

# **Self-Evaluation Report**

## **Texas State Board of Examiners of Dietitians**



Presented to the  
**Sunset Advisory Commission**

**August 2003**

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## Texas State Board of Examiners of Dietitians Self-Evaluation Report

### I. Key Functions, Powers, and Duties

**A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.**

The Texas State Board of Examiners of Dietitians is the licensing and regulatory authority for dietitians in Texas. The board's primary mission is to enforce licensure rules and standards for dietitians as a means to identify competent providers and promote public health, safety, and welfare. The board accomplishes its mission within the parameters established by Texas Occupations Code, Chapter 701.

The board is organizationally placed within the Professional Licensing and Certification Division, Texas Department of Health (TDH). TDH employs staff and provides necessary facilities and infrastructure to carry out the board's functions. Board members are appointed by the governor. The board is empowered to promulgate rules necessary to carry out its duties.

Key functions, powers, and duties of the Texas State Board of Examiners of Dietitians are:

- To establish the qualifications and fitness of applicants for licenses, including renewed and reciprocal licenses and to issue licenses and license renewals (Occupations Code § 701.151(3)).
- To revoke, suspend, or deny a license, probate a license suspension, or reprimand a license holder for a violation of the Licensed Dietitian Act or the rules of the board (Occupations Code § 701.151(4)).
- To adopt and publish a code of ethics for dietitians (Occupations Code § 701.151(2)).
- To adopt rules consistent with Occupations Code, Chapter 701 (Occupations Code § 701.152(a)).
- To establish reasonable and necessary fees to administer the chapter (Occupations Code § 701.151(6)).
- To prepare and distribute information of public interest describing the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board (Occupations Code § 701.201(a)).
- To adopt rules concerning the investigation and disposition of a complaint filed with the board (Occupations Code § 701.204).
- To establish the minimum number of hours of continuing education required to renew a dietitian license (Occupations Code § 701.303).

**B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?**

Yes.

**C. Please explain why these functions are needed. Are any of these functions required by federal law?**

Public health, safety, and welfare considerations lead to the conclusion that persons competent to practice dietetics should be identified and regulated. This includes demonstrating minimum educational achievement and experience, as well as adherence to professional standards in the delivery of dietetic services. Dietitians should be required to further their knowledge and skill levels annually and report to the board events (such as criminal convictions) that could affect their fitness to practice.

Since each jurisdictional complaint is potentially a situation in which the well-being of clients is compromised, each complaint should be investigated. When an investigation indicates that a violation has occurred, it is in the public interest to initiate disciplinary proceedings against the dietitian. Depending on the situation, a range of discipline may be imposed, up to and including revocation of the dietitian's right to use the title "licensed dietitian" and hold a dietitian license in this state.

Public information is necessary to inform dietitians and Texans of the code of ethics and complaint procedures.

The functions of the Texas State Board of Examiners of Dietitians are required and/or authorized by state, not federal, law.

**D. In general, how do other states carry out similar functions?**

According to the American Dietetic Association's *Professional Regulation Profile Update*, 42 states license, register, or certify dietitians. Twenty-seven of those states have enacted licensing and practice statutes, which prohibit performance of the profession without first obtaining a license from the state. Fifteen states, including Texas, have enacted statutes that confer certification, licensure, or registration status to persons meeting predetermined requirements, although persons not certified, licensed, or registered can still practice the profession.

**E. Describe any major agency functions that are outsourced.**

Occupations Code, Chapter 701.253 requires the board to prepare or approve a licensure examination. The Act also provides that an examination prescribed by the board may be or may include an examination given by the Commission on Dietetic Registration or by a national or state testing service instead of an examination prepared by the board.

The board has a written agreement with the Commission on Dietetic Registration (CDR), the credentialing agency for the American Dietetic Association, for use of the CDR Exam as the board's licensing examination.

**F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.**

None anticipated.

**G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Public Information (Open Records) Act, the Open Meetings Act, or the**

Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1999 - 2003, or earlier significant Attorney General opinions, that affect the agency's operations.

<b>Texas State Board of Examiners of Dietitians Exhibit 1: Statutes/Attorney General Opinions</b>	
<b>Statutes</b>	
<b>Citation/Title</b>	<b>Authority/Impact on Agency</b> (e.g., "provides authority to license and regulate nursing home administrators")
Occupations Code, Chapter 701 Licensed Dietitian Act	Creates the Texas State Board of Examiners of Dietitians within the Texas Department of Health and provides authority to regulate and discipline dietitians.
Occupations Code, Chapter 101 Health Professions Council Act	Creates the Health Professions Council and defines membership to include the licensing boards and programs of the health licensing division of Texas Department of Health (including the Texas State Board of Examiners of Dietitians).
Occupations Code, Chapter 53 Consequences of Criminal Conviction	Provides authority to revoke, suspend, or deny a license based on criminal convictions in certain circumstances.
Education Code, § 57.491 Loan Default Ground for Nonrenewal of Professional or Occupational License	Prohibits the board from renewing the license of a licensee whose name is on a default list provided by the Texas Guaranteed Student Loan Corporation.
Family Code, Chapter 232 Suspension of License	Requires the board to suspend a license upon receipt of a court order suspending the license for failure to comply with the terms of a child custody order or failing to pay child support.
Title IV, Public Law 99-660, Health Care Quality Improvement Act of 1986 and 45 CFR Part 60.	Established the National Practitioners Data Bank. Requires the board to report certain disciplinary actions to the NPDB.
<b>Attorney General Opinions</b>	
<b>Attorney General Opinion No.</b>	<b>Impact on Agency</b>
No current opinions impacting the agency.	

**H. Please fill in the following chart:**

<b>Texas State Board of Examiners of Dietitians Exhibit 2: Agency Contacts</b>				
	<b>Name</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>

<b>Agency Head</b>	Jeanette Hilsabeck Executive Secretary	1100 West 49 <sup>th</sup> Street Austin TX 78756	(512) 834-4565 (512) 834-6677 fax	jeanette.hilsabeck@tdh.state.tx.us
<b>Board Chair</b>	Ralph McGahagin Licensed Dietitian			
<b>Agency's Sunset Liaison</b>	Stephen Mills Program Specialist	1100 West 49 <sup>th</sup> Street Austin TX 78756	(512) 834-6628 (512) 834-6677 fax	stephen.mills@tdh.state.tx.us

## II. History and Major Events

**Provide a time line discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events, and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

1983 The 68<sup>th</sup> Legislature enacted the Licensed Dietitian Act, effective September 1, 1993. Texas Dietetic Association worked closely with legislators on the bill. The Act was codified in Vernon's Texas Civil Statutes, Article 4512h. The Act created the Texas State Board of Examiners of Dietitians, which first met on November 14, 1983 at Texas Department of Health in Austin, Texas. The board was empowered to qualify, license, and regulate dietitians. The board was created within the Texas Department of Health and organizationally placed with the Hospital and Professional Licensure Division (later, the Professional Licensing and Certification Division).

1985 TDH, on behalf of the board, contracted with the Commission on Dietetic Registration (CDR) for use of the CDR Exam as the board's licensure examination. Although no longer a contractual arrangement, the agreement continues to the present.

1993 The Sunset Advisory Commission reviewed the Texas State Board of Examiners of Dietitians and recommended continuation of the agency's functions with modifications to the enabling statute. The 73<sup>rd</sup> Legislature enacted amendments to the Act based on Sunset across-the-board recommendations.

1999 The 76<sup>th</sup> Legislature recodified the Act as Texas Occupations Code, Chapter 701.

2003 The 78<sup>th</sup> Legislature amended the Act to grant authority to assess administrative penalties and to authorize the board to suspend a license on an emergency basis for violations of the Act and/or rules.

2003 The board's program and staff, along with 19 other regulatory programs housed within TDH's Professional Licensing and Certification Division (PLCD), are reorganized along functional lines, instead of a programmatic arrangement that has been in place since the division's inception in 1985. The PLCD budget (5B508 building block) was reduced by 4.5 FTEs for the biennium. The reorganization is scheduled for implementation on September 1, 2003.

### III. Policymaking Structure

Texas State Board of Examiners of Dietitians Exhibit 3: Policymaking Body					
Member Name	6 Year Terms/ Appointment Dates/ Appointed by ____	Qualification	Address	Telephone & Fax Numbers	E-mail Address
Elizabeth S. Blakely	January 1998 – September 2003  Governor	Public			
Carol B. Davis	October 2002 – September 2005  Governor	Public			
Lucinda M. Flores	January 1998 – September 2003  Governor	Dietitian			
Janet S. Hall	November 2002 – September 2007  Governor	Dietitian			
Claudia Lisle	November 2002 – September 2007  Governor	Public			
Ralph McGahagin	October 1999 – September 2005	Dietitian			

	Governor				
Amy McLeod	May 2003 - September 2007	Dietitian			
	Governor				
Amy W. Scott	January 1998 – September 2003	Dietitian			
	Governor				
Gene Wisakowsky	October 1999 – September 2005	Dietitian			
	Governor				

**B. How is the chair of the policymaking body appointed?**

Occupations Code § 701.057 provides that “Not later than the 30<sup>th</sup> day after the date the governor appoints new board members, the board shall meet to elect a presiding officer and assistant presiding officer, who hold office according to board rules.” The board’s rules at 22 TAC § 711.2(n) provide that a chairman and vice-chairman shall be elected at the board meeting held nearest to August 31 of each year and that a board member shall not serve more than two consecutive terms in either of those offices.

**C. Describe the primary role and responsibilities of the policymaking body.**

General powers and duties of the board are set out in Occupations Code § 701.151; specific powers and duties are established throughout the chapter.

The board’s primary role is to adopt and enforce rules relating to the licensure of dietitians, including discipline of dietitians found to be in violation of the Licensed Dietitian Act or board rules.

**D. List any special circumstances or unique features about the policymaking body or its responsibilities.**

A feature that distinguishes the board from other regulatory boards administratively attached to TDH, Professional Licensing and Certification Division, is the title protection nature of the Licensed Dietitian Act. A dietitian must hold a license in order to use the title “licensed dietitian” in Texas. The title protection licensing program protects the public in that it identifies competent providers who have the appropriate knowledge and training to provide dietetic services. However, a person who engages in the practice of dietetics is not subject to regulation if the person does not use the protected title.

**E. In general, how often does the policymaking body meet? How many times did it meet in FY 2002? in FY 2003?**

Occupations Code § 701.058 requires the Texas State Board of Examiners of Dietitians to hold at least two regular meetings each year. In FY 2002 and FY 2003, the board held two meetings each fiscal year.



**F. What type of training do the agency's policymaking body members receive?**

Occupations Code § 101.101 requires the Health Professions Council to establish a training program for the governing bodies of state agencies that regulate health professions. The member must complete the training program prior to assuming the member's duties. The training curriculum created by the Health Professions Council was adapted for regulatory programs within the Professional Licensing and Certification Division, Texas Department of Health.

The training program includes information regarding the enabling legislation; the functions of the licensing program; the role of the program and the board; the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for the Board; the requirements of the open meetings law, Chapter 551, Government Code; the requirements of the open records law, Chapter 552, Government Code; the requirements of the administrative procedure law, Chapter 2001, Government Code; the requirements of the conflict of interest laws and other laws relating to public officials; and any applicable ethics policies adopted by the Texas Ethics Commission. Additionally, board members receive information concerning the board's unique placement within the Texas Department of Health and the staff, structure, and strategic plan of the Professional Licensing and Certification Division.

**G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.**

Yes. Occupations Code § 701.104 requires the board to develop and implement policies that clearly define the respective responsibilities of the board and the board's staff. The policy delineates 18 responsibilities of the board and 22 responsibilities of the board's staff. A copy of the policy is included as Attachment 22.

**H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.**

Texas State Board of Examiners of Dietitians Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How are members appointed?	Purpose/Duties	Legal Basis for Committee
Complaints Committee	3 members  One public board member and two dietitian board members.  Committee members are appointed by the Chair of the board for two year terms.	To review complaints filed against licensed dietitians and recommend action to be taken on complaints.	The Licensed Dietitian Act provides that the board may adopt rules consistent with the Act (Occupations Code § 701.152). The board's rules at 22 TAC § 711.2(o) set out requirements for the board's committees.

<p>Program Approval Committee</p>	<p>3 members  Three dietitian board members.  Committee members are appointed by the Chair of the board for two year terms.</p>	<p>To review applications for internship and preplanned professional experience programs and approve or deny the applications.</p>	<p>The Licensed Dietitian Act provides that the board may adopt rules consistent with the Act (Occupations Code § 701.152). The board's rules at 22 TAC § 711.2(o) set out requirements for the board's committees.</p>
<p>Consumer Information Committee</p>	<p>3 members  One public board member and two dietitian board members.  Committee members are appointed by the Chair of the board for two year terms.</p>	<p>To recommend the publication of consumer information related to the board and guide the preparation of consumer-related publications.</p>	<p>The Licensed Dietitian Act provides that the board may adopt rules consistent with the Act (Occupations Code § 701.152). The board's rules at 22 TAC § 711.2(o) set out requirements for the board's committees.</p>
<p>Rules Committee</p>	<p>3 members  1 public and 2 dietitian board members  Committee members are appointed by the Chair of the board for two year terms.</p>	<p>To consider matters relating to rule amendments, new rules, and rule reviews.</p>	<p>The Licensed Dietitian Act provides that the board may adopt rules consistent with the Act (Occupations Code § 701.152). The board's rules at 22 TAC § 711.2(o) set out requirements for the board's committees.</p>

**I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?**

The Texas State Board of Examiners of Dietitians uses a variety of mechanisms to obtain and incorporate public input. The board considers obtaining and using public input to be of critical importance in carrying out its duty to protect and promote the public health and safety by regulating the practice of licensed dietitians.

Each committee and board meeting agenda has a public comment item. Controversial or difficult issues and public comments on those issues are comprehensively discussed in both committee and board meetings.

The board's membership structure and committee composition lend themselves to considerable input from the public. Four board members represent the public and board committees, with the exception of the Program Approval Committee, are made up of at least one public member.

In the area of rulemaking, the board notifies stakeholders of rule issues early in the development phase. Stakeholders are encouraged to participate in committee and board meetings in which rules are drafted, discussed, or approved. Additionally, the board has established, by rule, provisions providing for any person to petition the board for the adoption of a rule. Finally, the board fully considers all written comments received during the statutory public comment period. Rule proposals and adoptions are posted on the board's website and regularly updated.

## IV. Funding

### Introduction

The Texas State Board of Examiners of Dietitians is administratively attached to Texas Department of Health (TDH). TDH provides staff, facilities, and infrastructure necessary to accomplish the board's mission and functions. This unique arrangement has implications for much of the information requested in Section IV (Funding) and V (Organization) of this Self-Evaluation Report.

The board is funded through a shared appropriation to TDH to fund the C.1.1. strategy (Health Care Standards). The legislative appropriation is made to TDH, not to the board. The General Appropriations Act (GAA) does not contain a line-item appropriation to the board, in fact, the GAA does not mention the board. Consequently, the board does not prepare a Legislative Appropriations Request. All revenue and expenditures are processed, accounted for, tracked, and audited through the TDH budget, fiscal, and audit structures.

It is important to note that the fee revenues exceed the direct and indirect costs of operating the board's program.

Due to the absence of a legislative appropriation, the board is unable to hire staff or expend funds in its own name. The requested information regarding Equal Employment Opportunity statistics and policy, Historically Underutilized Business purchases, expenditures by strategy, objects of expense from the GAA, and FTE cap is not available by program. The information is available regarding TDH in an agency-wide format. Expenditure allocation tracking by program activity code in the Health and Human Services Accounting System (HHSAS) is the foundation for tracking program costs. Some information requested in Section IV (Funding) and V (Organization) is available in a format that is specific to the board, with some necessary modifications, and the modified information is submitted in this report.

#### **A. Describe the agency's process for determining budgetary needs and priorities.**

For each of the 19 programs, TDH Professional Licensing and Certification Division management use the following process to project operating costs for the fiscal year. First salaries are projected using the labor account default percentages as an estimate of salary categories (direct staff, shared staff, investigation, testing, and general counsel.) Retirement and fringe benefits are projected based on the current percentage. Professional services and per diem (if board members receive it by law) are projected for services that each board will use during the year for special services such as testing, complaint review, and other specialized services. Travel costs are an estimate of the travel needed for board members and staff, based on the amount expended in prior years, current fiscal year needs, and the amount that the division's total allocation can support per program. Other operating costs are projected costs for each program, such as postage, telephone, printing, office supplies, registrations, copier rental, equipment

maintenance, training, and membership in the Health Professions Council. This is an estimate based on the amount expended in prior years and the amount that the division's total allocation can support per program. Third party reimbursement is utilized to cover other operating costs for some programs. Information systems charges are an estimate based on a percentage of the prior year's division total cost for infrastructure and direct program support billing. Indirect costs are projected based on the current percentage. Projected revenue is based on the prior year's revenue and last year's third party reimbursement (not all programs collect third party reimbursement.)

**PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.**

**B. Show the agency's sources of revenue. Please include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency.**

Texas State Board of Examiners of Dietitians Exhibit 5: Sources of Revenue — Fiscal Year 2002 (Actual)	
Source	Amount
General Revenue Fund	163,646
<b>TOTAL</b>	163,646

**C. If you receive funds from multiple federal programs, show the types of federal funding sources.**

Texas State Board of Examiners of Dietitians Exhibit 6: Federal Funds — Fiscal Year 2002 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
<b>TOTAL</b>		<b>N/A</b>		

**D. If applicable, please provide detailed information on fees collected by the agency.**

Texas State Board of Examiners of Dietitians Exhibit 7: Fee Revenue and Statutory Fee Levels — Fiscal Year 2002				
Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)

Application fee Occupations Code § 701.154	54.00/None	295	15,930	General Revenue Fund
License renewal fee Occupations Code § 701.154	45.00/None	3195	143,775	General Revenue Fund

**E. Show the agency's expenditures by strategy.**

Please refer to the Section IV introductory information.

<b>Texas State Board of Examiners of Dietitians Exhibit 8: Expenditures by Strategy — Fiscal Year 2002 (Actual)</b>	
Goal/Strategy	Amount
<b>GRAND TOTAL:</b>	

**F. Show the agency's expenditures and FTEs by program.**

<b>Texas State Board of Examiners of Dietitians Exhibit 9: Expenditures and FTEs by Program — Fiscal Year 2002 (Actual)</b>					
Program	Budgeted FTEs, FY 2002	Actual FTEs as of August 31, 2002	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
Licensing and Regulation of Dietitians	1.2	1.2	N/A	74,680	74,680
<b>TOTAL</b>	1.2	1.2	N/A	74,680	74,680*

\* This represents direct and investigation staff without fringe benefits and indirect cost rate applied.

**G. Show the agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2004-2005.**

Please refer to the Section IV introductory information and also see Attachment 8. The board's funding is within the attached building block.

Texas State Board of Examiners of Dietitians Exhibit 10: Objects of Expense by Program or Function -- Fiscal Year 2004			
Object-of-Expense Informational Listing	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)
<b>Total, FY 2004 Object-of-Expense Informational Listing</b>			

Objects of Expense by Program or Function -- Fiscal Year 2005			
Object-of-Expense Informational Listing	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)	Strategy, Program, Division, or Function ____ (insert strategy, division or program name)
<b>Total, FY 2005 Object-of-Expense Informational Listing</b>			

**H. Please fill in the following chart.**

Please refer to the Section IV introductory information.

**Texas State Board of Examiners of Dietitians  
Exhibit 11: Purchases from HUBs**

FISCAL YEAR 2000				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
<b>TOTAL</b>				
FISCAL YEAR 2001				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
<b>TOTAL</b>				
FISCAL YEAR 2002				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
<b>TOTAL</b>				

**I. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?**

Please refer to the Section IV introductory information.

**J. For agency with contracts valued at \$100,000 or more:**

Not applicable

	Response / Agency Contact
Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available under contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)	

**K. For agencies with biennial appropriations exceeding \$10 million:**

Not applicable

	Response / Agency Contact
Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)	
Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)	
Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128)	

**V. Organization**

**Introduction**

The Texas State Board of Examiners of Dietitians is administratively attached to Texas Department of Health (TDH). TDH provides staff, facilities, and infrastructure necessary to accomplish the board’s mission and functions. This unique arrangement has implications for much of the information requested in Section IV (Funding) and V (Organization) of this Self-Evaluation Report.

The board is funded through a shared appropriation to TDH to fund the C.1.1. strategy (Health Care Standards). The legislative appropriation is made to TDH, not to the board. The General Appropriations Act (GAA) does not contain a line-item appropriation to the board, in fact, the GAA does not mention the board. Consequently, the board does not prepare a Legislative Appropriations Request. All revenue and expenditures are processed, accounted for, tracked, and audited through the TDH budget, fiscal, and audit structures.

It is important to note that the fee revenues exceed the direct and indirect costs of operating the board’s program.



Due to the absence of a legislative appropriation, the board is unable to hire staff or expend funds in its own name. The requested information regarding Equal Employment Opportunity statistics and policy, Historically Underutilized Business purchases, expenditures by strategy, objects of expense from the GAA, and FTE cap is not available by program. The information is available regarding TDH in an agency-wide format. Expenditure allocation tracking by program activity code in the Health and Human Services Accounting System (HHSAS) is the foundation for tracking program costs. Some information requested in Section IV (Funding) and V (Organization) is available in a format that is specific to the board, with some necessary modifications, and the modified information is submitted in this report.

**A. Please fill in the chart below. If applicable, list field or regional offices.**

Texas State Board of Examiners of Dietitians Exhibit 12: FTEs by Location — Fiscal Year 2002			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2002	Number of Actual FTEs as of August 31, 2002
Central Headquarters Texas Department of Health	Austin		
<b>TOTAL</b>			

**B. What was the agency's FTE cap for fiscal years 2002 - 2005?**

Please refer to the Section V introductory information.

**C. How many temporary or contract employees did the agency have as of August 31, 2002?**

None

**D. Please fill in the chart below.**

Please refer to the Section V introductory information.

Texas State Board of Examiners of Dietitians Exhibit 13: Equal Employment Opportunity Statistics							
FISCAL YEAR 2000							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration			5%		8%		26%

<b>Professional</b>			7%		7%		44%
<b>Technical</b>			13%		14%		41%
<b>Protective Services</b>			13%		18%		15%
<b>Para-Professionals</b>			25%		30%		55%
<b>Administrative Support</b>			16%		17%		84%
<b>Skilled Craft</b>			11%		20%		8%
<b>Service/Maintenance</b>			19%		32%		27%

<b>FISCAL YEAR 2001</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
<b>Officials/Administration</b>			5%		8%		26%
<b>Professional</b>			7%		7%		44%
<b>Technical</b>			13%		14%		41%
<b>Protective Services</b>			13%		18%		15%
<b>Para-Professionals</b>			25%		30%		55%
<b>Administrative Support</b>			16%		17%		84%
<b>Skilled Craft</b>			11%		20%		8%
<b>Service/Maintenance</b>			19%		32%		27%

<b>FISCAL YEAR 2002</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
<b>Officials/Administration</b>			5%		8%		26%
<b>Professional</b>			7%		7%		44%
<b>Technical</b>			13%		14%		41%
<b>Protective Services</b>			13%		18%		15%
<b>Para-Professionals</b>			25%		30%		55%
<b>Administrative Support</b>			16%		17%		84%
<b>Skilled Craft</b>			11%		20%		8%
<b>Service/Maintenance</b>			19%		32%		27%

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**E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?**

Please refer to the Section V introductory information.

## VI. Guide to Agency Programs

**A. Please complete the following chart.**

Texas State Board of Examiners of Dietitians Exhibit 14: Program or Function Information — Fiscal Year 2002	
<b>Name of Program or Function</b>	Licensing and Regulation of Dietitians
<b>Location/Division</b>	Texas Department of Health/Professional Licensing and Certification Division
<b>Contact Name</b>	Jeanette Hilsabeck, Executive Secretary
<b>Number of Budgeted FTEs, FY 2002</b>	1.2
<b>Number of Actual FTEs as of August 31, 2002</b>	1.2

**B. What are the key services of this function or program? Describe the major activities involved in providing all services.**

Key services and activities are:

- rulemaking
- issuance of new, provisional, and renewal licenses to qualified applicants and dietitians
- processing, evaluation, and approval of applications to become a licensed dietitian or a provisionally licensed dietitian
- processing of consumer complaints against dietitians
- investigation and presentation of complaints to the Complaints Committee
- imposition of enforcement sanctions against licensees in violation of the law or rules
- provision of public information concerning the practice of dietetics and the regulation of the profession.

The Program Operating Plan for the board/program (July 2002) is included as Attachment 23. A revised POP will be available in Fall 2003 through the TDH website at <http://www.tdh.state.tx.us/oshp/pop/default.htm>.

**C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.**

The functions were created in order to identify competent providers and protect and promote public health, safety, and welfare. Texas Occupations Code, Chapter 701 sets out requirements for these functions. The functions were established by legislative action in 1983.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?**

The key functions of the Texas State Board of Examiners of Dietitians are ongoing and will continue to be needed as long as Texas citizens seek out dietetic services. The regulation of licensed dietitians is intended to identify competent providers and ensure that citizens are receiving the services of a qualified dietitian.

The services and functions have not changed significantly from the original intent of the 1983 Act.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The functions directly affect Texas consumers of dietetic services and Texas dietitians. There are 3,454 licensed dietitians and 23 provisionally licensed dietitians. It is not known how many persons are served by those dietitians.

Qualifications to become a dietitian are set out in Occupations Code §§ 701.251 – 701.261 and board rules at 22 TAC §§ 711.4 – 711.5. Qualifications include completion of a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition or dietetics; an internship or preplanned professional experience program in dietetic practice; and successful completion of the examination administered by the Commission on Dietetic Registration.

**F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

Rulemaking processes are carried out in accordance with the Administrative Procedure Act.

The application for dietitian licensure process is detailed in the flowchart labeled Attachment 24. The renewal process is detailed in the flowchart labeled Attachment 25. The complaint processing and enforcement processes are detailed in the flowchart labeled as Attachment 26.

**G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.**

N/A

**H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General revenue fund                      \$163,645

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Overall, current funding resources are appropriate to achieve the program’s mission and goals.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

There are no other state government programs engaged in the identification and licensure of dietitians.

**K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

N/A

**L. Please provide any additional information needed to gain a preliminary understanding of the program or function.**

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

The licensure and regulation of dietitians is necessary as a means to identify competent providers, thereby protecting and promoting public health, safety, and welfare. The licensure and regulation of dietitians is intended to ensure that persons seeking dietetic services from a licensed dietitian are receiving the services of a qualified and competent provider.

The Licensed Dietitian Act does not provide authority for routine inspections or compliance audits of the worksites of dietitians. The board does audit a percentage of licensees regarding continuing education compliance. When a jurisdictional consumer complaint is filed, the matter is investigated. Any violations of law or rule verified through a complaint investigation are presented to the Complaints Committee for consideration and the imposition of disciplinary action, if appropriate.

When non-compliance is identified, a number of follow-up actions may be taken. In a complaint matter, the dietitian could be required to complete additional training or continuing education in addition to enforcement sanctions such as probation or suspension. Program staff monitor enforcement orders and report non-compliance to the Complaints Committee for additional action. If another complaint is received or if there is reason to believe the problem has not been resolved, program staff re-investigate and provide additional investigative results to the Complaints Committee for action.

The Texas State Board of Examiners of Dietitians is authorized to impose a broad range of enforcement sanctions to ensure compliance with the Act and rules. These include application or renewal application denial, administrative penalties, emergency suspension, criminal penalty, reprimand, suspension, probation, and revocation. Additionally, the Board may resolve contested cases through the use of agreed orders.

Procedures for handling consumer complaints against dietitians are illustrated in the flowchart labeled Attachment 26.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>Texas State Board of Examiners of Dietitians</b>		
<b>Exhibit 15: Complaints <u>Against</u> Regulated Entities or Persons – Fiscal Years 2001 and 2002</b>		
	<b>FY 2001</b>	<b>FY 2002</b>
<b>Number of complaints received</b>	3	3
<b>Number of complaints resolved</b>	0	1
<b>Number of complaints dropped/found to be without merit</b>	2	2
<b>Number of sanctions</b>	0	1
<b>Number of complaints pending from prior years</b>	0	1
<b>Average time period for resolution of a complaint</b>	0	367 days
<b>Number of entities inspected or audited by the agency</b>	0	0
<b>Total number of entities or persons regulated by the agency</b>	3321	3490

## VII. Agency Performance Evaluation

### A. What are the agency's most significant accomplishments?

**Continuing Education Implementation** 1993 amendments to the Licensed Dietitian Act mandated that the board shall establish a minimum number of hours of continuing education required for license renewal. The board was also empowered to assess the continuing education needs of license holders and to develop a process to evaluate and approve continuing education courses. The board's rules regarding continuing education requirements are set out in 22 TAC § 711.17. Effective September 1, 1994, proof of having earned a minimum of six clock-hours of continuing education credit is required at the time of license renewal. The hours must be offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

In 1994, the board implemented a continuing education reporting process with random compliance audits at the time of renewal. If a license holder is selected for audit, the license holder must submit documentation verifying attendance and participation in the required number of hours.

**Pre-planned Professional Experience Program Approval Applications** During 1996, the Board Chair and the Executive Secretary initiated a project to review and evaluate forms and processes associated with applications for approval of pre-planned professional experience programs. The board and the Program Approval Committee approved the recommendations for improvements; significant upgrading of instructions and forms, as well as process streamlining, was accomplished.

### B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

At each board meeting, members are briefed by the division director on budgetary matters (relating specifically to the board and to the Professional Licensing and Certification Division), relevant legislation (proposed or passed), legal opinions, and current policy issues. The program administrator also provides a report regarding programmatic issues at each meeting. As policy or other issues develop (Sunset Review, PLCD reorganization), program staff update board members by e-mail.

Shared performance measure reporting associated with the appropriation to TDH in the C.1.1. strategy (Health Care Standards) is compiled quarterly. This information includes the number of new applications and renewal applications processed, the number of jurisdictional complaints received, the number of jurisdictional complaints resolved, the number and types of disciplinary action taken, and the average number of days required to resolve a complaint. The annual report of the Health Professions Council provides similar information for the Texas State Board of Examiners of Dietitians and is distributed to board members. The report is an opportunity for the board to assess its performance in those areas and provides statistical information used for staffing and resource allocations.

Program staff are evaluated by TDH in accordance with agency policy and procedure. The Professional Licensing and Certification Division also performs specific activities related to assessing customer service, including a customer comment survey. Survey results in summary form are provided to the staff and board for analysis and improvements.

**C. What are the agency's biggest opportunities for improvement?**

The board has opportunities for improvement in license application and license renewal processing. Senate Bill 1152 (78<sup>th</sup> Leg.) requires Texas Department of Health and its programs to participate in the Texas Online project administered by the Texas Online Authority through the Department of Information Resources (DIR). TDH staff met with DIR representatives in July 2003 to discuss implementation of online application and renewal processing for dietitians, as well as other TDH regulatory programs. DIR is moving forward with the initiative. The board will be providing baseline information for the project during the fall of 2003. Other licensing agencies currently using the online renewal system are realizing significant efficiencies and cost savings associated with online renewals.

An opportunity for improvement in terms of the program's placement within the Professional Licensing and Certification Division (PLCD) is currently underway. In June 2003, division management implemented a functional reorganization plan to better position the licensing and certification programs to implement legislative initiatives, address concerns arising from a reduced budget, and assimilate duties of retiring positions. The division has been organized along programmatic lines since its inception in 1985. The current plan to reorganize division staff (61 FTEs) based on function is scheduled for implementation on September 1, 2003. The reorganization will be closely monitored, evaluated, and adjusted as necessary during a 120-day transition period that ends December 31, 2003. The division's Reorganization Implementation Team, made up of division supervisors, managers, and program administrators, is charged with implementation and evaluation. The Reorganization Plan is labeled as Attachment 29.

**D. How does the agency ensure its functions do not duplicate those of other entities?**

There are no other entities involved in the regulation of dietitians in Texas.

**E. Are there any other entities that could perform any of the agency's functions?**

No. The profession of dietetics is a unique discipline in the field of health care.

**F. What process does the agency use to determine customer satisfaction and how does the agency use this information?**

Customer surveys are provided with renewed licenses. The information is analyzed and maintained by PLCD staff and forwarded to board staff for review by the board. Survey cards bearing a name or identifying information that request or require a response are a high priority for staff.

All specific and general suggestions for improvements or complaints are considered when the survey is received. The information is then provided to the board. The board and staff believe that customer feedback and satisfaction levels are important indicators of the need to clarify or simplify licensing processes.

**G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process.**



**If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.**

Due to the board’s organizational placement, the customer service policies and procedures of TDH apply. Please see Attachment 27 (TDH Complaint Resolution Policy and Procedures) and Attachment 28 (TDH Compact with Texans.)

**H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency’s practices.**

The information requested in Exhibit 16 for complaints filed against the board is not available. Due to the board’s organizational placement within the larger structure of TDH, the information is not maintained at the program level. Please see Attachment 30 (*Customer Service at the Texas Department of Health for Fiscal Years 2000-2002.*)

<b>Texas State Board of Examiners of Dietitians</b>		
<b>Exhibit 16: Complaints <u>Against the Agency</u> – Fiscal Years 2001 and 2002</b>		
	FY 2001	FY 2002
<b>Number of complaints received</b>		
<b>Number of complaints resolved</b>		
<b>Number of complaints dropped/found to be without merit</b>		
<b>Number of complaints pending from prior years</b>		
<b>Average time period for resolution of a complaint</b>		

**I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?**

Requests under the Public Information Act are processed in accordance with TDH Operating Procedure OP-1355 (Handling Requests for Public Information), the TDH Procedural Checklist for Public Information Requests, and the Public Information Act. Please see Attachment 21.

**J. Please fill in the following chart with updated information and be sure to include the most recent e-mail address if possible.**

<b>Texas State Board of Examiners of Dietitians Exhibit 17: Contacts</b>			
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Texas Dietetic Association	12300 Ford Road, Suite 135 Dallas TX 75234	(972) 755-2530  (972) 755-2561 fax	tda@challenge-management.com
<b>INTERAGENCY, INTRA-AGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with the agency)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Commission on Dietetic Registration Peggy Anderson	120 South Riverside Plaza, Suite 2000 Chicago IL 60606-6995	(312) 899-0040  (312) 899-4772 fax	cdr@eatright.org
American Dietetic Association	120 South Riverside Plaza, Suite 2000 Chicago IL 60606-6995	(800) 877-1600	govaffairs@eatright.org
<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Office of the Governor Appointments Division Ashley Morgan	P.O. Box 12428 Austin TX 78711	(512) 463-1828	
Health Professions Council Charles Horton, Administrative Officer	333 Guadalupe Street, Tower 2, Suite 220 Austin TX 78701-3942	(512) 305-8550  (512) 305-8553	Charles.Horton@hpc.state.tx.us

## VIII. 78th Legislative Session Chart

Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

Texas State Board of Examiners of Dietitians Exhibit 18: 78th Legislative Session Chart		
Legislation Enacted - 78th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent
HB 2985	Capelo	Relating to the establishment of an office of patient protection within the Health Professions Council
HB 2292	Wohlgemuth	Reorganizes the Health and Human Services enterprise, including reorganization and consolidation activities at the Texas Department of Health (TDH.) Requires that all licenses issued by TDH, or any entity attached to TDH, be issued for a term of two years effective January 1, 2005. Requires that all TDH licensing programs set fees in amounts designed to recover from license holders all direct and indirect costs of the licensing program.
SB 161	Nelson	Relating to the granting of certain enforcement sanctions to TDH licensing programs. The bill grants the Texas State Board of Examiners of Dietitians emergency suspension and administrative penalty authority.
HB 660	Allen	Grants specific authority to TDH to perform both DPS and FBI criminal history record checks.
SB 1152	Shapleigh	Relating to the use of Texas Online. Requires TDH to participate in online license application and renewal functions.
Legislation Not Passed - 78th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent/Reason the Bill did not Pass
None		

## IX. Policy Issues

### **A. Brief Description of Issue**

Should the Texas State Board of Examiners of Dietitians remain within TDH, be moved to another agency, or reconfigured to serve in an advisory capacity to another board or commission within the Texas Health and Human Services system?

### **B. Discussion**

Two recent studies related to the TDH Professional Licensing and Certification Division (PLCD) have examined the different regulatory models housed within PLCD (and state government generally.) See *Report on Texas Department of Health Regulatory Programs, Recommendations for Consolidating, Restructuring, or Moving Health-Related Regulatory Programs, December 15, 2000*, Texas Health and Human Services Commission; and *Texas Department of Health Business Practices Evaluation*, Elton Bomer, Consultant, August 31, 2001.

Both reports examined challenges associated with an umbrella agency housing regulatory boards and programs that possess certain authority independent of the umbrella agency's authority. The Bomer report found that "independent boards, functioning as quasi-agencies unto themselves, yet operating within the structure of a larger agency, are a fundamental organizational mistake."

The HHSC report examined five models for organizing regulatory programs and identified challenges associated with the TDH administration of PLCD regulatory programs. One of the commission's recommendations was to give "more of a voice" in decisions "related to policy, budget, and Legislative Appropriations Requests" to the licensing, certification, and advisory boards administratively attached to TDH. The commission's rationale for the recommendation follows:

The programs attached to the Professional Licensing and Certification Division are required to raise the revenue to operate their programs from the professionals they regulate. Yet independent boards have not routinely been involved in major decisions such as Legislative Appropriations Requests, development of the agency Five-Year Strategic Plan, and establishment of annual operating budgets. TDH has established the principle that the executive director of each program will bring any funding needs, issues, or concerns to TDH management. This has not proven to be sufficient in the opinions of members of the boards, committees, advisory bodies, and HHSC. Additional mechanisms should be developed to improve two-way communication – both from TDH to the statutorily established bodies, and from those bodies to TDH. Such mechanisms should include opportunities for the statutorily established bodies to have periodic access to the Board of Health.

The TDH Associate Commissioner for Health Care Quality and Standards (now Consumer Health Protection) formed the Council of Independent Licensing Board Chairs in 2001 in response to recommendations in the HHSC report and as a means to enhance communication between administratively attached boards and TDH senior management. The Council meets several times a year to discuss issues of mutual concern, to directly address problem areas with TDH senior management, and to recommend solutions to common challenges. The Council also met with members of the Texas Board of Health for a luncheon in 2002.

The commission also recommended "TDH should examine its regulatory programs and determine which ones could benefit from being functionally organized. It may be possible in some cases to combine staff

in different programs performing similar activities to carry out common practices, such as licensing, investigations, enforcement, and compliance.” The commission’s rationale was “There may be opportunities for the regulatory programs at TDH to share additional costs and functions by organizing like programs along functional lines. Such arrangements have been demonstrated to be effective and efficient alternatives to having distinct and perhaps duplicative functions when organizing along program lines.”

### **C. Possible Solutions and Impact**

The board is functioning effectively within Texas Department of Health. If the boards and programs of the Professional Licensing and Certification Division are transferred to a new or existing licensing agency in the future, the Texas State Board of Examiners of Dietitians should be transferred with them at that time.

A recent functional reorganization of the TDH Professional Licensing and Certification Division is anticipated to increase efficiencies in dietitian regulation through the use of shared resources. The Bomer report indicated that independent and quasi-independent boards should be converted to TDH advisory committees, which would result in efficiencies to be achieved through consolidation and uniformity. However, those efficiencies are anticipated through the division’s functional reorganization, which is being implemented within the current statutory framework.

An examination of the different regulatory models set out in the HHSC Report illustrates the options for placement of regulatory programs within state government. The models include regulatory programs as autonomous boards, boards with shared administrative functions, administratively attached boards with shared authority, administratively attached boards with limited authority, and centralized licensing agencies. Each model has perceived advantages and disadvantages in terms of cost-effectiveness, effective consumer protection, and effective professional regulation.

### **A. Brief Description of Issue**

Should the Licensed Dietitian Act (which is currently a title protection act) be amended to become a practice act?

### **B. Discussion**

As explained previously, the Licensed Dietitian Act requires a person who uses the title “Licensed Dietitian” to hold a license. The Act provides for public protection in that it requires the board to identify minimally competent persons by applying education and experience requirements.

However, persons who offer or provide dietetics, nutrition assessment, nutrition counseling, or nutrition services to the public are not required to obtain a dietitian license, as long as they do not use the title “licensed dietitian.” Therefore, there is no competency standard for education or experience for those unlicensed persons. Complaints filed against unlicensed persons are not within the board’s jurisdiction, unless the person used the protected title. The disciplinary actions available to the board are to instruct the person, by way of a “Cease and Desist” letter, to stop using the title and to refer the matter to the local

district attorney to prosecute as a Class B misdemeanor under Occupations Code § 701.451 if the behavior continues.

In recent years, there have been changes in the nutritional and dietary marketplace due to the growing public interest in wellness, nutrition, nutritional supplementation, and diet. More than ever before, people are assuming greater personal responsibility for and asserting greater control over their nutritional well-being. It is not known how many unlicensed persons are providing dietetic and nutritional counseling and services to the public, but the number is certainly significant. Some stakeholders, as well as some members of the public, believe that the lack of standards and regulation puts the public at risk.

### **C. Possible Solutions and Impact**

The Act could be amended to provide for practice protection, as well as title protection. Such an amendment could require that any person providing dietetic or nutritional services must meet minimum standards and hold a dietitian license. This requirement would result in greater public protection than is available through the current statute, as it would mean that the board would be authorized to revoke the credentials of violators for particularly serious violations or suspend, put on probation, or assess administrative penalties for less serious violations.

The extent and nature of the protected practice would need to be clearly defined in an amended statute. Some groups involved in nutritional services view their practice as separate from the practice of dietetics. In the last two legislative sessions, bills were filed to establish the regulation of clinical nutritionists (see HB 2248, Goodman, 77<sup>th</sup> Regular Session, and HB 1834, Goodman, 78<sup>th</sup> Regular Session.) The bills were not enacted. HB 1834 set out an exhaustive definition of “clinical nutrition” that appears to overlap with the definitions of “dietetics” and “nutrition services” set out in the Licensed Dietitian Act. Additionally, the bill to regulate clinical nutritionists was proposed as a title protection statute and did not prohibit the unlicensed practice of clinical nutrition as long as the unlicensed practitioner did not use the protected title.

If the Licensed Dietitian Act were amended to provide for practice protection, the nutritionist stakeholder groups should be consulted to determine if their regulatory and practice concerns could be incorporated into a practice protection dietitian statute.