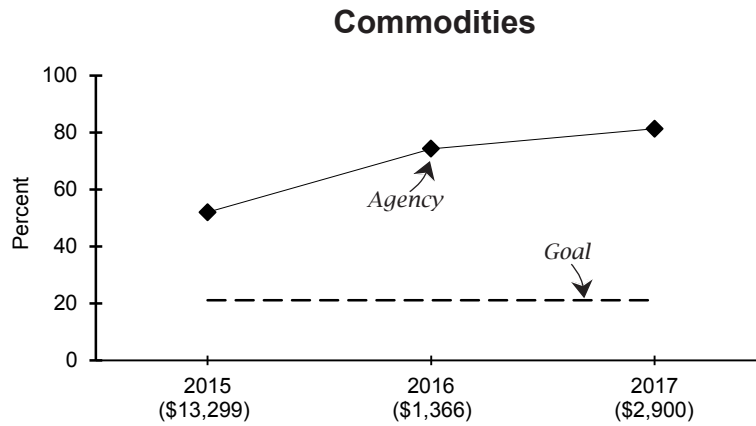
The following material shows trend information for the Texas State Board of Examiners of Psychologists' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The Texas State Board of Examiners of Psychologists has complied with most HUB program requirements. The board does not make purchases within most state procurement categories, but does report data on purchases in the categories of other services and commodities.



The board has had difficulty meeting the statewide purchasing goal for other services, failing to meet the statewide goal during the last three fiscal years. The board's expenditures in other services typically consist of contracts with licensees who assist the board in administering the oral exam; serve on committees and working groups established by the board; and serve as professional reviewers of enforcement cases. Due to the specialized nature of these services, the board often has difficulty securing the services from a HUB vendor.

## Appendix B



The board exceeded the statewide goal for commodity purchases during the last three fiscal years.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

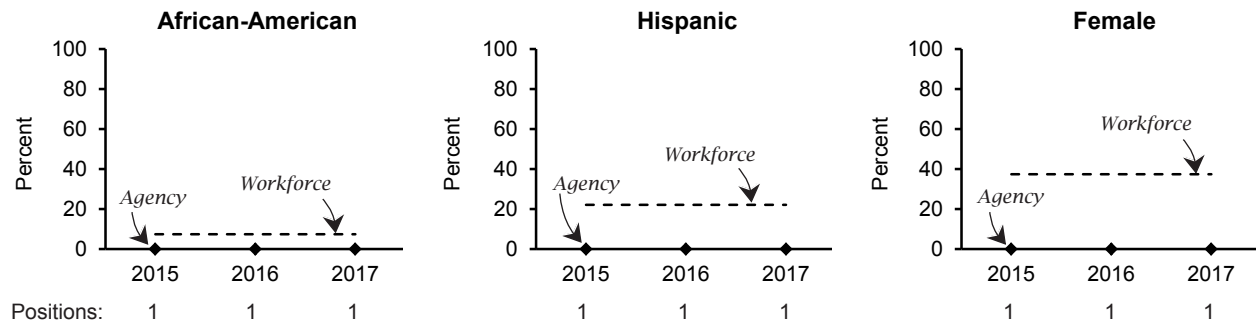
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX C

## Texas State Board of Examiners of Psychologists Equal Employment Opportunity Statistics 2015 to 2017

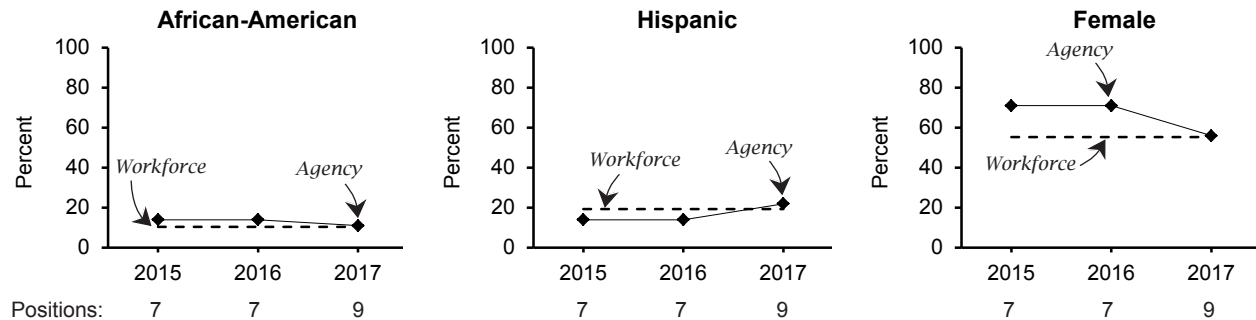
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas State Board of Examiners of Psychologists.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The board generally met or exceeded several statewide civilian workforce percentages for the past three fiscal years.

### Administration



The board did not meet the statewide civilian workforce percentages in administration for African-American, Hispanic, or female employees. However, the board only has one administration position.

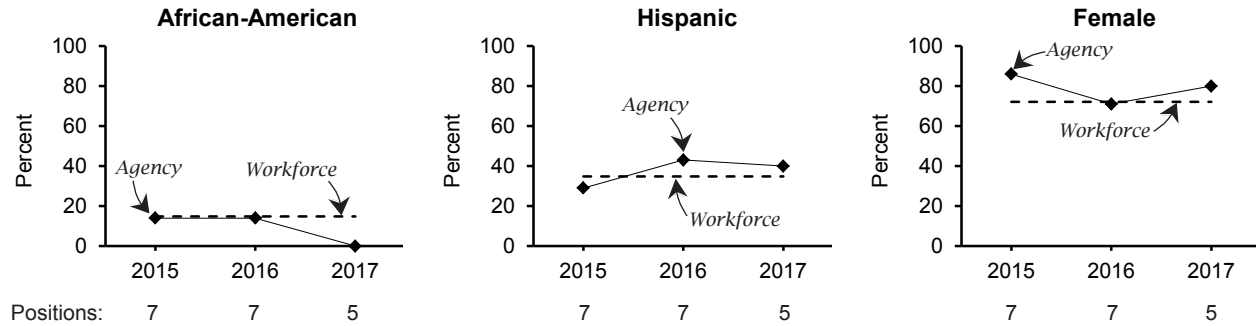
### Professional



The board generally met or exceeded the workforce percentages for women and minorities in professional positions.

## Appendix C

### Administrative Support



The board generally met or exceeded the workforce percentages for women and minorities in administrative support positions. However, the board fell below the percentages for Hispanics in 2015 and African-Americans in 2017.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

# APPENDIX D

## *Staff Review Activities*

During the review of the behavioral health boards, Sunset staff attended various meetings of each board and interviewed agency staff, board members, and the professional associations for each license. Sunset staff also engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; conducted interviews and solicited written comments from interest groups, stakeholders, and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, during the 2016 review of these boards, Sunset staff performed the following activities:

- Reviewed agency enforcement case files, observed complaints/ethics committee meetings, and observed informal settlement conferences for all four behavioral health boards
- Surveyed state and national interest groups, individual licensees, and other stakeholders
- Conducted an extensive review of Department of State Health Services enforcement case files
- Attended the administration of the psychology board's oral exam and observed staff involvement, examinations, and scoring procedures; and reviewed materials related to past oral examinations
- Spoke with representatives from university departments of psychology and education across Texas, as well as representatives from public school districts and private schools
- Interviewed representatives from the American Psychological Association and the Association of State and Provincial Psychology Boards





Sunset Staff Review of the  
*Texas State Board of Examiners of  
Marriage and Family Therapists*  
*Texas State Board of Examiners  
of Professional Counselors*  
*Texas State Board of Social Worker Examiners*  
*Texas State Board of Examiners of Psychologists*

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