

Sunset Advisory Commission



**Texas State Board of
Examiners of Dietitians**

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

Texas Midwifery Board

**Texas State Board of
Examiners of Perfusionists**

**Texas State Board of Examiners
of Professional Counselors**

**Texas State Board of
Social Worker Examiners**

Staff Report
October 2004

TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

TEXAS STATE BOARD OF EXAMINERS OF
MARRIAGE AND FAMILY THERAPISTS

TEXAS MIDWIFERY BOARD

TEXAS STATE BOARD OF EXAMINERS OF PERFUSIONISTS

TEXAS STATE BOARD OF EXAMINERS OF
PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

SUNSET STAFF REPORT
OCTOBER 2004

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SUMMARY

Summary

Texas State Board of Examiners of Dietitians

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

Texas Midwifery Board

Texas State Board of Examiners of Perfusionists

Texas State Board of Examiners of Professional Counselors

Texas State Board of Social Worker Examiners

The Legislature administratively attached six independent, licensing boards – regulating dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers – to the Department of State Health Services (DSHS). The six boards, with the assistance of DSHS staff, seek to ensure that only qualified individuals provide these services by administering examinations, issuing licenses, and enforcing the Acts. In forming its approach to the review, Sunset staff sought to assess what changes may be needed in each board’s authorizing legislation to improve the regulation of the health professions and then to determine the proper degree of independence of boards that are administratively attached to a larger agency.



The Sunset review focused on ensuring that each of the boards had appropriate authority to regulate their respective professions.

Sunset staff assessed each board to see that it has the appropriate authority for making rules and deciding licensing and enforcement matters, given the workload demands, and determined that neither the Perfusionist nor the Dietitian board needs this independent authority. Also, as required by the Sunset Act, staff assessed ways in which state agency operations could be less burdensome while still adequately protecting the public, and found that some provisions of the Licensed Professional Counselor Act impair the ability of licensees to easily move their practices into or out of Texas.

The Sunset review compared the boards’ statutes against standard licensing practices developed through 25 years of Sunset reviews and identified several changes that would enhance efficiency, administrative flexibility, fairness, and public protection, and would improve the consistency of operations of the boards.

Sunset staff also evaluated the continuing need for regulating each of the health care professions and concluded that public health and safety concerns necessitate continued state oversight. Specific recommendations on health licensing agency structure are contained within the Licensing Reorganization Project.

A summary follows of the Sunset staff recommendations in this report.

Issues/Recommendations

Issue 1

The Dietitian and Perfusionist Boards Are Not Needed to Protect the Public, Though Regulation of the Professions Should Continue.

Key Recommendation

- Replace the governor-appointed Dietitian and Perfusionist boards with advisory committees.

Issue 2

The Licensed Professional Counselor Act Limits the Ability of Professional Counselors to Practice in Other States.

Key Recommendations

- Remove the Professional Counselor Board's authority to develop a separate state exam.
- Remove the statutory provision that requires a licensed professional counselor to have 48 graduate hours to qualify for a license.
- Direct the Professional Counselor Board to replace the Texas exam with a national exam administered by the National Board of Certified Counselors.
- Direct the Professional Counselor Board to simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.

Issue 3

Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Recommendations

- Standardize the licensing functions of the Department of State Health Services boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers by ensuring that the boards address criminal convictions as defined in general statute, removing exemptions for temporary licenses, and changing the basis for assessing late renewal fees.
- Revise the boards' enforcement activities by authorizing them to refuse to renew licenses, providing for refunds as a sanction and granting the boards authority to issue cease-and-desist orders.
- Update administrative elements by specifying that only board members may serve on board committees, and requiring the boards to ensure their information for the public is current.

Issue 4

Texas Should Continue Regulating Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers.

Key Recommendation

- Continue regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.

Fiscal Implication Summary

This report contains recommendations that would have a fiscal impact to the State. The fiscal impact of the recommendations is summarized below:

- *Issue 1* – Funding travel expenses for ten advisory committee members would cost about \$4,100 annually. Eliminating 18 board member travel expenses would result in savings to general revenue of \$7,300.
- *Issue 3* – Adjusting late renewal penalties would result in a loss to general revenue of about \$25,600 annually beginning in 2008. Eliminating the payments to Midwifery Board members for attending their semi-annual meetings would save the state \$900 annually. Eliminating per diem payments to Dietitian Board members would result in \$800 in savings to the State.

| <i>Fiscal Year</i> | <i>Savings to the General Revenue Fund</i> | <i>Cost to the General Revenue Fund</i> | <i>Net Effect on the General Revenue Fund</i> |
|---------------------------|---------------------------------------------------|------------------------------------------------|------------------------------------------------------|
| 2006 | \$9,000 | \$4,100 | \$4,900 |
| 2007 | \$9,000 | \$4,100 | \$4,900 |
| 2008 | \$9,000 | \$29,700 | (\$20,700) |
| 2009 | \$9,000 | \$29,700 | (\$20,700) |
| 2010 | \$9,000 | \$29,700 | (\$20,700) |

ISSUES

The Dietitian and Perfusionist Boards Are Not Needed to Protect the Public, Though Regulation of the Professions Should Continue.

Summary

Key Recommendation

- Replace the governor-appointed Dietitian and Perfusionist boards with advisory committees.

Key Findings

- Functions of the Dietitian and Perfusionist boards are not needed to protect public health and safety.
- The limited activities of the Dietitian and Perfusionist boards are highlighted by the boards' infrequent, short meetings.
- Other licensing programs gain needed expertise through advisory committees rather than through independent boards.

Conclusion

The Legislature established state regulation of dietitians and perfusionists to protect the public from unqualified practitioners and assigned the Department of State Health Services to administer the licensing programs with policy input from independent, governor-appointed boards. The Texas State Board of Examiners of Dietitians and Texas State Board of Examiners of Perfusionists create rules governing the licensing process, and hear complaints and enforcement cases against licensees.

The Sunset review assessed whether these governor-appointed boards continue to be needed for the purposes of creating rules and hearing cases. The review found that the boards' licensing processes are handled administratively by the Department of State Health Services, the rules governing the professions are written and need few updates, and the boards hear few enforcement cases. This limited workload results in boards that meet infrequently and for very short meetings. The review concluded that both boards perform tasks that could be handled by staff or advisory committees. Eliminating both boards would streamline the regulation of dietitians and perfusionists by eliminating the unnecessary gubernatorial appointments of 18 board members.


Support

The Dietitian and Perfusionist boards have independent rulemaking and enforcement authority despite being administratively attached to an umbrella licensing agency.

- The boards responsible for regulating dietitians and perfusionists in Texas are located within the Department of State Health Services (DSHS), which administers 22 health licensing programs with a combined total of 118,000 licensees. For 13 of these programs, policy is determined by independent, governor-appointed boards with rulemaking and enforcement authority, while DSHS provides administrative services.
- The Texas State Board of Examiners of Dietitians is a nine-member, governor-appointed board, consisting of six dietitians representing the clinical, educational, management, consultation, and community areas of dietetics – and three consumer members. By law, the Dietitian Board meets twice a year to create rules for licensure, and take enforcement actions against violators of Dietitian Board rules and the Licensed Dietitian Act. The 3,400 dietitians in Texas provide nutritional services and advice in a variety of settings, including hospitals, extended care facilities, and private practice.
- The Texas State Board of Examiners of Perfusionists consists of nine members, appointed by the Governor, with five perfusionists, one cardiovascular surgeon, and three public members. By statute, the Perfusionist Board meets twice a year to pass rules on licensure requirements, and decide disciplinary cases involving violations of Board rules and the Licensed Perfusionists Act. The 300 perfusionists in Texas operate cardiopulmonary bypass equipment to maintain and monitor a patient's vital heart and lung functions during open-heart surgery and other surgical procedures.

Functions of the Dietitian and Perfusionist boards are not needed to protect public health and safety.

- The Dietitian and Perfusionist Boards are not needed to perform the type of work expected of most governor-appointed boards because their workloads are so limited. Independent, governor-appointed boards are typically necessary when decisions need to be made on approving individuals for licenses, creating rules governing the practice of a profession, processing complaints, and taking enforcement actions. The following material discusses how these boards have limited roles in each of these areas.
- The boards are not needed to perform licensing functions because these are largely performed administratively by the Department of State Health Services. Although the Dietitian Board approves license applications already approved by the Board's Executive Director, this duty is not required by statute and does not appear to enhance regulation as the Board has never rejected an application. Although statute does require the Dietitian Board to approve internship programs, most applicants take a standard pre-approved internship and the Board rarely evaluates individual applicants.



The Dietitian and Perfusionist boards are not needed for licensing functions, which are performed by the Department of State Health Services.

The Perfusionist Board's licensing process relies exclusively upon the perfusionist certification provided by the American Board of Cardiovascular Perfusion (ABCP). Because the education, examination, and experience requirements for a Texas perfusionist license are identical to requirements for an ABCP certificate, the Perfusionist Board licensing process almost literally rubber stamps the ABCP process. Perfusionist Board license renewals also mirror ABCP's process – licensees complete ABCP re-certification and forward an acknowledgment form to the Board confirming compliance with continuing education requirements and ethical standards. Following a review of ABCP material, the Perfusionist Board approves the renewal and reissues the license.

- The boards exhibit little rulemaking activity as the rules governing the professions are largely already written. The Dietitian Board has amended just one rule since December 2000, while the Perfusionist Rules committee has not met since November 2000. Recently proposed rules of both boards largely address minor administrative changes required by legislation for DSHS occupational licensing programs – such as transitioning to Texas Online and biennial license renewal – not health and safety issues.
- Both boards receive very few complaints, indicating a low risk to the public from incompetent dietitians and perfusionists. The Dietitian Board has received just six complaints in the past three years, and none in fiscal year 2003. The Perfusionist Board has received a total of three complaints in its entire 11-year history.

The enforcement cases heard before the Perfusionist Board have not been technical in nature, and have not required expertise in perfusion to resolve. Two complaints involved ethical issues: one perfusionist repeatedly posed as a physician and another inhaled an anaesthetic before attempting to participate in a surgery. A third case involved a perfusionist who had neglected to renew his license on time and was found practicing without a license.

These cases would be as effectively administered, by allowing the boards' executive directors to take action on non-technical complaints and seek advisory committee input on complaints requiring expertise.

The limited activities of the Dietitian and Perfusionist boards are highlighted by the boards' infrequent, short meetings.

- The Dietitian Board meets its statutory obligation of meeting twice a year but rarely meets more frequently. Although the Perfusionist Board's statute requires that the Board must meet at least twice a year, it failed to meet this requirement in 2002 and 2003. In addition, the Perfusionist Board routinely struggles to achieve a quorum to conduct business, and has had to cancel three posted meetings since 2001 because not enough members could attend. The table, *Dietitian and Perfusionist Board Meetings*, shows the total number of meetings of each board since 2001 in calendar years.

| Dietitian and Perfusionist Board Meetings (By Calendar Year) | | | | |
|-------------------------------------------------------------------------|-------------|-------------|-------------|---------------------------|
| Meetings | 2001 | 2002 | 2003 | 2004 (to date) |
| Dietitian Board | 2 | 3 | 2 | 1 |
| Perfusionist Board | 2 | 1 | 1 | 1 |

★

The Dietitian Board received no complaints in 2003 and the Perfusionist Board has received only three complaints in its existence.


★

The Perfusionist Board failed to meet its statutory obligation to meet twice a year in 2002 and 2003.

- The limited need for meetings of the Dietitian and Perfusionist boards is also shown by short board and committee meetings held by each board – indicating a dearth of substantive topics for the boards to consider and decide. For example, meetings of each board generally conclude within three hours despite usually only meeting twice a year. Dietitian Board committee meetings often conclude at 30 minutes and an entire Perfusion Board meeting in 2002 also lasted only half an hour. While other state boards may hold meetings that last only a few hours, such boards also spend considerable time discussing issues in committee meetings, and then present the findings to the whole board.

Other licensing programs gain needed expertise through advisory committees rather than through independent boards.

- A common approach within the Department of State Health Services is for advisory committees to provide necessary professional expertise instead of relying on independent regulatory boards, especially when workloads are light. For example, DSHS programs that regulate medical radiologic technicians, respiratory care practitioners, code enforcement officers, and professional sanitarians all use this advisory committee structure. These advisory committees, appointed by the Executive Commissioner of the Health and Human Services Commission, review rules, provide input on licensing exams, and assist DSHS staff with enforcement cases. The committees, ranging from seven to 11 members, generally meet twice a year. As required by statute, all the committees contain at least two consumer members, and must be reviewed periodically by the Executive Commissioner to ensure their continued usefulness.
- The Commission on Licensing and Regulation, a seven-member public board, relies on 13 board-appointed advisory committees to obtain needed technical expertise and advice for the regulatory programs under its purview. These advisory committees provide the Commission with counsel on licensing requirements, examination content, and continuing education in their program areas.


Advisory committees are commonly used to gain expertise when a board is not needed.

Recommendations

Change in Statute

- 1.1 Replace the governor-appointed Dietitian Board with an advisory committee.**
- 1.2 Replace the governor-appointed Perfusionist Board with an advisory committee.**

These recommendations would abolish the current nine-member Dietitian and Perfusionist boards on their September 1, 2005 Sunset dates and create advisory committees in their place. The five-member Dietitian and Perfusionist advisory committees would give advice to the Department of State Health Services staff on rulemakings and enforcement actions, when needed.

The Dietitian Advisory Committee would be composed of three dietitians and two public members. The Perfusionist Advisory Committee would include two perfusionists, one cardiovascular surgeon, and two public members. Both committees would be appointed by the State Health Services Council, which would also designate the advisory committee chairs. The committees would be subject to

statutory provisions regarding the appointment and governance of all agency advisory committees. Standard Sunset Across-the-Board provisions for state agency boards would also apply, including provisions on public membership, conflicts of interest, and unbiased appointments. The statute would direct the State Health Services Council, when making appointments to the Dietitian Advisory Committee, to attempt to ensure representation of component practice areas of dietitians. Boards' licensing and enforcement functions would be carried out by the Department of State Health Services' Professional Licensing and Certification Unit.

Impact

The Dietitian and Perfusionist boards have achieved their original objectives including the establishment of licensing processes for the professions, board rules, and enforcement and complaint procedures. Replacing the governor-appointed Dietitian and Perfusionist boards with advisory committees would eliminate the unnecessary gubernatorial appointments of 18 board members. As the State Health Services Council will be able to convene the advisory committees to gain needed expertise on future rulemaking and enforcement cases, the oversight of both professions would continue in a more efficient fashion.

Fiscal Implication

These recommendations would have a fiscal impact to the State. The elimination of travel costs for 18 board members would result in an annual savings of \$7,300. Reimbursing travel costs for 10 advisory committee members would cost the Department \$4,100 annually, resulting in an overall savings of \$3,200.

| <i>Fiscal Year</i> | <i>Savings to the General Revenue Fund</i> | <i>Cost to the General Revenue Fund</i> | <i>Net Effect on the General Revenue Fund</i> |
|---------------------------|---------------------------------------------------|------------------------------------------------|------------------------------------------------------|
| 2006 | \$7,300 | \$4,100 | \$3,200 |
| 2007 | \$7,300 | \$4,100 | \$3,200 |
| 2008 | \$7,300 | \$4,100 | \$3,200 |
| 2009 | \$7,300 | \$4,100 | \$3,200 |
| 2010 | \$7,300 | \$4,100 | \$3,200 |

The Licensed Professional Counselor Act Limits the Ability of Professional Counselors to Practice in Other States.

Summary

Key Recommendations

- Remove the Professional Counselor Board's authority to develop a separate state exam.
- Remove the statutory provision that requires a licensed professional counselor to have 48 graduate hours to qualify for a license.
- Direct the Professional Counselor Board to replace the Texas exam with a national exam administered by the National Board of Certified Counselors.
- Direct the Professional Counselor Board to simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.

Key Findings

- State regulation of professional counseling controls who may provide counseling services in Texas.
- State regulations limit the ability of Texas professional counselors to practice in other states.
- Out-of-state licensees find it difficult to gain Texas licensure.
- Other states that license professional counselors use a national exam and have begun to achieve greater portability of professional counselor licenses.

Conclusion

The Licensed Professional Counselor Act seeks to protect the public through licensing requirements for professional counselors, however current licensing requirements impair national portability — the ability of Texas licensees to transfer their license easily to other states, and out-of-state licensees to gain licensure in Texas. In reviewing the Professional Counselor's Board licensing processes, Sunset staff assessed ways in which the Board's operations could be less burdensome and still adequately protect the public. Staff noted that Texas is the only state to require a state exam, instead of a national exam administered by the National Board of Certified Counselors, and that this state exam creates barriers for Texas licensees who wish to practice in other states. Staff concluded that to ensure national portability of the license, the Professional Counselor Board should use a national exam instead of the state exam. Staff also weighed the requirements placed on counselors from other states and concluded that the Board should also remove barriers for out-of-state licensees to easily transfer their license to Texas, if the licensees have been in practice in good standing for a period of time, and the Board can ensure that they are adequately qualified to practice in the state.

Support

State regulation of professional counseling controls who may provide counseling services in Texas.

- The Professional Counselor Board licenses more than 12,000 counselors and 4,000 counselor interns. To qualify for licensure, counselors must have a master's degree or above in counseling, or a related field, with 48 hours of graduate course work. In addition, prospective counselors must complete 3,000 hours of post-graduate supervised experience under a Professional Counselor Board-approved supervisor. Finally, applicants must pass the Texas exam to show an understanding of counseling principles.
- The Texas Legislature created professional counselor licensing in 1981, establishing a grandfather provision for counselors in practice with a master's degree including 30 hours of counseling course work. The Professional Counselor Board began to require the exam for new licensees in September 1984, but allowed counselors in practice before that date to be grandfathered into licensure without having to pass the exam. The Board creates and updates its own exam, which covers core principles of counseling. The Board also contracts with an independent source to validate the Texas exam. A contracted testing firm administers the exam in nine cities across the state, giving approximately 1,000 exams each year at the cost of \$110 to the examinee.
- The Professional Counselor Board approves professional counselors from other states for licensure in Texas. Out-of-state applicants must meet Texas' current educational and experience requirements to qualify for a Texas license. However, out-of-state applicants do not have to take the state exam if they have passed a national exam offered by the National Board of Certified Counselors. About 50 to 60 out-of-state licensed professional counselors become licensed in Texas each year.

State regulations limits the ability of Texas professional counselors to practice in other states.

- By administering its own exam, the Professional Counselor Board imposes a requirement on Texas licensees that differs from licensing requirements of other states. Of the 48 states that license professional counselors, Texas is the only state that requires passage of its own exam instead of the standard national exam created and administered by the National Board of Certified Counselors. Because the Texas exam is not accepted in most other states, Texas licensees generally may not practice in other states unless they also pass the national exam.
- State law limits the flexibility of the Professional Counselor Board to change the required number of graduate hours to qualify for a license as national standards change. For example, in 1993, when the standard for the number of graduate hours required to be a professional counselor changed from 45 to 48 hours, a statutory change was necessary to enable the Professional Counselor Board to meet the new education requirements.



To practice in most other states, Texas licensees must pass both the Texas exam and a national exam.

National accreditation standards are again in transition as the national body that accredits counseling educational programs has recommended 60 hours of graduate education to become licensed.¹ Twenty-three other states currently require 60 hours of study for licensure. Because Texas statute currently requires 48 hours of graduate education, Texas licensees who wish to be licensed in these other states may not have sufficient graduate hours to qualify for licensure. Other mental health boards, such as the Marriage and Family Therapist Board and the Social Worker Board, are able to make such changes in rule when necessary.

Out-of-state licensees find it difficult to gain Texas licensure.

- State law establishes a burden for out-of-state applicants that is not required of Texas residents. This burden exists because out-of-state applicants must meet the current number of required graduate hours, while Texas counselors are grandfathered under the original educational requirements at the time they were licensed. In 1982, the original Licensed Professional Counselor Act required a graduate degree with 30 hours of graduate course work. Over time, that requirement has increased to 48 hours, which new licensees and out-of-state applicants must meet, while grandfathered licensees do not. For example, a licensee from another state who has practiced successfully for many years, but who received a graduate degree with fewer than 48 hours of study, would have to return to school to make up the shortage in required study.

Other states that license professional counselors use a national exam and have begun to achieve greater portability of professional counselor licenses.

- An evolving standard for licensing occupations is to provide uniform requirements that are easily transferable from state to state. In this way, states recognize the same education, experience, and examination requirements developed by national organizations that are generally accepted by the states. Satisfying these basic requirements enables practitioners to move freely among the states by simply satisfying administrative requirements and perhaps demonstrating knowledge of states' laws and regulations.
- All 48 states that license professional counselors, except for Texas, require a national exam created and administered by the National Board of Certified Counselors (NBCC). NBCC administers two exams, one based on counseling core principles, and a more advanced exam based on a counselor's clinical skills. Most states require the core principles exam while only a few states require the clinical skills exam. Some states offer both exams to allow counselors to qualify for an advanced license.
- Some states, unlike Texas, do not require out-of-state applicants to meet all current licensing requirements. Oklahoma, for instance, has no requirement for the number of graduate hours for out-of-state applicants, as long as the applicant has a master's degree from a regionally accredited college or university. While Texas law requires all out-of-state applicants to meet the current requirements for the number of graduate hours,



State law establishes a burden for out-of-state applicants that is not required of Texas residents.



Of the 48 states that license professional counselors, Texas is the only state that requires passage of its own exam instead of the standard national exam.

Oklahoma gives this flexibility to out-of-state applicants even though new applicants are required to have 60 graduate hours. Virginia only requires out-of-state applicants to meet the education requirements that are substantially equivalent to those in effect in Virginia at the time of initial licensure.

Recommendations

Change in Statute

2.1 Remove the Professional Counselor Board's authority to develop a separate state exam.

This recommendation would remove the Professional Counselor Board's authority to write its own exam and require the Board to contract with a nationally recognized organization to develop and administer the exam.

2.2 Remove the statutory provision that requires a licensed professional counselor to have 48 graduate hours to qualify for a license.

Under this recommendation the Professional Counselor Board would have authority to determine the number of graduate hours necessary for licensure. The current requirements for applicants to have a graduate degree with 48 hours from an accredited institution of higher education would be removed to grant the Board flexibility to change the number of required hours to track national trends. The law would still require applicants to have a graduate degree with a 3,000 clock hour supervised internship.

Management Action

2.3 Direct the Professional Counselor Board to replace the Texas exam with a national exam administered by the National Board of Certified Counselors.

This recommendation would instruct the Professional Counselor Board to consider using a national exam administered by the National Board of Certified Counselors (NBCC). NBCC has two exams, but Texas should consider using the exam that tests the core principles, as that exam most closely matches the content of the current state exam. Since most of the 47 other states that license professional counselors also use this exam, and it would allow for greater portability of the license.

2.4 Direct the Professional Counselor Board to simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.

This recommendation would direct the Professional Counseling Board to create rules increasing the portability of licensees into the State while ensuring that licensees possess sufficient qualifications to justify the license. The Board should consider accepting a graduate degree regardless of the number of graduate hours from out-of-state applicants currently licensed in their state of origin, if the Board determines the applicant possesses sufficient qualifications to justify a waiver. The number of graduate hours for licensure has increased in many states since the creation of the license, and this recommendation would allow out-of-state applicants to transfer their licenses easily without returning to school to earn additional graduate hours.

Impact

These recommended changes would increase national portability for Texas licensees who wish to be licensed in another state, and for out-of-state licensees who seek licensure in Texas. Without these changes a licensee could go through unnecessary hardship when moving to another state. Currently, some Texas licensees have to take another exam to gain licensure in other states, and some out-of-state licensees must earn additional graduate hours to gain licensure in Texas. These recommended changes would remove that hardship by requiring the Professional Counselor Board to use the national standard of the national exam and by giving the Board the authority to decide the parameters of licensee portability in Texas.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The Professional Counselor Board currently retains \$35 per exam beyond the cost of administering the exam, an average of \$28,000 to \$35,000 a year. As NBCC allows states to charge fees above the cost for administering the exam, the Board would be able to continue collecting these revenues from the NBCC exam.

¹ Council for Accreditation of Counseling and Related Educational Programs, *2001 Standards*, www.cacrep.org/2001Standards.html. Accessed: September 27, 2004.

Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Summary

Key Recommendations

- Standardize the licensing functions of the Department of State Health Services boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers by ensuring that the boards address criminal convictions as defined in general statute, removing exemptions for temporary licenses, and changing the basis for assessing late renewal fees.
- Revise the boards' enforcement activities by authorizing them to refuse to renew licenses, providing for refunds as a sanction and granting the boards authority to issue cease-and-desist orders.
- Update administrative elements by specifying that only board members may serve on board committees, and requiring the boards to ensure their information for the public is current.

Key Findings

- Licensing provisions of the boards' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the boards' ability to protect consumers.
- Nonstandard enforcement provisions of the boards' statutes could reduce the boards' effectiveness in protecting consumers.
- Certain administrative provisions of the boards' statutes conflict with standard practice, potentially reducing the boards' efficiency.

Conclusion

Over the past 25 years, Sunset staff has reviewed more than 80 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing the Department of State Health Services boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers, staff compared the boards' statutes, rules, and practices to the model licensing standards to identify variations. The Sunset review found that various licensing, enforcement, and administrative processes do not match these model licensing standards. Based on these variations, staff identified the recommendations needed to bring the boards in line with the model standards.


Support


The Sunset Commission has completed more than 80 licensing agency reviews.

Regulating occupations – such as dietetics, marriage and family therapy, midwifery, perfusion, professional counseling, and social work – requires common activities that the Sunset commission has observed and documented over more than 25 years of reviews.

- The State Board of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and State Board of Social Worker Examiners all seek to protect the public by ensuring that their licensees are qualified, competent, and adhere to established professional standards. The boards, all housed at the Department of State Health Services (DSHS), license a total of about 45,000 individuals. The boards regulate their respective professions by creating rules to enforce the statutes, investigating and resolving complaints alleging violations of statutes and rules, and taking disciplinary action when necessary.
- The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 80 licensing agency reviews.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the boards' statutes and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

Licensing provisions of the boards' statutes do not follow model licensing practices and could potentially affect public safety and the fair treatment of licensees.


Clearly specifying the criminal convictions that may disqualify an applicant from licensure would help ensure consistency and fairness.

- *Criminal convictions.* In accordance with Chapter 53 of the Occupations Code, the boards may suspend or revoke a license, or disqualify individuals from receiving a license or taking an exam, because of specific criminal activities related to the professions. While the six boards all have rules in place that generally address crimes relating to the professions, the rules contain vague language that does not clearly state which offenses warrant the denial of a license. More clearly specifying which convictions these boards consider in determining a licensee's ability to practice safely would help protect the public and ensure consistency and fairness to applicants.
- *Temporary licenses.* Agencies may issue temporary permits, which authorize individuals to practice while seeking to meet all licensure requirements. These permits should not be allowed except in very limited, controlled circumstances because the public is offered no assurance of competency on the part of the temporary licensee. The

Professional Counselor Board issues temporary permits to applicants who have completed a degree with 48 graduate semester hours so they may begin the required 3,000 hour supervised internship.¹ However, statute also allows the issuance of a temporary license to an art therapy applicant with 42 graduate semester hours and a plan filed to complete the required remaining six hours.² A similar provision allows an applicant who has a graduate degree with fewer than the currently required 48 hours to obtain the lacking hours while simultaneously completing the 3,000 hour internship.³ Eliminating these exceptions would stop the erosion of licensing standards by requiring all applicants for a temporary license to complete their graduate degree before they may interact with the public.

- *Unbiased testing.* Test components should be fair and unbiased, and consideration should be given to eliminating or restructuring components that tend to be subjective. Statutes governing both marriage and family therapists and licensed professional counselors reference field exams that may be taken instead of a written exam.⁴ Field exams assess examinees' skills in a variety of ways, including interviewing employers, requiring documentation of experience and competence, and submission of case studies and taped interviews. The Marriage and Family Therapist Act also references oral exams which, like field exams, introduce subjectivity to the exam process.⁵ Neither of the boards has ever used a field exam or oral exam. Deletion of these unused provisions would eliminate the possibility that the boards might create a subjective exam and make clear that applicants must take a written exam for licensure.
- *Jurisprudence exam.* Boards should ensure that licensees are familiar with the laws and rules under which they practice. Unlike many health licensing agencies in Texas, the six boards do not require a jurisprudence examination as part of licensure, though the Professional Counselor Board is currently considering the requirement. As a result, licensees may be unaware of state law or have limited knowledge about state regulations regarding issues that affect their practice. For example, a Professional Counselor committee expressed concern that many interns, who hold temporary licenses, do not fully understand their governing laws and rules.⁶ Requiring a jurisprudence exam for all six boards' applicants would establish that practitioners have a clear understanding of the laws and policies that guide their professional practice.
- *Test results.* Timely notice of exam results to a person taking an examination and analysis to individuals failing the exam help examinees acquire the knowledge and skills needed to pass the exam. Neither the Midwifery Act nor rules require timely notice of exam results. Specifying the time-frame in the Act would ensure the timely reporting of examination results and would ensure that examinees are informed of the reasons for failure.
- *Equivalency.* Any exemptions from licensure or licensing requirements should be statutory, have a clear and reasonable basis, and not impair the health, safety, or welfare of the public. The Marriage and Family Therapist, Perfusionist, Licensed Professional Counselor, and Social



Unlike many health licensing agencies in Texas, the six boards do not require a jurisprudence exam for licensure.



Four of the acts permit professionals from other states to temporarily practice in Texas without a Texas license.



Identifying complaint trends can help boards target resources more effectively.

Worker acts allow non-Texas residents to practice in Texas without licensure for a period of time if authorized to practice in another state.⁷ Removing these exemptions would protect the public from potentially unsafe practice and impose uniform requirements on all licensees.

- *Late renewal penalties.* Penalties for delinquent renewal should reflect the cost of renewing licenses and provide comparable treatment for all licensees. Four of the boards charge a late renewal fee based on their exam fee. Basing the late fee, instead, on the license renewal fee would more properly scale the fee to the cost of renewing a license, and would bring the boards in line with other licensing agencies. The Midwifery Board charges \$125 – not tied to the renewal fee – for midwives who are 30 days or less late renewing.⁸

In addition, the Perfusionist Board requires a person whose license has been expired for more than two years to reapply for licensure.⁹ The Midwifery Board permits midwives with expired licenses older than 30 days to become active licensees again by meeting continuing education and certification requirements, in addition to paying a fee.¹⁰ Other licensing agencies require reapplication after one year of expiration, which includes meeting all requirements for an original license. Matching the Perfusionist and Midwifery boards' requirement to the standard would ensure that practitioners keep up with licensing requirements and would treat licensees across professions more fairly.

Nonstandard enforcement provisions of the boards' statutes could reduce the boards' effectiveness in protecting consumers.

- *Deceptive practices.* The rules of licensing agencies should not restrict competition by limiting advertising and competitive bidding by licensees, except to prohibit misleading practices that could confuse or harm consumers. The Midwifery Board's statute does not contain language preventing it from unfairly restricting competition. While the Board has not passed rules to do so, establishing this provision in statute would ensure continued fair treatment of licensees.
- *Complaint trend analysis.* Licensing boards should analyze the sources and types of complaints they receive to identify problem areas and trends. Boards should also record non-jurisdictional complaints so that the agency has a complete picture of the public's problems with this general area of regulation. Identifying complaint trends can help boards target resources more effectively, leading to greater protection of consumers. The boards' final disciplinary actions are grouped by type of violation and outcome, and posted on DSHS's Web site, but the boards do not appear to use the data to target their resources. By paying attention to complaint information, the boards could enact policies to help prevent further public harm.
- *Complaint procedures.* Boards should provide the public with sufficient information on complaint procedures. Brochures, Web sites, and the placement of signs in businesses all promote public awareness of the boards. Statutes for all six boards require them to establish, by rule, methods to notify consumers about the boards for complaint purposes. However, rules adopted by the Midwifery and Social Worker boards do

not clearly specify these methods. Making these rules more explicit would ensure that the public has access to the procedures for filing a complaint should the need arise.

- *Committees.* Complaint committees should include a public board member to help ensure a balance between occupational and public interests. The Dietitian and Marriage and Family Therapist boards do not have rules specifying that committees must contain a public member, though in practice the boards assign at least one public member to enforcement committees. Requiring all the boards, in statute, to include a public member on their complaint committees would help ensure continued protection of the public and fairness to licensees in the complaint process.
- *Range of penalties.* All licensing boards should have a broad range of penalties – including revocation, suspension, and refusal to renew a license, probation of a suspended license, and reprimand – to be able to conform the punishment to the seriousness of the offense committed. The six boards already use many of these penalties. However, only the Professional Counselor Board’s statute includes authority to refuse to renew licenses. Including this sanction in these statutes would enable the other five boards to better take appropriate punitive action against licensees. Further, tying a decision to renew a license to a licensee’s compliance with a disciplinary order, such a payment of an administrative penalty, would help ensure that licensees are in good standing before renewing their licenses.
- *Administrative penalties.* A board’s administrative penalty authority should include penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. Three boards may impose a penalty amount of up to \$5,000 per violation per day for violations of state law, while the Marriage and Family Therapist and Midwifery boards have authority to impose administrative penalties of up to \$1,000 per violation per day, and the Social Worker Board can fine up to \$500 per violation per day. Given the significant harm that can result from illegal activity related to these boards, current penalty amounts may not be adequate to deter illegal behavior. Granting all six boards authority to charge the same \$5,000 would give the boards flexibility to address the potentially severe nature of illegal activity and would conform the statutes to a uniform penalty amount.
- *Administrative penalty matrix.* Boards with administrative penalty authority should use a penalty matrix to establish penalties for specific violations in a way that relates to the nature and seriousness of the violation and is fair and consistent for all violators. The matrix should be adopted by an agency’s policymaking body in rule to provide opportunity for public awareness and debate. Currently, the Dietitian and Perfusionist boards have no penalty matrices, though the Dietitian Board has proposed one in rule. The Professional Counselor and Social Worker boards maintain penalty matrices, but they do not specify dollar amounts associated with violations.¹¹ The Professional Counselor Board has proposed such a change in its rules. Requiring the boards to adopt




Statutorily requiring board enforcement committees to include a public member helps ensure protection of the public and fairness to licensees.



Establishing penalty matrices in rule helps ensure that administrative penalties reflect the severity of the violation.

penalty matrices, in rule, with attached dollar amounts would facilitate fair treatment of all violators.

- *Refund authority.* Refunds allow a complainant to be reimbursed for some or all of the fee paid to a practitioner who is found to have engaged in illegal activities. Refunds can be granted when a consumer has been defrauded or subjected to a quantifiable loss, such as the cost of a counseling session or consultation. The boards' current enforcement tools are designed to correct licensee behavior, but do not allow for repayment to the aggrieved party. Providing for refunds, not to exceed the fee the consumer paid, and as part of an informal settlement conference, could help defrauded consumers recover the loss incurred.
- *Unlicensed activity.* A licensing agency should have enforcement authority not only over licensees, but over those who engage in unlicensed activity. Injunctive authority enables boards to seek legal action against unlicensed violators, making them subject to contempt if they continue activity in violation of the injunction. The Dietitian Board is the only one of the six boards that cannot seek an injunction. Granting this authority would provide an enforcement tool for stopping illegal and potentially dangerous unlicensed activity.



All six boards lack authority to issue cease-and-desist orders to address unlicensed activity.

Another tool for taking action against unlicensed violators includes the cease-and-desist order. Cease-and-desist authority serves as an interim step, before an injunction, that boards may take on their own to stop unlicensed activity. Further, making violations of cease-and-desist orders subject to additional sanctions, such as administrative penalties, would help make them more enforceable. Currently, all six boards lack authority to issue cease-and-desist orders. Granting the boards this authority would allow them to better protect the public by stopping illegal and potentially dangerous unlicensed activity.

Certain policy body and administrative provisions of the boards' statutes could reduce the boards efficiency and flexibility to adapt to changing circumstances.

- *Compensation.* Board members should be subject to reasonable standards for travel reimbursement, which should be reflected in statute. The Dietitian, Marriage and Family Therapist, Midwifery, Perfusionist, and Professional Counselor statutes authorize payments to board members for attendance at board meetings, in addition to reimbursement for travel and meal expenses. Also, the Midwifery Act specifies that Midwifery Board members may receive a payment of \$50 per meeting – higher than the amount authorized in the General Appropriations Act – and the travel allowance authorized for state employees.¹² These payments are not current practice as many state boards have specific provisions in their statutes requiring board members to serve without compensation. Removing these payment provisions would align the boards with other state agencies.
- *Board committees.* Committees of boards should be composed only of board members to provide accountability to the Governor or appointing body for board actions. With the exception of the Marriage and Family Therapist Board, all the boards have created rules, without clear statutory



The Midwifery Board has appointed members of the Association of Texas Midwives to serve on its board committees.

direction, that permit the appointment of non-board members to committees. The Midwifery Board is the only board that has provided for non-board members on committees, though they do not vote. Establishing the boards' authority to appoint committees, and specifying that committees must be composed only of board members, would provide greater accountability to the Health and Human Services Commission for the Midwifery Board and to the Governor for the other boards. In addition, the Licensed Professional Counselor Act has a provision permitting the Board to delegate authority to a single Board member.¹³ Removing this authority would also improve accountability to the Governor.

- *Public information.* While the public may not be well informed about a profession or its governing policies, licensees are best able to provide this explanatory information. Current statutes require several of the boards to prepare information on the professions, but none of statutes requires licensees to distribute the information to clients. Requiring the boards' licensees to provide information on their profession to consumers would better inform them of their options.

Also, the public may not be aware of the differences between marriage and family therapy, professional counseling, and social work, and which of these services is most appropriate to particular needs. Having these boards prepare a plain-language brochure explaining the different professions, and requiring the licensees to distribute the brochure, would help the public make more informed decisions in obtaining these services.

In addition to information distributed by licensees, licensing agencies should also make consumer information available to the public. All six boards have Web sites describing the boards and the regulated professions, and four have brochures with similar information. However, not all the Web sites are kept up to date. In addition, the Dietitian Board brochure has become so outdated, the Board no longer distributes it. Requiring the boards to annually evaluate their public information would provide the public with access to current information about the boards' activities and the professions they regulate.



The boards do not always provide the public with current consumer brochures and up-to-date Web sites, limiting the usefulness of this information.

Recommendations

Licensing

Change in Statute

3.1 Clarify that the six boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the six boards' authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring them to develop rules defining the specific crimes they believe affect a potential licensee's ability to practice.

3.2 Remove exemptions from temporary licensure requirements from the Licensed Professional Counselor Act.

This recommendation would remove two provisions permitting the issuance of temporary permits to applicants who have not completed the required number of graduate semester hours. The first provision allows a person to receive a temporary license to practice art therapy before completing the required number of graduate hours, while the second provision permits a person to complete the required hours while simultaneously completing the supervised internship. These changes would clarify that the Professional Counselor Board has the authority to issue a temporary license only if the applicant has met specified educational requirements. Issue 2 in this report clarifies how the Professional Counselor Board would apply these educational requirements to professional counselors from other states, and directs the Board to consider licensing any out-of-state professional counselor who has a degree but has not attained the 48 graduate hours specified in Texas law.

3.3 Remove subjective examination provisions from the Marriage and Family Therapist and Professional Counselor boards' statutes.

This recommendation would remove the authority for the Marriage and Family Therapist and the Professional Counselor boards to use a field exam and remove the Marriage and Family Therapist Board's authority to use an oral exam. To qualify for a license, the boards would require passage of a written exam.

3.4 Require applicants to the six boards to pass a jurisprudence exam as a condition of licensure.

This recommendation builds on existing licensure requirements by requiring all of the boards' applicants to pass a jurisprudence exam to be eligible for licensure. The boards would need to develop an examination based on their licensing act and rules, and other applicable state laws and regulations affecting professional practice. The boards would have the flexibility to design and administer the exams to minimize impact on the licensees. The boards would also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results. Each board would develop an exam and begin exam administration by September 1, 2006. The requirement to pass the jurisprudence exam would only apply to individuals who apply for licensure on or after September 1, 2006; individuals licensed before then would be exempt from passing the jurisprudence exam.

3.5 Require the Midwifery Board to provide timely notice of exam results.

The Midwifery Board would be required to provide timely notice of exam results and analysis to individuals failing the exam. The change would require notification of examinees of their results not later than 30 days after they took the exam. If the exam is graded by a testing service, the Midwifery Board must notify the examinee of results not later than 14 days after receiving the results from the service. If notice from the testing service of exam results will be delayed longer than 90 days after the exam date, the Midwifery Board must notify the examinee of the reason for the delay before the 90th day.

3.6 Remove exemptions from the Marriage and Family Therapist, Perfusionist, Licensed Professional Counselor, and Social Worker acts for non-Texas residents to practice without temporary licensure.

This recommendation would prevent unlicensed marriage and family therapists, perfusionists, licensed professional counselors, and social workers from practicing in the state without receiving a temporary license to ensure minimum competency to practice. Practitioners from other states would no longer be able to practice in Texas without qualifying under state law.

3.7 Require the boards to base delinquent license renewal fees on the normally required renewal fee, and require midwives and perfusionists whose licenses are delinquent more than one year to reapply for licensure.

The renewal fee for the six boards' licensees who are delinquent in renewing their licenses would be based on the normal renewal rate set by the boards, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would be equal to 1-1/4 times the renewal fee, which would account for the increased fee that will result from a pending change to biennial renewals. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal 1-1/2 times the renewal fee. Also, midwives and perfusionists who have allowed their licenses to be expired for one year or more may not renew but must obtain a new license by complying with all requirements for obtaining an original license. These recommendations would not be implemented until September 1, 2007, to allow full implementation of the current shift to biennial renewal. Further, because of fiscal considerations, the Social Worker Board statute would need to specify that the current late renewal fee would remain in effect until such time that the new renewal fee approach would result in an increased late fee.

Enforcement

Change in Statute

3.8 Limit the Midwifery Board from adopting rules restricting advertising or competitive bidding by a license holder.

Adding this former Sunset across-the-board recommendation to the Midwifery Act would prohibit the Board from passing rules that restrict licensees' advertising or competitive bidding except to prohibit false, misleading, or deceptive practices.

3.9 Require the boards to include a public member on complaint committees.

Under this recommendation, the boards would be required in statute to include a public member on board committees that review enforcement cases. While all of the boards currently meet this requirement, enacting the provision in statute would ensure its continuation.

3.10 Authorize the Dietitian, Marriage and Family Therapist, Midwifery, Perfusionist, and Social Worker boards to refuse to renew a license as an administrative sanction.

This recommendation would add an extra enforcement tool for these five boards, allowing the boards to better fit punishments to infractions. This recommendation would also provide for clear authority to deny license renewal for those who do not pay outstanding administrative fines.

3.11 Increase the maximum administrative penalty of the Marriage and Family Therapist, Midwifery, and Social Worker boards to \$5,000 per violation per day.

This recommendation would make all six boards' maximum administrative penalty amount uniform by increasing the three boards' amounts to \$5,000 per violation per day. As a cap, this maximum penalty would be applied only to the most serious offenses.

3.12 Require the Dietitian, Perfusionist, and Professional Counselor boards to adopt penalty matrices with dollar amounts associated with violations.

The Dietitian and Perfusionist boards would be required to adopt penalty matrices in rule, including dollar amounts tied to each violation; and the Professional Counselor and Social Worker boards would be required to modify their existing matrices to include the dollar amounts.

3.13 Authorize the boards to require refunds as part of the settlement conference process.

The boards would be allowed under this recommendation to include refunds as part of an informal settlement conference on a disciplinary case. Authority would be limited to ordering a refund not to exceed the amount the consumer paid the licensee. Any refund offer would not include an estimation of other damages or harm. The refund may be in lieu of, or in addition to, a separate board order assessing an administrative penalty.

3.14 Authorize the Dietitian Board to seek an injunction against persons holding themselves out as dietitians without a license.

Under this recommendation, the Dietitian Board would be able to seek an injunction, through the Attorney General in district court, against individuals who use the title of dietitian without being licensed by the Board.

3.15 Authorize the six boards to issue cease-and-desist orders against unlicensed activity.

The boards would issue cease-and-desist letters when they receive complaints or otherwise learn of an individual practicing or using a title without a license. This recommendation would also authorize the boards to assess administrative penalties against persons who violate cease-and-desist orders. The boards would still be authorized to refer these cases to local law enforcement agencies or the attorney general for prosecution.

Management Action

3.16 The boards should use complaint trend analysis to address recurring problems.

The boards would be required to use complaint trend analyses already compiled by DSHS to target their resources toward recurring problems. The boards should also include non-jurisdictional complaints in the trend analyses to get a complete picture of the public's problems with these general areas of regulation.

3.17 The Midwifery and Social Worker boards should establish, by rule, methods to notify consumers about the boards for complaint purposes.

The Midwifery and Social Worker boards should develop more specific rules, as currently required by statute, to notify consumers about their boards in case of complaints against licensees. The statutes specify that notification must include the name, mailing address, and telephone number of the boards, and may be placed on registration forms, signs in licensees' offices, or on bills for services.

Administration

Change in Statute

3.18 Remove provisions allowing board members to receive payments for attendance at meetings.

This recommendation would remove obsolete provisions permitting Dietitian, Marriage and Family Therapist, Midwifery, Perfusion, and Professional Counselor board members to receive payments for each board meeting attended.

3.19 Clarify the boards' authority to appoint board committees, but only comprised of board members, and remove statutory authority for the Professional Counselor Board to delegate its authority to a single member.

This recommendation would establish that while the boards may have committees, they may only consist of committee members. The recommendation also deletes a provision permitting the Professional Counselor Board to delegate authority to one member.

Management Action

3.20 The boards should improve the information they provide to the public.

This recommendation would require the boards to distribute information about their professions, produced by the boards, to consumers. In addition, the Marriage and Family Therapist, Professional Counselor, and Social Worker boards would produce a brochure, separate from those describing individual boards, explaining the differences between the three mental health fields, and which of the services from each field is most appropriate to particular needs. Finally, this recommendation would require the boards to assess their public information annually to ensure that it remains current and accurate enough to be of assistance to consumers and the general public.

Impact

The application of these recommendations would result in efficiency and consistency from fairer processes for licensees, additional protection of consumers, and standardization of agency procedures. The chart, *Benefits of Recommendations*, summarizes the recommendations and their benefits.

Fiscal Implication

These recommendations would result in an overall loss to the General Revenue Fund of about \$24,000 annually beginning in fiscal year 2008. Basing the late renewal penalties on the boards' license renewal fees rather than the exam fees would result in an annual revenue loss of about \$25,600. Because the Social Worker Board's late renewal fee would not change until the new approach results in a higher fee, its revenue generated would not decrease. The recommendation to create a public information brochure describing the mental health professions could cost about \$1,500; the boards could cover this cost with existing resources. The boards would experience a cost to develop jurisprudence exams, but this cost would be recovered in the examination fee. Finally, eliminating the \$50 payment to Midwifery Board members for attending their semi-annual meetings would save DSHS about \$900 annually, while eliminating the \$30 compensatory per diem payment to Professional Counselor Board members for attending meetings three times a year would save DSHS about \$800 annually.

| Fiscal Year | Cost to the General Revenue Fund | Gain to the General Revenue Fund | Net Effect on the General Revenue Fund |
|--------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------------|
| 2006 | \$0 | \$1,700 | \$1,700 |
| 2007 | \$0 | \$1,700 | \$1,700 |
| 2008 | \$25,600 | \$1,700 | (\$23,900) |
| 2009 | \$25,600 | \$1,700 | (\$23,900) |
| 2010 | \$25,600 | \$1,700 | (\$23,900) |

| Benefits of Recommendations | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------|-----------------------------|--------------------------|
| Recommendations | Efficiency of Operations | Administrative Flexibility | Fairness to Licensee | Public Protection |
| Licensing | | | | |
| 3.1 Clarify that the six boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code. | ✓ | | ✓ | ✓ |
| 3.2 Remove exemptions from temporary licensure requirements from the Licensed Professional Counselor Act. | | | ✓ | ✓ |
| 3.3 Remove subjective examination provisions from the Marriage and Family Therapist and Professional Counselor boards' statute. | ✓ | | ✓ | |
| 3.4 Require applicants to the six boards to pass a jurisprudence exam as a condition of licensure. | | | | ✓ |
| 3.5 Require the Midwifery Board to provide timely notice of exam results. | | | ✓ | |
| 3.6 Remove exemptions from the Marriage and Family Therapist, Perfusionist, Licensed Professional Counselor, and Social Worker acts for non-Texas residents to practice without temporary licensure. | | | ✓ | ✓ |
| 3.7 Require the boards to base delinquent license renewal fees on the normally required renewal fee, and require midwives and perfusionists whose licenses are delinquent more than one year to reapply for licensure. | | ✓ | ✓ | |
| Enforcement | | | | |
| 3.8 Limit the Midwifery Board from adopting rules restricting advertising or competitive bidding by a license holder. | | | ✓ | |
| 3.9 Require the boards to include a public member on complaint committees. | | | | ✓ |
| 3.10 Authorize the Dietitian, Marriage and Family Therapist, Midwifery, Perfusionist, and Social Worker boards to refuse to renew a license as an administrative sanction. | | ✓ | | ✓ |
| 3.11 Increase the maximum administrative penalty of the Marriage and Family Therapist, Midwifery, and Social Worker boards to \$5,000 per violation per day. | | ✓ | | ✓ |
| 3.12 Require the Dietitian, Perfusionist, and Professional Counselor boards to adopt penalty matrices with dollar amounts associated with violations. | ✓ | ✓ | ✓ | ✓ |

| Benefits of Recommendations | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------|-----------------------------|--------------------------|
| Recommendations | Efficiency of Operations | Administrative Flexibility | Fairness to Licensee | Public Protection |
| Enforcement (cont.) | | | | |
| 3.13 Authorize the boards to require refunds as part of the settlement conference process. | | ✓ | | ✓ |
| 3.14 Authorize the Dietitian Board to seek an injunction against persons holding themselves out as dietitians without a license. | | ✓ | | ✓ |
| 3.15 Authorize the six boards to issue cease-and-desist orders against unlicensed activity. | | ✓ | | ✓ |
| 3.16 The boards should use complaint trend analysis to address recurring problems. | ✓ | | | ✓ |
| 3.17 The Midwifery and Social Worker boards should establish, by rule, methods to notify consumers about the boards for complaint purposes. | | | | ✓ |
| Administration | | | | |
| 3.18 Remove provisions allowing board members to receive payments for attendance at meetings. | ✓ | ✓ | | |
| 3.19 Clarify the boards' authority to appoint board committees, but only comprised of board members, and remove statutory authority for the Professional Counselor Board to delegate its authority to a single member. | ✓ | | | ✓ |
| 3.20 The boards should improve the information they provide to the public. | | | | ✓ |

¹ Texas Occupations Code, sec. 503.308.

² Texas Occupations Code, sec. 503.309.

³ Texas Occupations Code, sec. 503.302(c).

⁴ Texas Occupations Code, sec. 502.254(c)(3) and sec. 503.305(b)(1) and (c).

⁵ Texas Occupations Code, sec. 502.254(c)(2).

⁶ Professional Counselor Board's Ad-Hoc Testing Committee meeting (Austin, Texas, September 3, 2004).

⁷ Texas Occupations Code, sec. 502.004(3), sec. 503.053, sec. 603.004(2), and sec. 505.003(4).

⁸ Texas Administrative Code, Title 22, part 38, rule 831.11(g)2.

⁹ Texas Occupations Code, sec. 603.301(e).

¹⁰ Texas Administrative Code, Title 22, part 38, rule 831.11(h) and (i).

¹¹ Texas Administrative Code, Title 22, part 30, rule 681.203 and Texas Administrative Code, Title 22, part 34, rule 781.803.

¹² Texas Occupations Code, sec. 203.058.

¹³ Texas Occupations Code, sec. 503.205.

Texas Should Continue Regulating Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers.

Summary

Key Recommendation

- Continue regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.

Key Findings

- Texas has a continuing interest in regulating the practice of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.
- Different organizational options for regulating licensed health-care practitioners may offer advantages and disadvantages to the six licensing boards.
- Most states regulate dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers, although organizational structures vary.
- A complete study of organizational options that includes the results of the Sunset Commission's reviews of other health-profession licensing agencies during this review cycle is contained in the Licensing Reorganization Project.

Conclusion

The Department of State Health Services administers the licensing functions of 13 health licensing boards, six of which are currently under Sunset review – the State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and the State Board of Social Worker Examiners. Each board has independent enforcement authority and all, except for the Midwifery Board, are appointed by the Governor with independent rulemaking authority.

Sunset staff evaluated the continuing need for regulation of each of the health care professions overseen by the boards and concluded that public health and safety concerns necessitate continued State oversight. Sunset staff also evaluated options for the administrative structure in which the State provides these licensing functions. These options include retaining the current administrative attachment to the Department of State Health Services, creating a new, consolidated agency that would only provide health licensing functions, or enhancing coordination through an entity such as the Health Professions Council. Recommendations on health licensing agency structure are contained within the Licensing Reorganization Project.

Support

The state boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers seek to protect the public by ensuring that only licensed individuals provide these health-care services.

- The State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and State Board of Social Worker Examiners are all housed within the Department of State Health Services (DSHS), Professional Licensing and Certification Unit, which serves as an umbrella licensing agency for these and other health licensing programs. With the exception of the Midwifery Board, each board is an independent, governor-appointed board that creates rules to license these health professionals, and enforces their respective Acts and takes appropriate disciplinary actions against licensees who violate laws or rules. DSHS provides all administrative services to license applicants, process renewals, receive complaints, and enforce administrative penalties.


*The Department of
State Health Services
serves as an umbrella
licensing agency for
all six health
licensing boards.*

The Midwifery Board serves in an advisory capacity. Midwifery Board members are appointed by the Executive Commissioner of the Health and Human Services Commission and proposed rules must be approved by the State Health Services Council (SHSC) and the Executive Commissioner before adoption by the Midwifery Board. The make up of each board is shown in the table, *Composition of DSHS Health Licensing Boards Under Sunset Review*.

All the boards seek to protect the public by ensuring that these health-care licensees are qualified, competent, and adhere to established professional standards. While licenses offered by the boards have many differences, the required educational and experience qualifications seek to protect the public from unqualified practitioners. The table, *Persons Licensed by DSHS Health Licensing Boards* lists the number of licensees under each board's jurisdiction.


| Persons Licensed by DSHS Health Licensing Boards – FY 2003 | |
|-----------------------------------------------------------------------|------------------|
| Board | Licensees |
| Dietitian | 3,407 |
| Marriage and Family Therapist | 2,572 |
| Midwifery | 180 |
| Perfusionist | 296 |
| Professional Counselor | 16,200 |
| Social Worker | 22,068 |
| Total | 44,723 |

- The State Board of Examiners of Dietitians licenses about 3,400 dietitians who are trained in nutrition science and specialize in menu planning, supervision of food preparation, diet therapy, nutrition research, counseling, and nutrition education. State law requires a license for persons to hold themselves out as a 'Dietitian,' but does not restrict the practice of dietetics only to license holders. Dietitians typically work in

hospitals, nursing homes, or other institutions where they are responsible for menu planning and overseeing the preparation of food.

| Composition of DSHS Health Licensing Boards Under Sunset Review | | | |
|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------|
| Board | Professional Members | Public Members | Total |
| Texas State Board of Examiners of Dietitians | 6 Dietitians | 3 | 9 |
| Texas State Board of Examiners of Marriage and Family Therapists | 5 Marriage and Family Therapists (1 must be a Professional Educator) | 4 | 9 |
| Texas Midwifery Board | 3 Documented Midwives 1 Nurse Midwife 1 Pediatrician or Family Practitioner 1 OB-GYN | 3 (1 must be a Parent of a child born with assistance of a Midwife) | 9 |
| Texas State Board of Examiners of Perfusionists | 5 Licensed Perfusionists 1 Cardiovascular Surgeon | 3 | 9 |
| Texas State Board of Examiners of Professional Counselors | 5 Licensed Professional Counselors (3 must be in private practice and 1 must be an educator) | 4 | 9 |
| Texas State Board of Social Worker Examiners | 2 Licensed Master Social Workers 2 Licensed Clinical Social Workers 2 Licensed Baccalaureate Social Workers | 3 | 9 |

- The State Board of Examiners of Marriage and Family Therapists licenses 2,600 marriage and family therapists. The approach to this profession renders therapeutic services to individual clients or groups, and involves the application of family systems theories. Marriage and family therapists, trained in psychotherapy, can diagnose and treat mental and emotional disorders within the context of marriage, couples, and families. About 90 percent of marriage and family therapists hold dual licenses as professional counselors or social workers.
- The Texas Midwifery Board licenses about 180 midwives who provide birthing services at the mother's home or at licensed birthing centers using a model of care that de-emphasizes medical intervention. The Midwifery Board licenses direct entry, documented midwives while the Board of Nurse Examiners licenses certified nurse midwives. The Midwifery Board also licenses the three midwifery education programs in Texas. While birthing centers run by midwives are required to be licensed by DSHS, this function is not under the purview of the Midwifery Board.



Texas' 300 licensed perfusionists operate heart-lung machines during open-heart surgeries.

- The State Board of Examiners of Perfusionists licenses about 300 medical professionals who operate heart-lung machines during open-heart surgeries and other procedures. Perfusionists work under the direct supervision of surgeons and anesthesiologists during surgical procedures.
- The State Board of Examiners of Professional Counselors licenses 16,200 professional counselors who use their specialized training in psychotherapy, human development, and counseling, to diagnose and treat mental and emotional disorders, assist individual clients to overcome life challenges and promote wellness, personal growth, and career development.
- The State Board of Social Worker Examiners licenses 22,000 social workers who work to restore or enhance the functioning of individuals, couples, families, groups, organizations, and communities. Social workers apply social work values, principles, and methods, that include assessment, evaluation, case management, counseling, marriage and family therapy, and psychotherapy.

Texas has a continuing interest in regulating the practices of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.

- While the six health professions have significant differences from one another, each of the boards licenses individuals to ensure their competence to provide services to the public. The boards also develop rules to ensure that licensees engage in safe practices, receive and investigate complaints from the public, and enforce the laws and rules against violators. Specific additional reasons why the functions of each of the licensing programs need to be continued are discussed in the following material.
- Continuation of the dietitian license is important as many institutions receive third-party reimbursement for dietary services that is only available when a state-licensed dietitian provides services. Certain accrediting bodies also require hospitals and other institutions to employ state-licensed dietitians. Title restrictions also ensure that persons holding themselves out as dietitians in Texas are properly trained in nutrition science and services for medical dietary needs.
- Continued oversight of marriage and family therapists is needed because of the potential harm that could be caused to the well-being of clients. Public health and safety further require that practitioners have proper educational and experience qualifications to provide psychotherapy services, and are free from conviction of serious crimes and violations of rules.
- Licensing of midwives needs to continue because of the threat to public health posed by individuals without proper education and training. Midwives increase the availability of needed medical services in chronically underserved parts of Texas, and provide an alternative to the medical model of childbirth preferred by many pregnant women.

- Licensed perfusionists operate complex heart-lung machines in surgical environments. Because cardiac patients have no way of independently verifying the qualifications of perfusionists, public health and safety concerns create a need for assurance that perfusionists have proper educational and experience qualifications. Although the license requirements for perfusionists essentially duplicate certification requirements of the American Board of Cardiovascular Perfusion, state regulation provides enforcement authority to take action against problem perfusionists.
- Licensed professional counselors engage in direct services typically rendered in individual sessions. The intimate nature and sensitivity of this work requires appropriate screening of practitioners for educational and experience qualifications, criminal history, and conduct and ethical problems to ensure the well-being of clients.
- Although some specific tasks associated with social work parallel those of many non-licensed professions, public health and safety are enhanced by ensuring that social workers – especially those that are in clinical practice and who counsel patients in private environments – meet education and experience requirements and have no history of committing serious crimes.

Different organizational options for regulating licensed health-care practitioners may offer advantages and disadvantages to the six licensing boards.

- While the six boards are administratively attached to the Department of State Health Services, the regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers could occur through several organizational structures. These options include regulation through independent agencies, a coordinating council similar to the Health Professions Council, or the current structure of consolidated semi-independent boards under a larger health care delivery agency. The advantages and disadvantages of each of these organizational structures are detailed in the chart, *Licensing Agency Organizational Structure Options* and in the following material.
- Traditionally, Texas has regulated most health-care professions through an independent agency that covers the cost of operations through licensing and professional fees, and provides expertise for the regulation of its licensees. Examples of this structure include the Board of Medical Examiners and the State Board of Pharmacy.
- The Health Professions Council (HPC) currently functions as a coordinating council for 15 health-care professional licensing agencies representing 35 professional licensing boards and programs. Member agencies collocate in one state office building to facilitate resource sharing, including shared board and conference rooms, an imaging system, courier services, and information technology staff. HPC is currently making plans to coordinate human resources and financial activities among member agencies. The Legislature augmented the activities of HPC in 2003 by establishing the Office of Patient Protection, which will assist consumers with complaints about HPC member



The licensing and enforcement functions of each board continue to be needed to ensure the competence of the health professionals who serve the public.



While the regulation of each profession should continue, the State has several options for the organizational structure of the functions.

agencies. Currently HPC functions simply as a coordinating body with a small staff that brokers services among its member agencies. However, given additional authority and resources, HPC could perform administrative functions for member agencies, allowing the individual licensing agencies to focus on licensing and enforcement.

| Licensing Agency Organizational Structure Options | | | |
|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Organization | Description | Advantages | Disadvantages |
| Independent Agency | Independent boards appointed by Governor to represent health care professionals and make final decisions for regulation with own staff and budget. | <ul style="list-style-type: none"> • Expertise in profession applied to regulation of licensees. • Better accountability for licensing and enforcement decisions. • Improved customer service by Board and staff dedicated to single profession. | <ul style="list-style-type: none"> • Duplication of effort with other licensing agencies performing common functions. • Limited coordination with agencies with similar responsibilities. |
| Coordinating Council | Board appointed by Governor to make final decisions for regulation with own staff for licensing and enforcement. Receives some or all administrative support from coordinating council composed of comparable agencies, such as the Health Professions Council, which may rely on staff from member agencies or may employ own staff. | <ul style="list-style-type: none"> • Administrative efficiency from standardizing functions among member agencies. • Better focus of limited resources on core licensing and enforcement functions. | <ul style="list-style-type: none"> • Less autonomy for Board in meeting administrative program needs. • Fracturing administrative services among agencies, with some favored more than others. • Duplication of effort with other licensing agencies performing common functions. |
| Consolidation of Similar Agencies | Independent, governor-appointed boards that make rules and final decisions on licensing and enforcement, or advisory boards that makes recommendations to consolidated licensing oversight board for regulation of separate health-care practitioners as part of unified regulation of all health professions. | <ul style="list-style-type: none"> • Single point of contact for consumers to obtain information or lodge complaints. • Improved coordination and standardization of rules and policies, especially among similar professions. • Improved economy of scale for administrative, licensing, and enforcement functions. • Reduced potential for regulated profession to dominate regulations. | <ul style="list-style-type: none"> • Neglect of individual professions in favor of larger, more powerful groups. • Diminished customer service and accountability, resulting in increased response times for licensing and enforcement actions. • Lack of staff expertise in a specific profession. |

- A single umbrella health licensing agency could regulate all of the health professions currently regulated under 35 separate boards and programs. Under this configuration, the regulation of these six health care licensing programs could each be overseen by a board with final policymaking authority or by an advisory committee that could provide expertise to a public board that would oversee all regulation. The agency could be modeled after the Texas Department of Licensing and Regulation, which

has a structure for occupational and professional examination, licensing, and enforcement for more than 20 regulatory programs. The agency's public board receives assistance from statutorily created advisory committees, composed of regulated trades, businesses, industries, and occupations.

Most states regulate dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers, although organizational structures vary.

- The chart, *Placement of Health Licensing Agencies in Other States*, describes the structure of other states' agencies that regulate the practice of these six health care professions. Most states use an umbrella licensing agency to license one or more of these professions.

| Placement of Health Licensing Agencies in Other States | | | |
|---------------------------------------------------------------|---------------------------------------|-----------------------------------------|------------------------------------------|
| Profession | States that License Profession | States with Independent Agencies | States with Consolidated Agencies |
| Dietetics | 44 | 7 | 37 |
| Marriage and Family Therapy | 46 | 3 | 43 |
| Midwifery | 20 | 0 | 20 |
| Perfusion | 11 | 0 | 11 |
| Professional Counseling | 48 | 5 | 43 |
| Social Work | 50 | 9 | 41 |

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Most states regulate the six professions through an umbrella licensing agency.

A complete study of organizational options that includes the results of the Sunset reviews of other health-profession licensing agencies during this review cycle is contained in the Licensing Reorganization Project.

- Sunset reviews of other health-profession licensing agencies are scheduled for completion simultaneous with the completion of this report. The textbox, *Health Licensing Boards Under Sunset Review*, lists the professional licensing agencies that have undergone Sunset review this legislative cycle.
- The Sunset Commission delayed its decisions on continuation of these agencies until Sunset staff had completed reviews of all health profession licensing agencies. The results of these reviews may indicate that further administrative efficiencies could be gained among these agencies. Opportunities also may exist to provide for greater coordination and consistent regulation across Texas' health-profession licensing agencies. The Sunset Commission can then base its recommendations on continuation and organizational structure with the most complete information.

| Health Licensing Boards Under Sunset Review – 2005 |
|------------------------------------------------------------------|
| State Board of Acupuncture Examiners |
| Texas Board of Chiropractic Examiners |
| Texas State Board of Examiners of Dietitians |
| Texas State Board of Examiners of Marriage and Family Therapists |
| Texas State Board of Medical Examiners |
| Texas Midwifery Board |
| Texas Optometry Board |
| Texas State Board of Examiners of Perfusionists |
| Texas State Board of Pharmacy |
| State Board of Physician Assistant Examiners |
| State Board of Podiatric Medical Examiners |
| Texas State Board of Examiners of Professional Counselors |
| Texas State Board of Examiners of Psychologists |
| Texas State Board of Social Work Examiners |
| State Board of Veterinary Medical Examiners |

Recommendation

Change in Statute

4.1 Continue regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.

This recommendation would continue the statutes that authorize the licensing of the six health-care professions. The Licensing Reorganization Project report contains the staff's recommendations on the organizational structure for the State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and State Board of Social Worker Examiners. Issue 1 of this report deals specifically with the structure of the Dietitian and Perfusionist boards.

Impact

Although the State should continue to regulate the practice of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers, the decision on continuation of the structure of that regulation is best addressed within the context of the Sunset reviews of other health-profession licensing agencies.

Fiscal Implication

If the Legislature continues the regulation of the six health care professions using the existing organizational structure within the Department of State Health Services, the boards' annual appropriation of about \$1.4 million would continue to be required to maintain licensing functions. These appropriations would be offset by the boards continued collections of \$2 million in licensing fees and appropriated revenues.

ACROSS-THE-BOARD RECOMMENDATIONS

State Board of Examiners of Dietitians

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Already in Statute | 1. Require public membership on the agency's policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Already in Statute | 3. Require unbiased appointments to the agency's policymaking body. |
| Apply | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Update | 6. Require training for members of the policymaking body. |
| Update | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

State Board of Examiners of Marriage and Family Therapists

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Already in Statute | 1. Require public membership on the agency's policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Already in Statute | 3. Require unbiased appointments to the agency's policymaking body. |
| Already in Statute | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Already in Statute | 6. Require training for members of the policymaking body. |
| Update | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

Texas Midwifery Board

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Already in Statute | 1. Require public membership on the agency’s policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Already in Statute | 3. Require unbiased appointments to the agency’s policymaking body. |
| Modify | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Modify | 5. Specify grounds for removal of a member of the policymaking body. |
| Apply | 6. Require training for members of the policymaking body. |
| Update | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Update | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

State Board of Examiners of Perfusionists

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Apply | 1. Require public membership on the agency's policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Update | 3. Require unbiased appointments to the agency's policymaking body. |
| Apply | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Apply | 6. Require training for members of the policymaking body. |
| Update | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

State Board of Examiners of Professional Counselors

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Already in Statute | 1. Require public membership on the agency's policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Apply | 3. Require unbiased appointments to the agency's policymaking body. |
| Already in Statute | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Update | 6. Require training for members of the policymaking body. |
| Apply | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

State Board of Social Worker Examiners

| Recommendations | Across-the-Board Provisions |
|------------------------|-------------------------------------------------------------------------------------------|
| Already in Statute | 1. Require public membership on the agency's policymaking body. |
| Already in Statute | 2. Require provisions relating to conflicts of interest. |
| Apply | 3. Require unbiased appointments to the agency's policymaking body. |
| Already in Statute | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Already in Statute | 6. Require training for members of the policymaking body. |
| Apply | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

AGENCY INFORMATION

Agency Information

Texas State Board of Examiners of Dietitians

Texas State Board of Examiners of Marriage and Family Therapists

Texas Midwifery Board

Texas State Board of Examiners of Perfusionists

Texas State Board of Examiners of Professional Counselors

Texas State Board of Social Worker Examiners

Agency at a Glance

The state boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers are housed within the Department of State Health Services (DSHS), which serves as an umbrella licensing agency for these and other health licensing programs. Each board, with the exception of the Midwifery Board, is an independent Governor-appointed board that creates rules to enforce the Acts and determine appropriate administrative penalties for licensees who violate laws or rules. DSHS provides all administrative services and staff to license applicants, and process complaints and administrative penalties. The Midwifery Board serves as an advisory board and is appointed by the Health and Human Services Commission Executive Commissioner. Proposed rules must be approved by the State Health Services Council (SHSC) and the Executive Commissioner before adoption by the Midwifery Board.

All the boards seek to protect the public by ensuring that these health service licensees are qualified, competent, and adhere to established professional standards. The table, *Persons Licensed by DSHS Health Licensing Boards*, lists the number of licensees under each board's jurisdiction.

| Persons Licensed by DSHS Health Licensing Boards – FY 2003 | |
|-----------------------------------------------------------------------|------------------|
| Board | Licensees |
| Dietitian | 3,407 |
| Marriage and Family Therapist | 2,572 |
| Midwifery | 180 |
| Perfusionist | 296 |
| Professional Counselor | 16,200 |
| Social Worker | 22,068 |

Key Facts

- **DSHS Functions.** The Department of State Health Services has adopted a functional organization approach to servicing the six health licensing boards under Sunset review. Under this approach DSHS provides consolidated services for licensing, enforcement, and board support rather than dedicating specific staff that work only on a single

licensing program. DSHS assigns 21 full-time employees to these boards with a total budget of \$1.4 million.

- **Dietitians.** The 3,500 dietitians licensed by the State Board of Examiners of Dietitians are experts in nutrition science who specialize in menu planning, supervision of food preparation, diet therapy, nutrition research, counseling, and nutrition education. The Licensed Dietitian Act is a title act that restricts providers of nutritional advice from referring to themselves as dietitians unless they are licensed by the Dietitian Board. The Dietitian Board received no complaints in FY 2003.
- **Marriage and Family Therapists.** The State Board of Examiners of Marriage and Family Therapists licenses about 2,500 marriage and family therapists who are mental health professional trained in psychotherapy and family systems. The approach to this profession renders therapeutic services to individual clients or groups, and involves the application of family systems theories. About 90 percent of marriage and family therapists also hold a license as a professional counselor or social worker. Religious practitioners and other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by the Marriage and Family Therapist Board to perform counseling. The Marriage and Family Therapist Board received 46 complaints in FY 2003.
- **Midwives.** Midwives deliver babies at the mother's home or at licensed birthing centers using a non-medical model of care that de-emphasizes medical intervention. See the textbox on *Different Models of Care – Midwifery and Medicine*, for more explanation. The Midwifery Board licenses 180 direct entry, documented midwives while the Board of Nurse Examiners licenses certified nurse midwives. The Midwifery Board also licenses the three midwifery education programs in Texas and received 16 complaints concerning midwives in FY 2003.
- **Perfusionists.** Perfusionists operate cardiopulmonary bypass equipment to maintain and monitor a patient's vital heart and lung functions during open-heart surgeries. The State Board of Examiners of Perfusionists licensed about 300 perfusionists and received one complaint in FY 2003. The Perfusionist Board requires all licensees to be certified by the American Board of Cardiopulmonary Perfusion.
- **Licensed Professional Counselors.** The 16,200 counselors licensed by the State Board of Examiners of Professional Counselors use their specialized training in psychotherapy, human development, and counseling, to diagnose and treat mental and emotional disorders, assist individual clients to overcome life challenges and promote wellness, personal growth, and career development. Religious practitioners and

**Different Models of Care
Midwifery and Medicine**

Midwifery practice is limited to normal pregnancies and focuses on minimizing technological interventions. Midwives believe that childbirth is a natural process.

Medicine is the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease.



*Perfusionists operate
heart-lung bypass
machines during
open-heart surgeries.*

other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by this board to perform counseling. The Professional Counselor Board received 121 complaints in FY 2003.

- **Social Workers.** The State Board of Social Worker Examiners licenses about 22,000 social workers who apply the theory, knowledge, methods, and ethics of social work to restore or enhance the functioning of individuals, couples, families, groups, organizations, and communities. Social workers apply social work values, principles, and methods, that include assessment, evaluation, case management, counseling, marriage and family therapy, and psychotherapy. The Social Worker Board received 119 complaints in FY 2003.

Organization

Policy Bodies

State Board of Examiners of Dietitians

The Dietitian Board is composed of nine members appointed by the Governor. Six members are current licensees and three members represent the public. In making appointments, state law requires the Governor to attempt to maintain balanced representation among dietitians practicing in clinical, educational, management, consultation, and community environments. The chart, *State Board of Examiners of Dietitians*, shows the current membership. The Dietitian Board elects its presiding officer, establishes qualifications for licensees, adopts rules to enforce the Dietitian Act, takes enforcement actions against those who violate the Act or rules, and sets the fees necessary to fund administration of the Act.

| <i>State Board of Examiners of Dietitians</i> | | |
|------------------------------------------------------|----------------------|---------------------------------|
| Name | Qualification | Term Expires¹ |
| Ralph McGahagin, Chair (Austin) | Dietitian | 2005 |
| Elizabeth S. Blakely (Georgetown) | Public Member | 2003 |
| Carol Barnett Davis (Dallas) | Public Member | 2005 |
| Lucinda Montemayor Flores (Brownsville) | Dietitian | 2003 |
| Janet Suzanne Hall (Georgetown) | Dietitian | 2007 |
| Claudia L. Lisle (Amarillo) | Public Member | 2007 |
| Amy Nicholson McLeod (Lufkin) | Dietitian | 2007 |
| Amy W. Scott (Spring) | Dietitian | 2003 |
| Eugene E. Wisakowsky (Waxahachie) | Dietitian | 2005 |

State Board of Examiners of Marriage and Family Therapists

The Marriage and Family Therapist Board is composed of nine members, appointed by the Governor, five of whom are current licensees with one member who is a professional educator. Four members represent the public.

The chart, *State Board of Examiners of Marriage and Family Therapists*, shows the current membership. The Marriage and Family Therapist Board establishes qualifications for licensees, adopts rules to enforce the Act, takes enforcement actions against those who violate the Act or rules, and sets the fees necessary to fund administration of the Act.

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Unlike the other five boards, the Midwifery Board is not appointed by the Governor and does not have independent rulemaking authority.

| State Board of Examiners of Marriage and Family Therapists | | |
|-------------------------------------------------------------------|----------------------------------------|---------------------------|
| Name | Qualification | Term Expires ¹ |
| Marvarene Oliver, Ed.D., LMFT, Chair (Corpus Christi) | Marriage and Family Therapist Educator | 2003 |
| Simon Aguilar (Lufkin) | Public Member | 2009 |
| Joe Ann Clack (Missouri City) | Public Member | 2009 |
| Sandra DeSobe, LMFT (Houston) | Marriage and Family Therapist | 2007 |
| Waymon Hinson, Ph.D., LMFT (Abilene) | Marriage and Family Therapist | 2007 |
| Reverend B.W. McClendon (Austin) | Public Member | 2007 |
| Brenda VanAmburgh, Ph.D., LMFT (Ft. Worth) | Marriage and Family Therapist | 2005 |
| Bishop William H. Watson (Lubbock) | Public Member | 2005 |
| Jackie M. Weimer, LMFT (Plano) | Marriage and Family Therapist | 2005 |

Texas Midwifery Board

The Midwifery Board consists of nine members appointed by the Executive Commissioner of the Health and Human Services Commission. Three members are licensed midwives; one is a certified nurse-midwife; one is an obstetrician and gynecologist; one is a family practitioner or pediatrician;

and three are public members, one of whom is a parent of a child born with the assistance of a midwife. The chart, *Texas Midwifery Board*, shows the current membership. The Midwifery Board proposes to the Executive Commissioner of the Health and Human Services Commission qualifications for licensees and rules to enforce the Act, but does not have independent rulemaking authority. The Midwifery Board takes enforcement actions against those who violate the Act or rules.

| Texas Midwifery Board | | |
|---------------------------------|----------------------------------------------------------------------------|--------------|
| Name | Qualification | Term Expires |
| Brent Baylor, Chair (Victoria) | Public Member Parent of a Child Born with Assistance of a Midwife | 2007 |
| Susan Chick (Round Rock) | Public Member | 2009 |
| Thalia Hufton (Tyler) | Midwife | 2009 |
| Gail Winters Johnson (Hurst) | Midwife | 2007 |
| Lisa R. Nash, D.O. (Galveston) | Family Practitioner/ Pediatrician | 2007 |
| Barry E. Schwarz, M.D. (Dallas) | Obstetrician/ Gynecologist | 2009 |
| Cynthia Scott (Dallas) | Public Member | 2005 |
| Karen Strange (Garland) | Midwife | 2005 |
| Vacancy | Certified Nurse Midwife | 2005 |

State Board of Examiners of Perfusionists

The State Board of Examiners of Perfusionists consists of nine members appointed by the Governor. Five members are licensed perfusionists, one is a cardiovascular surgeon licensed by the Board of Medical Examiners, and three members represent the public. The Perfusionist Board determines the qualifications of applicants, writes rules to enforce the Act, and takes administrative actions against those who violate the Act or rules.

| State Board of Examiners of Perfusionists | | |
|--------------------------------------------------|---------------------------|---------------------------------|
| Name | Qualification | Term Expires¹ |
| Thomas Kurt Wilkes, Chair (Lubbock) | Perfusionist | 2005 |
| H.B. Bell (Dallas) | Public Member | 2001 |
| Debra Sue Douglass (Grapevine) | Perfusionist | 2003 |
| Gaye Jackson (Houston) | Public Member | 2005 |
| Scott Bostow Johnson, M.D. (San Antonio) | Cardiovascular Surgeon | 2007 |
| Guadalupe M. "Lupita" Mendez (San Antonio) | Perfusionist | 2007 |
| Steven R. Raskin (Richmond) | Perfusionist | 2003 |
| Thomas A. Rawles (Plano) | Perfusioinist | 2005 |
| Sheila M. Tello (Corpus Christi) | Public Member | 2009 |

State Board of Examiners of Professional Counselors

The State Board of Examiners of Professional Counselors 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 who is an educator; and four members represent the public. The chart, *State Board of Examiners of Professional Counselors*, shows the current membership. The Professional Counselor Board establishes qualifications for licensees, adopts rules to enforce the Act and define the counseling practices that licensees may perform, takes enforcement actions against those who violate the Act or rules, and sets the fees necessary to fund administration of the Act.

| State Board of Examiners of Professional Counselors | | |
|------------------------------------------------------------|---------------------------------------------|---------------------|
| Name | Qualification | Term Expires |
| Judith Powell, Chair (The Woodlands) | Public Member | 2005 |
| Ana C. Bergh (Edinburg) | Public Member | 2005 |
| Diane Johnson Boddy (Edinburg) | Licensed Professional Counselor | 2009 |
| James Castro (San Antonio) | Licensed Professional Counselor | 2009 |
| Glynda Corley (Round Rock) | Licensed Professional Counselor | 2005 |
| Michelle A. Eggleston (Amarillo) | Public Member | 2007 |
| Alma G. Leal (Rancho Viejo) | Licensed Professional Counselor Educator | 2009 |
| J. Helen Perkins (DeSoto) | Public Member | 2007 |
| Dan F. Wilkins (Center) | Licensed Professional Counselor | 2007 |

State Board of Social Worker Examiners

The State Board of Social Worker Examiners consists of nine members appointed by the Governor. Two members are licensed master social workers (LMSW), two are licensed clinical social workers (LCSW); two are licensed baccalaureate social workers (LBSW), and three members represent the public. The chart, *State Board of Social Worker Examiners*, shows the current membership. The Social Worker Board establishes qualifications for licensees, adopts rules to enforce the Act and define the procedures for recognizing the independent practice of licensees, takes enforcement actions against those who violate the Act or rules, and sets the fees necessary to fund administration of the Act. The Social Worker Board is prohibited from adopting rules that are inconsistent with the procedures of the State Health Services Council.

| State Board of Social Worker Examiners | | |
|------------------------------------------------------|--------------------------------|---------------------|
| Name | Qualification | Term Expires |
| Jeannie M. McGuire, LBSW, Chair (College Station) | Baccalaureate Social Worker | 2007 |
| Holly Anawaty (Houston) | Public Member | 2007 |
| Carrie Yeats, LMSW (Lubbock) | Master Social Worker | 2009 |
| Lt. Willie McGee, Jr. (Plainview) | Public Member | 2005 |
| John Steven Roberts, LCSW (Austin) | Clinical Social Worker | 2005 |
| Matt Shaheen (Plano) | Public Member | 2009 |
| Julia Dunaway, LCSW (Fort Worth) | Clinical Social Worker | 2007 |
| Jamie B. Ward, LBSW (Tyler) | Baccalaureate Social Worker | 2005 |
| Vacancy | Master Social Worker | 2009 |

Staff

The Department of State Health Services provides all staffing to the six health licensing boards and organizes this staff along workflow functions – administration, licensing, and enforcement. In addition, DSHS assigns a person to each board, in consultation with the affected board, to serve as the board’s executive director, though one person may serve multiple boards. In total, the equivalent of 21 full-time employees perform all licensing and administrative functions for the six boards. The table, *Health Licensing Boards Staffing Levels*, shows the relative commitment of personnel by DSHS to each board.

| Health Licensing Boards Staffing Levels | |
|------------------------------------------------|---------------------------------------|
| Board | Full Time Equivalent Staff |
| Dietitian | 1.2 |
| Marriage and Family Therapist | 2.6 |
| Midwifery | 1 |
| Perfusionist | .6 |
| Professional Counselor | 8.25 |
| Social Worker | 7.75 |
| Total | 21.4 |

DSHS has administratively located the boards’ employees within the Professional Licensing and Certification Unit in Austin, although the boards

also rely on investigators from a separate enforcement unit. This DSHS unit also performs licensing functions for other licensing programs that are not under current Sunset review. Because the boards' staffing functions are consolidated with other DSHS licensing programs, the agency cannot provide separate information on the compliance of the boards with Equal Employment Opportunity guidelines.

The organization of the Professional Licensing and Certification Unit, as it pertains to the functions carried out for the health licensing boards, is depicted in the chart, *Department of State Health Services Licensing Organizational Chart*. The overall structure of DSHS, showing the placement of the Professional Licensing and Certification Unit, is shown in Appendix A.

In addition, DSHS provides legal, accounting, and information resources services through administrative divisions not shown on the chart. The Health and Human Services Commission provides human resources services to all HHSC agencies through an outside contractor.

Funding

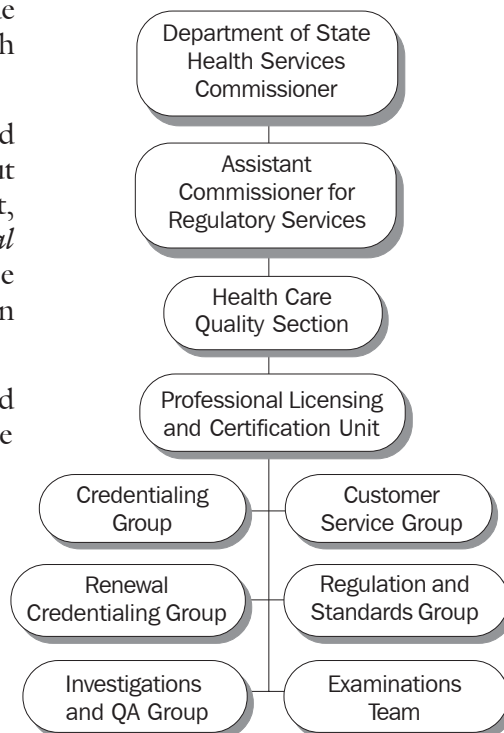
Revenues

In fiscal year 2003, the licensing of the six health professions generated \$2 million in revenue through various fees and assessments. Effective fiscal year 2004, state law requires each of the licensing programs to cover all administrative costs through licensing and renewal fees; and through appropriated receipts for charges for services, such as providing copies of the board's statutes and rules or approving third-party continuing education providers. All boards, except for the Midwifery Board, fully covered all direct and indirect administrative costs in fiscal year 2003. The revenue for each board in the last fiscal year is shown in the table, *Health Licensing Boards Revenue*.

Revenue generated through fees for licensing and renewal is deposited into the General Revenue Fund. Each board adjusts licensing fees every two years to keep the revenues generated through fees consistent with expenditure needs. Current fees for each of the boards are outlined in the chart, *Health Licensing Boards Fees*.

In addition, the boards may assess administrative penalties against licensees who violate statutes or rules. This penalty revenue is not used to cover the boards' operating costs, but goes to the General Revenue Fund to be spent for other state purposes. However, in fiscal year 2003, no administrative penalties were collected by any of these boards.

Department of State Health Services Licensing Organizational Chart



| Health Licensing Boards Revenue – FY 2003 | |
|--------------------------------------------------|--------------------|
| Board | Revenue |
| Dietitian | \$167,054 |
| Marriage and Family Therapist | \$245,713 |
| Midwifery | \$39,765 |
| Perfusionist | \$51,470 |
| Professional Counselor | \$737,090 |
| Social Worker | \$758,500 |
| Total | \$1,999,592 |

| Health Licensing Boards Fees – FY 2003 | | | | |
|-----------------------------------------------|-------------------------------|-------------------|---------------------------------|----------------------|
| Board | Fee Type | Fee Amount | Number of Persons Paying | Total Revenue |
| Dietitian | Application | \$54 | 267 | \$14,418 |
| | Renewal | \$45 | 3,140 | \$141,300 |
| Marriage and Family Therapist | Application | \$40 | 173 | \$6,920 |
| | License | \$45 | 57 | \$2,565 |
| | Renewal | \$65 | 2,475 | \$160,875 |
| | Inactive Status | \$75 | 290 | \$21,750 |
| | Continuing Education Provider | \$50 | 321 | \$16,050 |
| Midwifery | Initial Documentation | \$200 | 5 | \$1,000 |
| | Renewal | \$200 | 175 | \$35,000 |
| | School Approval | \$150 | 1 | \$150 |
| | School Site Visit | \$400 | 2 | \$800 |
| Perfusionist | Application | \$175 | 22 | \$3,850 |
| | Renewal | \$175 | 263 | \$46,025 |
| | Provisional | \$75 | 11 | \$825 |
| Professional Counselor | Application | \$90 | 1,148 | \$103,320 |
| | Renewal | \$50 | 11,200 | \$560,000 |
| | Inactive Status | \$25 | 765 | \$19,125 |
| Social Worker | Application | \$20 | 2,263 | \$45,260 |
| | License | \$30 | 1,833 | \$54,990 |
| | Renewal | \$30 | 10,466 | \$313,980 |
| | Advanced Practitioner License | \$40 | 450 | \$18,000 |
| | Advanced Practitioner Renewal | \$40 | 5,111 | \$204,440 |
| | Inactive Status | \$15 | 4,553 | \$68,295 |
| | Continuing Education Provider | \$50 | 1,115 | \$55,750 |

Expenditures

The administrative attachment of the six health licensing boards to the Department of State Health Services results in a shared appropriation through a single strategy – Health Care Standards. This administrative arrangement also means that the boards do not submit Legislative Appropriations Request or receive line-item appropriations. DSHS accounts for all revenue and expenditures through its budget and audit structures.

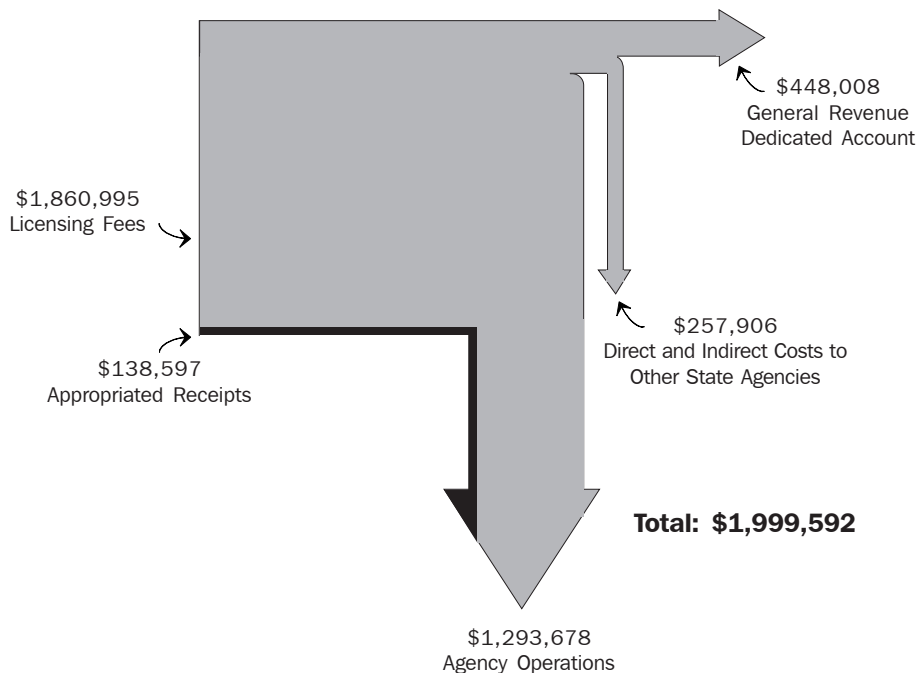
In fiscal year 2003, about \$1.4 million was spent on licensing, enforcement, and administration for these boards. The individual spending levels for each board are shown in the table, *Health Licensing Boards Expenditures*.

| Health Licensing Boards Expenditures FY 2003 | |
|---------------------------------------------------------|--------------------|
| Board | Budget |
| Dietitian | \$108,824 |
| Marriage and Family Therapist | \$171,315 |
| Midwifery | \$69,952 |
| Perfusionist | \$34,489 |
| Professional Counselor | \$497,836 |
| Social Worker | \$487,802 |
| Total | \$1,370,218 |

The Legislature has directed the boards, and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees, to cover all direct and indirect costs of the licensing program. These costs include spending by the licensing agency as well as funds appropriated to other agencies that are used to support the licensing program. Examples of these costs include employee benefits paid by the Employees Retirement System, and rent and utilities paid by the State Building and Procurement Commission. In fiscal year 2003, these direct and indirect funds appropriated to other agencies to support the boards totaled \$257,906.

The chart, *Health Licensing Boards Flow of Agency Revenue and Expenditures*, shows the overall impact of revenues and expenditures for the combined boards in fiscal year 2003. After subtracting the boards' operating expenses and the direct and indirect costs incurred by other agencies from the total of licensing fee revenue, \$448,008 went to the General Revenue Fund.


**Health Licensing Boards
Flow of Agency Revenue and Expenditures
FY 2003**



Because all expenditures for the boards are tracked through DSHS standard accounting systems, separate information regarding each board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services is not available.

Agency Operations

The six health licensing boards are administratively attached to the Department of State Health Services, which provides a common structure for licensing services and other agency operations. To achieve greater economies of scale, DSHS provides administrative operations in a functional manner, grouping similar activities in a single section. For example, rather than being assigned to one specific board, the same personnel are used to process license renewals for each of the six licensing boards and other DSHS licensing programs. Because of this common structure, the following material examines the operations of each licensing board in a common manner highlighting any major differences that may exist for one or more boards.


DSHS provides consolidated support for all the boards rather than for each one separately.

Board Support

Each of the six boards are assigned an executive director to support its work. The executive directors support the boards in developing rules, policies, and procedures, and serve as experts for licensing and practice issues, media and legislative contacts, and liaisons with professional organizations and government agencies. The executive directors also oversee the organization of board and committee meetings, including making travel and meeting room arrangements, information packets, and meeting minutes.

Licensing

To ensure adequate preparation of potential licensees to practice in a health profession, state law requires applicants for each of the six health licenses to have specific education and experience qualifications. Each board establishes qualifications for their licensees in rule, based upon statutory guidelines, and checks to see that new applicants meet these minimum qualifications. The number of licensees and new applications for each board is shown in the table, *Health Licensing Boards Licensing Workload*.

| Health Licensing Boards Licensing Workload – FY 2003 | | |
|-----------------------------------------------------------------|------------------|-------------------------------|
| Board | Licensees | Applications Processed |
| Dietitian | 3,407 | 266 |
| Marriage and Family Therapist | 2,572 | 173 |
| Midwifery | 180 | 8 |
| Perfusionist | 296 | 17 |
| Professional Counselor | 16,200 | 1,148 |
| Social Worker | 22,068 | 2,263 |
| Total | 44,723 | 3,875 |

The qualifications required for each profession must be demonstrated through successful completion of academic requirements, internships, and passage of examinations. The chart, *License Requirements*, shows the major qualifications required in each profession.

| License Requirements | | |
|-------------------------------|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Board | License Type | Requirement |
| Dietitian | Provisional | <ul style="list-style-type: none"> • Bachelor's degree with major in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management • Practice under supervision and direction of a currently licensed dietitian • May not be renewed more than two times |
| | Licensed Dietitian | <ul style="list-style-type: none"> • Bachelor's degree with major in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management • 900 hours of internship under licensed or registered dietitian • Passing score on national exam |
| Marriage and Family Therapist | Associate | <ul style="list-style-type: none"> • Graduate degree from accredited university • Internship in marriage and family therapy • Passing score on national exam |
| | MFT | <ul style="list-style-type: none"> • MFT Associate requirements • 3,000 hours of supervised clinical practice work which must include 1,500 hours of direct clinical services, 750 hours of services to couples or families, and 100 hours of individual supervision |
| Midwifery | Documented Midwife | <p>A passing score on a national exam and completion of 250 classroom instruction and 1,360 contact hours from either a:</p> <ul style="list-style-type: none"> • Midwifery Board-approved Texas Midwifery course; or • Midwife Education Accreditation Council accredited course and a continuing education course on the current Texas Midwifery Basic Information and Instructor Manual; or • Certification by North American Registry of Midwives, and completion of a continuing education course on the current Texas Midwifery Basic Information and Instructor Manual |
| | Midwifery School | <ul style="list-style-type: none"> • Course curriculum based on core competencies specified by the Midwives Alliance of North America • Written and skills assessment tests that conform to North American Registry of Midwives specifications • Financial statements • On-site evaluation by Midwifery Board |
| Perfusionist | Provisional Licensed Perfusionist | <ul style="list-style-type: none"> • Completion of an approved perfusion education program • Must practice under supervision and direction of a currently licensed Texas perfusionist |
| | Licensed Perfusionist | <ul style="list-style-type: none"> • Completion of an approved perfusion education program • Passing score on national exam • Participation in at least 25 perfusions • Hold current certification as a Certified Clinical Perfusionist issued by the American Board of Cardiovascular Perfusion |

| License Requirements | | |
|-----------------------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Board | License Type | Requirement |
| Professional Counselor | Temporary License | <ul style="list-style-type: none"> • Graduate degree in a counseling-related field from an accredited college with 48 graduate semester hours in normal human growth and development; abnormal human behavior; assessment techniques; counseling theories and methods; research; lifestyle and career development; and social, cultural and family issues • A supervised counseling practicum of 300 hours with 100 hours of direct client contact |
| | Licensed Professional Counselor | <ul style="list-style-type: none"> • Temporary LPC license • Post-graduate counseling internship of 3,000 hours under supervision of a Board-approved supervisor • Passing score on Texas Professional Counselor exam |
| Social Worker | Licensed Baccalaureate Social Worker (LBSW) | <ul style="list-style-type: none"> • Baccalaureate degree in social work from an accredited social work program • Passing score on national Social Work exam |
| | Licensed Master Social Worker (LMSW) | <ul style="list-style-type: none"> • Graduate degree in social work from accredited social work program • Passing score on national masters Social Work exam |
| | Licensed Master Social Worker-Advanced Practitioner (LMSW-AP) | <ul style="list-style-type: none"> • Licensed as an LMSW • 3,000 hours of Board-approved supervised professional employment experience with 100 hours of individual supervision • Passing score on national advanced-generalist exam |
| | Licensed Clinical Social Worker (LCSW) | <ul style="list-style-type: none"> • Licensed as an LMSW • 3,000 hours of Board-approved supervised professional employment experience with 100 hours of individual supervision • Passing score on national clinical exam |

Examination

All of the boards tests applicants for their knowledge of the profession and each of the boards, with the exceptions of the Midwifery and Professional Counselor boards, use an examination administered by a recognized, national association in the subject matter. The benefits of using a national exam are that the tests are fully validated by the national group as a fair and accurate examination of the licensee's knowledge; the tests are less expensive than preparing and updating a Texas-only exam; and the tests are usually available to applicants at various accessible sites throughout the state. In addition, using a standard exam that is accepted by many states enhances the ability of Texas licensees to practice in other states. While the Midwifery Board uses a national exam, DSHS staff administer the exam in Austin two times a year.

The one board that does not use a national exam, the Professional Counselor Board, creates its own, Texas-only exam. The Board has had the exam validated and the exam is administered by a private company that gives the computerized test in cities throughout Texas on a regular basis throughout the year. At one time, other states used the Texas exam, but now every other state that licenses professional counselors uses a national exam.

Applicants may take the national dietitian, perfusionist, marriage and family therapist, and social worker exams at testing sites across the state. Applicants notify the boards after completing all prerequisites for the exams. The boards then relay the applicants' eligibility to take the exam to the national associations that administer and grade the tests. The national groups notify the boards and applicants of the results of the exam. The procedure for the perfusionist exam differs from the other examinations in that the national association also determines applicants' eligibility to sit for the exam.

★
The Professional Counselor Board is the only one of the six that writes its own exam rather than using a national exam.

License Renewal

The six health licensing boards require licenses to be renewed annually, although beginning in 2005, DSHS will phase-in biennial renewals as required by recent legislation. By fiscal year 2008, all DSHS licenses will require biennial renewals. All licensees are able to renew electronically through the Texas Online Web site. To fund the cost of the online system all licensees, regardless of whether they use the online system, are required to pay an additional fee for online renewal. By June 2005, applicants for the six health licenses will also be able to apply for licenses online and all applicants will be assessed an additional fee.

To ensure that licensees stay abreast of current developments in their practice, all six boards require licensees to fulfill continuing education requirements before renewing their licenses. The hours of instruction required annually for each board are shown in the chart, *Continuing Education Requirements for Health Licensing Boards*. Professional associations and academic institutions offer many of the continuing education courses. DSHS staff randomly audit a percentage of licensees each year to check for proof of continuing education. The Social Worker and Marriage and Family Therapist boards also require continuing education providers to register their courses. This process is designed to better ensure the quality of the courses offered to licensees.

| Continuing Education Requirements for Health Licensing Boards | |
|----------------------------------------------------------------------|---------------------------------------------------|
| Board | Hours Required Annually |
| Dietitian | 6 |
| Marriage and Family Therapist | 15 (Must include 3 hours of ethics) |
| Midwifery | 10 |
| Perfusionist | 15 |
| Professional Counselor | 12 (Must include 3 hours of ethics each biennium) |
| Social Worker | 15 (Must include 3 hours of ethics) |

Complaint and Enforcement Process

DSHS staff answer public inquiries about each of the health licensing programs and receive complaints about licensees. These complaints may be submitted by mail, fax, or e-mail. Each complaint is first reviewed to determine if the allegations indicate potential imminent harm to public health and safety. These emergency cases have the highest priority for investigation and quick administrative processing. The board's executive

| Health Licensing Boards Complaints – FY 2003 | | | |
|-----------------------------------------------------|----------------------------|----------------------------|------------------------------------|
| Board | Complaints Received | Complaints Resolved | Average Time for Resolution |
| Dietitian | 0 | 1 | 76 Days |
| Marriage and Family Therapist | 46 | 46 | 133 Days |
| Midwifery | 16 | 11 | 102 Days |
| Perfusionist | 1 | 1 | 148 Days |
| Professional Counselor | 121 | 104 | 147 Days |
| Social Worker | 119 | 103 | 198 Days |
| Totals/Average | 303 | 266 | 162 Days |

director then reviews all complaints, and may dismiss non-jurisdictional complaints and refer potentially valid complaints for investigation by the unit’s investigators. The table, *Health Licensing Boards Complaints*, details the number of complaints received and resolved for each board as well as the average time for resolution.

DSHS investigators prioritize complaints with input from the executive directors. The investigators gather information on all cases to determine the validity of a complaint and return findings to the executive directors. State law grants all the boards authority to suspend licenses in emergency cases.

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Complaints that allege imminent harm to public health and safety are prioritized for speedy investigation.

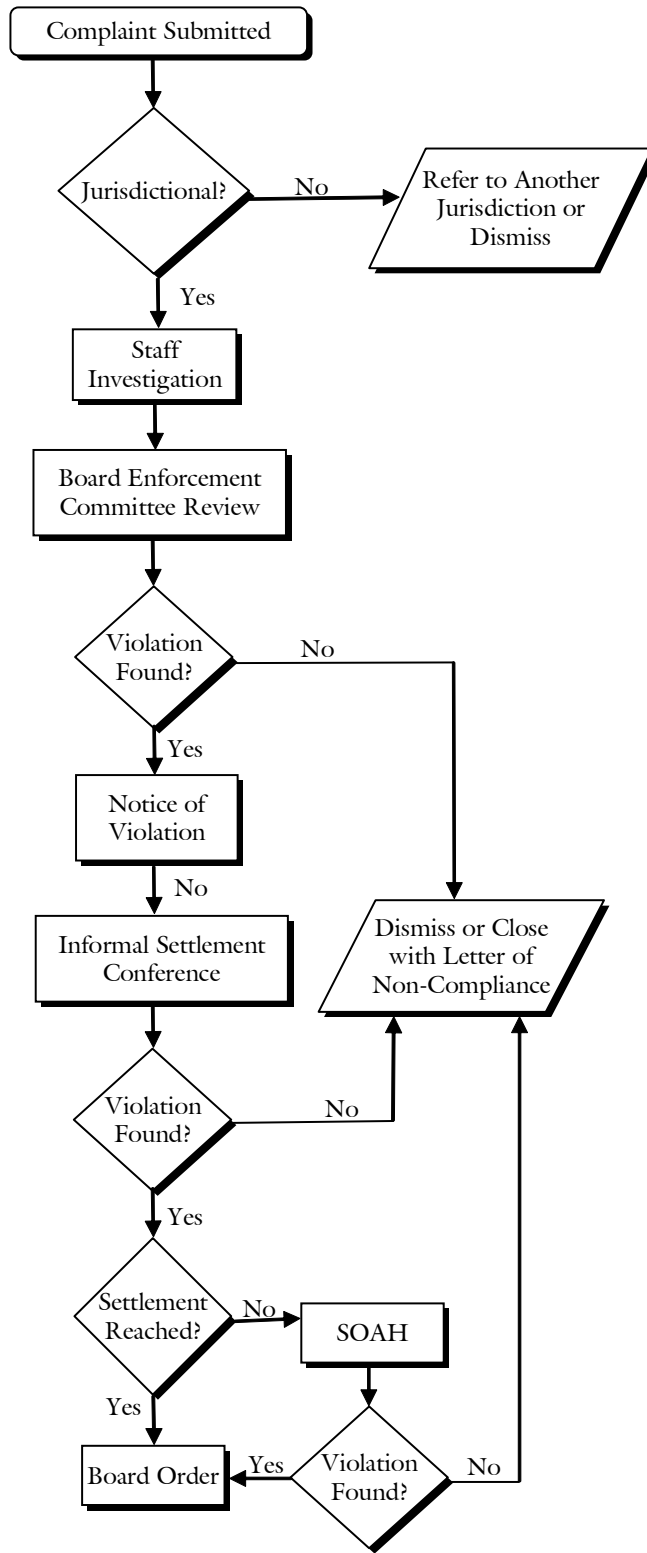
When investigators gather sufficient evidence, cases are scheduled for consideration by the board’s enforcement committee. Licensees and complainants receive notice of the committee meeting. The concerned board’s enforcement committee hears the case and may propose disciplinary action or close the case. DSHS staff prepare and send a notice of violation to the licensee. Licensees may request an informal settlement conference to discuss the notice of violation or request a hearing before a State Office of Administrative Hearings administrative law judge. Following this hearing the administrative law judge will return a proposal for decision to the full licensing board, which ultimately takes the final action. Licensees may appeal final decisions to District Court. The flowchart, *Health Licensing Boards Enforcement Process*, displays how cases may be handled by the boards’ processing system.

| Health Licensing Boards Disciplinary Actions – FY 2003 | | | | | | | | | | |
|---------------------------------------------------------------|----------------|-----------|----------------|---------------|-----------|------------|-------------------|------------|-------------------------|-----------|
| Board | | | | | | | | | | |
| | Warning Letter | Reprimand | Admin. Penalty | Civil Penalty | Probation | Suspension | License Surrender | Revocation | Cease and Desist Letter | Total |
| Dietitian | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Marriage and Family Therapist | 1 | 2 | 0 | 0 | 5 | 1 | 1 | 5 | 0 | 15 |
| Midwifery | 3 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 6 |
| Perfusionist | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Professional Counselor | 17 | 7 | 0 | 0 | 5 | 0 | 4 | 3 | 5 | 41 |
| Social Worker | 9 | 2 | 0 | 7 | 4 | 2 | 2 | 0 | 4 | 30 |
| Totals | 30 | 13 | 1 | 7 | 14 | 3 | 8 | 8 | 9 | 93 |

State law provides each board with a broad range of disciplinary actions ranging from reprimands to administrative penalties. In addition, informal settlement conferences may result in licensees agreeing to penalties that are not specified in statute. For example, a settlement agreement may require a licensee to refund fee payments to consumers or take additional continuing education courses. The table, *Health Licensing Boards Disciplinary Actions*, details the number of each type

of formal penalty taken by each board in fiscal year 2003. More detailed information on resolution of all complaints by the boards including complaints that were dismissed or referred to other Jurisdictions is available in Appendix B.

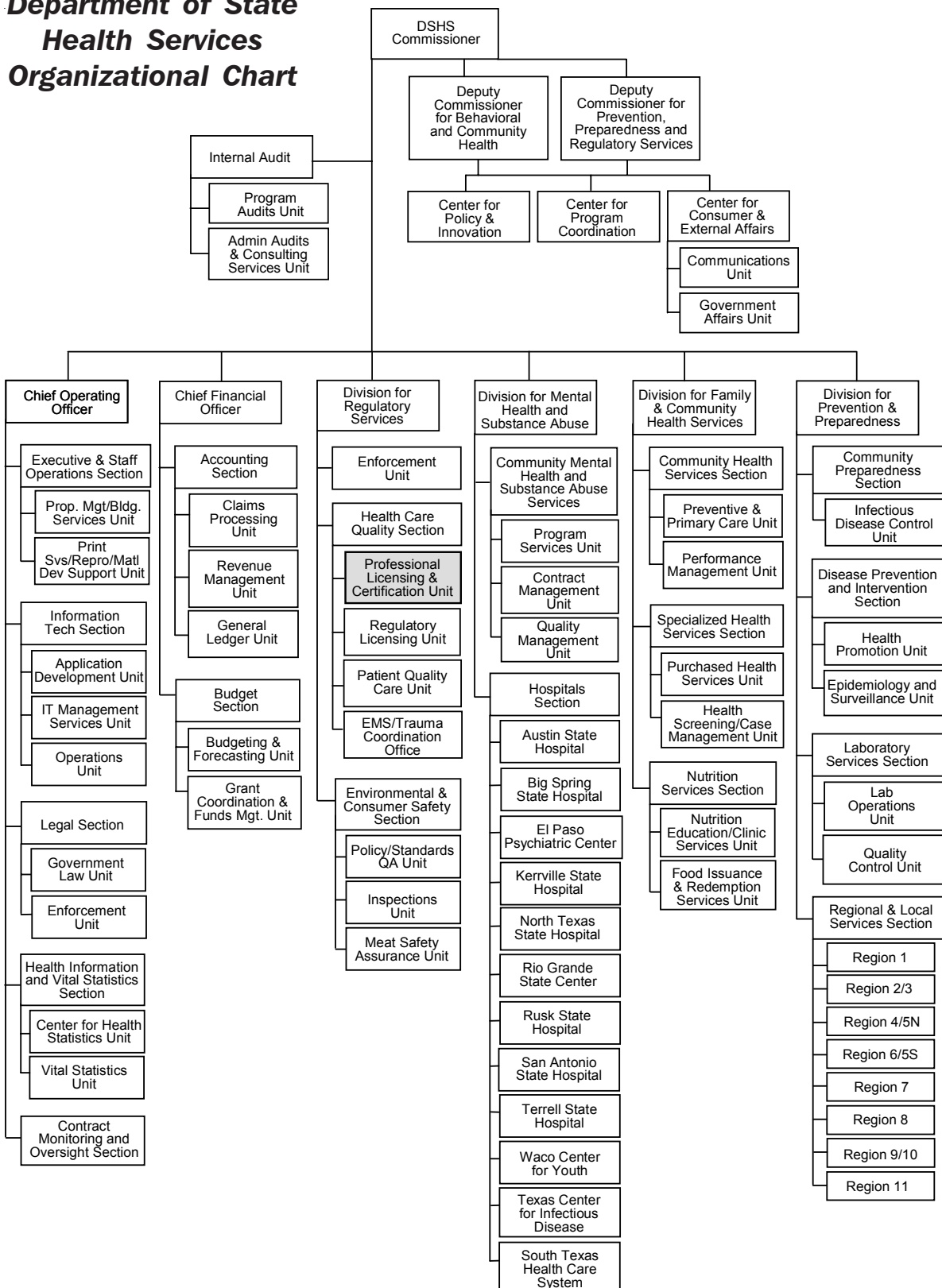
**Health Licensing Boards
Enforcement Process**



¹ Board members whose terms have expired continue to serve until a new appointment is made.

APPENDICES

Department of State Health Services Organizational Chart



Appendix B

Complaint Resolutions Fiscal Year 2001-2003

Dietitians

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender | Criminal Referral |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|-------------------|
| Criminal Activity¹ | | | 1 | 1 | | | | | | | | | | 1 |
| Improper Relationship² | | | | 0 | | | | | | | | | | |
| Standard of Care³ | | 3 | 1 | 4 | 2 | | | 1 | 1 | | | | | |
| Ethics⁴ | | | | 0 | | | | | | | | | | |
| Conduct⁵ | | | | 0 | | | | | | | | | | |
| Confidentiality⁶ | | | | 0 | | | | | | | | | | |
| Unauthorized Practice⁷ | | | | 0 | | | | | | | | | | |
| Total⁸ | 0 | 3 | 2 | 5 | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 1 |

Marriage and Family Therapists

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender | Criminal Referral |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|-------------------|
| Criminal Activity¹ | | | | 0 | | | | | | | | | | |
| Improper Relationship² | 4 | 7 | 14 | 25 | 10 | | | | 6 | 3 | 3 | 3 | | |
| Standard of Care³ | 15 | 14 | 7 | 36 | 26 | | | 3 | 5 | 1 | 1 | | | |
| Ethics⁴ | 9 | 9 | 6 | 24 | 12 | 3 | | 5 | 1 | 1 | 1 | | | 1 |
| Conduct⁵ | 3 | 1 | 4 | 8 | 7 | | | 1 | | | | | | |
| Confidentiality⁶ | 5 | 4 | 14 | 23 | 15 | | 5 | | 1 | 1 | 1 | | | |
| Unauthorized Practice⁷ | 3 | | 2 | 5 | 3 | | 1 | | | 1 | | | | |
| Total⁸ | 39 | 35 | 47 | 121 | 73 | 3 | 5 | 1 | 9 | 13 | 7 | 6 | 3 | 1 |

Appendix B

Complaint Resolutions

Midwives

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender | Administrative Penalty |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|------------------------|
| Criminal Activity¹ | | 2 | 2 | 4 | 3 | | | | | | | | | 1 |
| Improper Relationship² | | | | 0 | | | | | | | | | | |
| Standard of Care³ | 5 | 5 | 6 | 16 | 6 | 1 | 1 | | 5 | 1 | | 1 | 1 | |
| Ethics⁴ | | 1 | | 1 | 1 | | | | | | | | | |
| Conduct⁵ | | 1 | | 1 | 1 | | | | | | | | | |
| Confidentiality⁶ | | | | 0 | | | | | | | | | | |
| Unauthorized Practice⁷ | 3 | 1 | 3 | 7 | 5 | | | | 1 | | | | | 1 |
| Total⁸ | 8 | 10 | 11 | 29 | 16 | 1 | 1 | 0 | 6 | 1 | 0 | 1 | 1 | 2 |

Perfusionists

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|
| Criminal Activity¹ | | | | 0 | | | | | | | | | |
| Improper Relationship² | | | | 0 | | | | | | | | | |
| Standard of Care³ | | | | 0 | | | | | | | | | |
| Ethics⁴ | | | | 0 | | | | | | | | | |
| Conduct⁵ | | | | 0 | | | | | | | | | |
| Confidentiality⁶ | | | | 0 | | | | | | | | | |
| Unauthorized Practice⁷ | | | 1 | 1 | | | | | | | | 1 | |
| Total⁸ | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |

Appendix B

Complaint Resolutions

Licensed Professional Counselors

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|
| Criminal Activity¹ | | 4 | 3 | 7 | 2 | 1 | 1 | | 1 | 1 | | | 1 |
| Improper Relationship² | 23 | 9 | 18 | 50 | 34 | 1 | 2 | | 3 | 3 | 1 | 2 | 4 |
| Standard of Care³ | 3 | 1 | 2 | 6 | 1 | 2 | | | 2 | | | | 1 |
| Ethics⁴ | 52 | 64 | 75 | 191 | 145 | 5 | 1 | 4 | 19 | 5 | 1 | 9 | 2 |
| Conduct⁵ | 12 | 3 | | 15 | 13 | | | | 1 | | | 1 | |
| Confidentiality⁶ | 16 | 6 | 6 | 28 | 20 | | | | 3 | 1 | | 4 | |
| Unauthorized Practice⁷ | 23 | 9 | 4 | 36 | 29 | 2 | | 1 | 3 | | | | 1 |
| Total⁸ | 129 | 96 | 108 | 333 | 244 | 11 | 4 | 5 | 32 | 10 | 2 | 16 | 9 |

Social Workers

| | FY 01 | FY 02 | FY 03 | Total | Dismissed - No Violation | Dismissed - Referred | Revocation | Cease and Desist | Warning Letter | Probated Suspension | License Expiration | Reprimand | Surrender | Civil Penalty |
|------------------------------------------|-------|-------|-------|-------|--------------------------|----------------------|------------|------------------|----------------|---------------------|--------------------|-----------|-----------|---------------|
| Criminal Activity¹ | 4 | | 2 | 6 | 1 | | | 1 | 2 | | | | | 2 |
| Improper Relationship² | 7 | 4 | 9 | 20 | 10 | | | 1 | | 3 | 1 | 1 | 4 | |
| Standard of Care³ | 8 | 3 | 9 | 20 | 19 | | | | 1 | | | | | |
| Ethics⁴ | 21 | 15 | 31 | 67 | 51 | | 3 | | 7 | 2 | | 3 | 1 | |
| Conduct⁵ | 8 | 3 | 18 | 29 | 21 | | | | 3 | 2 | | 2 | 1 | |
| Confidentiality⁶ | 6 | 4 | 4 | 14 | 10 | | 1 | | 2 | | | | 1 | |
| Unauthorized Practice⁷ | 14 | 5 | 11 | 30 | 13 | | | 7 | 5 | | | 1 | 1 | 3 |
| Total⁸ | 68 | 34 | 84 | 186 | 125 | 0 | 4 | 9 | 20 | 7 | 1 | 7 | 10 | 3 |

-
- ¹ Includes Tampering With a Government Document, Criminal History, Fraud/Bribery.
 - ² Includes Sexual Misconduct, Dual Relationship.
 - ³ Includes Failure to Provide Standard of Care, Negligence.
 - ⁴ Includes Violation of Code of Ethics, Personal Gain, Misrepresentation, Inappropriate Billing Practices, Interference/Non-cooperation with Investigation, Wrongful Advertising.
 - ⁵ Includes Unprofessional Conduct, Use of Alcohol/Drugs on the Job.
 - ⁶ Includes Breach of Confidentiality.
 - ⁷ Includes Practicing Without a License, Unauthorized Procedure, Unauthorized Use of a Protected Title, Practice Without Medical Direction, Invalid Supervision.
 - ⁸ Chart data reflects the year the complaint was resolved, not received, and may not exactly match other complaint information reported by the agency.

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and State Board of Social Worker Examiners.

All Boards

- Reviewed reports by the Health Professions Council, Texas Department of Health, Health and Human Services Commission, Legislative Budget Board, state and federal statutes, previous legislation, other states' information, and information available on the Internet.
- Solicited written comments from the public and interest groups.
- Worked extensively with Department of State Health Services staff and management.

Dietitian Board

- Attended meetings of the Dietitian Board and interviewed Board Chair.
- Interviewed stakeholders, including representatives of dietitian and nutritionist groups.
- Interviewed Licensed Dietitians at the Austin State Hospital and at the MHMR central nutrition office.
- Interviewed a nutritionist in Houston.

Marriage and Family Therapist Board

- Attended a Marriage and Family Therapist Board meeting, as well as meetings of the Applications, Rules, Ethics, and Supervision committees.
- Interviewed Marriage and Family Therapist Board Chair by phone.
- Interviewed representatives of marriage and family therapist interest groups.

Midwifery Board

- Attended Complaint Review, and Education committee meetings, as well as a Midwifery Board meeting.
- Interviewed Midwifery Board Chair and other Board members.
- Interviewed in person, or by phone, stakeholders, including midwifery and medical groups.
- Toured birthing centers run by documented midwives in Austin, Brownsville, and McAllen.
- Observed the administration of a Midwifery Exam and interviewed by phone the directors of a midwifery program in El Paso and the Midwifery accreditation body.
- Interviewed by phone staff at DSHS Health Facility Licensing and Compliance Division and Bureau of Vital Statistics.

Appendix C

Staff Review Activities

Perfusionist Board

- Attended a Perfusionist Board meeting.
- Interviewed Perfusionist Board Chair and Board members by phone.
- Interviewed stakeholders, including a cardiovascular surgeon, perfusionists, perfusion educators, and representatives of Texas hospitals.
- Observed perfusion and open heart surgery at the Texas Heart Institute, School of Perfusion Technology in Houston.

Professional Counselor Board

- Attended a Professional Counselor Board meeting and Administration and Finance, Ad-Hoc Testing, Testing and Continuing Education, and Ethics committee meetings.
- Interviewed Board Chair and Board members.
- Interviewed staff members of the National Board of Certified Counselors, and the Council for Accreditation of Counseling and Related Educational Programs.
- Interviewed Texas licensed professional counselor interest groups.

Social Worker Board

- Attended meetings of the Social Worker Board and Ethics, Licensing Standards and Qualifications, and Rules committees.
- Interviewed social worker educators and interest groups.
- Observed two informal settlement conferences.

SUNSET REVIEW OF THE

TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

**TEXAS STATE BOARD OF EXAMINERS OF
MARRIAGE AND FAMILY THERAPISTS**

TEXAS MIDWIFERY BOARD

TEXAS STATE BOARD OF EXAMINERS OF PERFUSIONISTS

**TEXAS STATE BOARD OF EXAMINERS OF
PROFESSIONAL COUNSELORS**

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

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