

EXECUTIVE SUMMARY

Texas State Board of Podiatric Medical Examiners

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The small size of the Texas State Board of Podiatric Medical Examiners in no way reflects its substantial responsibility to regulate the profession of podiatry. The practice of podiatry requires significant medical expertise and can result in serious harm to the public if not done properly. While podiatrists play an important role in the treatment of numerous foot ailments, their role has become increasingly significant in caring for the epidemic level of patients with diabetes who have complex medical needs.

Consistent with previous reviews, Sunset staff found this small agency struggles to carry out its mission effectively while operating as an independent state agency, especially on the heels of a costly eight-year scope of practice lawsuit and several statewide budget cuts. Having only four staff, every cut and crisis disproportionately affects the agency, particularly since it must perform the same regulatory and administrative functions as other larger health licensing agencies. To make ends meet, the executive director wears multiple hats, essentially acting as the chief executive officer, chief financial officer, and head of investigations and licensing.

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The cumulative impact of the agency's limited resources is most evident in the area of enforcement. Despite efforts to improve performance outcomes, the agency's complaint resolution times consistently fail to meet target performance measures. Over the last five years, the average time to resolve complaints is 493 days. An enforcement case has not gone to the State Office of Administrative Hearings (SOAH) in almost 20 years. While the agency could increase fees to fund additional staff and other resources, the state's approximately 1,100 podiatrists already pay a high annual licensing fee of \$520 in fiscal year 2015, making further increases a strain for these individuals. Consequently, the agency finds itself between a rock and a hard place to address its regulatory resource needs.

While significant concerns exist about the agency's ability to adequately function independently, the decision to recommend an alternative organizational structure for the agency cannot be made until after the Sunset reviews of other health licensing agencies. Together, these reviews will consider the potential benefits of consolidation and determine if they are

significant enough to justify a major organizational change. Regardless of the organizational structure, the agency should implement the best practices outlined in this report to gain efficiencies and better ensure fair and effective regulation of podiatry services in Texas.

The following material summarizes Sunset staff recommendations on the Texas State Board of Podiatric Medical Examiners.

Issues and Recommendations

Issue 1

Key Elements of the Texas State Board of Podiatric Medical Examiners' Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

Sunset staff found that various licensing and enforcement processes of the agency do not match model standards or common practices observed through Sunset reviews of many regulatory agencies. The agency has not used technology fully to ease the burden on applicants and licensees when applying for a license. The agency's lack of a written policy to prioritize complaints increases the risk that scarce agency resources will not be spent most efficiently. The absence of monetary penalty ranges matched to types of infractions in the penalty schedule heightens the possibility of inconsistencies in applying penalties. The use of board members to both investigate complaints and participate in later related disciplinary proceedings introduces more possibility for bias in imposing sanctions. Infrequent use of SOAH risks minimizing the respondent's due process rights in the enforcement process.

Key Recommendations

- Direct the agency to accept all license and registration applications, renewals, and fee payments online; and to administer the Texas podiatric jurisprudence exam online.
- Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Require the agency to establish written policies to guide the prioritization of complaints; and to develop and adopt in rule penalty amounts for violations.
- Direct the agency to establish a schedule for conducting each phase of the complaint resolution process.
- Direct the agency to prohibit a board member who investigates a complaint from participating in any resulting disciplinary proceeding.
- Direct the agency to incorporate SOAH into its complaint resolution process.

Issue 2

Texas Should Continue Regulating Podiatrists, but Decisions on the Structure of the Texas State Board of Podiatric Medical Examiners Await Further Review.

Texas has a continuing need to regulate the practice of podiatry. Podiatrists perform surgery, admit patients to the hospital, and have full prescriptive authority. These services, if not performed properly, can have serious consequences to a patient. However, this small independent agency struggles to carry out its important mission, with slow complaint resolution times, unmet performance measures, non-standard enforcement practices, and a lack of on-staff medical expertise.

These issues raise the question of whether the agency's functions should continue in a stand-alone or consolidated organization, particularly considering most states regulate podiatry through some form of combined agency. Several health licensing agencies are under Sunset review at this time. Through these reviews, Sunset is considering the benefits of consolidation, such as enhanced administrative efficiencies and increased available staff time to perform critical licensing and regulatory functions. Sunset staff will complete the analysis of these benefits in November 2016.

Key Recommendation

- Continue the state's regulation of podiatrists, but postpone the decision on continuation of the Texas State Board of Podiatric Medical Examiners until completion of the Sunset reviews of other health licensing agencies.

Fiscal Implication Summary

Overall, the recommendations in this report would not have a significant fiscal impact to the state, as most are designed to improve internal operations and efficiency at the agency, or change procedures in ways that do not require additional resources.

