

# SUNSET ADVISORY COMMISSION

## FINAL REPORT

*State Committee of  
Examiners in the Fitting  
and Dispensing of Hearing  
Instruments*

*State Board of Examiners for  
Speech–Language Pathology  
and Audiology*

July 2011



# *Sunset Advisory Commission*



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

*State Committee of Examiners in the Fitting  
and Dispensing of Hearing Instruments*

*State Board of Examiners for Speech-Language  
Pathology and Audiology*

SUNSET FINAL REPORT

JULY 2011

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This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, October 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
  - *Hearing Material, November 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
  - *Decision Material, December 2010* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
  - *Commission Decisions, December 2010* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.
  - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's bill.
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# *Summary*

# Summary

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## *State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments*

## *State Board of Examiners for Speech-Language Pathology and Audiology*

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) and the State Board of Examiners for Speech-Language Pathology and Audiology (the Board) are administratively attached to the Department of State Health Services (DSHS). The Committee and the Board are housed with 21 other healthcare licensing programs within DSHS' Professional Licensing and Certification Unit (the Unit).

The Committee licenses and regulates hearing instrument fitters and dispensers who measure human hearing to fit, dispense, and sell hearing instruments to hearing impaired consumers. The Board licenses and regulates both speech-language pathologists who treat communication and swallowing disorders, and audiologists who treat hearing and vestibular disorders, including fitting and dispensing hearing instruments. The Board and Committee, with assistance of DSHS staff, seek to ensure only qualified individuals provide these services by administering examinations, issuing licenses, and enforcing the related statutes and rules. The Sunset review concluded that while the Board is primarily focused on public protection and operates in a manner typical to most licensing agencies, several of the Committee's practices seem focused more on protecting current practitioners in the industry than consumers.

Sunset staff considered the need to regulate these professions jointly, particularly since both the Committee and the Board regulate individuals who fit and dispense hearing instruments. However, staff concluded that the Board and Committee should be continued separately since the practice of speech-language pathology and audiology are focused on providing a healthcare service to consumers while the practice of fitting and dispensing hearing instruments is focused more on providing a product to consumers. Also, the practice of speech-language pathology and audiology continues to expand, while the fitting and dispensing of hearing instruments has remained mostly static. Additionally, the same DSHS staff administers both the Board and the Committee, so consolidation would not yield any significant efficiencies or cost savings.

Sunset staff also assessed the structure and management of these programs within DSHS to determine whether any changes were needed for their

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*While the Board is focused on public protection, some Committee practices seem to protect practitioners more than consumers.*

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improvement. However, staff was unable to fully evaluate several aspects of their administration, as these practices and procedures would have implications for the other programs DSHS administers in the Unit which the Sunset Commission will have the opportunity to assess in 2013 when DSHS undergoes Sunset review. As such, staff determined the next Sunset review of the Board and Committee should coincide with the review of the six other licensing programs in the Unit scheduled to undergo Sunset review during the 2016-2017 biennium to allow changes to their structure and administration to be evaluated together while still allowing sufficient time for the Committee and the Board to implement changes resulting from both this review and the upcoming Sunset review of DSHS.

Finally, the review compared the Committee and the Board statutes against standard licensing practices developed through more than 30 years of Sunset reviews and identified several changes that would enhance efficiency, fairness, and public protection, and improve the consistency of operations of both the Committee and the Board.

The following material summarizes Sunset staff recommendations on the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology.

## Issues and Recommendations

### ***State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments***

#### **Issue 1**

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##### ***Texas Has a Continuing Need for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.***

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments regulates hearing instrument fitters and dispensers who measure human hearing for the purpose of selling devices for hearing loss treatment. Sunset staff found that the State has a continuing need to license and regulate hearing instrument fitters and dispensers to protect Texas consumers and to maintain standards for this occupation to ensure these practitioners are trained, competent, and ethical.

Since the Committee is administratively attached to the Department of State Health Services, consolidation would not result in any significant cost savings or efficiencies. However, Sunset staff concluded that the Committee should only be continued for six years so that its next Sunset review would coincide with the review of six other licensing programs within the DSHS Professional Licensing and Certification Unit. Performing these reviews at the same time would allow their structure and administration to be evaluated together, while still allowing sufficient time for the Committee to implement changes resulting from both this review and the upcoming Sunset review of DSHS in 2013.

#### **Key Recommendation**

- Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.

## Issue 2

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### ***The Committee's Continuing Education Requirements Are Unnecessarily Restrictive for Both Licensees and Sponsors.***

Texas hearing instrument fitters and dispensers must complete 20 hours of continuing education annually to ensure licensees stay current on practices and advancements within the profession. Sunset staff found the Committee's annual continuing education requirements and lack of online course opportunities place an undue burden on licensees. Additionally, the Committee's process for approving continuing education sponsors and courses is unduly burdensome, benefiting only a small number of existing sponsors and potentially limiting entry to other qualified providers.

Authorizing licensees to obtain more of their continuing education online and removing the 20-hour annual requirement would bring the Committee's continuing education requirements more in line with the other licensing programs administered by DSHS. Also, establishing clear requirements for continuing education sponsors and courses would improve the consistency and fairness of the approval process.

#### **Key Recommendations**

- Authorize hearing instrument fitters and dispensers to obtain at least half of their continuing education online.
- Remove the 20-hour annual continuing education requirement from statute and require the Committee to specify, in rule, the number of continuing education hours required biennially.
- Require the Committee to establish, by rule, clear requirements for continuing education sponsors and courses, and require staff, rather than the Committee, to review and approve sponsors and courses.

## Issue 3

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### ***The Committee's Residency Requirement Is Unnecessary and Needlessly Restricts Entry of Out-of-State Hearing Instrument Fitters and Dispensers to Texas.***

The Committee provides an abridged path to licensure for hearing instrument fitters and dispensers licensed in other states applying for a Texas license. However, the Committee requires out-of-state applicants to establish Texas residency before applying for a license. Sunset staff found this residency requirement creates an unnecessary barrier to entry, as the Committee already has sufficient requirements to ensure out-of-state applicants are qualified. Also, having the Committee, rather than staff, review and approve out-of-state licensure applications is inefficient, potentially taking several months for an out-of-state practitioner to become licensed. Removing the unnecessary residency requirement and allowing staff to review and approve out-of-state applications for licensure would remove significant barriers to hearing instrument fitters and dispensers from other states becoming licensed in Texas, giving Texas consumers greater access to licensed practitioners throughout the state.

#### **Key Recommendations**

- Remove the statutory provision requiring out-of-state hearing instrument fitters and dispensers to establish Texas residency before applying for Texas licensure.

- Require DSHS staff, not the Committee, to review and approve all out-of-state applications for licensure.

## Issue 4

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### ***The Committee's Examination Practices Do Not Adequately Ensure Fairness and Objectivity.***

Candidates for hearing instrument fitter and dispenser licenses must pass both a written exam and a practical exam. Committee members and other licensed hearing instrument fitters and dispensers proctor the practical exam. The Sunset review found that the Committee and DSHS staff have not created formal policies to ensure proctor qualifications and proper conduct during the practicum, raising concerns regarding proctor objectivity, particularly in this competitive business. Establishing proctor qualifications and directing staff to develop and enforce policies and procedures for the administration of the practical exam would help ensure consistency and fairness in the exam process.

#### **Key Recommendations**

- Require the Committee to adopt rules establishing qualifications for practical exam proctors, and require staff to select and assign proctors based on these qualifications.
- Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam.

## Issue 5

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

Over the past 32 years, Sunset staff has reviewed more than 98 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions of the Committee, Sunset staff found that certain licensing and enforcement processes in the Committee's statute do not match these model standards. The Sunset review compared the Committee's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified changes needed to bring the Committee in line with model standards to more fairly treat licensees and better protect the public.

#### **Key Recommendations**

- Require the Committee to conduct a fingerprint-based criminal background check of all hearing instrument fitter and dispenser licensees.
- Authorize the Committee to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.
- Require Committee members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.
- Grant cease-and-desist authority to the Committee for unlicensed practice of hearing instrument fitting and dispensing.

# **State Board of Examiners for Speech-Language Pathology and Audiology**

## **Issue 1**

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### ***Texas Has a Continuing Need for the State Board of Examiners for Speech-Language Pathology and Audiology.***

The Board regulates speech-language pathologists who evaluate and treat disorders related to communication, language, and swallowing; and audiologists who evaluate and treat ailments related to hearing and vestibular functions. Sunset staff found that the State has a continuing need to license and regulate these professions to protect Texas consumers and to improve and maintain professional standards for these occupations, particularly as the complexity of the conditions and treatments these healthcare professions address will continue to evolve.

Since the Board is administratively attached to the Department of State Health Services, additional consolidation would not result in any significant cost savings or efficiencies. However, Sunset staff concluded that the Board should only be continued for six years so that its next Sunset review would coincide with the review of six other licensing programs within the DSHS Professional Licensing and Certification Unit. Performing these reviews at the same time would allow their structure and administration to be evaluated together, while still allowing sufficient time for the Board to implement changes resulting from both this review and the upcoming Sunset review of DSHS in 2013.

#### **Key Recommendation**

- Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.

## **Issue 2**

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### ***Having Different Rules Governing the Sale of Hearing Instruments Treats Customers Inequitably and Causes Confusion.***

Both the Board and the Committee have authority to adopt rules regarding the sale of hearing instruments. Sunset staff found several inconsistencies in the Board's and the Committee's rules relating to the standards for hearing instrument sales, including different requirements for the written purchase contract, recordkeeping, and 30-day trial period. Having inconsistent rules regarding hearing instrument sales is unfair to consumers and creates confusion for both consumers and licensees. Requiring the Board and the Committee to jointly adopt rules for hearing instrument sales would ensure consumers who purchase hearing instruments from audiologists receive the same information about their purchase as consumers who purchase hearing instruments from hearing instrument fitters and dispensers.

#### **Key Recommendation**

- Require the Board and Committee to jointly develop and adopt rules for hearing instrument sales.

## Issue 3

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

Over the past 32 years, Sunset staff has reviewed more than 98 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 Board's licensing functions, Sunset staff found that certain licensing and enforcement processes in the agency's statute do not match these model standards. The Sunset review compared the Board's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified changes needed to bring the Board in line with model standards to more fairly treat licensees and better protect the public.

### **Key Recommendations**

- Require the Board to conduct a fingerprint-based criminal background check of all SLP and audiologist licensees.
- Authorize the Board to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.
- Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.
- Grant cease-and-desist authority to the Board for unlicensed practice of speech-language pathology and audiology.

## **Fiscal Implication Summary**

These recommendations would not have a significant fiscal impact to the State.

***Summary of Legislative Action***  
***State Committee of Examiners in the Fitting and  
Dispensing of Hearing Instruments***  
***S.B. 663 Nichols (Anchia)***

Senate Bill 663 continues the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years and contains all of the Sunset Commission's recommendations, including removing unnecessarily restrictive continuing education and residency requirements, and ensuring consistency and fairness in the Committee's operations. The list below summarizes the major provisions of S.B. 663, and more detailed discussion is located in each issue.

**Sunset Provisions**

1. Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.
2. Make the Committee's continuing education requirements less restrictive for both licensees and sponsors.
3. Remove the Committee's unnecessary residency restriction for out-of-state hearing instrument fitters and dispensers.
4. Better ensure fairness and objectivity in the Committee's examination practices.
5. Conform key elements of the Committee's licensing and regulatory functions to common licensing standards.
6. Ensure consistency in the sale of hearing instruments by both audiologists and fitters and dispensers of hearing instruments. This provision was adopted as part of Issue 2 on the State Board of Examiners for Speech-Language Pathology and Audiology, as discussed beginning on page 43.

**Provisions Added by Legislature**

None added.

**Fiscal Implication Summary**

Senate Bill 663 will result in a gain of \$8,228 to General Revenue each fiscal year, beginning in fiscal year 2012. The bill requires the Committee to obtain a fingerprint-based criminal history check on each hearing instrument fitter and dispenser applicant and license holder, and authorizes the Department of Public Safety (DPS) to administer these checks. Implementing this provision will require performing an estimated 484 additional checks each fiscal year. The fee for performing each check is \$34.25 which is deposited into General Revenue, but a portion of this fee, \$17.25 per check, is returned to the FBI for professional services as required by federal law. These additional

checks will account for a small percentage of the criminal history checks DPS facilitates each year, so any additional operational costs will be absorbed within existing DPS resources.

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>
2012	\$16,577	\$8,349
2013	\$16,577	\$8,349
2014	\$16,577	\$8,349
2015	\$16,577	\$8,349
2016	\$16,577	\$8,349

***Summary of Legislative Action***  
***State Board of Examiners for Speech-Language Pathology and Audiology***  
***S.B. 662 Nichols (Anchia)***

Senate Bill 662 continues the Board of Examiners for Speech-Language Pathology and Audiology for six years, and makes several changes to the Board’s administration to enhance the efficiency, fairness, and public protection of its operations. The Legislature adopted all of the Sunset Commission’s recommendations, but removed the exemption of certain speech-language pathologists from the Board’s required fingerprint criminal background check. The list below summarizes the major provisions of S.B. 662, and more detailed discussion is located in each issue.

**Sunset Provisions**

1. Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.
2. Ensure consistency in the sale of hearing instruments by both audiologists and fitters and dispensers of hearing instruments.
3. Conform key elements of the Board’s licensing and regulatory functions to common licensing standards.

**Provisions Added by Legislature**

None added.

**Fiscal Implication Summary**

Senate Bill 662 will have a positive fiscal impact to the State of \$9,269 in the 2012-2013 biennium. The bill requires the Board to obtain a fingerprint-based criminal history check on each speech-language pathologist and audiologist applicant and license holder, and authorizes the Department

of Public Safety (DPS) to administer these checks. Implementing this provision will require performing an estimated 8,680 additional background and criminal history checks in both fiscal year 2012 and fiscal year 2013, and an estimated 1,959 checks for new applicants in each subsequent fiscal year. The fee for performing the check is \$34.25, but a portion of this fee, \$17.25 per check, is returned to the FBI for professional services as required by federal law.

DPS assumes some additional personnel and operating costs will be needed to perform these checks. Although the bill authorizes DPS to recover the costs incurred in conducting the check from each applicant, DPS's operational costs are paid out of State Highway Fund 6, not General Revenue where the fee to recover the cost of the check is deposited. As a result, the Legislature included a contingency rider in the General Appropriations Act (Article IX, Sec. 18.73) appropriating needed amounts to cover these operational costs from State Highway Fund 6 and authorizing the additional employees.

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>	<b>Cost to the State Highway Fund 6</b>	<b>Change in Number of FTEs From FY 2011</b>
2012	\$297,290	\$149,730	\$154,054	+1.8
2013	\$297,290	\$149,730	\$131,797	+1.8
2014	\$67,096	\$33,793	\$131,797	+1.8
2015	\$67,096	\$33,793	\$136,157	+1.8
2016	\$67,096	\$33,793	\$149,292	+1.8



*State Committee of Examiners in the Fitting  
and Dispensing of Hearing Instruments*

*Committee at a Glance*  
*(October 2010)*

# Committee at a Glance

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The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) licenses and regulates hearing instrument fitters and dispensers in Texas. Hearing instrument fitters and dispensers measure human hearing for the purpose of selecting, adapting, or selling hearing instruments.

The Committee is administratively attached to the Texas Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit (the Unit), along with 22 other occupational licensing programs. DSHS provides staff, facilities, and infrastructure necessary to accomplish the Committee's mission and functions which is to protect and promote public health and welfare by developing and enforcing licensure rules and regulations for hearing instrument fitters and dispensers. To achieve this mission, the Committee carries out the following key activities.

- Develops and updates standards of practice for the fitting and dispensing of hearing instruments.
- Administers a written and practical exam for hearing instrument fitter and dispenser licensure three times per year.
- Issues and renews hearing instrument fitter and dispenser licenses and permits.
- Enforces regulation of hearing instrument fitters and dispensers by receiving and investigating complaints, and issuing sanctions to individuals who violate the Committee's statute or rules.

## Key Facts

- **Policymaking Body.** The Committee consists of nine Governor-appointed members, including six licensed hearing instrument fitters and dispensers, one practicing physician who specializes in otolaryngology, and two public members with no professional affiliation to the retail hearing aid or healthcare industry.
- **Funding.** The Committee does not receive a direct appropriation. Instead, the Committee receives funding through an appropriation to DSHS for the administration of the 23 licensing programs in the Unit. In fiscal year 2009, the Committee expended about \$84,400 and generated revenues totaling about \$180,600.
- **Staffing.** DSHS staff provides administrative support to the Committee. While several DSHS staff provide some administrative support to the Committee, the total staff time spent on Committee administration in fiscal year 2009 was equivalent to one employee. One staff member serves as the Program Director for both the Committee and the State Board of Examiners for Speech-Language Pathology and Audiology.
- **Licensing.** The Committee issues temporary training and apprentice hearing instrument fitter and dispenser permits, and issues and renews hearing instrument fitter and dispenser licenses, all of which have qualifications the Committee determines and updates. As Appendix A, *Hearing Instrument Fitter and Dispenser Licensure*, indicates, in fiscal year 2009, the Committee regulated 484 dispensers, 59 apprentice permit holders, and 97 temporary training permit holders.

- **Enforcement.** Staff receives and investigates complaints regarding hearing instrument fitters and dispensers. The Committee's complaints subcommittee receives and reviews complaint files from staff and recommends action to the full Committee, which imposes sanctions against individuals found to be in violation of the Committee's statute or rules. In fiscal year 2009, the Committee received 39 complaints, with complaints concerning customer refunds being the most common. The Committee investigated 35 of these complaints and took disciplinary action in the form of an administrative penalty on three of them.

*Issues*

# Issue 1

## ***Texas Has a Continuing Need for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.***

### **Background**

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The Legislature created the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids in 1970 as an independent state agency to regulate individuals who measure human hearing for the purpose of selling devices for hearing loss treatment. In 1993, the Legislature discontinued the Board as an independent agency, changing its name to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) and administratively attaching it to the Department of State Health Services (DSHS).

The Committee regulates hearing instrument fitters and dispensers through licensing and enforcement as a means to protect Texas consumers and to maintain standards for the profession. The Committee issues temporary training permits and apprentice permits, and issues and renews full hearing instrument fitter and dispenser licenses, all of which have qualifications the Committee determines and updates. In fiscal year 2009, the Committee regulated 484 fully licensed hearing instrument fitters and dispensers, 97 temporary training permit holders, and 59 apprentice permit holders. Appendix A, *Hearing Instrument Fitter and Dispenser Licensure*, lists the different levels of licensure and the number of individuals regulated in each. In fiscal year 2009, the Committee expended about \$84,400 and generated revenues totaling about \$180,600.

The nine-member, Governor-appointed Committee includes six currently licensed Texas hearing instrument fitters and dispensers, two members of the public with no professional affiliation to the retail hearing instrument or healthcare industry, and one currently licensed Texas physician who specializes in otolaryngology. DSHS provides staff, facilities, and infrastructure through its Professional Licensing and Certification Unit (the Unit), which administers 22 other licensing programs, including the State Board of Examiners for Speech-Language Pathology and Audiology (the Board). While several DSHS staff provide some administrative support to the Committee, the total staff time spent on Committee administration in fiscal year 2009 was equivalent to one employee.

### **Findings**

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#### **Texas has a continuing need to regulate hearing instrument fitters and dispensers.**

Fitting and dispensing hearing instruments is a healthcare service subject to federal regulations and eligible for Medicaid reimbursement. As such, the State must protect the health and welfare of the hard of hearing in Texas by ensuring dispensers are trained, competent, and ethical. The population of individuals whose hearing is deficient to the point of needing a hearing instrument is substantial. In 2005, the Office for Deaf and Hard of Hearing Services estimated its total service population to be more than 3.8 million people, and other indicators suggest this population will continue to grow.<sup>1,2</sup>

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*An estimated 3.8 million Texans have hearing impairments.*

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Hearing instrument fitters and dispensers, who must have a high school diploma or high school equivalency and meet the Committee's other qualifications, provide consumers additional options for hearing instrument purchases, particularly in communities that may have difficulty attracting practitioners with doctorate-level education. Besides hearing instrument fitters and dispensers, the state's roughly 1,100 Board-licensed audiologists and all medical doctors can fit and dispense hearing instruments.

**The Sunset review of the Committee did not reveal any significant benefits to further consolidation at this time, but different regulatory and organizational options should be considered during upcoming Sunset reviews.**

Both the Committee and the Board regulate individuals who fit and dispense hearing instruments. The Committee regulates hearing instrument fitters and dispensers while the Board regulates audiologists. Although having two separate entities regulating individuals who perform the same function may seem inefficient, consolidation would not result in any significant cost savings or efficiencies. Since the same DSHS staff support both the Committee and the Board, consolidation would not reduce employees. The only cost savings would result from reduced travel expenses for fewer Committee or Board members, but any savings would be minimal.

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*Consolidation would not result in any significant cost savings or efficiencies.*

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This review and the resulting staff recommendations are based on the examination and evaluation of statutes, rules, and policies unique to both the Committee and the Board. However, Sunset staff was unable to fully evaluate several aspects of the administration of the Committee by DSHS, as these practices and procedures have implications for the 22 other licensing programs within the Unit. The Sunset Commission will have the opportunity to assess DSHS's administrative practices in 2013 when the agency undergoes Sunset review, which could have implications for the all programs in the Unit. In addition, six other licensing programs in the Unit will undergo Sunset review during the 2016-2017 biennium.<sup>3</sup> As such, the next Sunset review of the Committee should coincide with the review of these programs to allow any changes to their structure and administration within the Unit to be evaluated together, while still allowing sufficient time for the Committee to implement changes resulting from both this Sunset review and the upcoming Sunset review of DSHS.

**Most states regulate hearing instrument fitters and dispensers separately from audiologists.**

As reflected in the table on the following page, *States' Regulation of Hearing Instrument Fitters and Dispensers*, every state regulates hearing instrument fitters and dispensers. The majority of states regulate hearing instrument fitters and dispensers separately from audiologists, and only nine states regulate hearing instrument fitters and dispensers, audiologists, and speech-language pathologists together.

**States' Regulation of  
Hearing Instrument Fitters and Dispensers**

State Regulation	Number of States
States that regulate hearing instrument fitters and dispensers separately from audiologists	38
States that regulate hearing instrument fitters and dispensers with audiologists	3
States that regulate hearing instrument fitters and dispensers, audiologists, and speech-language pathologists together	9

**The Committee's statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Committee's statute lacks the following standard provisions that the Sunset Commission applies in across-the-board fashion to agencies under review.

- **Public Membership.** The Committee's statute does not include the standard provision relating to public membership on state agency policymaking bodies that prevents a person from serving as a public member of the Committee if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Committee. This provision better ensures the Committee is more responsive to the public's broad interests rather than the regulated professions affected by the activities of the Committee.
- **Conflict of Interest.** The Committee's statute does not include standard conflict of interest language that would help prevent potential conflicts with professional trade organizations and other groups that may not be in the public's interest.
- **Presiding Officer Designation.** The Committee's statute does not include the standard provision requiring the Governor to designate the presiding officer of a board. Instead, statute requires the Committee to elect a president and vice president.
- **Grounds for Removal.** The Committee's statute lacks the standard provision relating to grounds for removal of Committee members. The statute does not specify it is a ground for removal when a Committee member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term. Additionally, the statute does not include a notification procedure for the potential grounds for removal.
- **Board Member Training.** The Committee's statute does not establish the type of training and information Committee members need to allow them to properly discharge their duties.

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*The Committee's statute lacks language that better ensures the Committee is responsive to the public.*

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- **Separation of Duties.** The Committee’s statute lacks the standard provision that requires the Committee to clearly separate its policymaking duties from the day-to-day operations of staff.
- **Public Testimony.** The Committee’s statute does not include the standard provision that ensures the public has the opportunity for public input to the Committee on issues under its jurisdiction.

## Recommendations

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### *Change in Statute*

#### **1.1 Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.**

This recommendation would continue the Committee for six years, administratively attached to DSHS. This shorter Sunset date would enable the Sunset Commission to evaluate the Committee together with the six other licensing programs administered by the Professional Licensing and Certification Unit at DSHS which are scheduled for Sunset review in 2017. Aligning these Sunset dates will allow any changes to the structure and administration of these programs within the Unit to be evaluated together.

#### **1.2 Apply the standard Sunset across-the-board requirements to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.**

**Public Membership.** This recommendation would prohibit a person from serving as a public member of the Committee if the person or the person’s spouse uses or receives a substantial amount of tangible goods, services, or money from the Committee other than compensation or reimbursement authorized by law for Committee membership, attendance, or expenses. In addition, this recommendation would prohibit a person employed by or participating in the management of a business entity or other organization regulated by or receiving money from the Committee from being a public member on the Committee.

**Conflict of Interest.** This recommendation would define “Texas trade association” and prohibit an individual from serving as a member of the Committee if the person or the person’s spouse is an officer, employee, or paid consultant of a Texas trade association in the field of fitting and dispensing hearing instruments.

**Presiding Officer Designation.** This recommendation would require the Governor to designate a member of the Committee as the presiding officer to serve in that capacity at the pleasure of the Governor.

**Grounds for Removal.** This recommendation would specify the grounds for removal for Committee members and the notification procedure for when a potential ground for removal exists.

**Board Member Training.** This recommendation would clearly establish the type of information to be included in the Committee member training. The training would need to provide Committee members with information regarding the legislation that created the Committee; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

**Separation of Duties.** Under this recommendation, the Committee would be required to adopt policies clearly defining its role of setting policy separate from staff responsibilities.

**Public Testimony.** This recommendation would ensure the opportunity for public input to the Committee on issues under its jurisdiction.

## Fiscal Implication Summary

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If the Legislature continues the Committee and its current functions, administratively attached to DSHS, about \$84,400 would be needed for the Committee's continued operations within the Professional Licensing and Certification Unit. The Committee's operations are self-funded through industry fees.

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<sup>1</sup> Department of Assistive and Rehabilitative Services (DARS), Offices for Deaf and Hard of Hearing Services (DHHS), Frequently Asked Questions About Deaf and Hard of Hearing Issues, [www.dars.state.tx.us/dhhs/dhhsfaqs.shtml](http://www.dars.state.tx.us/dhhs/dhhsfaqs.shtml). Accessed: August 20, 2010.

<sup>2</sup> Josef Shargorodsky; Sharon G. Curhan; Gary C. Curhan; Roland Eavey, "Change in Prevalence of Hearing Loss in US Adolescents." *Journal of the American Medical Association*, 304(7) (2010), pp. 772-778.

<sup>3</sup> State Board of Examiners of Professional Counselors, State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Midwifery Board, State Perfusionist Advisory Committee, and State Board of Social Worker Examiners.



# ***Responses to Issue 1***

## **Recommendation 1.1**

*Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.*

### **Committee Response to 1.1**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### **For 1.1**

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

### **Against 1.1**

None received.

### **Modifications**

1. Require Sunset staff to conduct a limited review of the Committee in 2017 that specifically focuses on a comparison of the Committee's structure to other licensing programs operated by the Department of State Health Services, and the administration provided to the Committee by the Department. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)
2. Combine the regulation of audiologists and hearing instrument fitters and dispensers under a nine-member Board appointed by the Governor. The Board would include three audiologists, three fitters and dispensers, and three public members. Speech-language pathologists would maintain their own Board or Committee to regulate their profession. (Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock)
3. Merge the Committee and the Board to regulate audiologists, hearing instrument fitters and dispensers, and speech-language pathologists under one entity. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)

## **Recommendation 1.2**

*Apply the standard Sunset across-the-board requirements to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.*

### **Committee Response to 1.2**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

**For 1.2**

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

**Against 1.2**

None received.

## ***Commission Decision***

Adopted Recommendation 1.1 and Recommendation 1.2 as modified to clarify that where statute delegates a duty to Department staff, the Committee retains final authority to administer the licensing Act and direct the actions of staff.

## ***Legislative Action***

Senate Bill 663 continues the Committee for six years, administratively attached to DSHS. This shorter Sunset date will allow the Sunset Commission to evaluate the Committee together with seven other licensing programs administered by DSHS' Professional Licensing and Certification Unit that are scheduled for Sunset review in 2017. (Recommendation 1.1)

In addition, the bill applies the standard Sunset across-the-board requirements to the Committee regarding public membership, conflicts of interest, presiding officer designation, grounds for removal, board member training, separation of duties, and public participation. The Legislature removed the modification that explicitly provided the Committee final authority to administer the licensing Act and direct the actions of staff. (Recommendation 1.2)

# Issue 2

## ***The Committee's Continuing Education Requirements Are Unnecessarily Restrictive for Both Licensees and Sponsors.***

### **Background**

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Statute requires the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) to adopt, by rule, continuing education requirements for licensed hearing instrument fitters and dispensers. Statute requires licensees to complete 20 hours of continuing education each year of their two-year license period, resulting in a 40-hour biennial requirement. Statute also specifies licensees may not receive more than five of these hours per year from a course sponsored by a manufacturer.<sup>1</sup>

The Committee categorizes continuing education sponsors as either manufacturer or non-manufacturer. Manufacturer-sponsored courses cover a range of topics, from business practices to technology, but focus on the products provided by the specific manufacturer. Groups, associations, or individuals not connected with a particular manufacturer provide non-manufacturer continuing education courses on various topics such as understanding the Health Insurance Portability and Accountability Act, communicating with people who are deaf or hard of hearing, aural testing procedures, and aural rehabilitation.

Statute also requires the Committee to provide and periodically update a list of approved continuing education sponsors.<sup>2</sup> To become an approved sponsor, one must submit an application and a \$500 annual fee. The Committee reviews and either approves or denies each continuing education sponsor application. Once approved, continuing education sponsors must submit individual courses to the Committee for approval at least 30 days before the course takes place. In 2009, 14 manufacturer and 14 non-manufacturer sponsors provided 471 courses to licensees.

### **Findings**

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#### **Some of the Committee's continuing education requirements impose unwarranted burdens on licensees.**

The Committee has established certain continuing education requirements that are restrictive and do little to advance the occupation.

- **Limited online courses.** Committee rules specify online courses may not make up more than five of the required 20 hours of continuing education per year, even though online courses are more efficient and accessible.<sup>3</sup> Because few approved sponsors offer enough course hours with enough frequency to satisfy the Committee's 40-hour biennial continuing education requirement, hearing instrument fitters and dispensers must attend several continuing education courses throughout the year. Since the majority of approved courses are held in Austin, Dallas, and Houston, many hearing instrument fitters and dispensers incur travel expenses and possibly lose a day or more of work to obtain the required continuing education hours. In 2009, of the 14 approved sponsors, only eight held

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*Many licensees must travel and spend time away from work to obtain required continuing education.*

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classes in Texas and only two of those held events that provided 15 or more hours of non-manufacturer continuing education.

Online continuing education for hearing instrument fitters and dispensers is widely available and accepted in other states, such as California, Florida, Pennsylvania and Ohio. The International Hearing Society, an internationally recognized association for hearing instrument fitters and dispensers, accredits several online continuing education courses. Additionally, almost half of the 22 other licensing programs administered by the Professional Licensing and Certification Unit (the Unit) in the Department of State Health Services (DSHS) allow licensees to obtain all of their continuing education online.

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*Online continuing education is widely available and accepted by other states and programs.*

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- Substantially higher required hours.** Texas hearing instrument fitters and dispensers must obtain significantly more continuing education hours than professions with similar education and training requirements. As shown in the table, *Comparison of Continuing Education Requirements*, the Committee has one of the most rigorous continuing education requirements among the licensing programs in the Unit.<sup>4</sup> The table compares continuing education requirements for professions the Unit administers with education and training requirements similar to hearing instrument fitters and dispensers.

***Comparison of Continuing Education Requirements***

<b>Profession</b>	<b>Biennial Continuing Education Requirement</b>
Personal Emergency Response System Provider	None
Optician	10 hours
Code Enforcement Officer	12 hours
Massage Therapist	12 hours
Medical Radiologic Technologist	24 hours
Respiratory Care Practitioner	24 hours
Hearing Instrument Fitters and Dispensers	40 hours

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*The annual continuing education requirement for a biennial license undermines administrative efficiencies.*

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- Annual requirement for a biennial license.** Having an annual continuing education requirement for a biennial license undermines administrative efficiency. Statute requires hearing instrument fitters and dispensers to obtain 20 hours of continuing education each year, but the Committee recently switched to a two-year license renewal to parallel the Unit's other licensing programs. Of the 23 programs in the Unit, only four, including the Committee, have continuing education requirements set in statute.

Having to enforce a different renewal requirement for just one program is inconsistent with the administrative efficiencies intended when

establishing the Unit. As such, DSHS staff only requires hearing instrument fitters and dispensers to affirm they have met the annual 20-hour continuing education requirement every two years when they renew their licenses, rendering the annual requirement meaningless. In addition, staff does not require any licensees to show actual proof of their continuing education hours unless they are selected for audit, and DSHS only audits 10 percent of licensees each year. DSHS data indicate that the Committee’s annual audits have never cited a hearing instrument fitter and dispenser for failure to meet continuing education requirements.

**The Committee’s process for approving continuing education sponsors and courses is unduly burdensome and inconsistent.**

The Committee’s approval process for continuing education sponsors and courses is inefficient and benefits only a small number of existing providers while potentially limiting entry of other qualified individuals and entities.

- **Exceptionally high sponsor fee.** Only six of the 23 licensing programs in the Unit require continuing education sponsors to pay a renewal fee, which is set in rule.<sup>5</sup> Currently, the Committee has a \$500 annual fee for continuing education sponsors. The table, *Continuing Education Sponsor Fee Comparison*, compares these programs’ renewal fees and shows the Committee requires the highest renewal fee by far.

***Continuing Education Sponsor Fee Comparison***

<b>Professional Licensing and Certification Unit Program</b>	<b>Continuing Education Sponsor Fee</b>
Licensed Professional Counselor	\$50 annually
Marriage and Family Therapist	\$50 annually
Social Worker	\$50 annually
Sanitarian	\$100 annually <sup>6</sup>
Massage Therapist	\$200 biennially
Hearing Instrument Fitters and Dispensers	\$500 annually

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*High annual fees and unclear requirements limit competition among continuing education providers.*

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- **Inconsistent and lengthy approval process.** Currently, the full Committee reviews continuing education sponsor applications and determines whether to approve or deny them. However, the Committee does not have clear requirements in place to consistently and fairly evaluate these applications. The Committee’s rules do not specifically define a non-manufacturer or manufacturer continuing education sponsor, but do describe the course categories that non-manufacturer sponsors may offer.<sup>7</sup> However, similar course category descriptions for manufacturers do not exist. Without clearly defined requirements sponsors must meet, the Committee cannot equitably evaluate, or approve or deny sponsor applications.

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*It can take up to four months for the Committee to consider an application.*

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In addition, because the Committee only meets three times a year, an applicant may have to wait several months to be approved. Potential continuing education sponsors must submit an application three weeks before a scheduled Committee meeting to be considered at that meeting. If applicants miss the date, they must wait an additional four months to be considered at the next scheduled meeting. In contrast, DSHS staff usually conduct reviews and approvals for the five other programs requiring approval for continuing education sponsors and courses in the Unit, within one week of receiving the applications.

Before January 2009, DSHS staff were responsible for approving or denying continuing education courses submitted by approved sponsors to the Committee. Since this time the Committee president has chosen to designate one Committee member to review and approve all course applications. Currently, the designee receives the applications from staff within two days of receipt, and then approves or denies the course within one to three days. While the Committee taking over the task of course approvals has not considerably altered the turnaround time, an increase in what is currently a low number of course applications could become unmanageable. The Unit, meanwhile, can provide the personnel needed to quickly and efficiently process large volumes of applications, while seeking expertise from Committee members when needed.

## Recommendations

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

#### **2.1 Authorize hearing instrument fitters and dispensers to obtain at least half of their continuing education online.**

This recommendation would allow licensed hearing instrument fitters and dispensers to obtain more of their continuing education through online courses. Online continuing education courses provide a viable alternative to classroom instruction and make it possible for licensees to meet continuing education requirements without having to incur travel expenses or take time away from work. In addition, the recommendation would bring the Committee's continuing education requirements more in line with the other licensing programs administered through the Unit, which all allow licensees to obtain a substantial amount of their required continuing education online. The Committee would be authorized to allow more than half of continuing education to be provided by online sponsors.

As a result of this recommendation, the Committee would adopt rules to establish clear and fair requirements for online continuing education sponsors and courses. Once requirements are established, staff would be responsible for reviewing and approving online continuing education sponsor and course applications.

**2.2 Remove the 20-hour annual continuing education requirement from statute and require the Committee to specify, in rule, the number of continuing education hours required biennially.**

This recommendation would remove the statutory requirement that a license holder complete 20-hours of continuing education each year. Statute would still require the Committee to adopt requirements for continuing education of a license holder, but the number of hours required would be based on a biennial, rather than annual basis. Doing this would bring the Committee's continuing education requirements more in line with all of the Unit's other programs. The Committee would need to reassess the required hours and adopt new rules no later than May 1, 2012. The Committee's new rules would need to reflect the change from the annual deadline for obtaining continuing education hours to the new biennial deadline.

**2.3 Require the Committee to establish, by rule, clear requirements for continuing education sponsors and courses, and require staff, rather than the Committee, to review and approve sponsors and courses.**

Under this recommendation, the Committee would be required to adopt rules to establish clear and fair requirements for continuing education sponsors and courses, including providing a clear definition for both manufacturer and non-manufacturer sponsors. This recommendation would also require staff, rather than the Committee, to review continuing education sponsors and courses to help reduce the time it takes to receive approval. Staff would base their review on the Committee's requirements and either approve or deny the sponsor and course applications. Staff would obtain expertise from licensed Committee members where necessary to assist in a decision.

***Management Action***

**2.4 The Committee should reassess its 40-hour continuing education requirement.**

The Committee should conduct a review of its 40-hour continuing education requirement to ensure that it is appropriate, is needed to advance the occupation, and does not place an undue burden on licensees. The Committee should take into consideration the continuing education requirements of other health licensing programs with comparable education and training of their licensees. As part of this review, the Committee should engage and get input from licensees, stakeholders, and the public regarding the required hours.

**2.5 The Committee should reassess its \$500 annual continuing education sponsor fee.**

This recommendation would direct the Committee to review its annual fee for continuing education sponsors to ensure it generates sufficient revenue without creating a barrier to entry as a continuing education sponsor. As part of this review, the Committee should work with DSHS staff to gauge the appropriateness of the fee, particularly in comparison to the other licensing programs in the Unit, and to determine what fee level is needed to generate a sufficient amount of revenue to adequately administer the program. The Committee should also solicit input from appropriate stakeholders to provide transparency and fairness to the process. While the fee review could result in a reduction in the continuing education sponsor fee amount, decreasing General Revenue to the State, this would likely be offset by an increase in the number of continuing education sponsors paying the more affordable fee.

# Fiscal Implication Summary

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These recommendations would not have a fiscal impact to the State.

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<sup>1</sup> Texas Occupations Code, sec. 402.303.

<sup>2</sup> Texas Occupations Code, sec. 402.303 (d).

<sup>3</sup> Texas Administrative Code, Title 22, Part 7, rule 141.14(a)(3).

<sup>4</sup> Chemical dependency counselors without a master's degree are the only group required to take as much continuing education as hearing instrument fitters and dispensers. All other programs in the Unit are required to take between 12 to 30 hours of continuing education every two years.

<sup>5</sup> Texas Administrative Code, Title 22, Part 7, rule 141.6.

<sup>6</sup> The Sanitarian Registration Program requires commercial sponsors to pay the \$100 continuing education sponsor fee. Universities, non-profits, and government agencies are exempt from the fee.

<sup>7</sup> Texas Administrative Code, Title 22, Part 7, rule 141.14(g).

## ***Responses to Issue 2***

### **Recommendation 2.1**

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*Authorize hearing instrument fitters and dispensers to obtain at least half of their continuing education online.*

#### **Committee Response to 2.1**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

#### **For 2.1**

Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

Michael A. Winters – Hearing Loss Association of America, Austin

#### **Against 2.1**

None received.

#### **Modification**

1. Allow hearing instrument fitters and dispensers to obtain all of their continuing education online. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)

### **Recommendation 2.2**

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*Remove the 20-hour annual continuing education requirement from statute and require the Committee to specify, in rule, the number of continuing education hours required biennially.*

#### **Committee Response to 2.2**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

#### **For 2.2**

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

#### **Against 2.2**

None received.

## **Modifications**

2. Require the Committee to reassess the required hours and adopt new rules no later than June 1, 2012. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)
3. Reduce the number of required hours of continuing education for fitters and dispensers from the current 40 hours to 20 hours. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)

## **Recommendation 2.3**

*Require the Committee to establish, by rule, clear requirements for continuing education sponsors and courses, and require staff, rather than the Committee, to review and approve sponsors and courses.*

### **Committee Response to 2.3**

The Committee agrees that it should establish, by rule, clear requirements for continuing education sponsors and courses. However, we do not agree that staff, rather than the committee, should have the additional workload of reviewing and approving sponsors and courses. Committee members do not agree that staff is able to assess the quality of continuing education and we believe this ultimately would not be good for consumers. Additionally, by requiring the Committee to adopt policies that would clearly define its role in setting policy separate from staff responsibilities as proposed in Recommendation 1.2, the statute does not need to specifically mandate staff responsibilities as set forth in Recommendation 2.3.

### **Committee Modification**

4. Remove the requirement that staff, rather than the Committee, review and approve continuing education sponsors and courses.

(Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and William McCrae, President – Texas Hearing Aid Association, Inc., Austin)

### **For 2.3**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

### **Against 2.3**

None received.

### **Modification**

5. Remove the category of manufacturer and non-manufacturer continuing education sponsors and courses from statute and rule, and remove the statutory restriction on the number of continuing education credit hours a licensee may receive from courses sponsored by manufacturers. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth and Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock)

## **Recommendation 2.4**

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*The Committee should reassess its 40-hour continuing education requirement.*

### **Committee Response to 2.4**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### **For 2.4**

Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

### **Against 2.4**

None received.

## **Recommendation 2.5**

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*The Committee should reassess its \$500 annual continuing education sponsor fee.*

### **Committee Response to 2.5**

None received.

### **For 2.5**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

### **Against 2.5**

None received.

### **Modification**

6. Lower the annual continuing education sponsor fee from the current \$500 fee, which is the highest in the state, to \$50. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)

## ***Commission Decision***

Adopted Recommendations 2.1, 2.3, 2.4, and 2.5.

Also adopted Recommendation 2.2 regarding continuing education requirements, with a modification to require licensees to complete 20 hours of continuing education every two years under Occupations Code 402.303(a), instead of 20 hours annually.

## ***Legislative Action***

Senate Bill 663 changes the current 20-hour continuing education requirement from an annual requirement to a biennial requirement beginning May 1, 2012. (Recommendation 2.2 with Commission modification)

The bill also requires the Committee to adopt rules to establish reasonable requirements for continuing education sponsors and courses, and to clearly define what constitutes a manufacturer or non-manufacturer sponsor. The bill requires DSHS, rather than the Committee, to review and approve continuing education sponsors and course applications, but allows DSHS to request assistance from licensed members of the Committee with the approval process. (Recommendation 2.3)

Senate Bill 633 also requires the Committee, by rule, to adopt requirements for online continuing education sponsors and courses, and requires the Committee to allow a license holder to obtain at least 10 hours of continuing education online. (Recommendation 2.1)

As management recommendations not needing statutory change, Recommendations 2.4 and 2.5 did not result in legislative action.

# Issue 3

## ***The Committee's Residency Requirement Is Unnecessary and Needlessly Restricts Entry of Out-of-State Hearing Instrument Fitters and Dispensers to Texas.***

### **Background**

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A customary practice among state professional licensing entities is to either recognize or accept licenses from other states or to waive certain licensure requirements for practitioners licensed in other states thereby allowing professionals to cross state lines to practice. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) allows for the latter. The Committee's statute permits hearing instrument fitters and dispensers licensed in other states applying for a Texas license to bypass the temporary training and apprentice process, which can last 18 months or longer, and requires the supervision of a licensed Texas hearing instrument fitter and dispenser.

Instead, the Committee requires out-of-state applicants to establish residency by moving to Texas and obtaining a Texas driver's license or identification card, which usually takes about two to three weeks. After establishing residency, an applicant must submit their application to the Committee, including the items listed in the textbox, *Out-of-State Application Requirements*. Once the Committee receives and approves the application, applicants who have passed a Committee-approved licensure exam or possess a certification from a Committee-approved professional organization must take the practical exam and a written exam on the Committee's governing statute. Applicants who have not passed an approved exam or do not possess an approved certification must pass both the written and practical Texas licensure exams. Out-of-state applicants have one opportunity to pass the licensure exam(s). If they fail, statute requires them to go through the entire licensing process, starting with a temporary training permit.

#### ***Out-of-State Application Requirements***

Out-of-state hearing instrument fitters and dispensers applying for Texas licensure must submit the following items to the Committee with their application:

- \$417 application fee;
- verification of high school graduation, high school equivalency, or graduation from an accredited college or university;
- copy of current Texas driver's license or Texas identification card;
- verification of having a fitter and dispenser license in good standing for at least three years before the date of application from the originating state;
- verification of passing a Committee-approved exam or holding a Committee-approved certification; and
- verification of any previous disciplinary actions taken.

### **Findings**

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**The Committee's residency requirement creates an unnecessary barrier to entry, as the Committee already has sufficient requirements to ensure out-of-state applicants are qualified.**

Sunset staff uses documented standards in reviewing licensing programs. These standards are the byproduct of more than 98 licensing agency reviews completed over the course of more than 30 years. One of these standards maintains that regulatory provisions should not limit entry to a profession

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*No valid reason for limiting entry of out-of-state applicants exists.*

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without a sound basis. State professional licensing agencies typically allow for either licensure by reciprocity or the waiving of certain licensure requirements in acknowledgement of the education, training, and experience of out-of-state practitioners. The Committee's Texas residency requirement undermines the purpose of these alternative paths to licensure for experienced practitioners, violating the licensing model's standard of providing out-of-state reciprocity and limiting barriers to entry into an occupation.

No valid reason for limiting entry of out-of-state applicants exists. The Committee has sufficient requirements in place to ensure out-of-state hearing instrument fitters and dispensers are qualified to practice in Texas without requiring them to establish Texas residency. The Committee reviews each out-of-state applicant's training and employment history, and licensure status to verify the applicant's education and experience meet or exceed the qualifications required in Texas. The Committee also requires every out-of-state applicant to pass the practical and at least a portion of the written licensure exam to ensure they can demonstrate their knowledge of Texas laws and regulations. Sunset staff concluded that the residency restriction unnecessarily limits competition for existing practitioners.

**Having the Committee, rather than staff, review and approve out-of-state fitter and dispenser applications is inefficient, with the potential to take several months for an out-of-state practitioner to become licensed.**

Once an out-of-state applicant establishes Texas residency, they submit their licensure application to the Committee. However, the Committee only meets three times a year, so once the Committee meets and approves the application, the applicant has to wait an additional three to four months for the Committee to meet again so the applicant can take the required exam(s). Having to find employment in another line of work or remain unemployed for several months is extremely burdensome and may be untenable for many, if not most applicants, especially during difficult economic times.

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*The lengthy process for considering out-of-state applications unfairly bars entry.*

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By contrast, DSHS staff review and approve out-of-state applications for the other 22 programs administered in the Unit, usually within one week of receiving a complete application. The Unit has an established process for the intake, review, and approval of licensure applications. Additionally, most of the other boards administratively attached to the Unit have no involvement in the review and approval of licensure applications, and those that do, have a limited role. In only one of the other licensing programs in the Unit, the Board of Orthotics and Prosthetics, do members of the Board rather than staff review and approve licensure applications. The board members of several of the other programs, including social workers, marriage and family therapists, and professional counselors are only involved in the application approval process when staff denies an applicant's license, and the applicant requests an appeal to the board.

**Unlike Texas, no other state has a residency requirement for hearing instrument fitter and dispenser applicants from other states, and many provide an abbreviated path to licensure.**

Many licensing entities for fitters and dispensers of hearing instruments in other states – at least 19 – require out-of-state applicants to demonstrate their state has licensure qualifications substantially equivalent or higher than the qualifications of the state in which they are applying. Also, like Texas, several states have requirements for non-resident practitioners applying for licensure, such as requiring out-of-state applicants to take an exam and show proof of experience in fitting and dispensing hearing instruments. However, no other state was found that has a residency requirement.

Because the residency requirement is relatively new, its effect on out-of-state applications is still unclear, especially since the number of out-of-state hearing instrument fitters and dispensers applying for Texas licensure is typically small. From 2005 to 2009, the Committee received an average of five out-of-state applications per year, and has only received two applications since the residency requirement went into effect in 2009. Because the residency requirement inhibits qualified practitioners from other states from obtaining licensure in a manner that is economically and practically feasible, the requirement restricts entry into the Texas retail hearing instrument industry, thereby limiting the number of options to Texas consumers of hearing instruments.

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*Restricting entry into the retail hearing instrument industry limits options for Texas consumers.*

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## **Recommendations**

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

#### **3.1 Remove the statutory provision requiring out-of-state hearing instrument fitters and dispensers to establish Texas residency before applying for Texas licensure.**

This recommendation would remove the statutory requirement that hearing instrument fitters and dispensers licensed in other states establish Texas residency before applying for a Texas license. Deleting this provision would remove a significant barrier to practitioners from other states becoming licensed in Texas. Encouraging a larger pool of practitioners would give Texas consumers and Texas employers greater access to licensed hearing instrument fitters and dispensers throughout the state.

#### **3.2 Require DSHS staff, not the Committee, to review and approve all out-of-state applications for licensure.**

Under this recommendation, DSHS staff would review and approve all licensure applications from licensed hearing instrument fitters and dispensers from other states. Since the Committee's handling of out-of-state licensure applications is needlessly cumbersome and time consuming, making the review and approval of these applications a staff function would enhance the fairness and timeliness of the process. Statute specifically defines the criteria hearing instrument fitters and dispensers licensed in other states must meet to become licensed in Texas, which staff would use when approving or denying these applications.<sup>1</sup> In addition, the Professional Licensing and Certification Unit staff at DSHS already has an established process for the intake, review, and approval of applications for licensing and certification.

## Fiscal Implication Summary

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These recommendations would not have a fiscal impact to the State. Requiring DSHS staff to review and approve out-of-state applications for hearing instrument fitters and dispensers would reduce the Committee's workload and the time it takes an out-of-state applicant to obtain a license. While DSHS staff would be taking on an additional duty, they already have a process in place to carry out this duty since they review and approve out-of-state applications for all of the other 22 licensing programs within the Unit. Also, given the small number of these applications, staff could perform this duty with current resources.

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<sup>1</sup> Texas Occupations Code, sec. 402.209.

# Responses to Issue 3

## Recommendation 3.1

*Remove the statutory provision requiring out-of-state hearing instrument fitters and dispensers to establish Texas residency before applying for Texas licensure.*

### Committee Response to 3.1

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments disagrees that this recommendation is appropriate. We are concerned that the removal of this provision would encourage and enable persons from other states to enter Texas for short periods of time, without the benefit of a permanent business, and enter into contracts with consumers for hearing instrument sales. The person could then leave the state and not deliver the hearing instrument after having been paid, or could fail to honor the 30-day trial period. The fact that the person is not a resident of this state diminishes the ability of the Committee to regulate a license holder and it diminishes the ability of a consumer to seek redress for grievances. We believe that removing the statutory requirement for Texas residency could result in great harm to vulnerable consumers. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### For 3.1

Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

### Against 3.1

None received.

### Modification

1. Set aside Recommendation 3.1 until the Attorney General issues an opinion concerning the constitutionality of the residency requirement in the Committee's statute. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)

**Staff Comment:** The staff recommendation is not predicated on the constitutionality of the residency requirement, but that the requirement creates a barrier to entry and competition. For informational purposes, the Office of the Attorney General is currently reviewing a request for an opinion (RQ-0921-GA) on the constitutionality (under the Commerce Clause of the United States Constitution and under the equal protection provisions of the United States and Texas Constitutions) of requiring hearing instrument fitters and dispensers licensed in other states to establish Texas residency before being eligible to apply for Texas licensure under Texas Occupations Code, sec. 402.209. The request also asks for an opinion on the validity of the Committee prohibiting an audiologist licensed in another state from receiving a fitter and dispenser license in Texas, which is the subject of New Issue 6.

## **Recommendation 3.2**

*Require DSHS staff, not the Committee, to review and approve all out-of-state applications for licensure.*

### **Committee Response to 3.2**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments disagrees that this recommendation is appropriate. We believe that the Committee should exercise decision-making authority regarding all out-of-state licensure applications. We do agree that the current system could be modified; for example, one Committee member could be designated to review the applications and authorize staff to issue licenses or to forward an application for full Committee review. Additionally, by requiring the Committee to adopt policies that would clearly define its role in setting policy separate from staff responsibilities as proposed in Recommendation 1.2, the statute does not need to specifically mandate staff responsibilities as set forth in Recommendation 3.2. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### **For 3.2**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

### **Against 3.2**

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

## ***Commission Decision***

Adopted Recommendations 3.1 and 3.2.

## ***Legislative Action***

Senate Bill 663 removes the statutory requirement that hearing instrument fitters and dispensers licensed in other states establish Texas residency before applying for a Texas license. The bill also requires DSHS, rather than the Committee, to review and approve or deny out-of-state licensure applications. (Recommendations 3.1 and 3.2)

# Issue 4

## ***The Committee's Examination Practices Do Not Adequately Ensure Fairness and Objectivity.***

### **Background**

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To be licensed as a hearing instrument fitter and dispenser, candidates must pass both a written and a practical exam. Statute and rule define the content of the exams, both of which must test the candidate's knowledge of the basics of sound, anatomy and physiology of the ear, testing and analyzing a person's hearing, taking an ear impression, and selecting and fitting a hearing instrument.<sup>1</sup> For the written exam, the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) uses the International Licensing Examination (ILE) which the International Hearing Society produces, validates, and scores.<sup>2</sup> The ILE includes 10 questions on Texas law concerning hearing instrument fitting and dispensing provided by the Committee. The Committee uses a practical exam produced in 1993 and last validated in 2003.

The Department of State Health Services (DSHS) staff administers the written exam while the professional members of the Committee and licensed hearing instrument fitters and dispensers chosen by the Committee's President administer the practicum. Non-member proctors receive \$85 per day for their services, while member proctors are entitled to per diem and transportation expenses. Other DSHS staff volunteer to act as "patients" on which examinees perform certain procedures during the practical exam.

The Committee offers the exams three times a year over a three-day period coinciding with Committee meetings. Candidates may retake the written exam or any portion of the practical exam they fail at the next available test date. In fiscal year 2009, 66 first-time candidates sat for both the written and practical exams, with a passing rate of 95 percent for the written exam and 48 percent for the practicum. An additional 27 candidates retook the exams or a portion of the exams in fiscal year 2009.

### **Findings**

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#### **No formal policies for proctor qualifications or selection exist, potentially compromising the objectivity of the administration of the practical exam.**

In recent years, the number of hearing instrument fitter and dispenser test candidates has increased, requiring the use of outside proctors to help Committee members administer the practical exam. However, the Committee has not instituted a formal policy on the qualifications or selection of these outside proctors. Currently, the Committee President has complete discretion over who is invited to serve as a non-member proctor, and for pairing the proctors by assigning them to specific candidates to administer the practicum. By practice, the Committee requires proctors to be licensed hearing instrument fitters and dispensers, and that any new proctor must observe two practical exams before they can administer an exam. However, these requirements are not included in any formal, written policies or procedures.

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*Outside proctors are needed to administer the practicum to the increasing number of candidates.*

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*Competition in the profession and lack of policies for proctors creates the potential for abuse.*

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The lack of formal criteria for proctor qualifications and selection procedures, coupled with the competitive nature of the profession, creates the potential for abuse. The business of fitting and dispensing hearing instruments is competitive. In addition to competition within their own profession, hearing instrument fitters and dispensers also compete with physicians and audiologists who also fit and dispense hearing instruments. The competitive nature of this profession raises concerns regarding proctor objectivity. In fact, DSHS staff has had to ask proctors to refrain from asking candidates for whom they would be working to ensure the proctor's objectivity when administering and scoring the candidate's practical exam.

**While instructions for administering the practical exam exist, staff has not adequately enforced them, jeopardizing the fairness and consistency of the examination process.**

DSHS staff attempts to ensure fairness, consistency, and impartiality in the examination process mainly by establishing instructions for the administration of the practical exam. The instructions direct proctors to maintain a professional demeanor, and refrain from communicating with one another on how to score an exam item, asking candidates the name of their sponsors and where they are from, and stereotyping the candidates, as well as to recuse themselves when faced with proctoring the exam of a candidate whom they know personally. The instructions also direct volunteers who act as the candidate's "patient" during the exam, to not take part in the testing of candidates whom they know. The President conducts a pre-exam meeting to provide these and other instructions to the proctors on the proper exam procedures, and DSHS staff provide instructions to the volunteers.

However, candidates are not made aware of restrictions proctors and volunteers must follow when administering the exam. Also, in the past, DSHS staff attempted to protect the candidates' identities during the exam procedure to help mitigate any bias, but due to a recent security policy at the building where the exams are given, candidates must now wear name tags, thus removing this protection of anonymity.

While staff has created these proctoring instructions, they do little to consistently enforce them. DSHS staff is not usually present during administration of a practical exam. The only individuals present are the candidate, volunteer, and two proctors. Although a digital audio recording of each exam is made, DSHS staff only reviews these recordings if there is a complaint. However, without knowing the actual instructions the proctors must follow in administering the exam, candidates have little information to base any complaints.

## **The Committee's proctoring process does not follow model licensing standards, raising concern about its fairness.**

Sunset staff uses documented standards in reviewing licensing programs. These standards are the byproduct of more than 98 licensing agency reviews completed over the course of more than 30 years. One of these standards maintains that clear procedures for governing all parts of the testing process be adopted to ensure fair and consistent treatment of applicants. Although the Committee has some procedures for the administration of the practical exam, they have not been formally adopted and are not consistently enforced, calling into question the fairness of the process and violating the licensing model's standard.

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*The Committee lacks procedures to ensure the practical exam is administered fairly and consistently.*

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## **Recommendations**

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

- 4.1 Require the Committee to adopt rules establishing qualifications for practical exam proctors, and require staff to select and assign proctors based on these qualifications.**

Under this recommendation the Committee would establish formal qualifications for proctors to help ensure their professionalism and objectivity in administering the practical exam. The qualifications should, at a minimum, specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser, and the type of disciplinary actions that would disqualify a licensee from serving as a proctor. DSHS staff would select licensees to serve as non-member proctors based on these qualifications. Additionally, staff would be responsible for pairing the proctors by assigning them to specific candidates to administer the practicum. Having staff rather than the Committee President select and assign proctors would better ensure the objectivity and consistency in proctor selection and assignments.

### ***Management Action***

- 4.2 Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam.**

DSHS staff should formally establish and enforce written policies and procedures for the administration of the practical exam to better ensure candidates receive consistent and fair evaluations. While the Committee currently uses instructions and procedures developed by staff to administer the practical exam, these need to be formalized and expanded upon to include training requirements for new proctors. These policies and procedures should also attempt to protect the candidate's identity throughout the examination process to the extent practicable. Staff should provide copies of these policies and procedures to the proctors, volunteers, and candidates to ensure all of the parties are informed of their rights and responsibilities during the exam process. Finally, staff should ensure the policies and procedures are followed by having a staff person observe or listen to the recording of at least 25 percent of exams selected at random.

## Fiscal Implication Summary

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These recommendations would not have a fiscal impact to the State.

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<sup>1</sup> Occupations Code, sec. 402.204.

<sup>2</sup> The International Licensing Examination (ILE) is used by most state hearing instrument fitter and dispenser licensing programs.

# Responses to Issue 4

## Recommendation 4.1

*Require the Committee to adopt rules establishing qualifications for practical exam proctors, and require staff to select and assign proctors based on these qualifications.*

### Committee Response to 4.1

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees in part with this recommendation. We do not agree that staff should select and assign proctors, unless those selections and assignments are approved by the Committee President. Additionally, by requiring the Committee to adopt policies that would clearly define its role in setting policy separate from staff responsibilities as proposed in Recommendation 1.2, the statute does not need to specifically mandate staff responsibilities as set forth in Recommendation 4.1.

### Committee Modification

1. Require staff's selections and assignments of proctors to be approved by the Committee President.

(Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### For 4.1

None received.

### Against 4.1

None received.

### Modifications

2. Require the Committee to adopt rules establishing qualifications for practical exam proctors, but remove the requirement that staff select and assign proctors based on these qualifications. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)
3. Require the Committee to administer the practical exam across the state using Committee-appointed proctors. (Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock)
4. Remove the requirement that applicants for licensure pass a practical examination because all of the subject matter covered in the practical examination can be examined in a written examination. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)

## **Recommendation 4.2**

*Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam. (Management Action)*

### **Committee Response to 4.2**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees in part with this recommendation. The Committee does not agree that staff should establish and enforce policies for exam administration without the approval of the Committee. Additionally, by requiring the Committee to adopt policies that would clearly define its role in setting policy separate from staff responsibilities as proposed in Recommendation 1.2, staff responsibilities do not need to be specifically mandated as set forth in Recommendation 4.2.

### **Committee Modification**

5. Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam with approval of the Committee.

(Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### **For 4.2**

None received.

### **Against 4.2**

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

## ***Commission Decision***

Adopted Recommendations 4.1 and 4.2.

## ***Legislative Action***

Senate Bill 663 requires the Committee to adopt rules establishing qualifications for practical exam proctors. The rules must require a proctor to be licensed as a hearing instrument fitter and dispenser in good standing; specify the number of years a proctor must be licensed; and specify the disciplinary actions or other actions that disqualify a person from serving as a proctor. The bill also requires the practical exam be administered by one or more qualified proctors, selected and assigned by DSHS. The Legislature modified this Sunset provision to clarify that the Committee shall develop and maintain an examination that may include written, oral, or practical tests, and DSHS shall administer or arrange for the administration of the exam. (Recommendation 4.1)

As a management recommendation not needing statutory change, Recommendation 4.2 did not result in legislative action.

# Issue 5

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

### **Background**

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In its regulation of hearing instrument fitters and dispensers in Texas, the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) performs several standard licensing and enforcement activities. Administratively attached to the Department of State Health Services (DSHS), the Committee and DSHS staff monitor 640 permit holders and licensees, including 484 fully licensed hearing instrument fitters and dispensers, 59 apprentice permit holders, and 97 temporary training permit holders. Appendix A, *Hearing Instrument Fitter and Dispenser Licensure*, provides more information on the licenses issued by the Committee. The Committee also investigates complaints against license holders, taking disciplinary action when necessary. In fiscal year 2009, the Committee resolved 38 jurisdictional complaints.

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 98 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 Committee's statute and rules differ from these model standards and describes the potential benefits of conforming to standard practices.

### **Findings**

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**One of the Committee's licensing provisions does not follow model licensing practices, affecting the Committee's ability to protect consumers.**

- **Criminal background checks.** Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public, particularly vulnerable populations such as children and the elderly, or there is a potential risk of consumer fraud. In recent years several agencies have switched from name-based criminal background checks to the Department of Public Safety (DPS) fingerprint system, which provides more accurate, real-time information than a name-based check. Fingerprint-based criminal background checks match an individual with any associated criminal history, including criminal history from other states and the Federal Bureau of Investigation. In place of the need for renewal checks, DPS issues automatic notice of subsequent arrests.

The use of fingerprint-based checks is expanding in Texas and nationally, as the checks have become more affordable. At least 12 state agencies use fingerprint-based criminal background checks including the following:

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*The DPS fingerprint system provides more accurate, real-time information than a name-based background check.*

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Department of Banking, Office of the Consumer Credit Commissioner, Department of Insurance, Department of Licensing and Regulation, Department of Savings and Mortgage Lending, and Funeral Service Commission.

In contrast, DSHS staff conducts a DPS name check upon submission of the initial licensure application, and when investigating a complaint or conducting an audit. Requiring staff to shift to fingerprint checks would better protect the public and eliminate the need for additional checks upon renewal, as DPS would provide automatic notice of subsequent arrests.

**Nonstandard enforcement provisions of the Committee’s statute could reduce the Committee’s effectiveness in protecting the public.**

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*The Committee lacks specific authority to force a licensee to pay a required refund.*

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- **Refund authority.** Statute requires hearing instrument fitters and dispensers to grant refunds during the 30-day trial period. Refunds allow a complainant to receive financial compensation for some or all of what was lost as a result of the act that prompted the complaint and resulted in a violation of state laws or rules by a licensee. Refunds can be granted when a consumer has been defrauded or subjected to a loss that can be quantified, such as the cost of a medical device. The majority of complaints the Committee receives concern consumers demanding a refund. From fiscal years 2005 to 2009, 48 percent of complaints concerned refunds.

While the Committee can strongly recommend a licensee issue a refund to a consumer, the Committee does not have specific authority to force a licensee to pay a required refund for a hearing instrument directly to the aggrieved party. The Committee can investigate and administratively penalize a licensee who violates the 30-day trial period for hearing instruments, but statute prohibits the amount of the administrative penalty from exceeding \$250 plus the cost to DSHS for taking action on the first violation, and \$1,000 plus the cost for prosecuting each subsequent violation. Because the Committee’s fines are less than the cost of issuing a refund, they are not sufficient to deter bad actors. The only other option the Committee has is to inform consumers of their right to sue under a surety bond since a condition of licensure requires owners of hearing instrument dispensing businesses to have a \$10,000 surety bond. However, staff indicated this option is costly to consumers and typically not successful. Requiring the licensee to refund the consumer directly would provide a potentially faster and fairer option to compensate the consumer.

- **Complaint investigation.** In general, board members should not be involved in both the investigation of complaints and determining disciplinary action. Ideally, investigation of complaints and setting a

complaint for hearing should be a staff function. If board members are involved in investigation, however, they should not take part in disciplinary proceedings.

Currently, Committee members serving on the complaints subcommittee review case information and often initiate investigations that identify additional violations. Committee members that investigate complaints may develop biases about the validity of the complaints which can prejudice the outcome of later disciplinary processes. Requiring Committee members to recuse themselves from voting on final disciplinary actions of cases they reviewed during complaints subcommittee hearings would maintain the fairness and impartiality of the Committee's consideration of these disciplinary cases.

- **Public members.** If an agency uses investigative or enforcement committees made up of board members, each committee should include at least one public member. The Committee's one active subcommittee, the complaints subcommittee, includes one public member. However, the Committee's statute does not specify that public members be appointed to subcommittees, and therefore does not ensure continued public representation on subcommittees once Committee membership changes.
- **Informal settlement conferences.** An agency should use methods other than just hearings to resolve complaints. Such methods include informal settlement conferences and mediated settlement conferences. Informal settlement conferences should be conducted either by staff or by the State Office of Administrative Hearings, and the agency's governing body should approve the informal agreements to ensure their knowledge of staff decisions and appropriate oversight of staff operations.

Although the Committee allows for informal settlement conferences, the Committee President recently required the full complaints subcommittee to conduct each informal settlement conference. Having the entire subcommittee be a party to these conferences makes them much more formal, thereby undermining the purpose of the conferences.

- **Cease-and-desist authority.** A licensing agency should have enforcement authority not only over its licensees, but also over those who engage in unlicensed activity of the profession. However, standard sanctions against licensees do not apply to unlicensed activity. While injunctive authority through the Attorney General's Office allows agencies to seek legal action to stop unlicensed activity, cease-and-desist orders provide a more immediate step that agencies may take on their own to stop unlicensed activity.

Although the Committee has injunctive authority, it does not have authority to issue cease-and-desist orders. The Committee's current process of issuing a warning letter to stop unlicensed practice lacks real

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*The Committee's statute does not require public members to be appointed to subcommittees.*

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*Seeking injunctions for unlicensed practice through the Attorney General is time consuming.*

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enforcement authority, while seeking injunctions through the Attorney General can be cumbersome and time-consuming. Cease-and-desist orders would provide for faster action, especially when violators of these orders are subject to additional sanctions, such as administrative penalties. In addition, violations of cease-and-desist orders could help the agency obtain injunctive relief.

## Recommendations

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### *Change in Statute*

#### **5.1 Require the Committee to conduct a fingerprint-based criminal background check of all hearing instrument fitter and dispenser licensees.**

This recommendation would require the Committee to conduct fingerprint criminal background checks, through DPS, on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time, approximate \$45 cost.

#### **5.2 Authorize the Committee to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.**

This recommendation would authorize the Committee to mandate that a licensee issue a refund to a consumer who is entitled to it according to the terms of the 30-day trial period policy for hearing instruments.

#### **5.3 Require Committee members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.**

This recommendation would require Committee members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory level. Recusing Committee members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

#### **5.4 Require the Committee to include at least one of its public members on its subcommittees.**

This recommendation would ensure the Committee appoints at least one public member to its subcommittees, including the complaints subcommittee. This subcommittee assists the Committee in determining whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

#### **5.5 Require the Committee to approve informal agreements made by agency staff with licensees through the informal settlement conference process.**

Having staff, instead of Committee members, conduct informal settlement conferences would enable more conferences to be held, and would expedite cases through the system. Staff would use

the Committee's penalty schedule to determine the appropriate disciplinary action to recommend to the full Committee. If the licensee agrees with the staff's informal settlement recommendation, the Committee would vote to ratify, modify, or reject the recommendation.

#### **5.6 Grant cease-and-desist authority to the Committee for unlicensed practice of hearing instrument fitting and dispensing.**

This recommendation would authorize the Committee to assess administrative penalties against individuals who violate cease-and-desist orders. Cease-and-desist authority would help the Committee better protect the public from unlicensed fitters and dispensers of hearing instruments and standardize the Committee's procedures with commonly applied licensing practices.

### **Fiscal Implication Summary**

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These recommendations would not have a significant fiscal impact to the State. For criminal background checks, licensees, not the State, would be responsible for paying a one-time fee of approximately \$45. Authorizing the Committee to order a refund would have no fiscal impact because consumers, not the State, directly receive the funds. The Committee could implement the remaining recommendations within its current resources.



# Responses to Issue 5

## Recommendation 5.1

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*Require the Committee to conduct a fingerprint-based criminal background check of all hearing instrument fitter and dispenser licensees.*

### Committee Response to 5.1

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### For 5.1

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

### Against 5.1

None received.

## Recommendation 5.2

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*Authorize the Committee to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.*

### Committee Response to 5.2

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

### For 5.2

Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

### Against 5.2

None received.

### **Recommendation 5.3**

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*Require Committee members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.*

#### **Committee Response to 5.3**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

#### **For 5.3**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

#### **Against 5.3**

None received.

### **Recommendation 5.4**

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*Require the Committee to include at least one of its public members on its subcommittees.*

#### **Committee Response to 5.4**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

#### **For 5.4**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

#### **Against 5.4**

None received.

### **Recommendation 5.5**

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*Require the Committee to approve informal agreements made by agency staff with licensees through the informal settlement conference process.*

#### **Committee Response to 5.5**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments disagrees with this recommendation. The current approach is working well and no change is necessary. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

**For 5.5**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

**Against 5.5**

None received.

**Recommendation 5.6**

*Grant cease-and-desist authority to the Committee for unlicensed practice of hearing instrument fitting and dispensing.*

**Committee Response to 5.6**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments agrees with this recommendation. (Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

**For 5.6**

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

William McCrae, President – Texas Hearing Aid Association, Inc., Austin

**Against 5.6**

None received.

## ***Commission Decision***

Adopted Recommendations 5.1 through 5.6.

## ***Legislative Action***

Senate Bill 663 includes six provisions that bring the Committee in line with standard licensing agency practices, including the following.

- Requires the Committee to obtain a fingerprint-based criminal history check on each applicant and license holder. (Recommendation 5.1)
- Authorizes the Committee to order a license holder to pay a refund to a consumer who returns a hearing instrument during the required 30-day trial period. (Recommendation 5.2)
- Prohibits a Committee member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint from voting on the matter at a Committee meeting related to the complaint. (Recommendation 5.3)

- Requires the Committee to appoint at least one public member to each of its subcommittees. (Recommendation 5.4)
- Requires the Committee, by rule, to adopt procedures governing informal proceedings and informal settlement conferences, and to approve informal agreements made by DSHS staff with licensees through the informal settlement conference process. (Recommendation 5.5)
- Authorizes the Committee to issue a cease-and-desist order for unlicensed practice of fitting and dispensing hearing instruments; and allows the Committee to impose an administrative penalty against an individual who violates a cease-and-desist order. (Recommendation 5.6)

*State Board of Examiners for Speech-Language  
Pathology and Audiology*

*Board at a Glance*  
(October 2010)

# Board at a Glance

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The State Board of Examiners for Speech-Language Pathology and Audiology (the Board) regulates speech-language pathologists (SLPs) and audiologists in Texas. The textbox, *Speech-Language Pathologists and Audiologists*, explains the scope of practice and minimum educational requirements for each.

The Board is administratively attached to the Texas Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit (the Unit), along with 22 other licensing programs. DSHS provides staff, facilities, and infrastructure necessary to accomplish the Board's mission and functions which is to protect and promote public health by designing and enforcing licensure rules and regulations for SLPs and audiologists. To achieve its mission, the Board carries out the following key activities.

- Develops and updates standards of practice for licensed speech-language pathologists and audiologists.
- Issues and renews licenses to qualified individuals as SLPs, SLP interns, and SLP assistants as well as audiologists, audiologist interns, and audiologist assistants.
- Receives and investigates complaints concerning licensees, and takes disciplinary actions against individuals who violate the Board's statute or rules.

## Key Facts

- **State Board of Examiners for Speech-Language Pathology and Audiology.** The Board's policymaking body consists of nine Governor-appointed members, including three licensed speech-language pathologists, three licensed audiologists, and three public members, one of whom must be a practicing physician licensed and certified in otolaryngology or pediatrics.
- **Funding.** The Board does not receive a direct appropriation. Instead, the Board receives funding through the appropriation to DSHS for the administration of the 23 licensing programs in the Unit. In fiscal year 2009, the Board expended \$338,356 and generated revenues totaling about \$917,800.
- **Staffing.** DSHS staff provides administrative support to the Board. While several DSHS staff provide some administrative support to the Board, the total staff time spent on Board administration in fiscal year 2009 was equivalent to almost six employees. One staff member serves as the Program Director for both the Board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.
- **Licensing.** In fiscal year 2009, the Board regulated 9,735 SLPs, 541 SLP interns, and 2,059 SLP assistants. The Board also regulated 1,059 audiologists, 38 audiologist interns, and six audiologist assistants. Appendix B, *Speech-Language Pathology and Audiology Licensure*, provides additional information on these licensees and on the licensing process.

### **Speech-Language Pathologists and Audiologists**

Speech-Language Pathologists (SLPs) evaluate and treat disorders related to communication, language, and swallowing. To be licensed, SLPs must obtain a masters-level degree.

Audiologists evaluate and treat ailments related to hearing and vestibular functions. As of January 1, 2007, licensed audiologists must obtain a doctorate-level degree.

- **Enforcement.** Staff receives and investigates complaints regarding SLPs and audiologists, and as a result of these investigations, the Board imposes sanctions against individuals found to be in violation of the Board's statute or rules. In fiscal year 2009, staff received 49 jurisdictional complaints, 33 regarding SLPs and 16 regarding audiologists. The majority of the complaints related to standard of care. In fiscal year 2009, the Board imposed seven sanctions against SLPs including issuing four administrative penalties, one suspension, and two probated suspensions. The Board also issued three administrative penalties to audiologists, and cease-and-desist letters to two SLPs and two audiologists.

*Issues*

# Issue 1

## ***Texas Has a Continuing Need for the State Board of Examiners for Speech-Language Pathology and Audiology.***

### **Background**

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In 1983, the Legislature created the State Committee of Examiners for Speech-Language Pathology and Audiology and administratively attached it to the Texas Department of Health. Ten years later, the Legislature changed the name to the State Board of Examiners for Speech-Language Pathology and Audiology (the Board). In 2004, the Board was placed in the newly created Department of State Health Services (DSHS).

The Board regulates individual speech-language pathologists (SLPs) and audiologists through licensing and enforcement as a means to protect Texas consumers, and to improve and maintain standards for the professions. The Board consists of nine Governor-appointed members, including three licensed SLPs, three licensed audiologists, and three public members, one of whom must be a practicing licensed physician certified in either otolaryngology or pediatrics. In fiscal year 2009, the Board regulated 9,735 speech-language pathologists and 1,059 audiologists, as well as 541 SLP interns, 38 audiologist interns, 2,059 SLP assistants, and six audiologist assistants. Appendix B, *Speech-Language Pathology and Audiology Licensure*, lists and describes the different levels of licensure and the number of individuals regulated in each. In fiscal year 2009, the Board expended \$338,356 and generated revenues totaling about \$917,800 to license and regulate these individuals.

DSHS provides staff, facilities, and infrastructure to the Board through its Professional Licensing and Certification Unit (the Unit), which administers 22 other licensing programs, including the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee). While several DSHS staff provide some administrative support to the Board, the total staff time spent on Board administration in fiscal year 2009 was equivalent to almost six employees.

### **Findings**

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#### **Texas has a continuing need to regulate speech-language pathologists and audiologists.**

Audiologists and SLPs serve several types of clients in a range of different settings. Most SLPs work in schools serving children with developmental, learning, and language difficulties. They also work in hospitals, clinics, and nursing homes providing therapy and rehabilitation. Audiologists work in private practice; for other medical professionals such as ear, nose, and throat physicians; as well as for the military, industry, and even NASA. In addition to performing various diagnostic and hearing rehabilitation functions, audiologists can also screen newborns for hearing loss, and fit and dispense hearing instruments. Because SLPs and audiologists are healthcare providers and often have direct contact with vulnerable populations, such as children and elderly individuals, the State must continue to regulate these professions to ensure practitioners meet high professional and ethical standards.

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*Audiologists and SLPs are healthcare providers that often have direct contact with vulnerable populations.*

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While the two professions have significant differences, the Board licenses individuals to verify their competence to provide services to the public, and develops rules to ensure licensees meet proper education and training requirements, and engage in safe practices. The Board also receives and investigates complaints, and enforces the laws and rules against violators.

**The Sunset review of the Board did not reveal any significant benefits to further consolidation at this time, but different regulatory and organizational options should be considered during upcoming Sunset reviews.**

Both the Committee and the Board regulate individuals who fit and dispense hearing instruments. The Board regulates audiologists while the Committee regulates hearing instrument fitters and dispensers. Although having two separate entities regulating individuals who perform the same function may seem inefficient, consolidation would not result in any significant cost savings or efficiencies. Since the same DSHS staff support both the Committee and the Board, consolidation would not reduce employees. The only cost savings would result from reduced travel expenses for fewer Board or Committee members, but any savings would be minimal.

Additionally, speech-language pathology and audiology possess a historical and professional interconnectedness as well as similar educational and training requirements. As health care becomes further specialized, the complexity of the types of conditions these healthcare professions treat will continue to evolve. In comparison, although the hearing instrument industry has grown steadily, the scope of practice of hearing instrument fitters and dispensers is basically static.

This review and the resulting staff recommendations are based on the examination and evaluation of statutes, rules, and policies unique to both the Board and Committee. However, Sunset staff was unable to fully evaluate several aspects of the administration of the Board by DSHS, as these practices and procedures have implications for the 22 other licensing programs within the Unit. The Sunset Commission will have the opportunity to assess DSHS's administrative practices in 2013 when the agency undergoes Sunset review, which could have implications for all of the programs in the Unit. In addition, six other licensing programs in the Unit will undergo Sunset review during the 2016-2017 biennium.<sup>1</sup> As such, the next Sunset review of the Board should coincide with the review of these programs to allow any changes to their structure and administration within the Unit to be evaluated together, while still allowing sufficient time for the Board to implement changes resulting from both this Sunset review and the upcoming Sunset review of DSHS.

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*Consolidating the Board and the Committee would not result in any significant cost savings or efficiencies.*

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**Most other states regulate speech-language pathologists and audiologists together, but separately from fitters and dispensers.**

As reflected in the table, *Other States' Regulation of SLPs and Audiologists*, most states regulate SLPs and audiologists together. Only nine states regulate SLPs, audiologists, and dispensers together.

***Other States' Regulation of SLPs and Audiologists***

<b>State Regulation</b>	<b>Number of States</b>
States that regulate SLPs with audiologists	37
States that regulate audiologists separately from SLPs and fitters and dispensers	2
States that regulate hearing instrument fitters and dispensers, SLPs, and audiologists together	9
States that do not regulate SLPs*	2

\* South Dakota and Colorado do not regulate SLPs.

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*Thirty-seven states regulate SLPs and audiologists together.*

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**The Board's statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Board's statute lacks the following standard provisions that the Sunset Commission applies in across-the-board fashion to agencies under review.

- **Public Membership.** The Board's statute does not include the standard provision relating to public membership on state agency policymaking bodies that prevents a person from serving as a public member of the Board if the person's spouse is registered, certified, or licensed by a regulatory agency in the field of speech-language pathology or audiology. In addition, the Board's statute does not include the standard provision that prevents a person from serving as a public member of the Board if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Board. This provision better ensures the Board is more responsive to the public's broad interests rather than the regulated professions affected by the activities of the Board.
- **Conflict of Interest.** The Board's statute does not include standard conflict of interest language that would help prevent potential conflicts with professional trade organizations and other groups that may not be in the public's interest.
- **Presiding Officer Designation.** The Board's statute does not include the standard provision requiring the Governor to designate the presiding officer of the Board. Instead, statute requires the Board to organize itself

and select a presiding officer, assistant presiding officer, and secretary-treasurer, lessening the accountability of the Board.

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*The Board's statute lacks some standard provisions applied to all agencies under Sunset review.*

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- **Grounds for Removal.** The Board's statute lacks the standard provision relating to grounds for removal of Board members. The statute does not specify it is a ground for removal of a Board member if appointment requirements are not met, and does not include a notification procedure for these potential grounds for removal. Additionally, the statute does not specify that if a ground for removal of a member exists, the Board's actions are still valid.
- **Board Member Training.** Board members must comply with training requirements established by the Health Professions Council, but the Board's statute does not specify the type of training and information Board members need to allow them to properly discharge their duties.

## Recommendations

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

#### **1.1 Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.**

This recommendation would continue the Board for six years, administratively attached to DSHS. This shorter Sunset date would enable the Sunset Commission to evaluate the Board together with six other licensing programs administered by the Professional Licensing and Certification Unit at DSHS which are scheduled for Sunset review in 2017. Aligning these Sunset dates would allow any changes to the structure and administration of these programs within the Unit to be evaluated together.

#### **1.2 Apply the standard Sunset across-the-board requirements to the State Board of Examiners for Speech-Language Pathology and Audiology.**

**Public Membership.** Under this recommendation, a person would be prohibited from being appointed as a public member of the Board if the person's spouse is registered, certified, or licensed by a regulatory agency in the field of speech-language pathology or audiology. This recommendation would also prohibit a person from serving as a public member of the Board if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Board other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses.

**Conflict of Interest.** This recommendation would define "Texas trade association" and prohibit an individual from serving as a member of the Board if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of speech-language pathology or audiology.

**Presiding Officer Designation.** This recommendation would require the Governor to designate a member of the Board as the presiding officer to serve in that capacity at the pleasure of the Governor.

**Grounds for Removal.** This recommendation would specify the grounds for removal for Board members and the notification procedure for when a potential ground for removal exists. This recommendation would also clarify that if a ground for removal of a Board member exists, actions taken by the Board are still valid.

**Board Member Training.** This recommendation would clearly establish the type of information to be included in the Board member training. The training would need to provide Board members with information regarding the legislation that created the Board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

## **Fiscal Implication Summary**

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If the Legislature continues the State Board of Examiners for Speech-Language Pathology and Audiology and its functions administratively attached to DSHS, about \$338,300 would be needed for the Board's continued operations within the Professional Licensing Certification Unit. The Board's operations are self-funded through industry fees.

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<sup>1</sup> State Board of Examiners of Professional Counselors, State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Midwifery Board, State Perfusionist Advisory Committee, and State Board of Social Worker Examiners.



# ***Responses to Issue 1***

## **Recommendation 1.1**

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*Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.*

### **Board Response to 1.1**

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

### **For 1.1**

Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

### **Against 1.1**

None received.

### **Modification**

1. Require Sunset staff to conduct a limited review of the Board in 2017 that specifically focuses on a comparison of the Board's structure to other licensing programs operated by the Department of State Health Services, and the administration provided to the Board by the Department. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)

## **Recommendation 1.2**

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*Apply the standard Sunset across-the-board requirements to the State Board of Examiners for Speech-Language Pathology and Audiology.*

### **Board Response to 1.2**

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

### **For 1.2**

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

### **Against 1.2**

None received.

## ***Commission Decision***

Adopted Recommendations 1.1 and 1.2.

## ***Legislative Action***

Senate Bill 662 continues the Board for six years, administratively attached to DSHS. This shorter Sunset date will allow the Sunset Commission to evaluate the Board together with the seven other licensing programs administered by DSHS' Professional Licensing and Certification Unit scheduled for Sunset review in 2017. (Recommendation 1.1)

In addition, the bill applies the standard Sunset across-the-board requirements to the Board regarding public membership, conflicts of interest, presiding officer designation, grounds for removal, and Board member training. (Recommendation 1.2)

# Issue 2

## ***Having Different Rules Governing the Sale of Hearing Instruments Treats Customers Inequitably and Causes Confusion.***

### **Background**

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Texas allows both hearing instrument fitters and dispensers and audiologists to fit and dispense hearing instruments. However, hearing instrument fitters and dispensers and audiologists are licensed by different entities. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) licenses and regulates hearing instrument fitters and dispensers while the State Board of Examiners for Speech-Language Pathology and Audiology (the Board) licenses and regulates audiologists.

The Committee and the Board each have separate authority to adopt rules for the regulation of the fitting and dispensing of hearing instruments, but these rules do not have to be consistent.<sup>1</sup> Sunset staff found several inconsistencies in the Committee's and the Board's rules, but of particular concern was the disparity in standards for hearing instrument sales, including the written purchase contract, recordkeeping, and the 30-day trial period.

### **Findings**

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#### **Having inconsistent rules regarding hearing instrument sales is unfair to consumers and creates confusion for both consumers and licensees.**

Because of the disparity in rules for hearing instrument sales, consumers who purchase hearing instruments from audiologists do not receive the same information about their purchase as consumers who purchase hearing instruments from hearing instrument fitters and dispensers.

- **Written Contract.** When a person purchases a hearing instrument, the seller provides the customer a written contract for the purchase. However, the Committee requires hearing instrument fitters and dispensers to provide much more detailed information in their contracts than the Board requires audiologists to provide. The table on the following page, *Comparison of Contract Requirements for Hearing Instrument Sales*, shows the different information provided in each type of contract.<sup>2,3</sup> Hearing instruments are a significant purchase, costing anywhere from a few hundred dollars to several thousand dollars. Depending on whom a consumer purchases the instrument from, the consumer may not receive important information such as the terms of the warranty, the serial number, and the condition of the instrument when purchased.
- **Recordkeeping.** Although recordkeeping facilitates transparency and seamlessness in healthcare service delivery – including the sale of medical devices such as hearing instruments – state standards for recordkeeping for audiologists and hearing instrument fitters and dispensers are not

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*Hearing instruments can cost several thousand dollars.*

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uniform. The Committee requires hearing instrument fitters and dispensers to maintain several items, such as pertinent case history, source of referral and related documentation, and cumulative records for all clients for at least three years from the latest fitting. The Board, however, has no such requirements for audiologists.

- **30-day trial period and refund.** State law requires both the Committee and the Board to adopt guidelines for a 30-day trial period for purchased hearing instruments.<sup>4</sup> The 30-day trial period allows time for hearing instruments to be adjusted to customers' needs and gives customers the opportunity to determine if they can adapt and get used to such a device. However, the Committee and the Board have each adopted different rules to implement the 30-day trial period. The Committee entitles customers to a refund before the end of 30-day trial period, which Committee rules define as "30 days from the date of delivery."<sup>5</sup> Board rules specify the 30-day trial period consists of "30 consecutive days" and require contracts to include a specific return date for consumers to qualify for a refund.<sup>6</sup> Under the Committee's rules, when a customer returns a hearing instrument for repair or adjustment, the 30-day trial period stops once the device is out of the customer's possession and resumes when the device returns to the customer. Under the Board's rules, when a customer returns a hearing instrument, the 30-day trial period stops, and a new 30-day trial period begins when the device returns to the customer's possession.

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*The 30-day trial period allows consumers time to decide if the hearing instruments are appropriate.*

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#### **Comparison of Contract Requirements for Hearing Instrument Sales**

Contract Requirements	Board	Committee
Printed name, signature, and license number	Yes	Yes
Name and address of Board/Committee	Yes	Yes
Notice of a 30-day trial period	Yes	Yes
Notice of fee associated with the trial period	Yes	Yes
Make and model of the hearing instrument	No	Yes
State of the condition of the hearing instrument (used, new, refurbished)	No	Yes
Hearing instrument warranty information	No	Yes
Serial number of the hearing instrument	No	Yes
Contact information for the principal place of business	No	Yes
Notice that complaints can be addressed to the Board/Committee	No	Yes
Full and complete disclosure of the cost of financing the purchase of the hearing instrument	No	Yes
Price before discounts or trade-in	No	Yes
Final price	No	Yes

Having two different trial-period policies can be confusing to consumers, who may easily misunderstand what they are entitled to with respect to obtaining a refund. Consumers often do not know whether they are purchasing a hearing instrument from an audiologist or a hearing instrument fitter and dispenser, particularly because many retail hearing instrument operations employ both types of practitioners. DSHS data indicate that the majority of complaints the Board and Committee receive involving hearing instrument sales concerns consumers demanding a refund after the 30-day trial period may have elapsed.

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*Having different trial-period policies can be confusing to consumers.*

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Overall, the lack of consistent rules regarding the sale of hearing instruments is confusing since audiologists sometimes work for hearing instrument fitters and dispensers, and vice versa. Knowing which rules apply is not always clear, as evidenced by complaints the Committee has received involving hearing instrument fitters and dispensers following the policies and procedures of their audiologist employers rather than those prescribed by the Committee. This situation is particularly troubling given how most hearing instrument consumers are elderly.<sup>7</sup>

**Other licensing programs in Texas, as well as other states, ensure uniformity of regulation across professions with occupational overlap.**

Much like the administrative attachment of the Board and the Committee to DSHS, the Advisory Board on Barbering and the Advisory Board on Cosmetology are housed within the Texas Department of Licensing and Regulation. While barbering and cosmetology are two distinct occupations, practitioners provide many of the same services, such as haircutting, styling, and waxing. As a result of this overlap, the Texas Department of Licensing and Regulation led an initiative to create parity between the rules of these advisory boards for service delivery, sanitation, and inspections, to ensure consistency for consumers and licensees.

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*Several other states require uniform regulations for hearing instrument sales.*

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In addition, other states' regulatory bodies for hearing instrument fitters and dispensers and audiologists require practitioners in the two professions to adhere to the same guidelines with respect to selling hearing instruments. Uniformity of regulations for the sale of hearing instrument exists even in states that regulate the two professions separately. For example, hearing instrument fitters and dispensers and audiologists in California, Florida, and New York are all subject to common rules.

## Recommendation

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

#### **2.1 Require the Board and Committee to jointly develop and adopt rules for hearing instrument sales.**

Under this recommendation, the Committee and Board would be statutorily required to work together to develop and adopt common rules for hearing instrument sales, including the written contract, recordkeeping, and 30-day trial period for hearing instrument sales. Uniform rules would provide consistency in the sale of hearing instruments for consumers and licensees. To help ensure fairness and consistency, DSHS staff should facilitate this process, bringing together the expertise of the professional members of both the Committee and Board. The Board and Committee should adopt the common rules by May 1, 2012.

## Fiscal Implication Summary

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

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<sup>1</sup> 21 Code of Federal Regulations sec. 801.421 requires anyone fitting and dispensing a hearing aid to obtain a statement from a physician or a medical waiver before selling the device, and to provide the consumer with detailed information about product maintenance and a warranty.

<sup>2</sup> Texas Administrative Code, Title 22, part 32, rule 741.102.

<sup>3</sup> Texas Administrative Code, Title 22, part 7, rule 141.16.

<sup>4</sup> Occupations Code, secs. 401.403(5) and 402.401.

<sup>5</sup> Texas Administrative Code, Title 22, part 7, rule 141.16(b).

<sup>6</sup> Texas Administrative Code, Title 22, part 32, rule 741.102(4).

<sup>7</sup> *Hearing Review*, vol. 12, no. 7 (2005), pp. 16-29.

# ***Responses to Issue 2***

## **Recommendation 2.1**

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*Require the Board and Committee to jointly develop and adopt rules for hearing instrument sales.*

### **Board Response to 2.1**

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

### **Committee Response to 2.1**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments does not agree that this recommendation should be a statutory requirement. Additionally, we do not agree that DSHS staff should facilitate the joint development of rules, and do not believe staff should be required to navigate this process.

### **Committee Modifications**

1. Instead of statutorily requiring the Board and Committee to jointly develop and adopt rules for hearing instrument sales, make this a legislative recommendation for best practices.

(Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments)

2. DSHS administrative staff should not facilitate the joint development of rules. Instead, require the Committee and the Board to work on any initiative relating to the joint development of rules independently of staff.

(Ken Haesly, President – State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and William McCrae, President – Texas Hearing Aid Association, Inc., Austin)

### **For 2.1**

Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth

Matt Lyon – Texas Academy of Audiology, El Paso

Michael A. Winters – Hearing Loss Association of America, Austin

### **Against 2.1**

None received.

### **Modifications**

3. As part of the joint rulemaking process for hearing instrument sales facilitated by DSHS staff, the DSHS attorney for the Board and the Committee should establish consumer-friendly requirements. (Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin)
4. Clarify what is specifically meant by the term “hearing instrument sales” by requiring the Board and Committee to jointly develop and adopt rules specifically for written contracts, recordkeeping, and the 30-day trial period. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)
5. Change the May 1, 2012 date to September 30, 2012 to provide enough time to successfully develop and adopt the joint rules. (William McCrae, President – Texas Hearing Aid Association, Inc., Austin)
6. Require DSHS staff to write common rules for recordkeeping and the 30-day trial period for hearing instrument sales that the Board and Committee would adopt. (Ray Jones, President – Jack Jones Hearing Centers, Inc., Fort Worth)
7. Require the written contract and 30-day trial period policy for hearing instruments be written in clear, plain language. (Michael A. Winters – Hearing Loss Association of America, Austin)

## ***Commission Decision***

Adopted Recommendation 2.1 with Modifications 4 and 7 which clarify the term “hearing instrument sales” specifically applies to written contracts, recordkeeping, and the 30-day trial period, and require the written contract and 30-day trial period to be written in clear, plain language.

## ***Legislative Action***

Senate Bill 662 requires the Board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee), with DSHS assistance, to jointly adopt rules to establish requirements for each sale of a hearing instrument. The rules must address the information and other provisions required in each written contract; records that must be retained; and guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument. The bill stipulates the Board and Committee must adopt the joint rules by May 1, 2012. The bill also requires the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be written in plain language designed to be easily understood by the average consumer. (Recommendation 2.1 with Modifications 4 and 7) The requirement for the Board and Committee to jointly adopt rules for hearing instrument sales was also adopted in Senate Bill 663, the Committee’s Sunset bill.

# Issue 3

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

### **Background**

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As part of its mission to protect and promote public health by establishing and implementing standards of ethical practice and professional conduct for speech-language pathologists (SLPs) and audiologists, the State Board of Examiners for Speech-Language Pathology and Audiology (the Board) performs several standard licensing and enforcement functions.

Administratively attached to the Department of State Health Services (DSHS), the Board and DSHS staff monitor more than 13,443 individuals, including 9,735 SLPs, five temporary SLPs, 541 SLP interns, 2,059 SLP assistants, 1,059 audiologists, 38 audiologist interns, and six audiologist assistants. Appendix B, *Speech-Language Pathology and Audiology Licensure*, provides more information on the licenses issued by the Board. The Board also investigates complaints against license holders, taking disciplinary action when necessary. In fiscal year 2009, the Board resolved 49 jurisdictional complaints.

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 98 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 Board's statute and rules differ from these model standards and describes the potential benefits of conforming to standard practices.

### **Findings**

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#### **One of the Board's licensing provisions does not follow model licensing practices, affecting the Board's ability to protect consumers.**

- **Criminal background checks.** Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public, particularly vulnerable populations such as children and the elderly, or there is a potential risk of consumer fraud. In recent years, several agencies have switched from name-based criminal background checks to the Department of Public Safety (DPS) fingerprint system, which provides more accurate, real-time information than a name-based check. Fingerprint-based criminal background checks match an individual with any associated criminal history, including criminal history from other states and the Federal Bureau of Investigation. In place of the need for renewal checks, DPS issues automatic notice of subsequent arrests.

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*The DPS fingerprint system provides more accurate, real-time information than a name-based background check.*

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The use of fingerprint-based checks is expanding in Texas and nationally, as the checks have become more affordable. At least 12 state agencies use fingerprint-based criminal background checks including the following: Department of Banking, Office of the Consumer Credit Commissioner, Department of Insurance, Department of Licensing and Regulation, Department of Savings and Mortgage Lending, and Funeral Service Commission. California also requires prospective SLP and audiologist licensees to submit fingerprints for a state and federal background check.

In contrast, DSHS staff conducts a DPS name check upon submission of the initial licensure application, and when investigating a complaint or conducting an audit. Requiring staff to shift to fingerprint checks would better protect the public and eliminate the need for additional checks upon renewal, as DPS would provide automatic notice of subsequent arrests.

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*The Board lacks specific authority to force a licensee to pay a required refund.*

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**Nonstandard enforcement provisions of the Board’s statute, rules, and practices reduce the Board’s effectiveness in protecting consumers.**

- **Refund authority.** Statute requires audiologists to grant refunds during the 30-day trial period. Refunds allow a complainant to receive financial compensation for some or all of what was lost as a result of the act that prompted the complaint and resulted in a violation of state laws or rules by a licensee. Refunds can be granted when a consumer has been defrauded or subjected to a loss that can be quantified, such as the cost of a medical device. Although the Board can investigate and administratively penalize a licensee who violates the 30-day trial period for hearing instruments, the Board does not have specific authority to force a licensee to pay a required refund for a hearing instrument directly to the aggrieved party, even though statute and rule require a 30-day trial period. Requiring the licensee to refund the consumer directly would provide a potentially faster and fairer option to compensate the consumer.

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*Board members should not be involved in both the investigation of complaints and determining disciplinary action.*

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- **Complaint investigation.** In general, board members should not be involved in both the investigation of complaints and determining disciplinary action. Ideally, investigation of complaints and setting a complaint for hearing should be a staff function. If board members are involved in investigation, however, they should not take part in disciplinary proceedings.

Currently, Board members serving on the complaints committee review case information and often initiate investigations that identify additional violations. Board members that investigate complaints can develop biases about the validity of the complaints which may prejudice the outcome of later disciplinary processes. Requiring Board members to recuse themselves from voting on final disciplinary actions of cases they reviewed during complaints subcommittee hearings would maintain the fairness and impartiality of the Board’s consideration of these disciplinary cases.

- **Cease-and-desist authority.** A licensing agency should have enforcement authority not only over its licensees, but also over those who engage in unlicensed activity of the profession. However, standard sanctions against licensees do not apply to unlicensed activity. While injunctive authority through the Attorney General's Office allows agencies to seek legal action to stop unlicensed activity, cease-and-desist orders provide a more immediate step that agencies may take on their own to stop unlicensed activity.

Although the Board has injunctive authority, it does not have authority to issue cease-and-desist orders. The Board's current process of issuing a warning letter to stop unlicensed practice lacks real enforcement authority, while seeking injunctions through the Attorney General can be cumbersome and time-consuming. Cease-and-desist orders would provide for faster action, especially when violators of these orders are subject to additional sanctions, such as administrative penalties. In addition, violations of cease-and-desist orders could help the agency obtain injunctive relief.

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*Seeking injunctions for unlicensed practice through the Attorney General is time consuming.*

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## Recommendations

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

#### **3.1 Require the Board to conduct a fingerprint-based criminal background check of all SLP and audiologist licensees.**

This recommendation would require the Board to conduct fingerprint criminal background checks, through DPS, on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time \$45 cost, and eliminating the name-based criminal history checks would result in a projected cost savings of about \$2,630 annually for the Professional Licensing and Certification Unit at DSHS.

#### **3.2 Authorize the Board to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.**

This recommendation would authorize the Board to mandate that a licensee issue a refund to a consumer who is entitled to it according to the terms of the 30-day trial period policy for hearing instruments.

#### **3.3 Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.**

This recommendation would require Board members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory level. Recusing Board members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

### **3.4 Grant cease-and-desist authority to the Board for unlicensed practice of speech-language pathology and audiology.**

This recommendation would authorize the Board to assess administrative penalties against individuals who violate cease-and-desist orders. Cease-and-desist authority would help the Board better protect the public from unlicensed speech-language pathologists and audiologists, and standardize the Board's procedures with commonly applied licensing practices.

## **Fiscal Implication Summary**

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These recommendations would not have a significant fiscal impact to the State. For criminal background checks, licensees, not the State, would be responsible for paying a one-time fee, currently \$45. Additionally, eliminating the name-based criminal history checks for new license applicants and applicants for license renewal would result in a projected cost savings of about \$2,630 annually for the Professional Licensing and Certification Unit at DSHS. These savings would be used for the administration of the program. Authorizing the Board to order a refund would have no fiscal impact because consumers, not the State, directly receive the funds. The Board could implement the remaining recommendations within its current resources.

# Responses to Issue 3

## Recommendation 3.1

*Require the Board to conduct a fingerprint-based criminal background check of all SLP and audiologist licensees.*

### Board Response to 3.1

Speech-language pathologists and speech assistants working in the Texas state school system are already required by Texas law to submit to DPS fingerprint background checks. Requiring these individuals to repeat the process and pay for this information again seems unnecessary.

### Board Modification

1. Exempt speech-language pathologists and speech assistants working in the Texas state school system, who are already subject to fingerprint-based criminal background checks as a condition of their employment, from having to undergo this process again when applying and renewing their license with the Board. DSHS would obtain the fingerprint-based criminal background checks on these speech-language pathologists and speech assistants from the Texas Department of Public Safety.

(Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology and Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin)

### For 3.1

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

### Against 3.1

None received.

## Recommendation 3.2

*Authorize the Board to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.*

### Board Response to 3.2

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

**For 3.2**

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

**Against 3.2**

None received.

**Modification**

2. Require the Board and Committee to adopt specific rules to clarify the 30-day trial period since the process for consumer complaints may be outside the 30-day trial period. Require the Board and Committee to maintain the same standards. (Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin)

**Recommendation 3.3**

*Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.*

**Board Response to 3.3**

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

**For 3.3**

Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

**Against 3.3**

None received.

**Recommendation 3.4**

*Grant cease-and-desist authority to the Board for unlicensed practice of speech-language pathology and audiology.*

**Board Response to 3.4**

The State Board of Examiners for Speech-Language Pathology and Audiology agrees with this recommendation. (Vickie Dionne, Au.D., CCC-A, FAAA, Chair – State Board of Examiners for Speech-Language Pathology and Audiology)

### **For 3.4**

Denise Barringer, MS, CCC-SLP, BRS-S, President – Texas Speech-Language-Hearing Association, Austin

Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock

Sherry Sancibrian, MS, CCC-SLP – Texas Speech-Language-Hearing Association, Lubbock

### **Against 3.4**

None received.

## ***Commission Decision***

Adopted Recommendation 3.1 with Modification 1 which exempts speech-language pathologists and speech assistants working in the Texas state school system, who are already subject to fingerprint-based criminal background checks, from having to undergo this process again for license application or renewal.

Also adopted Recommendations 3.2, 3.3, and 3.4.

## ***Legislative Action***

Senate Bill 662 includes four provisions that bring the Board in line with standard licensing agency practices, including the following.

- Requires the Board to obtain a fingerprint-based criminal history check on each applicant and license holder. The Legislature modified this Sunset provision by removing the exemption from the fingerprint-based criminal history check for licensed SLPs and SLP assistants employed by a K – 12 school. (Recommendation 3.1)
- Authorizes the Board to order an audiologist to pay a refund to a consumer who returns a hearing instrument during the required 30-day trial period. (Recommendation 3.2)
- Prohibits a Board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint from voting on the matter at a Board meeting related to the complaint. (Recommendation 3.3)
- Authorizes the Board to issue a cease-and-desist order for unlicensed practice of speech-language pathology and audiology; and allows the Board to impose an administrative penalty against an individual who violates a cease-and-desist order. (Recommendation 3.4)



# *New Issues*

*New Issues*

# *New Issues*

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## ***State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments***

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations on the Committee.

6. Remove the statutory provision that prohibits the Committee from issuing a fitter and dispenser license to an applicant who is a licensed audiologist in another state and requires the Committee to refer the applicant to the State Board of Examiners for Speech-Language Pathology and Audiology. (Richard R. Davila II, President – Livingston Hearing Aid Center, Inc., Lubbock)
7. Authorize educational entities, including universities, colleges, and trade schools, that provide training to hearing instrument fitters and dispensers, to serve as sponsors for multiple individuals with temporary training permits under Texas Occupations Code, sec. 402.251. (Michael Lee – Hearing Aid Academy, Atlanta)
8. Establish a separate license for hearing instrument fitter and dispenser assistants in statute. (Michael Lee – Hearing Aid Academy, Atlanta)
9. Authorize the Committee to regulate the sale of certain low-cost hearing assisting devices. (Michael Winters – Hearing Loss Association of America, Austin)

### ***Commission Decision***

The Commission did not adopt any of the new issues.

### ***Legislative Action***

No action needed.

# State Board of Examiners for Speech-Language Pathology and Audiology

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations on the Board.

4. Nationally, the entry-level degree for audiologists is now a doctoral degree. As a result, no university programs in the United States have offered a master's degree in audiology since 2007.
  - a. Update educational requirements for licensure as an audiologist in Texas to require applicants to hold a doctoral degree, per current national standards.
  - b. Include a "Grandfather Clause" in state law to allow continued licensure for existing license holders who hold master's degrees earned before 2007.
  - c. Authorize the Board to grant licensure to Texas applicants who are licensed in another state, District of Columbia, or territory if the licensing standards are considered by the Board to be equivalent to Texas requirements at the time the license was issued in the other state or territory.

(Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock and Matthew Lyon – Texas Academy of Audiology, El Paso)

**Staff Comment:** The Board has authority to grant a provisional license to an applicant who is licensed in good standing as a speech-language pathologist or an audiologist in another state that has licensing requirements that are substantially equivalent to the Board's requirements. This new issue addresses the Board's authority to grant a license to an individual licensed in another state who may not hold a doctoral degree as proposed.

5. Authorize the Board to establish criteria that recognize accrediting academic programs as equivalent to the American Speech-Language-Hearing Association Council on Academic Accreditation (CAA). Currently, applicants must have graduated from academic programs accredited by the CAA. Another nationally recognized accrediting organization, the Accreditation Commission for Audiology Education, accredits audiology academic programs and should be considered equivalent to CAA. (Richard W. Danielson, Ph.D., President – Texas Academy of Audiology, Lubbock)
6. Require applicants for licenses in audiology or speech-language pathology to document, at a minimum, graduation from a university program accredited by a programmatic accrediting organization recognized by the U.S. Secretary of Education. (Sherry Sancibrian, MS, CCC-SLP – Texas Speech-Language-Hearing Association, Lubbock)

## ***Commission Decision***

The Commission did not adopt any of the new issues.

## ***Legislative Action***

No action needed.



# *Provisions Added by Legislature*

*Provisions Added by Legislature*

# *Provisions Added by Legislature*

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## ***State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments***

None added.

## ***State Board of Examiners for Speech-Language Pathology and Audiology***

None added.



# *Appendices*

# *Appendices*

# Appendix A

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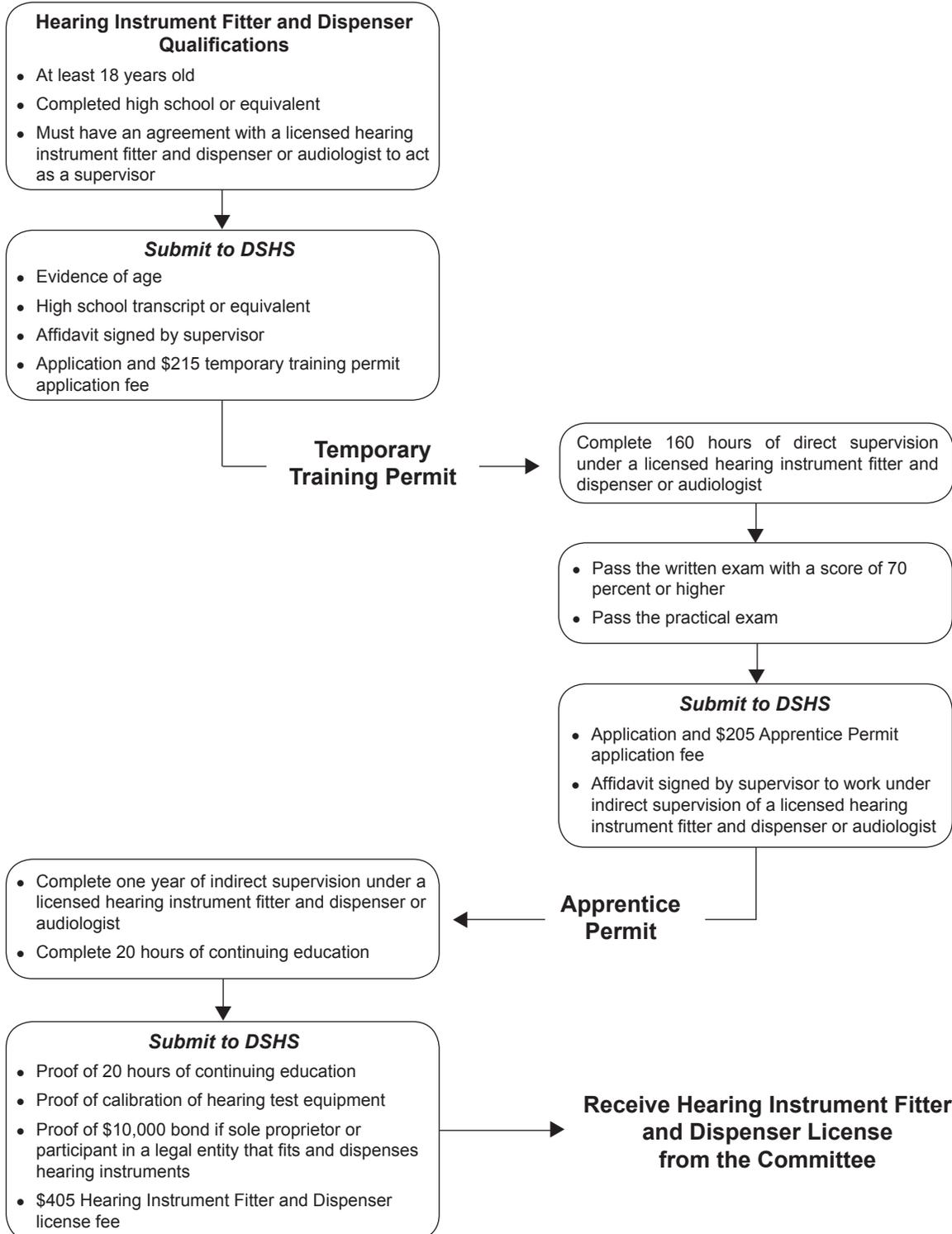
## **Hearing Instrument Fitter and Dispenser Licensure**

### **Hearing Instrument Fitter and Dispenser Licenses**

<b>Type of License</b>	<b>Description</b>	<b>Number of Licensees FY 09</b>
Hearing Instrument Fitter and Dispenser Temporary Training Permit	An individual that is at least 18 years old, has earned a high school degree or equivalent, and obtained a licensed hearing instrument fitter and dispenser to act as supervisor. A temporary training permit holder works under direct supervision for 160 hours before they are eligible to take the written and practical licensure exam.	97
Hearing Instrument Fitter and Dispenser Apprenticeship Permit	An individual that has completed the 160 hours of direct supervision and passed the written and practical licensure exams. Apprentices must work under indirect supervision of a licensed hearing instrument fitter and dispenser for one year.	59
Hearing Instrument Fitter and Dispenser License	An individual that has completed the 160 hours of direct supervision, passed the written and practical licensure exams, and completed the required one-year apprenticeship.	484
<b>Total Number of Licensees</b>		<b>640</b>

# Appendix A

## Licensure Process for Hearing Instrument Fitters and Dispensers



# Appendix B

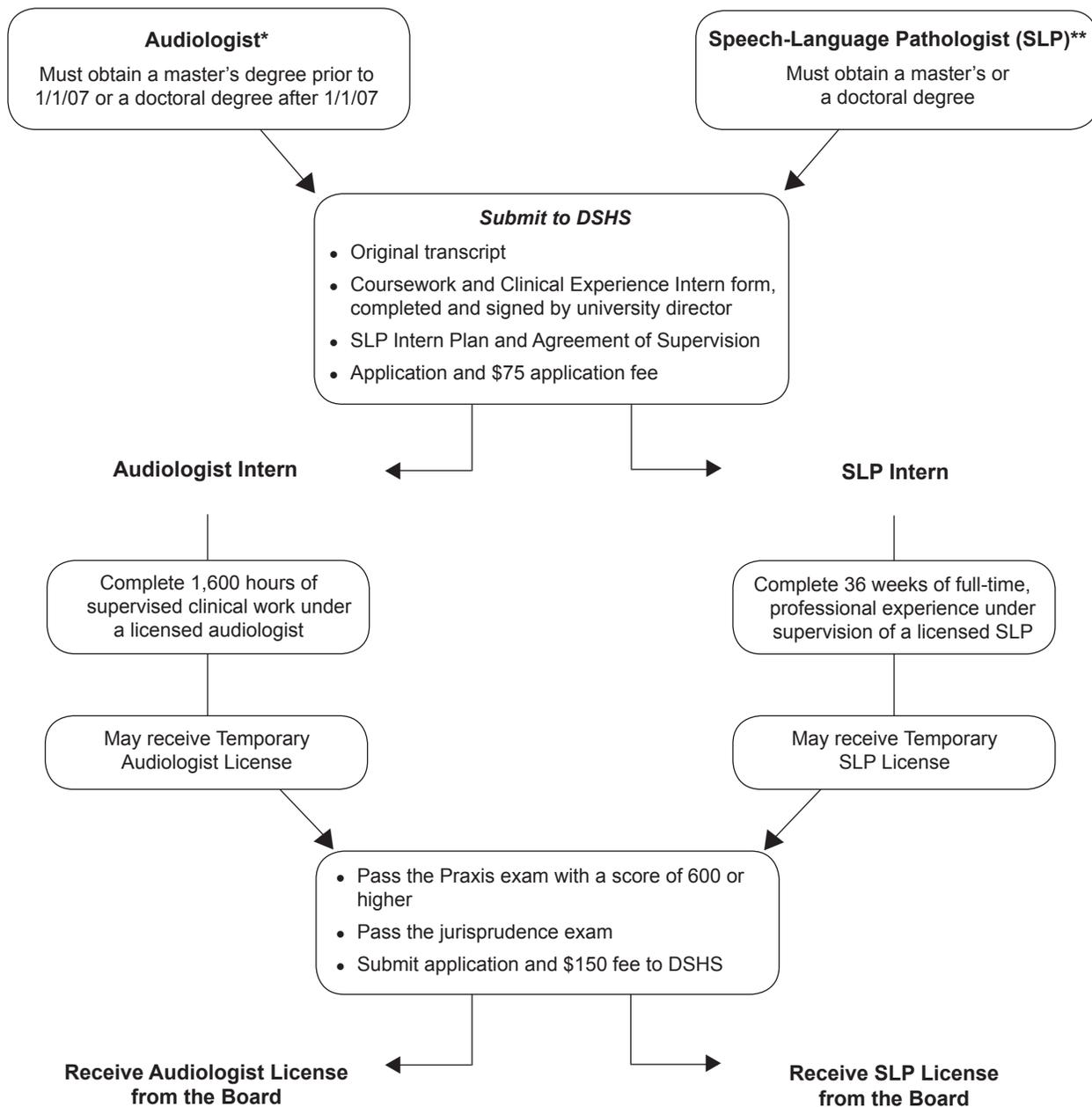
## Speech-Language Pathology and Audiology Licensure

### Speech-Language Pathology and Audiology Licenses

Type of License	Description	Number of Licensees FY 09
Speech-Language Pathologist Assistant	An individual that has completed a baccalaureate degree in communicative sciences and disorders. An assistant may only practice under a Board-approved supervisor that is a licensed SLP.	2,059
Speech-Language Pathologist Intern	An individual that practices speech-language pathology under Board-approved supervision while completing a post-master's degree 36-week, full-time internship.	541
Temporary Speech-Language Pathologist	An individual that has completed a master's degree and the internship period, but has not passed the required exam. An individual licensed under a temporary license must practice under a Board-approved supervisor that is a licensed SLP.	5
Speech-Language Pathologist	An individual holding a minimum of a master's degree that has completed the required internship period and passed the required exam.	9,735
Audiologist Assistant	An individual that has completed a baccalaureate degree in communicative sciences and disorders. An assistant must practice under a Board-approved supervisor that is an audiologist.	6
Audiologist Intern	An individual that practices audiology under Board-approved supervision while completing their fourth-year externship of their doctorate-level degree.	38
Audiologist	An individual holding a doctorate-level degree that has passed the required exam.	1,059
<b>Total number of licensees</b>		<b>13,443</b>

## Appendix B

### *Path to Licensure for Speech-Language Pathologists and Audiologists*



\* Audiologist Assistants are individuals that have obtained a baccalaureate degree in communicative sciences and disorders, but have not obtained a master's or doctoral degree. Audiologist Assistants may only practice under the supervision of a licensed audiologist.

\*\* SLP Assistants are individuals that have obtained a baccalaureate degree in communicative sciences and disorders, but have not obtained a master's or doctoral degree. SLP Assistants may only practice under the supervision of a licensed SLP.

# Appendix C

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## Staff Review Activities

During the review of the State Board of Examiners for Speech-Language Pathology and Audiology and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with DSHS personnel; attended Board and Committee meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to these agencies.

- Attended the Texas Speech-Language Hearing Association's annual convention and met with licensees.
- Attended a Board presentation to university students on state regulations for speech-language pathologists and audiologists.
- Observed several practical exams for hearing instrument fitter and dispenser applicants.
- Interviewed and observed speech-language pathologists working in the public school system, private practice, and a hospital.
- Interviewed and observed audiologists working in retail locations, a physician's office, and a hospital.
- Interviewed and observed hearing instrument fitters and dispensers in retail locations at their places of employment as well as owners of dispensing practices.
- Interviewed a representative from a hearing instrument manufacturing company.



SUNSET STAFF REVIEW OF THE  
STATE COMMITTEE OF EXAMINERS IN THE FITTING AND  
DISPENSING OF HEARING INSTRUMENTS  
STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE  
PATHOLOGY AND AUDIOLOGY

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