

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

HEALTH CARE LICENSING BOARDS

A Staff Report
to the
Sunset Advisory Commission



October 1992

TEXAS SUNSET ADVISORY COMMISSION

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**HEALTH LICENSING
BOARDS UNDER REVIEW**

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

TEXAS STATE BOARD OF DENTAL EXAMINERS

TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

TEXAS BOARD OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING AIDS

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

TEXAS STATE BOARD OF MEDICAL EXAMINERS

MIDWIFERY BOARD

BOARD OF NURSE EXAMINERS

TEXAS BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS

TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY EXAMINERS

TEXAS OPTOMETRY BOARD

TEXAS STATE BOARD OF PHARMACY

TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

TEXAS STATE BOARD OF PODIATRY EXAMINERS

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

COUNCIL FOR SOCIAL WORK CERTIFICATION

STATE COMMITTEE OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

BOARD OF VOCATIONAL NURSE EXAMINERS

HEALTH CARE LICENSING BOARDS

October 1992

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SUMMARY

SUMMARY

The health care licensing boards addressed in this report are subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 73rd Legislature. As required by statute, the sunset review of the health care licensing boards included a determination of the continued need for the regulation of health care professionals carried out by the boards, whether benefits could be achieved by changing the organizational structure used to carry out the regulation, and whether statutory changes are needed to improve the regulatory ability of the boards under review.

Need for Regulation

The results of the review indicated that the regulation of the 20 health care professions under review should be continued for a 12-year period and reviewed again in 2005. The state's current approach to regulation was determined to be reasonable.

Reorganization Alternatives

The current organizational structure used to carry out the regulation of health care professions under review should be changed by:

- merging the boards that regulate registered nurses and vocational nurses into a single policy board;
- merging the boards that regulate psychologists, professional counselors, social workers, and marriage and family therapists into a single policy board;
- merging the policy bodies that regulate speech-language pathologists, audiologists, and fitters and dispensers of hearing aids into a single policy board;
- merging the boards that regulate occupational therapists, physical therapists, and athletic trainers into a single policy board;
- abolishing the board that regulates nursing home administrators and transferring its functions to the Texas Department of Human Services; and
- creating a Health Care Professions Coordinating Council.

Recommendations for All Licensing Boards

The operating structure of all the licensing boards should be improved by:

- requiring that fees be set by the General Appropriations Act as necessary to cover the costs of regulation;
- requiring that all licensing examinations be validated;

- authorizing a full range of licensing options;
- providing authority for an adequate range of enforcement powers; and
- requiring mandatory continuing education.

Policy Options for Specific Boards

A number of issues were identified during the review that related to changes in regulation which were unique to the profession regulated. Presented in option format, these issues are included to allow for discussion of policy changes related to the specific boards under review.

FISCAL IMPACT

Preliminary estimates indicate that the recommendations will result in a fiscal impact. Some recommendations involve additional costs that can be recovered through fees charged under existing fee authority. An estimate of the fiscal impact of the mergers recommended and the creation of the coordinating council could not be estimated in time to be included in the report. In addition, information provided to staff concerning the policy options discussed in the report did contain detail related to the fiscal impact of the options. Many of these issues, if adopted as recommendations, could result in significant additional costs to the state.

BACKGROUND

BACKGROUND

Occupational regulation is an exercise of a state's inherent power to protect the health, safety, and welfare of its citizens. Occupational regulation in Texas began in 1837, during the days of the Republic, with the licensing of physicians. The State of Texas began its regulatory effort in 1876 with the creation of the Medical Practice Act, which required the licensing of physicians. Today, the state regulates more than 100 occupations and professions ranging from doctors and lawyers to tow truck operators. Regulation is achieved primarily through licensure, which requires a person to meet state-imposed standards to practice an occupation or a profession. Regulation is generally performed by state agencies that screen applicants for licensure, administer examinations, issue initial licenses and renewals, monitor the continued competence of licensees, and take disciplinary action against licensees who violate the licensing law or related rules.

The Sunset Commission has 20 health care licensing boards currently under review. In 1992, these boards expended \$13,616,267 to regulate more than 345,833 licensees. Exhibit 1 includes general background information about each board and a comparison of policy board structure; revenue generated, funding sources and expenditures; number of employees, licensees, and examinations; and selected enforcement data. Of particular note is that the boards received a total of 8,721 complaints during fiscal year 1992, conducted a total of 5,374 investigations, revoked 231 licenses, and suspended 345. The Appendix provides background detail for each board and an overview of its operations.

Exhibit 2 provides a historical perspective of the state's regulatory efforts in the health care licensing area. Since 1982, the level of state regulation has increased significantly. Six of the boards currently under review did not exist in 1982. Expenditures by the state have increased from \$5,504,058 million in 1982 to \$13,616,267 million in 1992 for an increase of 147 percent. In 1982, the number of licensees regulated totaled 227,727. By 1992, this number had grown by 52 percent to 345,833. The staff employed by the boards has also grown during this period, from 136.5 FTE employees in 1982 to 261.5 FTE employees in 1992.

Exhibit 3 presents key measures that compare the performance of the 20 health care licensing boards under review. This chart concentrates on indicators of enforcement effort such as the average time for complaint resolution and disciplinary action. As the chart indicates, the boards took an average of 140 days to resolve complaints and, when disciplinary action was necessary, 201 days was needed to take that action. Also, while the number of license suspensions and revocations varied greatly among the boards, the overall average was about 32.

Exhibit 1
General Background Information
Fiscal Year 1992

Profession Regulated	Statutory Reference	Date Created	Board Size/Public Members	Number of Employees (FTE)	Number of Licensees	Revenue Generated
Chiropractors	Article 4512 b	1949	9 members, 3 public	3	2,901	\$877,600
Dentists	Article 4543, et seq.	1897	15 members, 3 public	20	18,136	\$1,246,764
Dietitians	Article 4512h	1983	9 members, 3 public	1.5	3,061	\$85,018
Hearing Aid Fitters and Dispensers	Article 4556	1970	9 members, 2 public	2	991	\$134,410
Marriage & Family Therapists	Article 4512c-1	1991	9 members, 4 public	3	2,512	\$166,813
Midwives	Article 4512i	1983	12 members, 3 public	2	273	\$18,870
Nurses	Article 4513 - 4528	1909	9 members, 3 public	44	131,015	\$2,995,202
Nursing Home Administrators	Article 4442d	1969	12 members, 3 public	7	2,509	\$449,447
Occupational Therapists	Article 8851	1983	6 members, 2 public	4	3,046	\$215,413
Optometrists	Article 4552	1921	9 members, 3 public	4	2,513	\$871,161
Pharmacists	Article 4542a-1	1907	9 members, 2 public	32	16,883	\$2,379,759
Physical Therapists	4512e	1971	9 members, 3 public	7	6,655	\$679,847
Physicians	Article 4495b	1907	15 members, 3 public	80	44,671	\$6,094,500
Podiatrists	Article 4567, et seq.	1923	9 members, 3 public	3	773	\$137,600
Professional Counselors	Article 4512g	1981	9 members, 4 public	8	9,000	\$396,827
Psychologists	Article 4512c	1969	9 members, 2 public	8	4,345	\$621,006
Social Workers	Ch. 50, H.R.Code	1981	9 members, 3 public	4	12,541	\$399,370
Speech/Language Pathologists/Audiologist	Article 4512j	1983	9 members, 3 public	4	5,027	\$169,082
Veterinarians	Article 8890	1911	9 members, 3 public	8	5,441	\$568,309
Vocational Nurses	Article 4528c	1951	12 members, 2 public	18	74,540	\$1,483,514
Total				262.5	346,833	\$19,990,512

* created in 1991, information not available
n/a not applicable

Exhibit 1 (cont.)
General Background Information
 Fiscal Year 1992

FUNDING			EXAMINATIONS		ENFORCEMENT ACTIONS			
Source	FY 1992 Expended	FY 1993 Appropriated	Number Given	Pass Rate (%)	Complaints	Investigations	Suspensions	Revocations
Spec. Fund	\$139,000	\$162,279	260	77	363	178	14	4
Spec. Fund	\$817,233	\$872,691	755	72.5	555	499	28	4
Spec. Fund	\$66,048	\$98,810	6	50	2	2	7	0
General Revenue	\$66,737	\$67,141	159	74	152	152	0	0
General Revenue	\$60,987	\$163,345	*	*	*	*	*	*
Fed. Grant	\$25,762	0	0	n/a	23	n/a	n/a	n/a
Spec. Fund	\$2,630,016	\$2,026,354	6,691	87	1,063	1,136	8	107
Spec. Fund	\$315,196	\$231,451	323	87.5	2,141	97	1	1
General Revenue	\$149,915	\$157,288	411	92	10	11	1	0
Spec. Fund	\$224,416	\$214,981	197	82	158	79	0	0
Loc. Fund	\$1,953,708	\$1,746,022	1,436	91	596	141	54	4
General Revenue	\$352,420	\$314,471	965	84	137	18	0	0
Spec./Loc. Fund	\$3,915,605	\$3,364,550	3,658	93	1,930	1,709	26	38
Spec. Fund	\$102,997	\$95,784	28	88	50	1	5	0
Spec. Fund	\$332,443	\$256,503	638	83	49	22	0	0
Spec. Fund	\$557,621	\$528,285	826	85	120	167	6	3
Spec. Fund	\$293,391	\$304,115	1,382	78	43	40	1	2
Spec. Fund	\$166,114	\$134,879	0	n/a	2	1	0	0
Spec. Fund	\$454,118	\$479,324	208	82	160	160	11	3
Spec. Fund	\$992,540	\$992,940	4,205	91	1,167	961	183	65
	\$13,616,267	\$12,211,213	22,148	82 (avg.)	8,721	5,374	345	231

Exhibit 2
Fiscal Year 1982 - Fiscal Year 1992 Comparison

Profession Regulated	Licenses FY 82	Licenses FY 92	Employees FY 82	Employees FY 92	Expended FY 82	Expended FY 92
Chiropractors	1,297	2,901	2	3	\$70,644	\$139,000
Dental Examiners	12,793	18,136	11	20	\$549,404	\$817,233
Dietitians	*	3,061	*	1.5	*	\$66,048
Hearing Aid Fitters and Dispensers	468	991	1.5	2	\$53,489	\$66,737
Marriage & Family Therapists	*	2,512	*	3	*	\$60,987
Midwives	*	273	*	2	*	\$25,762
Nurses	88,229	131,015	23	44	\$978,196	\$2,630,016
Nursing Home Administrators	n/a	2,509	5	7	\$171,553	\$315,196
Occupational Therapists	*	3,046	*	4	*	\$149,915
Optometrists	1,671	2,513	2.5	4	\$107,133	\$224,416
Pharmacists	12,321	16,883	24	32	\$963,888	\$1,953,708
Physical Therapists	2,718	6,655	2	7	\$94,062	\$352,420
Physicians	37,292	44,671	40	80	\$1,616,519	\$3,915,605
Podiatrists	600	773	1.5	3	\$51,414	\$102,997
Professional Counselors	*	8,000	*	8	*	\$332,443
Psychologists	3,400	4,345	4	8	\$162,313	\$557,621
Social Workers	*	12,541	*	4	*	\$293,391
Speech-Language Pathologists/Audiologist	*	5,027	*	4	*	\$166,114
Veterinarians	3,755	5,441	5	8	\$187,143	\$454,118
Vocational Nurses	63,183	74,540	15	18	\$498,300	\$992,540
Total	227,727	345,833	136.5	262.5	\$5,504,058	\$13,616,267
% Increase	52%		92%		147%	
Average	18,977	17,292	10.5	13	\$423,389	\$684,393

* created after 1981

n/a not available

Exhibit 3
Comparison of Key Performance Measures
Fiscal Year 1992

Profession Regulated	Administrative Costs as a Percent of Budget	Average Time for Complaint Resolution (Days)	Average Time for Disciplinary Action (Days)	Average Cost of Disciplinary Hearings	Exam Pass Rate (%)	Licenses Suspended or Revoked
Chiropractors	19	263	413	\$4,350	77	18
Dentists	18	205	106	\$2,212	72.5	32
Dietitians	*	119	235	\$1,002	50	7
Hearing Aid Fitters and Dispensers	71	20	0	0	74	0
Marriage & Family Therapists (1)	*	*	*	*	*	*
Midwives (2)	*	n/a	n/a	n/a	n/a	n/a
Nurses	15	174	49	\$514	87	115
Nursing Home Administrators	63	135	105	\$1,020	87.5	2
Occupational Therapists	*	99	n/a	\$5,000	92	1
Optometrists	35	100	n/a	n/a	82	0
Pharmacists	24	111	305	\$2,744	91	58
Physical Therapists	14	124	246	0	84	0
Physicians	26	267	315	\$16,751	93	64
Podiatrists	81	33	0	0	88	5
Professional Counselors	*	427	393	n/a	83	2
Psychologists	28	131	93	\$604	85	9
Social Workers	35	50	90	*	n/a	3
Speech-Language Pathologists/Audiologist	*	72	180	n/a	78	0
Veterinarians	22	92	130	\$4,629	82	14
Vocational Nurses	17	98	147	\$267	91	248
AVERAGE	33	140	201	\$3,554	82	32

(1) - created in 1991

(2) - not a regulatory program, registration only

* - accurate figures were not available

n/a - not applicable

***FINDINGS,
RECOMMENDATIONS,
AND POLICY OPTIONS***

OVERALL APPROACH TO REVIEW

OVERALL APPROACH TO THE REVIEW

In accordance with the Sunset Act, the review of the health care licensing boards included determining if the current regulation of the 20 health care professions should be continued and if the regulation could be performed better using an alternative organizational structure rather than the current, independent board approach. In addition, the review focused on statutory changes needed to improve the regulation of the health care professions under review.

The need for the current regulation of health care professions involved a comparison of the approach used in Texas with that used by other states. The comparison centered on the number of professions regulated and the extent of the regulation used. The review of organizational alternatives focused on the merits of the current organizational structure, the use of independent boards, versus consolidating functions together into some type of combined, centralized effort. The review of needed statutory changes involved a comparison of the statutes regulating the professions and making adjustments as necessary to provide, where justified, the same basic authority to regulate.

As part of this review, the previous sunset evaluations of most of the licensing boards were re-examined. The first sunset reviews had concentrated primarily on reorganization and the boards' control of entry into the professions. As stated previously, this review also looked at reorganization. The review then focused primarily on the boards' ability to deal with practitioners once they are licensed to practice.

To make determinations in each of the areas listed above, the review team was involved in a number of activities during the five-month review period. These included:

- a review of documents and reports prepared by the boards under review, state statutes, legislative reports, previous legislation, other states' information, literature containing background material, and information from the National Clearing House on Licensure, Enforcement and Regulation (CLEAR);
- a review of the previous sunset evaluations that were performed for most of the boards under review;
- development of a list of model elements of licensing agency operations that was used to compare the operating structure and authority of the boards under review;
- attendance at public meetings of the several of the boards under review;
- interviews with staff of each of the boards;
- a survey of board members to obtain suggested changes needed to improve the regulatory ability of the boards;

- a survey of groups and individuals affected by or interested in the activities of the boards under review to determine their positions on and the feasibility of numerous issues identified during the review;
- discussions with staff supporting the efforts of the Texas Health Policy Task Force (a special committee created by the governor) and the Senate Interim Committee on Health and Human Services to coordinate evaluation efforts; and
- discussions with the Performance Evaluation Staff of the Legislative Budget Board regarding its review of the investigation efforts of the boards under review.

Out of these activities the overall approach of the review was developed. First, adjustments were needed in the organizational structure used to carry out the regulation. Merger of some of the boards was decided on and then all the resulting boards were made subject to a coordinating council on which they would all sit as members. This was recommended as a way to achieve the benefits of consolidating functions and services into a combined effort.

The next phase of the review involved standardizing the structure of each of the boards' enabling statutes. The approach was to ensure that each contained all the essential elements of regulation. Several recommendations were developed to provide all the boards under review with adequate authority to examine, license, ensure continued competency, and take needed enforcement action.

In addition to the issues that applied across-the-board, the review also included the identification of a number of issues related to specific boards under review. These issues involved changes unique to the regulation of a particular health care profession. The number and complexity of many of these issues, balanced against the available time, precluded standard analysis of the issues and development of a staff recommendation. These issues are presented as a series of policy options for consideration by the commission. Presented in option format, by source, the issues include background information, the proposed solution, and potential benefits and drawbacks. This approach was used to provide information on a vast number of issues related to the boards under review. This section of the report does not include all the issues identified during the review but represents those changes identified as priorities.

NEED FOR REGULATION

ISSUE 1: The regulation of all 20 health care licensing professions currently under sunset review should be continued for a 12-year period.

BACKGROUND

The state began regulating health care professions in the mid-1800s. Regulation of physicians came first in 1837, followed in the early 1900s by the regulation of nursing, pharmacy, veterinary medicine, podiatry, dentistry and optometry. Since then Texas, along with the other states, has continued to add regulation of new health professions that have been created to respond to advances in medical and health care technology. Boards to regulate chiropractors and vocational nurses were created around 1950. Psychologists, physical therapists, hearing aid fitters and dispensers, and nursing home administrators came under state board regulation around 1970. In the early 1980s, the mental health professions expanded significantly, resulting in the addition of boards to regulate social workers and professional counselors. Most recently, a board was created to license and regulate marriage and family therapists.

Significant changes in the nature of the regulation have also occurred over the years. For example, in the earlier years, some boards were not authorized to take action against licensees, but instead relied on the judicial system for disciplinary action needed. In the early stages of regulation, the state more commonly protected professional titles like "nurse" rather than regulated the actual practice of the profession. However, in the 1950s, many of the statutes became practice acts and the licensing boards were granted expanded enforcement powers. These changes were made to help protect the public as health care became more complex. Today, most of the statutes regulating the health care professions contain specific requirements for examination, licensing, accreditation of educational programs, grounds for discipline, complaints, board investigations, and administrative hearings. Consequently, the state's health care licensing boards now concentrate fully on ensuring that only competent individuals are licensed to practice their profession, take action against licensees in violation of state laws and regulations, and overall to protect the public health, safety and welfare.

The state has developed its regulatory structure of health care professionals, in part, to control a health care delivery system that has become enormously complex. The state is now faced with serious issues about how to obtain the best possible care for consumers at a reasonable financial cost. Expanded access to medical services, practitioner competency, health care ethics, educational and training requirements, rapidly expanding technology, and quality of care are just a few of the issues currently being encountered by the state. The more complex health care delivery becomes, the more important effective regulation becomes.

Health care practitioners are allowed to make decisions and execute technical procedures that can result in the life or death, or the well or ill health of persons entrusted to their care.

The state has an obligation to ensure that practitioners allowed to provide health services have met established standards and are subject to enforcement sanctions should the quality of care they deliver diminish. Because practitioners are required to make greater numbers of critical decisions than ever before, government needs to continue serving as the consumer's representative in the evaluation and monitoring of health care providers and their services.

When compared to other states, the regulation of health care professions in Texas represents a standard, moderate approach to licensing being neither more nor less restrictive than other states. A recent survey of other states by the National Clearinghouse on Licensure, Enforcement, and Regulation indicated that all of the 20 health professions under review are also regulated by most other states. The state regulates about one-half of all professions that are regulated by various states across the nation. Most states regulate a comparable number of health care professions. Overall when compared to other states, the state's decision to regulate the 20 health care professions currently under review was determined to be a reasonable approach.

CONCLUSION

The state began regulating health care professions in the mid-1800s. Significant changes in the nature of the regulation have occurred over the years. When compared to other states, the current level of regulation represents a standard approach. The state's decision to regulate the twenty health care professions currently under review was determined to be reasonable.

RECOMMENDATION

- **The statutes should be changed to continue the regulation of the 20 health care licensing professions currently under sunset review for a 12-year period.**

This recommendation would continue the statutes regulating the health care professions under review for a 12-year period and provide for review again in 2005. This recommendation does not address whether the current organizational structure of an independent board, should continue to be used to regulate each of the health care professions under review. This issue was evaluated separately and is covered in the next section of the report.

FISCAL IMPACT

If the regulation of the 20 health care professions is continued, using the current independent boards, the annual appropriations to these boards would continue to be required. The combined appropriations for fiscal year 1993 is \$12,211,213.

REORGANIZATION ALTERNATIVES

INTRODUCTION

Once a conclusion was reached that the state needs to continue regulation of the various professions, the review focused on the merits of the organizational structures used to carry out the regulation of health care professions. Generally, Texas uses separate, autonomous boards to license and regulate professions. Two basic alternatives to the current approach were identified: combining all the boards into one "umbrella" board, which would regulate all the professions; or selectively combining boards regulating professions that have substantial interaction either through cross-licensing or in their respective practices.

The use of separate boards versus a centralized approach for regulation has been evaluated several times before. The Sunset Commission has evaluated the issue twice. The first effort took place during the 1978 sunset review of occupational and professional licensing boards by the Sunset Commission. A proposal for the creation of a consolidated "umbrella" licensing agency was considered by the commission before it recommended continuation of a separate agency structure to the legislature. In 1988, consolidation was again given serious consideration by a special joint committee of legislature. The Special Committee on Organization of State Agencies, in its report to the governor and the 71st Legislature, recommended consolidation of several licensing agencies. Again, consolidation was ultimately not adopted.

Most recently, in 1991, the Texas Performance Review recommended consolidation of licensing functions through the transfer of several licensing agencies to the Texas Department of Licensing and Regulation (TDLR). The proposal included the transfer of most of the health care licensing boards currently under sunset review. While these recommendations were ultimately not adopted by the legislature, the debate regarding consolidation has continued.

Centralized licensing functions currently exist in many other states. At least 31 other states have a consolidated licensing program of some type. Among these states are Florida, New York, California, Illinois, and Michigan. These structures usually have centralized staffing and support functions with independent boards to set policy, screen entry into the professions, and make final enforcement decisions.

The number of times that the issue of a centralized board has been proposed and rejected in Texas may give an indication that the state is either not in favor of this approach or the combined efforts of the licensee groups are powerful enough to prevent the adoption of the approach. Whichever one is true, allocating additional staff effort to restudy the issue was determined to be a waste of time. The time could be better spent reviewing whether benefits that usually result from a centralized approach could be achieved in other ways.

The staff also analyzed the potential of combining selected licensing boards. Over time, a significant number of new health care regulatory programs have been created. The regulatory acts are usually proposed by the professions themselves and are developed independently, one-at-a-time. This has resulted in a somewhat fragmented approach to regulation that does not address issues related to similarity of professional practice. The review analyzed whether the public would be better served by merging selected boards or by transferring functions to any other state agencies. The results of the analysis are provided in the following material.

ISSUE 2: The policy boards that regulate registered nurses and vocational nurses should be merged into a single policy board.

BACKGROUND

Nurses are health care providers who assist individuals and families to maintain and promote their health and well-being. The practice of nursing has always concentrated on supportive and restorative care. The regulation of the nursing profession began in the early Twentieth Century due to the growth and development of hospitals and technological advances in medical science and nursing. Today, the practice of nursing includes both registered nursing and vocational nursing. Although both types of nurses provide standard nursing care, vocational nurses focus on the less technical aspects of nursing and provide basic direct patient care, in relatively stable practice settings such as hospitals, nursing homes, and other long-term care facilities. Registered nurses often perform more complex tasks, such as providing leadership in managing, planning and evaluating the nursing care of individuals, families and groups. In addition, registered nurses may become advanced nurse practitioners, which allows registered nurses, after completion of advanced education programs, to teach staff and patients, administer medications and treatments without direct physician supervision, and practice nursing in highly specialized areas of health care.

Texas did not regulate vocational nurses until the early 1950s. The need for regulation gained importance in the U.S. due to the shortage of registered nurses caused by World War II. The shortage of registered nurses forced vocational nurses, with little or no formal education, to assume registered nurses' responsibilities. Thus, most state legislation regulating vocational nurses was passed between 1943 and 1953. Over the years, increasing hospital costs and limited numbers of registered nurses have continued the demand for vocational nurses to perform more complex nursing duties and responsibilities such as assisting in intensive or coronary care units and emergency rooms. Therefore, vocational nursing now requires more formal education that complements the practice of professional nursing. This trend has caused the lines between vocational nursing and registered nursing to blur. Consequently, dual licensing occurs within the nursing profession.

Although the two professions are similar in nature, the state regulates professional and vocational nursing separately, through two licensing boards. In 1909, the Texas Board of Nurse Examiners was created as a free-standing health licensing agency. Today, this nine-member board has exclusive jurisdiction over the practice of professional nursing. Later in 1951, the Board of Vocational Nurse Examiners was created as an independent board. The 12-member board has statutory authority over the title of licensed vocational nurse (LVN) in Texas. Both boards have rulemaking authority over various programs within their respective agencies such as continuing education, enforcement, and the approval of educational programs. Both the registered and vocational nursing boards establish licensing requirements, administer the national examinations, collect fees, issue and renew licenses,

and investigate and take disciplinary action. Both boards conduct the approval/accreditation of schools and programs for professional and vocational nursing.

State regulation of health care professions should be structured to ensure that all closely related professions are fairly and consistently regulated while providing adequate protection to the public from harmful or incompetent practice. The regulation provided by the Board of Nurse Examiners and the Board of Vocational Nurse Examiners was analyzed to determine if a merger of the boards would be beneficial. The analysis resulted in the following findings and conclusions.

FINDINGS

- ▶ **The practice of registered nurses and vocational nurses is similar.**
 - The practice of nursing for registered and vocational nurses is the observation, assessment, intervention, evaluation, rehabilitation, care, counsel, and education of patients and the public. Both professions perform nursing interventions in some capacity based on their level of knowledge, education, and experience.
 - Registered nurses are more knowledgeable about health maintenance, the prevention of disease, and the management of complex health care problems in all health service settings. Registered nurses typically lead teams of vocational nurses in hospitals and other health service settings.
 - The nursing practices of vocational and registered nurses are similar and complementary, but differ depending on the depth and scope of knowledge and skills of the LVN. The scope of practice for vocational nurses is not defined in statute because the Vocational Nurse Act is a title act. Consequently, an LVN can be trained to perform nursing duties that are not taught in vocational nursing programs and are typically considered registered nurse duties.

- ▶ **The required education and training for registered and vocational nurses is similar.**
 - Both registered and vocational nurses learn basic biological, physical and social scientific principles and general patient care responsibilities and skills.
 - Vocational nurse education is made up of elements included in professional nursing education. The training for the registered nurse, however, is longer to allow teaching of more complex and specialized nursing skills. Registered nurses are also taught leadership, management skills, and the provision of services in community-based settings.

- ▶ **The similar nature of professional and vocational nursing has resulted in the dual licensure of nurses. Such dual licensure, by separate boards, can reduce the efficiency of the state's enforcement efforts.**
 - The entire population of dually licensed nurses cannot be identified. The Board of Nurse Examiners does not keep information on which of their licensees are also licensed vocational nurses. However, the Board of Vocational Nurse Examiners does track the dual licensure of vocational nurses and indicated that 3,066 or approximately four percent of licensed vocational nurses, hold a registered nurse license.
 - The practice of a registered nurse and a vocational nurse are very similar so that an action that violates one practice act may violate the other act also. If disciplinary action is taken against the practitioner under one practice act, a separate action would be needed to take action under the other act. This may result in a duplication of enforcement effort.
- ▶ **Continuing education programs and requirements for professional and vocational nurses are similar.**
 - Both boards require, by statute and rule, continuing education. Both programs require 20 classroom hours every two years, although the subject matter may vary.
 - The rules on proper courses, procedures for study and responsibilities of the licensee are also similar in content. Both boards' policies on delinquent licenses require 20 hours of continuing education within two years preceding re-licensure.
- ▶ **The education and practice similarities between the two professions have resulted in a registered nurse serving on the vocational nursing board.**
 - The Board of Vocational Nurse Examiners requires one board member to be a registered nurse, licensed by the Board of Nurse Examiners. The registered nurse must be actively teaching, administering or supervising in a vocational nurse educational program and assist in the approval of vocational nursing programs.
- ▶ **Currently, 45 states regulate the professional and vocational nursing professions through one consolidated board. Texas is one of the five states that uses two separate boards.**
- ▶ **Past reviews of the Board of Vocational Nurse Examiners and the Board of Nurse Examiners recommended merging the two boards into one Texas Board of Nursing.**

- In 1980, the Sunset Advisory Commission staff recommended that both agencies be merged into a single agency with a combined board, composed of six registered nurses, three licensed vocational nurses and three public members.
- In 1991, the merger of the nursing boards was also recommended by the Texas Performance Review.

CONCLUSION

Although the practice and education of vocational and registered nurses is similar and complementary, registered and vocational nurses are regulated by two different boards. Registered nurses possess more expertise and skills based on their extensive education; however, licensed vocational nurses, because of the structure of their title act, can be taught some of those same skills. The programs of the boards perform the same or similar functions and responsibilities. Because the practice is similar, dual licensure occurs.

RECOMMENDATION

- **The statute should be changed to:**
 - **merge the boards regulating registered nurses and vocational nurses;**
 - **establish the merged board to consist of 12 members with five registered nurses, four vocational nurses, and three public members;**
 - **provide the board with rulemaking authority to regulate the practice of registered nurses and vocational nurses;**
 - **specify the continued separate licensing of registered nurses and vocational nurses;**
 - **specify that the board has authority to establish rules governing dual licensure; and**
 - **authorize the board to hire an executive director and necessary staff to carry out the board's responsibilities.**

The merger of the Board of Nurse Examiners and the Board of Vocational Nurse Examiners should result in a more consistent and coordinated approach to the licensing and regulation of registered and vocational nurses. A merger will allow the two boards to refine, improve and coordinate policies on licensing requirements and disciplinary procedures for practitioners. Combining the boards should increase coordination and the sharing of data related to licensing, complaint filing and investigation, and other enforcement efforts. The merged board will be able to define practice standards for registered and vocational nurses.

Consumers will be assisted by using a single nursing board when filing complaints and seeking information about licensees and the nursing profession. The merger recommendation is intended to protect the integrity of each health profession by maintaining already established standards of practice.

FISCAL IMPACT

A merger of these agencies will result in some fiscal impact, such as one-time costs for the physical move of personnel and equipment. However, through the combination of functions, existing resources will be available to increase support of the licensing and enforcement efforts of the merged board.

ISSUE 3: The policy boards that regulate psychologists, licensed professional counselors, social workers, and marriage and family therapists should be merged into a single policy board.

BACKGROUND

Mental health counseling has developed over the last 100 years into a highly specialized field with several distinct professions. Prior to the 1900s, only severe emotional disorders were recognized and treatment was provided mainly through lifelong institutional care managed by physicians and nurses. The field of mental health first became a focus after the World Wars when a large number of soldiers returned with many mental disorders often grouped together under the name "shell shock". In the following years, the mental health movement developed treatment approaches that relied less on the medical treatment of major mental disorders and instead used counseling and other techniques to promote mental health in people with less severe emotional problems.

By the 1950s, the study of psychology had developed as a science of the human personality. Universities offered Ph.D. training to non-physician students in the use of psychological principles to diagnose emotional disorders and promote mental health. Psychologists developed treatment approaches that relied on specialized counseling techniques. The profession of social work also developed in the early part of the century to address the social and mental health needs of socially disadvantaged individuals in institutions such as poor houses. The field of social work developed as a study of how the individual's social support system, environment, and physical resources contribute to mental health. Later, social workers expanded their approach to include counseling techniques that address problems within the person's social environment. While most early social workers developed skills on the job, by the 1970s, graduate programs in social work had become widespread.

The need for a wider availability of mental health counseling services for less disturbed individuals resulted in an expansion of the mental health counseling field in the last half of the century. The field of professional counseling emerged to meet the need for general assessment and counseling techniques in educational, vocational and rehabilitation settings. Several types of masters-degree programs prepare professional counselors with the skills needed. In the last 30 years, practitioners that specialize in the treatment of dysfunctions within the marriage and family have also become a distinct profession. Marriage and family therapists have developed an approach to identify and treat dysfunction within the family unit through specialized counseling techniques. Universities have responded to this new specialty and now masters-degree and doctoral programs are available in these specialized techniques.

All four of the counseling professions address a common goal: helping people identify and overcome problems that affect their mental health. While each profession has developed

a distinct theoretical approach to help people attain this goal, all use similar and sometimes overlapping assessment and counseling techniques. The techniques and training are so similar in fact that many mental health counselors may qualify to practice under more than one of the professional licensing programs.

Although the four categories of mental health counselors are similar and significant cross-licensing has occurred, the state currently regulates each profession through a separate regulatory program. A brief description of each program is provided below.

Established in 1969, the Texas State Board of Examiners of Psychologists is an independent state agency with a nine member, governor-appointed board. In 1992, the agency licensed approximately 4,000 professionals with an annual budget of \$550,000 and eight employees.

Professional counselors became a regulated profession in 1981. The licensing program is administered by the Texas Department of Health with a nine member, governor-appointed advisory board, the Texas State Board of Examiners of Licensed Professional Counselors. In 1992, the program licensed about 8,000 professional counselors with an annual budget of about \$332,440 and eight employees.

Social workers also became a regulated profession in Texas in 1981. The regulatory program is operated by the Texas Department of Human Services (DHS) with a nine-member, DHS board-appointed advisory committee, the Council for Social Worker Certification. In 1992, the program licensed about 12,504 social workers with an annual budget of approximately \$300,000 and four employees.

Marriage and family therapy became a regulated counseling profession in 1991. Operating as a program of the Texas Department of Health, a nine-member, governor-appointed advisory board, the Texas State Board of Examiners of Marriage and Family Therapists was established in September 1991. License requirements first became effective in March of 1992. In 1992, the program licensed about 2,500 marriage and family therapists with a first-year budget of about \$61,000 and three employees.

Like all other health care licensing boards, each of the counselor licensing boards is responsible for establishing minimum educational and experience qualifications, competency examination, continuing education requirements, and standards of conduct for licensees. In addition, each board is responsible for investigating complaints against licensees and enforcing the licensing requirements of state law.

In general, state regulation of health care professionals should be structured in a way that ensures that closely related professions are fairly and consistently regulated while providing adequate protection to the public from harmful or incompetent practice. The regulation

provided by the Texas State Board of Examiners of Psychologists, Texas State Board of Examiners of Licensed Professional Counselors, Council for Social Worker Certification, and the Texas State Board of Examiners of Marriage and Family Therapists was analyzed to determine if a merger of the boards would be beneficial. The analysis resulted in the following findings and conclusions.

FINDINGS

- ▶ **The practice of the four counseling professions regulated are highly similar and are generally difficult to distinguish from each other.**
 - While each profession has a distinct orientation and specialized areas of expertise and training, each profession provides counseling to address emotional and relational difficulties through a variety of counseling and psychotherapeutic techniques. For example, all four professions use assessment techniques that involve interviews or verbal or written standardized tests, and all use group and individual counseling as the main method of treatment. The primary factor that distinguishes the professions is the theoretical orientation of the counselor.
 - The statutory definitions used to distinguish each licensing requirement relies on the theoretical orientation of the counselor. For example, the statutory definition used for psychologists includes: "psychological services means acts or behaviors coming within the purview of the practice of psychology"; while the definition used for social workers includes: "social work services consist of the professional application of social work values, principles and techniques." The statutory definitions used for professional counselors and marriage and family therapists rely on similar theoretical approaches to distinguish the professions.
 - Counseling professionals are often referred to by the public generically as therapists, caseworkers or counselors. The professions often provide counseling side-by-side in the clinic setting.
 - The standards of conduct and practice established by the four programs are similar for the four professions. Each program addresses the counselors' case documentation, inappropriate relations with clients, and confidentiality requirements.
- ▶ **The minimum educational and experience requirements of the four counseling professions are comparable.**
 - All four professional counseling licensing programs regulate practitioners with a masters degree in a mental health field and all require supervised counseling experience for at least one category of license. Some

programs also provide a license for practitioners with a higher level of education and experience. Licensed psychologists must also have a Ph.D. in psychology and two years experience, and an advanced clinical social work practitioner must have five years experience after a masters degree in social work.

- ▶ **Because the exception of educational and experience requirements are similar, cross-licensing among most of the counseling professions is common.**

- With the exception of psychologists, regulation by more than one board is common. In fact, the statute regulating marriage and family therapist provides that applicants may qualify for licensure in the first two years without examination if they are already licensed by the state in another mental health discipline. As a result, all of the 2,500 licensed marriage and family therapists are also licensed under one of the other counselor licensing programs.

- ▶ **The fragmented structure used to regulate counselors in Texas makes it difficult for consumers and members of the public to file complaints and obtain information about licensees.**

- Since the counseling professions work closely together and a significant number are licensed by several boards, it may be difficult for consumers and members of the general public to distinguish them as separate professions. However, under the current regulatory structure, the consumer has difficulty registering a complaint or inquiring about a counselor's license status unless the consumer knows which board has jurisdiction.

- The four professions are regulated by four separate boards. Each has a different phone number, complaint procedure, and set of forms. To make an inquiry or file a complaint, the consumer must correctly identify the type of license held, if any, locate the appropriate board, and obtain and file the form required by that board.

- ▶ **The state's ability to take enforcement actions is limited when counseling practitioners hold multiple licenses under several licensing programs.**

- Each board operates its complaint and enforcement activities separately. When a practitioner is licensed by two or more boards, no provision is made to allow enforcement measures taken by one board to affect the other licenses. For example, if the Board of Examiners of Psychologists suspends or revokes the license of a psychologist, who is also a licensed professional counselor (LPC), the LPC board is unable to take action unless the complainant files a separate complaint. Some complainants

are understandably unwilling to undergo the complaint resolution process twice just so both boards can take action. As a result, the counselor can still practice under the LPC license.

- Despite the high proportion of licensees regulated under more than one counseling program, the programs have failed to develop and maintain a system to share information on cross-licensed practitioners. Such lack of coordination makes effective complaint investigation and enforcement actions difficult since problems discovered by one board may never be communicated to the other board.
- ▶ **Several other states place the regulation of counseling professions under one policy board that has jurisdiction over several types of licensing programs.**
 - Fifteen states regulate more than one counseling profession through a single, composite board. These states include California, Florida, Ohio, Arizona, and Kansas. While most of the states include the regulation of social work, professional counseling and marriage and family therapy, a few also include psychologist regulation under a composite board. In nearly all cases, the composite board includes representation of each profession regulated and the general public. All states maintain distinct programs and license categories for each of the mental health counseling professions.

CONCLUSION

The state regulates the four closely-related mental health counseling professions by four separate licensing boards. While each profession has a distinct orientation, to the general public and consumer, the practice of each profession is similar. The minimum education and experience requirements are similar and many practitioners are regulated under several programs. Cross-licensing among counselors is very common. Merging the policymaking authority into one board with jurisdiction over the four separate licensing programs could streamline the process for the public. A consolidated board approach to regulating closely related professions has been adopted by several other states.

RECOMMENDATION

- **The statute should be changed to:**
 - **merge the policy bodies regulating psychologists, professional counselors, social workers, and marriage and family therapists;**
 - **establish a new board to consist of 12 members with two licensed psychologists, two licensed professional counselors, two licensed**

marriage and family therapists, two regulated social workers, and four public members;

- provide the board with rulemaking authority and enforcement authority to regulate psychologists, professional counselors, social workers, and marriage and family therapists;
- specify the continued separate licensing of psychologists, professional counselors, social workers, and marriage and family therapists;
- specify that the board has the authority to establish rules governing cross-licensure; and
- authorize the board to hire an executive director and necessary staff to carry out the board's responsibilities.

The merger of the boards that regulate psychologists, professional counselors, social workers, and marriage and family therapists would result in a more consistent state policy regarding the regulation of the counseling professions. Under one board, the state will be better able to standardize and coordinate regulations. Including the perspectives of each counseling profession on the board would give the regulatory programs a broader perspective for coordinating the approach to regulation when reasonable but varying it to address the particular characteristics of each profession. In contrast to the current approach with four separate boards working independently, the consolidated board would be better able to develop a consistent state approach to professional standards of conduct, complaint investigation and enforcement actions. This recommendation is intended to protect the integrity of each counseling profession by maintaining the already established statutory standards of practice.

Giving the consolidated board jurisdiction over all counseling professions would simplify the regulatory structure for consumers. Consumers would no longer have to identify which license the counselor holds in order to contact the appropriate board to file a complaint. Consolidating the jurisdiction will also improve the effectiveness of state regulation with cross-licensees by having one board receive all counselor complaints and authorizing one board to take enforcement actions that affect all state counseling licenses issued to a licensee.

FISCAL IMPACT

The merger of these programs will result in some fiscal impact such as one-time costs for the physical move of personnel and equipment. However, through the combination of administrative functions, existing resources will be available to increase the support of the licensing and enforcement efforts of the merged board.

ISSUE 4: The boards that regulate speech-language pathologists, audiologists, and fitters and dispensers of hearing aids should be merged into a single policy board.

BACKGROUND

Both audiologists and hearing aid fitters and dispensers are health care professionals who are concerned with human hearing and the correction of hearing disabilities. Since the mid-1940s, the practice of audiology has concentrated on evaluating and testing human hearing and the treatment of communicative disorders involving speech, language, and auditory functions related to hearing loss. Although audiologists perform hearing evaluations and make ear molds for the purpose of fitting amplification devices such as hearing aids, they are not authorized to sell hearing aids. Since the 1930s, the practice of dispensing hearing aids has been concerned with aspects of measuring human hearing for the purpose of fitting hearing aids, making ear molds for hearing aids, and dispensing hearing aids to correct hearing disabilities. Over the years, because sales of hearing aids has become big business, audiologists have become more involved in measuring human hearing for the purpose of fitting and dispensing hearing aids. This trend has led to a growing overlap between the two professions including significant cross-practice and cross-licensing of many audiologists as hearing aid fitters and dispensers.

Although both professions are concerned with testing and treating human hearing and hearing disabilities, the state regulates audiology and the fitting and dispensing of hearing aids through two separate licensing boards. In 1970, the nine-member Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids was created as a free-standing health care licensing agency. In 1983, the State Committee of Examiners for Speech-Language Pathology and Audiology, a nine-member committee attached to the Texas Board of Health, was created to regulate the professions of audiology and speech-language pathology.

Speech-language pathologists provide services to individuals with communication disabilities. Although some speech problems result from hearing disabilities, speech-language pathologists are primarily concerned with speech and language disorders, not with the evaluation of human hearing. Like other professional licensing boards, both the board and committee are responsible for establishing licensing standards, such as education and training requirements, licensing qualified applicants through an examination process, and enforcing provisions in statute and rule.

State regulation of health care professions should be structured to ensure that all closely related professions are fairly and consistently regulated while providing adequate protection to the public from harmful or incompetent practice. The regulation provided by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids and the State Committee of Examiners for Speech-Language Pathology and Audiology was analyzed to determine

if a merger of the regulatory bodies would be beneficial. The analysis resulted in the following findings and conclusions.

FINDINGS

- ▶ **Although audiologists provide a broader range of services than hearing aid fitters and dispensers, both audiologists and hearing aid fitters and dispensers evaluate hearing ability and treat hearing disabilities.**
 - Certain services provided by audiologists and hearing aid fitters and dispensers are very similar. Both professions provide counseling, hearing evaluation, hearing rehabilitation, and diagnose hearing related disabilities. Both professions use the same equipment, such as audiometers and hearing aid analyzers, to evaluate human hearing. Both professions use similar techniques to make ear molds for the purpose of fitting hearing aids and select the appropriate hearing aid based on the hearing evaluations.
 - The primary difference between the professions is that audiologists may provide more extensive hearing services; for example, performing more complex hearing evaluations and providing counseling related to noise control and hearing conservation. The only service a licensed audiologist cannot perform is to sell a hearing aid.
- ▶ **The similarity of audiology and the fitting and dispensing of hearing aids has led to significant cross-licensing of professionals. In addition, cross-licensed individuals are currently serving on the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.**
 - A steadily increasing number of audiologists are being licensed to fit and sell hearing aids. Currently, 72 percent of all audiologists in Texas are also licensed as hearing aid fitters and dispensers. Almost half of all hearing aid fitters and dispensers are also licensed audiologists.
 - Although the statute only requires one member of the Texas Board of Examiners in the Fitting and Dispensing of Hearings Aids to be an active practicing audiologist, currently, four of the board members are cross-licensed as hearing aid fitters and dispensers and audiologists.
- ▶ **Other states have recognized the growing overlap between the professions of audiology and hearing aid fitting and dispensing.**
 - Audiologists are allowed to fit and dispense hearing aids without being licensed as a hearing aid fitter and dispenser in ten states.

- Two states, Delaware and Maryland, have placed the regulation of speech-language pathology, audiology, and the fitting and dispensing of hearing aids under one licensing agency.

CONCLUSION

The functions performed by audiologists and hearing aid fitters and dispensers are very similar. Both professions are concerned with the evaluation of hearing and provide counseling, hearing evaluation, hearing rehabilitation, and diagnose hearing related disabilities. Because of the economic benefits associated with selling hearing aids, more and more audiologists are becoming licensed as hearing aid fitters and dispensers. The similarity of the two professions has led to cross-practice and cross-licensing.

RECOMMENDATION

- **The statute should be changed to:**
 - **merge the policy bodies regulating speech-language pathologists, audiologists, and fitters and dispensers of hearing aids;**
 - **establish a new board to consist of nine members with two licensed speech-language pathologists, two licensed audiologists, two traditional hearing aid fitters and dispensers, and three public members;**
 - **provide the board with rulemaking authority to regulate the practices of speech-language pathology, audiology, and the fitting and dispensing of hearing aids;**
 - **specify the continued separate licensing of speech-language pathology, audiology, and the fitting and dispensing of hearing aids;**
 - **specify that the board has the authority to establish rules governing multiple licensure; and**
 - **authorize the board to hire an executive director and necessary staff to carry out the board's responsibilities.**

The merger of the State Committee of Examiners for Speech-Language Pathology and Audiology and the Board of Examiners in the Fitting and Dispensing of Hearing Aids should result in a more standardized and coordinated approach to the licensing and regulation of speech-language pathology, audiology, and the fitting and dispensing of hearing aids. The merged board will allow the two agencies to share administrative functions such as examinations, collection of fees, distribution of licenses, processing complaints, and inspections. Consumers will also be assisted by providing a single board to contact when filing complaints and seeking information about licensees and the

profession. The recommendation is intended to protect the integrity of each health care profession by maintaining established standards of practice.

FISCAL IMPACT

A merger of these agencies will result in some fiscal impact such as one-time costs for the physical move of personnel and equipment. However, through the combination of functions, existing resources will be available to increase support of the licensing and enforcement efforts of the merged board.

ISSUE 5: The policy boards that regulate occupational therapists, physical therapists, and athletic trainers should be merged into a single policy board.

BACKGROUND

Occupational therapists, physical therapists, and athletic trainers are health care professionals who provide treatment and therapy to individuals with physical injuries and impairments. Occupational therapy was first recognized as a profession around 1910. Its primary focus was to rehabilitate individuals so that they can better function mentally, socially, and physically in an occupational setting. Today, occupational therapists provide evaluation and treatment to people whose ability to perform the normal tasks of living has been threatened or impaired by mental, social, and physical deficiencies; the aging process; sensory impairment; physical injury or illness; or psychological or social dysfunction. Physical therapy was developed as a profession in the 1930s and the 1940s, and concentrated on the treatment of injuries of war veterans and polio victims. Presently, physical therapists examine and provide treatment to people to prevent and alleviate physical disability and pain caused by injuries, disease, or physical deformities. Athletic training evolved as a profession in the 1940s. Since then, athletic trainers have provided training primarily to athletes to enhance physical strength, stamina, and performance to avoid injuries and focused on the rehabilitation of sport-related injuries for athletes.

Although the three professions all focus on the treatment of injuries and impairments, the state regulates these professions through three separate licensing boards. In 1971, the nine-member State Board of Physical Therapy Examiners was created as a free-standing agency to regulate physical therapists. In the same year, the six-member Advisory Board of Athletic Trainers was established to license athletic trainers. The board was administratively attached to the Texas Department of Health in 1975. In 1983, the six-member Texas Advisory Board of Occupational Therapy was created to regulate occupational therapists. Since its inception, the board has been administratively attached to the Texas Rehabilitation Commission. Like other professional licensing boards, these three boards are responsible for establishing licensing standards such as education and training requirements, licensing qualified applicants, developing rules and regulations governing the practice of the professions, and enforcing provisions in statute and rule.

State regulation of health care professions should be structured to ensure that all closely related professions are fairly and consistently regulated while providing adequate protection to the public from harmful or incompetent practice. The regulation provided by the Texas Advisory Board of Occupational Therapy, the State Board of Physical Therapy Examiners and the Advisory Board of Athletic Trainers was analyzed to determine if a merger of the boards would be beneficial. The analysis resulted in the following findings and conclusions.

FINDINGS

- ▶ **In providing treatment and training to individuals with physical injuries and impairments, occupational therapists, physical therapists and athletic trainers share similar goals and use similar therapeutic methods.**
 - Occupational therapists and physical therapists often work toward common patient goals. Shared treatment goals include successful use of adaptive and physical support devices, increasing the strength and the range of motion of the muscle system, and correcting and enhancing the coordination of the patient's sensory and nervous systems. The treatment goals of athletic trainers are to prevent sport-related injury and to restore athletes to their original level of activity after a sport-related injury. Like occupational therapists and physical therapists, athletic trainers strive to increase an athlete's physical strength and enhance coordination.
 - The majority of therapeutic methods used in the treatment and training procedures by occupational therapists, physical therapists and athletic trainers are similar. The most commonly used methods among these professions involve the application of heat, light, cold and electricity. Other methods include hydrotherapy, ultrasound, biofeedback, and exercise programs to alleviate or rehabilitate injuries. One difference between occupational therapists and physical therapists is in the use of therapeutic activities and crafts. Occupational therapists may train patients to use crafts, such as clay and woodwork, to allow them to gain fine motor skills, while physical therapists rarely use this method.
- ▶ **The educational and training requirements for occupational therapists and physical therapists are similar. Although educational requirements for athletic trainers are not as extensive as occupational and physical therapists, athletic trainers are required to take academic courses in the same areas. All three professions require supervised practical experience.**
 - Both occupational and physical therapy programs require courses in the same basic sciences, such as psychology, biology, mathematics, physics, chemistry, statistics, and zoology.
 - The components of the professional curriculum in occupational and physical therapy programs are similar. Students in both programs are required to take courses in such areas as anatomy, kinesiology, physiology, pathology, neuroscience, psychiatric and mental health, human development, and health administration. Athletic trainers are required to take courses in anatomy, kinesiology, physiology, health, and athletic training. Further, the Advisory Board of Athletic Trainers accepts a degree or certificate in physical

therapy as partial fulfillment of the licensure requirements as an athletic trainer.

- To be licensed, occupational therapists, physical therapists, and athletic trainers are required to have practical experience directly related to the subjects that the students learn in the classroom. For occupational and physical therapists, clinical experience is required in the respective degree programs. Occupational therapists are required to have a minimum of six months supervised field work. Physical therapists' programs require a range of four to 18 months of supervised field work, although the average requirement is about six months. Athletic trainers are required to have a two-year apprenticeship if they have a physical therapy degree or certificate, or a three-year apprenticeship if they do not have a physical therapy degree or certificate.
- ▶ **Occupational therapists and physical therapists work in similar settings. Most of them provide services in rehabilitation centers, in-patient and out-patient facilities, sports clinics, nursing homes, hospitals, industrial consultation facilities, public and private schools, home health agencies, and private clinics. Athletic trainers work primarily in sports medicine programs of schools and professional sports teams.**
- ▶ **Merger of the boards regulating occupational therapists, physical therapists, and athletic trainers has been recommended twice before during sunset reviews.**
 - In 1984, the sunset review of the State Board of Physical Therapy Examiners and the Texas Department of Health recommended combining the regulation of the physical therapists, athletic trainers and occupational therapists under one board.
 - Again, in 1985, the sunset review of the Texas Advisory Board of Occupational Therapy recommended combining the regulation of occupational therapists and physical therapists into one agency.
- ▶ **Other states have recognized the overlap among the professions of occupational therapy, physical therapy and athletic trainers, and combined the regulation of these professions under a single regulatory board.**
 - Four states, Iowa, Massachusetts, Tennessee and Alaska, have placed the regulation of occupational therapists and physical therapists in the same licensing board.
 - Ohio has combined the regulation of occupational therapists, physical therapists and athletic trainers into one licensing board.

CONCLUSION

The state regulates these three closely-related professions through three separate licensing boards. All three professions are concerned with the prevention, treatment, and rehabilitation of physical disabilities and use most of the same therapeutic methods. The educational requirements of and the services provided by occupational therapists and physical therapists are similar. Much of the educational requirements of, and the services provided by athletic trainers overlap those of the other two professions. Other states have noted the similarities of the professions and combined their regulation under one regulatory agency.

RECOMMENDATION

- **The statute should be changed to:**
 - **merge the boards regulating occupational therapists, physical therapists, and athletic trainers;**
 - **establish a new board to consist of nine members with two licensed occupational therapists, two licensed physical therapists, two licensed athletic trainers, and three public members;**
 - **provide the board with rulemaking authority to regulate the practice of occupational therapists, physical therapists, and athletic trainers;**
 - **specify the continued separate licensing of occupational therapists, physical therapists, and athletic trainers;**
 - **specify that the board has authority to establish rules governing dual licensure; and**
 - **authorize the board to hire an executive director and necessary staff to carry out the board's responsibilities.**

The merger of the boards that regulate occupational therapists, physical therapists and athletic trainers should result in a more standardized and coordinated approach to licensing and regulation. The combined board will refine and coordinate policies on licensing requirements and disciplinary procedures for practitioners. Consumers will have better access to information about licensees and the professions, and will find it easier to file complaints against licensees who violate established regulations. The merger recommendation is intended to protect the integrity of each of the three professions by maintaining already established standards of practice.

FISCAL IMPACT

A merger of these agencies will result in some fiscal impact, such as one-time costs for the physical move of personnel and equipment. However, through the combination of administrative functions, existing resources will be available to increase support of the licensing and enforcement efforts of the combined board.

ISSUE 6: The Texas Board of Licensure of Nursing Home Administrators should be abolished and its functions transferred to the Texas Department of Human Services.

BACKGROUND

The Texas Board of Licensure of Nursing Home Administrators (TBLNHA) is an independent agency, created in 1969, to license nursing home administrators. The board was created in response to federal requirements that states license administrators of nursing homes that receive Medicare or Medicaid funds. When the Texas nursing home administrators licensing law was enacted, it required licensure for administrators of all nursing homes. The TBLNHA examines and licenses applicants, biennially renews current licensees, provides continuing education and approves and monitors others who provide such programs, and regulates the practice of nursing home administration. Regulatory activities include staff investigation of complaints against licensees, preparation of cases where violations of law or rules are found, and imposing of sanctions when necessary.

The state's regulation of the nursing home industry is complex as is the system under which the state's nursing home administrators operate. Regulation of nursing homes is split primarily between the board, the Texas Department of Health (TDH), and the Texas Department of Human Services (DHS). The TDH has primary involvement with nursing homes and licenses them under patient care, health, and safety standards and regulations. The TDH also certifies as Medicaid eligible those nursing home operators who contract with the DHS for Medicaid reimbursement. Staff from the TDH annually inspect nursing homes for compliance with licensure and, where applicable, Medicaid certification standards and regulations. The DHS inspects patient records to ensure that Medicaid reimbursements are consistent with the level of patient care. Since most infractions of law or regulation in a nursing home reflect administrative practices in the home, both of these departments report inconsistencies and violations to the board.

The 72nd Legislature initiated a restructuring of the state's health and human services regulatory system. One change transferred the nursing home licensing and certification function from the TDH to the DHS. This change necessitated a review of the role and responsibilities of the TBLNHA in the overall regulatory structure for nursing homes. The results of the review are provided in the following material.

FINDINGS

- ▶ **Consolidation of nursing home regulation has been considered before.**
 - In 1978 the initial sunset review of the Texas Nursing Home Administrators Licensure Act identified a need for a less fragmented approach to nursing

home regulation and indicated that some consolidation of the agency's responsibilities with the TDH would improve overall regulation.

- In 1988, the Special Committee on Organization of State Agencies, a joint legislative committee that included public members, recommended that the board be consolidated into a proposed umbrella licensing and regulatory agency.
 - In 1991, the Texas Performance Review made essentially the same recommendation as the special committee. Legislation to implement this recommendation was debated by the 72nd Legislature but ultimately not adopted.
- ▶ **Regulation of nursing home administrators is closely linked to licensing and enforcement efforts of the TDH.**
- Currently, the TDH issues a nursing home's license in the name of the administrator. However, the TDH is considering a proposed rule to issue the license in the name of the owner.
 - The department's Bureau of Long Term Care is a major source of complaints to the board, and much of the investigation surrounding the circumstances of complaints has already been performed. These complaints are the board's first priority for investigation.
- ▶ **The licensing and certification functions of the TDH are being transferred to the Texas Department of Human Services (DHS).**
- Effective September 1, 1993 the department's Bureau of Long Term Care will be transferred to the DHS.
 - This transfer leaves the nursing home board's functions as the only significant part of nursing home regulation in a separate agency.

CONCLUSION

The state's regulation of nursing homes is currently separated between the nursing home board, the TDH and the DHS. Consolidation has been considered before. Regulation of nursing home administrators is closely related to the regulation of nursing homes by the TDH. However, the department's regulatory functions for nursing homes are currently scheduled for transfer to the DHS September 1, 1993. Consequently, only the functions of the nursing home board remain separated.

RECOMMENDATION

- **The statute should be changed to:**
 - **abolish the Texas Board of Licensure of Nursing Home Administrators and transfer its functions to the Texas Department of Human Services; and**
 - **require the department to establish an advisory committee of nursing home administrators to provide expertise in carrying out the regulation.**

Transferring the licensing and regulation of nursing home administrators into the same agency that licenses and regulates nursing homes will improve regulatory efforts. Combining the investigations of facilities and administrators will improve both the timeliness and quality of investigations and improve the state's ability to regulate nursing homes. The current staff of the nursing home board would become employees of the DHS. In structuring the regulation of nursing home administrators, the DHS would need to create an advisory committee to provide expertise currently provided by the board.

FISCAL IMPACT

The regulation of nursing home administrators are now supported by fees and would continue to be under the DHS. Some savings may occur by eliminating some of the administrative functions now performed by the TBLNHA. However, no estimate of the fiscal impact of the transfer can be made at this time.

ISSUE 7: Create a Health Professions Council.**BACKGROUND**

Efforts in Texas over the past 40 years to create a centralized licensing board have received only lukewarm support. The primary element that generates the greatest amount of opposition has been the elimination of the individual licensee boards. This eliminates control of the profession by members of the profession and, understandably, makes licensees nervous. In the past, the same scenario has developed when a consolidation proposal is suggested: determination of which boards would be combined; organization of opposition by licensee associations; and defeat of the proposal.

During the development of legislation to implement the recommendations of the Texas Performance Review, the sunset staff took another approach and posed the question of what the combination efforts were trying to achieve, other than ending up with one umbrella board. The staff determined that a number of other reasonable benefits can result from consolidation. These benefits generally never receive attention because the issue of whether the profession should control the regulation has always moved to the forefront.

The staff analysis indicated that the following positive benefits can result from consolidation; coordination of overall policy; economies of scale; standardization of functions; improved public access to services; and potential for better enforcement. After this determination was made, a final question was asked as to whether a majority of these benefits could be achieved *without* replacing individual boards with an umbrella board. A review of these benefits indicated that a majority of them could be achieved in a constructive manner. The findings of the review are presented in the following material.

FINDINGS

- ▶ **Health licensing boards have no forum through which they can routinely discuss and decide on major licensing goals and overall statewide regulatory policy.**
 - Currently, each board and its staff works in isolation from each other. Occasionally staff level meetings take place, usually when there is a potential exists for conflict between licensee groups.
 - Voluntary efforts at creating a forum have not been successful and have been perceived by some as a lobbying organization.
 - National organizations such as the National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR), indicate a need for exchange of basic information between agencies. This is supported by the lack of understanding

of other agencies' programs displayed by some agency staff during meetings conducted by sunset staff to discuss licensing issues.

▶ **Overall policy needs to be coordinated between licensing agencies.**

- Sunset reviews in the past have shown wide variations in agency approaches to affirmative action plans, personnel policies, conflicts of interest, and training for customer services.
- These areas need standard approaches and do not need to be tailored to each agency.
- The governor's office has recognized this need and partially addressed one aspect through its orientation and on-going training for board members.

▶ **Future expenditures could be minimized by achieving economies of scale in operating costs.**

- Overall rental space, if the boards' staffs were placed in one location, could be reduced from approximately 72,000 square feet to 53,000 square feet. The savings result from shared conference, reception, and supply areas.
- Projections by the General Services Commission indicate that having a single office location would reduce costs for custodial, maintenance and telecommunications by as much as \$140,000 per year.
- Moving staff could be minimized. Co-location would create more permanent space for the licensing boards. These boards are required to move on a relatively frequent basis. This has an effect on employee moral and overall productivity.

▶ **Increased coordination would lead to a standardization of functions.**

- Licensing techniques and strategies are normally not shared between boards. This generally occurs because the staff of licensing boards have other priorities. If sharing were made a priority by the legislature, time would be found.
- Some boards have better approaches than others to licensing, renewals, hearings, investigations, application of penalties, continuing education, and substance abuse counseling. These approaches, if discussed among staff, could prevent re-inventing the wheel.

- ▶ **Coordination would result in more consistent unit costs.**
 - At the present wide variation exists between boards in the cost of performing similar functions. Some variation is appropriate but others result from poor management practices.
 - Comparisons between boards will provide a basis for determining if costs are appropriate and will allow for adjustments in fees where costs are too high or are artificially low.

CONCLUSION

Lack of a forum for coordination results in higher costs and inconsistent regulatory policies. Sunset reviews can identify and correct these inconsistencies but some continuing process is needed for assessment in the interim.

RECOMMENDATIONS

- **A structure should be created in statute to allow the boards involved in regulating health care professions to join together and coordinate their administrative and regulatory efforts.**
- **The Health Care Professions Council should be created. The statute should specify that:**
 - **each of the licensing boards under review is a member of and subject to the decisions of the council;**
 - **each board's staff director shall serve on the council;**
 - **the council shall elect a chair and vice-chair to serve two-year terms;**
 - **the council may employ staff or have the member boards assign staff as necessary to allow the council to carry out its duties;**
 - **the council's efforts shall be funded by a pro rata assessment paid by the member boards; and**
 - **each board represented on the council shall cooperate with the council as it carries out its responsibilities.**

- **The council will be required to:**
 - **develop and implement, in conjunction with the General Services Commission, a plan to obtain permanent space for co-location of all the member boards and their staffs;**
 - **develop and implement a plan to centralize the administrative functions of all the member boards;**
 - **develop and implement a plan to standardize strategic planning, budgeting, and the definition and use of performance measures;**
 - **develop and implement a plan to centralize initial review of applicants for licensure, exam administration, and issuance of initial licenses and renewals;**
 - **develop and implement a plan to centralize receipt, tracking, and investigation of complaints; and**
 - **study health care policy issues such as continuum of health care, infectious disease control, and peer assistance.**
- **The council will be required to report to the governor before January 1 of each odd-numbered year on recommended statutory revisions to:**
 - **implement changes the council determines are necessary to improve its operations;**
 - **identify changes necessary to improve the regulation carried out by its member boards; and**
 - **identify policy issues relating to the impact changes in the overall delivery of health care will have on licensed health care professionals.**

The approach of creating a council may be characterized by some to be just another bureaucratic initiative. However, there are few alternatives when faced with developing an approach dealing with setting priorities for governmental operations. While it could be done without any statutory guidance or change, the uncertainty of whether it would be perceived as a lobbying effort would probably prevent its happening. If done correctly, and it will not work unless the boards for whom it is created use it in a positive way, creation of a council can produce worthwhile benefits for both licensee groups and consumers.

FISCAL IMPACT

The fiscal impact of the creation of a council, with the specified duties set out above, is difficult to estimate. Co-location will have a positive fiscal impact. Estimates of savings can be as high as \$300,000 per year. Centralization of various administrative functions will have a positive fiscal impact. Printing, copying, mailing, purchasing, and accounting can all be shared to some degree. To determine the fiscal impact, a detailed cost analysis will be needed by the boards involved. In addition, a detailed discussion will be needed to establish an organizational structure to carry out the centralized efforts.

Centralization will also have a positive impact in other areas of operation, particularly in the area of enforcement. With a common location for housing investigative staff, other agencies may feel more comfortable contracting with the co-located boards for this type of service. This fiscal impact of improving services cannot be easily quantified.

**RECOMMENDATIONS FOR ALL
HEALTH LICENSING BOARDS**

INTRODUCTION

The sunset review of the health care licensing agencies involved a comparison of the licensing structures used to regulate the various health professions in Texas. Current state licensing of health care professionals includes several common elements: screening applicants, examination, licensing, ensuring continued competence, and enforcement efforts. Each of the health care licensing boards under review function in significantly similar ways and are intended to protect the general public's health in the delivery of health care services. Consequently, a comparison of the regulatory structures administered by the twenty health care licensing boards was used to evaluate the need for changes in their respective enabling statutes.

Drawing on the experience gained in previous sunset reviews, the staff has identified model elements of licensing agency operations. A standard licensing framework has been developed for evaluating licensing structures. This has been tested in past reviews and was used during the current review to evaluate the specific structure of the health care licensing boards. In addition, the comparison of the licensing structures included a review of other states' practices, information from discussions with agency staff and board members, information from groups and individuals interested in the boards under review, and a search of literature on health care service providers, health care regulation, and empirical licensing models that have been developed.

Five areas of operation were selected for analysis and comparison with the standard framework. These areas are: fee authority, examination, licensing, enforcement, and continuing professional education. Where an agency did not meet the standard, recommendations were developed to bring them in line with the standard. The recommendations are categorized according to the profession to which they apply. This will allow the recommendations to be considered separately from decisions regarding the organizational structure used to carry out the regulation.

ISSUE 8: The statute should be changed to require that fees be set by the General Appropriations Act as necessary to cover the costs of regulation.

BACKGROUND

Generally, licensing fees have been used by the state to cover the costs of regulation and, in some cases, to raise revenue for the state. All the health licensing boards currently under review are funded through fees paid by licensees. Fees generally paid include an application fee, an initial licensure fee, an examination fee, and an annual or biennial license renewal fee. The fees are collected by the licensing agencies and, with a couple of exceptions, are deposited in the state treasury. Funding for these agencies are appropriated from either a special agency fund or the general revenue fund.

The 20 health licensing boards under review, as a whole, generate more than enough fee revenue to cover the costs of regulation. In fiscal year 1992, these boards generated more than \$19.9 million in fee revenue. During the same fiscal year, \$13.6 million was spent on regulation. The surplus, totaling more than \$6.3 million, most of which was deposited in the general revenue fund to be used by the state for other purposes.

Current practice in Texas state government provides that fees paid by licensed professionals should cover the costs of regulating the profession. The legislature has taken an increasingly active role in setting fee levels to cover costs and raise additional revenue. The state should have a flexible fee setting policy that requires regulatory costs to be covered by fee revenue and allows the legislature to use fees to raise additional revenue when necessary. A review of current fee setting processes of the health care licensing boards revealed inconsistent fee setting policies. The findings from this review are presented in the following material.

FINDINGS

- ▶ **The current fee authority for the health care licensing boards is inconsistent. Some boards have fee levels set in statute or by the appropriations act, while other boards are allowed, within statutory guidelines, to set their own fees.** (Exhibit 4 provides detail regarding the current fee authority of each of the boards)
 - Sixteen of the boards under review have the authority to set fee levels but are subject to a variety of statutory guidelines. These boards operate under one or more of the following restrictions: a limit on the fees that may be charged; a requirement that fees charged must cover the costs of operation; and a prohibition on fee levels that generate an unnecessary fund balance.
 - Three of the boards, the Board of Licensure for Nursing Home Examiners, the Board of Examiners for the Fitting and Dispensing of Hearing Aids and the

Board of Vocational Nurse Examiners, have at least part of their fees set by the appropriations bill.

- One board, the Midwifery Board, has its fees set in statute.
- ▶ **Because fee setting authority is placed with the individual boards not under the control of the legislature, the legislature has had to place fee-related riders in the General Appropriations Act and enact additional fee legislation to raise revenue.**
- The recent trend for fee authority has been for the legislature to set fee levels using riders in the General Appropriations Act. Many health care licensing boards, which have traditionally set their own fee levels, are now subject to fee-related riders in the General Appropriations Act. Of the 13 freestanding licensing boards currently under review, 11 have a rider in the General Appropriations Act that prohibits them from expending appropriations unless fees are increased to cover the costs of their appropriation. In some instances, the board is directed by the rider to increase fees to a specific level.
- During the 72nd Legislature, a \$200 professional fee was authorized by the legislature to be levied on individuals licensed by seven of the boards currently under review. These boards include the Board of Medical Examiners, the Board of Chiropractic Examiners, the Board of Dental Examiners, the Optometry Board, the Board of Podiatry Examiners, Board of Veterinary Medical Examiners, and the Board of Psychologists.
- Allowing the legislature to set fee levels in the appropriations act would result in a coordinated fee setting and revenue raising approach and tie the fee setting process (revenues) to the budgeting process (expenses).

CONCLUSION

The fee setting process used by the health care licensing boards is inconsistent. The statutory language providing fee authority is different for each of the boards. In addition, the legislature does not have control of the fee-setting process. This has forced the legislature to place fee-related riders in the General Appropriations Act and pass additional fee legislation. By allowing fees to be set in the appropriations process, the legislature could develop a consistent fee approach and allow the legislature to coordinate both revenues and expenditures.

RECOMMENDATION

- **The statutes should be changed to require that fees be set by the General Appropriations Act as necessary to recover the costs of regulation.**

The approach would allow the licensing boards and the legislature to have input in the fee setting process. The board, with the assistance of the Legislative Budget Board, would develop its budget request and recommend fee levels to cover the cost of regulations. The fee levels would then be set, based on agency input, by the legislature in the General Appropriations Act. This approach removes the unbridled fee authority that many agencies now have and places the agency in an advisory position, ties the fee setting process to the budget process, and allows the fee levels to be ultimately set by the legislature to give it revenue generating ability.

Recommendations contained earlier in this report proposed placing the health care licensing boards under the control of a coordinating council. The boards would maintain autonomy but share administrative support functions. This new fee-setting process would allow fees to be set to cover the costs of the council and those shared functions mentioned above.

FISCAL IMPACT

The recommendation would give the legislature the authority to set fee levels based on the advice of the Legislative Budget Board and health licensing agencies. The actual fiscal impact would depend upon the actual fees set by the legislature. However, no loss of fee revenue is anticipated since the fees could be set as needed to maintain the current level of fee revenue.

Exhibit 4
Fee Authority

Agency/ Authority	License fees set by the agency	License fees set in the Appropriations Bill	Fee amounts set in statute	Licensing fees have statutory range	Statute grants authority to charge late fees	Funds deposited in treasury	Funds appropriated from the general revenue	Funds appropriated from special fund
Chiropractors	yes	no	no	yes	yes	yes	no	yes
Dentists	yes	no	no	yes	yes	yes	no	yes
Dietitians	yes	no	no	no	yes	yes	no	yes
Hearing Aid Fitters and Dispensers	yes	no	no	yes	yes	yes	yes	no
Marriage & Family Therapists	yes	no	no	no	yes	yes	no	yes
Midwives	no	no	yes	no	yes	yes	yes	no
Nurses	yes	no	no	yes	yes	yes	no	yes
Nursing Home Administrators	no	yes	no	yes	yes	yes	no	yes
Occupational Therapists	yes	no	no	no	yes	yes	yes	no
Optometrists	yes	no	no	yes	yes	yes	no	yes
Pharmacists	yes	no	no	yes	yes	no	no	yes
Physical Therapists	yes	no	no	yes	yes	yes	yes	no
Physicians	yes	no	no	yes	yes	yes	no	yes
Podiatrists	yes	no	no	yes	yes	yes	no	yes
Professional Counselors	yes	no	no	no	yes	yes	no	yes
Psychologists	yes	no	no	no	yes	yes	no	yes
Social Workers	yes	no	no	no	yes	yes	no	yes
Speech-Language Pathologists/ Audiologists	yes	no	no	yes	yes	yes	no	yes
Veterinarians	yes	no	no	no	yes	yes	no	yes
Vocational Nurses	no	yes	no	yes	yes	yes	no	yes

Exhibit 4 (cont.)
Fee Authority

Revenue exceeds expenditures	Statute requires revenue to cover expenditures	Revenues FY 1992	Expenditures FY 1992	Difference	Agency may not maintain unnecessary fund balance	Fees must be reasonable and necessary	Fees are capped in statute	\$200 professional fee
yes	yes	\$877,600	\$139,000	\$738,600	no	yes	yes	yes
yes	no	\$1,246,764	\$817,233	\$429,531	yes	yes	yes	yes
yes	yes	\$85,018	\$66,048	\$18,970	yes	no	no	no
yes	no	\$134,410	\$66,737	\$67,673	no	yes	yes	no
yes	yes	\$166,813	\$60,987	\$105,826	no	yes	no	no
no	no	\$18,870	\$25,762	\$-6,892	no	no	no	no
yes	no	\$2,995,202	\$2,630,016	\$365,186	yes	yes	yes	no
yes	no	\$449,447	\$315,196	\$134,251	no	no	yes	no
yes	yes	\$215,413	\$149,915	\$65,498	no	no	no	no
yes	no	\$871,161	\$224,416	\$646,745	yes	yes	yes	yes
yes	yes	\$2,379,759	\$1,953,708	\$426,051	no	no	yes	no
yes	no	\$679,847	\$352,420	\$327,427	yes	yes	yes	no
yes	no	\$6,094,500	\$3,915,605	\$2,178,895	no	no	yes	yes
yes	no	\$137,600	\$102,997	\$34,603	yes	yes	yes	yes
yes	no	\$396,827	\$332,443	\$64,384	yes	no	no	no
yes	yes	\$621,006	\$557,621	\$63,385	yes	yes	no	yes
yes	yes	\$399,370	\$293,391	\$105,979	no	no	no	no
yes	yes	\$169,082	\$166,114	\$2,968	yes	no	yes	no
yes	no	\$568,309	\$454,118	\$114,191	yes	yes	no	yes
yes	yes	\$1,483,514	\$992,540	\$490,974	yes	yes	yes	no

ISSUE 9: The statutes should be changed to require that all written state licensing exams be validated by independent testing professionals.

BACKGROUND

Licensing examinations are designed to measure the competence of persons seeking a license. The examinations specifically measure the knowledge, skills, and abilities needed to safely and effectively perform in a selected licensed profession. In addition to measuring the potential licensee's capabilities, the examination must be difficult enough to screen out those persons who lack the necessary level of competence. The process used to ensure that the examinations used are valid, reliable, and defensible is validation. Validation is a process by which examinations are observed and researched for their accuracy and impartiality. Validation ensures that the examination is a satisfactory measure of the knowledge, skills and abilities required of someone entering the profession, and not a measure of a person's academic achievement or performance compared to others in the profession. In addition, validation ensures that an examination does not contain any ethnic or gender biases, resulting from the way questions are designed. Without validation, a licensing board is subject to legal action challenging that its examination is discriminatory, biased or simply not an accurate test of the skills and knowledge required for competent practice.

Most of the health care licensing boards under review have the statutory authority to use either national or state-developed examinations. National exams are generally developed by a national testing service, a private accrediting body, or the national office of a professional association. State exams are usually developed by the licensing board administering the exam. Validation of the examination used by the boards is generally not required by state statute. National examinations are, with few exceptions, validated by national testing companies. The review of the issue of exam validation resulted in the findings presented in the following material.

FINDINGS

- ▶ **Validation is a nationally accepted process to guarantee the accuracy, integrity and validity of occupational licensing examinations.**
- The examinations division of the American Institute of Certified Public Accountants (AICPA) conducted a national survey in 1991 of the 15 largest professional licensing organizations, based on the number of candidates tested annually and the number of jurisdictions using the exam. All 15 examination programs validated their examinations.
- The Council on Licensure, Enforcement and Regulation (CLEAR) recognized the importance of validation and recommended the adoption of, and adherence

to, the 1985 *Standards for Educational and Psychological Testing* written by the American Psychological Association, which includes guidelines on validating licensing tests.

- ▶ **The use of validation is not consistent among the health care licensing boards.**
 - Sixteen of the boards currently use, or are in the process of switching to, a validated national examination.
 - Four of the boards use a state examination. Two of those boards, the State Board of Examiners in the Fitting and Dispensing of Hearing Aids and the Board of Licensure for Nursing Home Administrators, have not had their examinations validated.
 - In addition, 10 of the 20 boards administer a jurisprudence examination that tests knowledge of related state law and regulations. Five of those tests are not validated.
- ▶ **Without the validation of licensing examinations, the health care licensing boards are potential targets for legal challenges.**
 - Many advocacy groups, such as the Public Interest Research Group in New York and FairTest, have challenged organizations that prepare admission tests and licensing agencies that develop examinations. These groups have alleged racial and sexual bias in the examinations used by these agencies and organizations.
 - As an outgrowth, these groups have promoted "truth in testing" legislation concerning licensing and certification tests in some states. The legislation requires disclosure of test forms and the standards by which the tests were developed.
- ▶ **Although most of the boards use validated exams, state statutes do not require validation. Without a requirement, exams could be developed and used in the future without validation.**

CONCLUSION

Nationally, the validation of examinations has been recommended to ensure the effectiveness of the exams in identifying competent practitioners. In Texas, validation of examinations is not consistently required by the health care licensing boards. Without validation, the boards are susceptible to legal action because the examinations are not legally defensible. Most health care licensing boards use validated examinations but their statutes do not require validation, thereby allowing the development and use of unvalidated exams.

RECOMMENDATION

- **The statutes should be changed to require that all written state licensing exams be validated by independent testing professionals.**

The requirement for validation of examinations should ensure that the exams only test an applicant's competence to practice a profession. Most boards will not be affected because they already administer validated examinations. However, this change will ensure that the current practice is continued. The validation of examinations should also protect the boards against possible legal challenges concerning the standards by which the tests were constructed.

FISCAL IMPACT

The cost of exam validation is currently between \$15,000 and \$50,000 per year. Most of the boards' exams are already validated so they would not experience any additional costs. Any costs incurred could be recovered through an increase in examination fees. The total impact on the boards should not exceed \$350,000 to validate all exams currently used that are not validated.

ISSUE 10: The statutes should be changed to authorize a full range of licensing options.

BACKGROUND

The goal of state licensure of professional occupations is the protection of the public welfare from incompetent and unethical practitioners. However, the regulation of a profession should offer options to the licensees to accommodate their licensing needs during a lifetime of practice. The regulations should be flexible enough to accommodate changing life circumstances, such as pregnancy, military service, retirement, and relocation.

For the health care licensing boards under review, licensing options are mostly authorized in statute and include licensing by reciprocity or endorsement, temporary and provisional licensing, and inactive license status. Licensing by reciprocity or endorsement offers a choice for those licensed professionals who move from state-to-state during their career. This option allows the professional to relocate without having to retake the licensure examination. Temporary and provisional licenses are generally offered by licensing boards to applicants who have met the majority of the licensing requirements and want to begin work. The temporary period is usually limited to a few months, pending the results of the licensure exam. In addition, practice is often restricted by requiring direct supervision by a fully licensed professional. Provisional licenses are provided for applicants who have completed the educational but not the experience or internship requirements for licensure. This license allows the applicants to practice, under direct supervision, until the completion of their internship or successful completion of an examination.

Another licensing option available to most licensing boards is inactive license status. Inactive status is provided for licensees who have life circumstances and needs during their careers that cause them to temporarily cease to practice their professions, but at the same time want to keep their license. For example, disability, military leave, and family needs may all prevent licensees from being actively engaged in their profession. On inactive status, a licensee generally does not have to pay the renewal fees or complete the continuing education requirements. In most cases, inactive status allows licensees to place their license on hold while they are not practicing but allows them to retain the option of reactivating at a later date without re-examination. A review of the licensing authority of the health care licensing boards revealed that all do not have the full range of licensing options. The results of the review are presented in the following material.

FINDINGS

- ▶ **The statutes regulating the health care professions currently provide the licensing boards with most of the necessary licensing options.** (See Exhibit 5 for a comparison of current licensing authority.)
- All 20 health care licensing boards have the authority to license professionals from out-of-state using either endorsement or reciprocity.

- Eleven of the boards under review have the authority to issue temporary licenses.
- Eleven of the boards have the authority to place a licensee on inactive status.
- ▶ **Some of the boards lack the authority to issue temporary licenses or place a license on inactive status.**
 - The statutes regulating chiropractors, dentists, marriage and family therapists, midwives, optometrists, pharmacists, podiatrists, professional counselors, social workers, and veterinarians do not authorize the issuance of temporary licenses.
 - The statutes regulating dietitians, hearing aid fitters and dispensers, midwives, optometrists, physical therapists, podiatrists, social workers, speech-language pathologists\audiologists and veterinarians do not provide authority to place licenses on inactive status.
 - The statute regulating dentists provides authority to place a license on inactive status only by retiring the license.

CONCLUSION

Licensing options offer choices for professionals as their needs change during their career. Most of the necessary licensing options are currently provided by the health care boards in statute. However, some of the boards lack the authority to issue temporary licenses and places licensees on inactive status.

RECOMMENDATION

- **The statutes should be changed to provide the boards with authority to issue temporary licenses and place licensees on inactive status.**

Giving the boards the authority to provide licensing options should create more flexibility in the regulation of licensed health care professionals. This change would ensure that the boards will be able to respond to the different needs of the licensees. Exhibit 5 indicates which boards will be provided with additional licensing authority.

FISCAL IMPACT

A fiscal impact is anticipated. Authority to issue temporary licenses should result in additional revenue from an increase in licenses issued. The use of inactive status could result in a slight loss of fee revenue as licensees in this category would not be required to pay license fees. An estimate was not available for inclusion in this report.

**Exhibit 5
Comparison of Licensing Option Authority**

Profession	Reciprocity/ Endorsement	Inactive License Status			Temporary License Status	
		Authorized in Statute	Restrictions on Use	Conditions to Reactivate	Authorized In statute	Restrictions on Use
Chiropractors	Yes	Yes	None	Continuing Education	No	N/A
Dentists	Yes	No	N/A	N/A	No	N/A
Dietitians	Yes	No	N/A	N/A	Yes	Supervision
Hearing Aid Fitters and Dispensers	Yes	No	N/A	N/A	Yes	- Supervision - Valid for 6 months
Marriage & Family Therapists	Yes	Yes	None	None	No	N/A
Midwives	*	No	N/A	N/A	No	N/A
Nurses	Yes	Yes	None	None	Yes	- Limited to 6 months - Supervision
Nursing Home Administrators	Yes	Yes	None	Continuing Education	Yes	- Next testing date - Licensed in another state
Occupational Therapists	Yes	Yes	Limited to 5 years by rule	Continuing Education	Yes	- Licensed in another state - Pending exam score - Supervision
Optometrists	Yes	No	N/A	N/A	No	N/A
Pharmacists	Yes	Yes	None	Continuing Education	No	N/A
Physical Therapists	Yes	No	N/A	N/A	Yes	Pending exam score
Physicians	Yes	Yes	Limited to 5 years by rule	None	Yes	Endorsement applicant
Podiatrists	Yes	No	N/A	N/A	No	N/A
Professional Counselors	Yes	Yes	None	Continuing Education	No	N/A
Psychologists	Yes	Yes	Limited to 2 years by rule	May require re-exam	Yes	- Pending exam score - Licensed in another state
Social Workers	Yes	No	None	None	Yes	N/A
Speech-Language Pathologists/ Audiologists	Yes	No	Limited to 2 year by rule	Continuing Education	Yes	- Pending exam score - Supervision
Veterinarians	Yes	No	N/A	N/A	No	N/A
Vocational Nurses	Yes	Yes	None	Refresher course	Yes	- Pending exam score - Supervision

* not a regulatory program, registration only

ISSUE 11: The statutes should be changed to provide for an adequate range of enforcement powers.

BACKGROUND

The basic purpose of professional and occupational licensing boards is to protect the public's health, safety, and economic welfare. Government creates these boards to regulate persons entering a profession or occupation to ensure that they are minimally qualified and that the public is protected from unqualified or incompetent practitioners. Licensing boards screen applicants for licensure, administer examinations, and, in many cases, define practice standards. To carry out enforcement responsibility, licensing boards are given the authority to take action and impose sanctions against licensees who do not perform properly with regard to laws, rules, ethical standards, and generally accepted practice. The U.S. constitution requires that the enforcement process assures due process of law. In Texas, this protection is provided through the Texas Administrative Procedure and Texas Register Act.

Enforcement authority should be adequate to allow a licensing board to achieve compliance either by reforming licensees or removing them from practice. State law generally provides licensing boards with a standard enforcement structure that consists of a range of enforcement powers. Basic powers include the authority to reprimand or warn, suspend, or revoke the practitioner's license. A licensing board can also probate a disciplinary action that it has taken against a licensee and place conditions on the probation, such as additional education and training.

In addition to the above basic enforcement powers, the state has provided most licensing boards with additional enforcement powers to encourage compliance. The additional enforcement powers are usually given to boards depending on the potential for significant harm to the health and welfare of the public. These powers include the power to obtain court ordered injunctions, the ability to seek civil and criminal causes of action in court, and the authority to assess monetary penalties administratively. Exhibit 6 provides a description of the range of enforcement powers that can be provided to licensing boards.

State policy is to provide boards with a sufficient enforcement structure to allow them to ensure compliance with the regulation for which they are responsible. A review of the current enforcement powers of the health care licensing boards under review indicated the following.

FINDINGS

- ▶ **The statutes regulating the health care professions currently provide the licensing boards with many of the enforcement options available. (See Exhibit 7 for a comparison of enforcement authority).**
- ▶ **Some of the licensing boards lack the authority to use some of the basic enforcement options.**

- The statute regulating professional counselors does not provide authority for the use of written reprimands or probation.
 - The statutes regulating nursing home administrators and speech-language pathologists and audiologists do not provide authority for the use of written reprimands.
 - The statutes regulating hearing aid fitters and dispensers, nursing home administrators, professional counselors, psychologists, speech-language pathologists and audiologists, social workers, and veterinarians do not provide authority for the use of continuing education as an enforcement tool.
- ▶ **Several of the licensing boards regulate professions where significant harm to the public health and welfare is possible. Such professions are usually regulated through a practice act, the most restrictive form of regulation. In addition, such professions include those that are authorized to practice independent of other professionals, perform invasive procedures, dispense controlled substances, or prescribe medications. Some of the boards regulating these professions lack the authority to use enforcement options to deal with more serious situations that may arise.**
- Civil penalties are not authorized in the statutes regulating chiropractors, dentists, marriage and family therapists, nurses, nursing home administrators, pharmacists, physicians, psychologists, veterinarians, and vocational nurses.
 - Administrative penalties are not authorized in the statutes regulating chiropractors, marriage and family therapists, nurses, nursing home administrators, optometrists, physicians, podiatrists, psychologists, and vocational nurses.
 - Current administrative penalty authority in the statutes regulating dentists, pharmacists, and veterinarians is inadequate as an effective enforcement tool.

CONCLUSION

Professional licensing boards exist to ensure that persons licensed to practice a profession are competent and that the public is adequately protected. This protection is accomplished by requiring boards to examine, license, and regulate the practice of their licensees. An essential element of the regulation process is an adequate and appropriate range of enforcement authorities that will deter licensees from violating laws and rules governing their practice and, where warranted, penalize or remove serious violators from the profession. The review of the health care licensing boards found that all boards did not possess an adequate range of enforcement powers.

RECOMMENDATION

- **The statutes should be changed, where appropriate, to provide the licensing boards with additional enforcement powers as follows:**
 - **add authority for written reprimands to statutes regulating nursing home administrators, professional counselors, and speech-language pathologists and audiologists;**
 - **add authority for the use of probation to the statute regulating professional counselors;**
 - **add authority for the use of continuing education as an enforcement tool to statutes regulating hearing aid fitters and dispensers, nursing home administrators, professional counselors, psychologists, social workers, speech-language pathologists and audiologists, and veterinarians;**
 - **add authority for the imposition of civil penalties to statutes regulating chiropractors, dentists, marriage and family therapists, nurses, nursing home administrators, pharmacists, psychologists, physicians, veterinarians, and vocational nurses;**
 - **add authority to assess administrative penalties to statutes regulating chiropractors, marriage and family therapists, nurses, nursing home administrators, optometrists, physicians, podiatrists, psychologists, and vocational nurses; and**
 - **increase current authority to assess administrative penalties authority in the statutes regulating dentists, pharmacists, and veterinarians.**

These recommended changes will provide the health care licensing boards with an appropriate range of enforcement powers and provide flexibility to impose sanctions suited to the seriousness of violations. Exhibit 8 provides, by regulated profession, the additional enforcement powers recommended. In addition to adding authority, current levels of authority were increased in instances where existing authority is inadequate, given the nature of the profession and the potential for harm to the public health and welfare.

FISCAL IMPACT

Increased revenue may result from added or increased administrative fine authority. This revenue would be deposited into the general revenue fund. However, the potential amount of any added revenues from these fines cannot be estimated at this time. No loss of revenue is anticipated.

Exhibit 6
Description of Enforcement Powers

Power	Description
Administrative Penalty	A monetary fine directly by the board. Administrative penalty authority is used in cases where a violation is serious but does not necessarily warrant revocation. An administrative penalty may be a board's only sanction or may be assessed in conjunction with other penalties.
Civil Penalty	A monetary penalty imposed by a court of competent jurisdiction for a violation that is not criminal in nature.
Criminal Penalty	A monetary fine and or jail time imposed by a court of competent jurisdiction for a violation that is criminal in nature.
Injunctive Relief	An order of the court that requires a licensee to cease practice of the profession or occupation or a specified activity within it. A board will normally seek injunctive relief when the licensee's continued practice will pose an immediate and serious threat to the public safety, health or welfare. Boards generally obtain injunctions through the attorney general.
Probation	The conditional waiver of a board sanction. Conditions frequently placed on probated board actions are full compliance of rules and law, satisfactory completion of specified education and training, and community service.
Reprimand	A written warning from the board to a licensee for non-compliance and serves as a warning to correct a problem or face a more serious sanction.
Revocation	Removal of a licensee's ability to practice as a licensee within the profession. This authority is used in cases of serious non-compliance or intentional disregard for the laws and regulations.
Suspension	A temporary and time specific prohibition for a licensee to practice. This action is often used in cases where previous enforcement actions have not gained compliance or where somewhat serious or flagrant violations of law or agency rules have occurred.

**Exhibit 7
Comparison of Current Statutory Enforcement Authority**

Enforcement Elements/Agency	Range of Sanctions and Authorities								
	Written Reprimand	Probation	Suspension	Revocation/ Cancellation	Administrative Penalty Authority	Civil Penalty Authority	Criminal Penalties	Injunctive Authority	Continuing education as an enforcement tool
Chiropractors	yes	yes	yes	yes	no	no	yes	yes	yes
Dentists	yes	yes	yes	yes	yes	yes	yes	yes	yes
Dietitians	yes	yes	yes	yes	no	no	yes	yes	yes
Hearing Aid Fitters and Dispensers	yes	yes	yes	yes	no	no	yes	yes	no
Marriage & Family Therapists	yes	yes	yes	yes	no	no	yes	yes	yes
Midwives*	--	--	--	--	--	yes	yes	yes	--
Nurses	yes	yes	yes	yes	no	no	yes	yes	yes
Nursing Home Administrators	no	yes	yes	yes	no	no	yes	yes	no
Occupational Therapists	yes	yes	yes	yes	no	yes	yes	yes	yes
Optometrists	yes	yes	yes	yes	no	yes	yes	yes	yes
Pharmacists	yes	yes	yes	yes	yes	no	yes	yes	yes
Physical Therapists	yes	yes	yes	yes	no	yes	yes	yes	yes
Physicians	yes	yes	yes	yes	no	no	yes	yes	yes
Podiatrists	yes	yes	yes	yes	no**	yes	yes	yes	yes
Professional Counselors	no	no	yes	yes	no	no	yes	yes	no
Psychologists	yes	yes	yes	yes	no	no	yes	yes	no
Social Workers	yes	yes	yes	yes	no	yes	no	yes	no
Speech-Language Pathologists/ Audiologists	no	yes	yes	yes	no	no	yes	yes	no
Veterinarians	yes	yes	yes	yes	yes	no	yes	yes	no
Vocational Nurses	yes	yes	yes	yes	no	no	yes	yes	yes

* not a licensing/regulatory act
 ** in agency rule; no statutory authority

Exhibit 8
Detail of Additional Enforcement Authority

Profession	Recommended Changes to Enforcement Powers
Chiropractors	<ul style="list-style-type: none"> • Administrative penalty authority of \$1,000 per violation per day • Civil penalty authority of \$1,000 per violation per day • Continuing education as an enforcement tool
Dentists	<ul style="list-style-type: none"> • Increase administrative penalty authority from \$2,500 per violation to \$5,000 per violation per day
Hearing Aid Fitters and Dispensers	<ul style="list-style-type: none"> • Continuing education as an enforcement tool
Marriage and Family Therapists	<ul style="list-style-type: none"> • Administrative penalty authority of \$1,000 per violation per day • Civil penalty authority of \$1,000 per violation per day
Nurses	<ul style="list-style-type: none"> • Administrative penalty authority of \$2,500 per violation per day • Civil penalty authority of \$1,000 per violation per day
Nursing Home Administrators	<ul style="list-style-type: none"> • Administrative penalty authority of \$2,500 per violation per day • Civil penalty authority of \$1,000 per violation per day • Continuing education as an enforcement tool • Use of written reprimands
Optometrists	<ul style="list-style-type: none"> • Administrative penalty authority of \$2,500 per violation per day
Pharmacists	<ul style="list-style-type: none"> • Increase administrative penalty authority from \$1,000 to \$5,000 per violation per day involving diversion of drugs and from \$250 to \$2,500 per day for other violations • Civil penalty authority of \$1,000 per violation per day
Physicians	<ul style="list-style-type: none"> • Administrative penalty authority of \$5,000 per violation per day • Civil penalty authority of \$1,000 per violation per day
Podiatrists	<ul style="list-style-type: none"> • Administrative penalty authority of \$2,500 per violation per day
Professional Counselors	<ul style="list-style-type: none"> • Continuing education as an enforcement tool • Probation of sanctions • Use of written reprimands
Psychologists	<ul style="list-style-type: none"> • Administrative penalty authority of \$1,000 per violation per day • Civil penalty authority of \$1,000 per violation per day • Continuing education as an enforcement tool
Speech-Language Pathologists/ Audiologist	<ul style="list-style-type: none"> • Continuing education as an enforcement tool • Use of written reprimands
Veterinarians	<ul style="list-style-type: none"> • Increase administrative penalty authority from \$2,500 to \$5,000 per violation per day • Civil penalty authority of \$1,000 per violation per day • Use of continuing education as an enforcement tool
Vocational Nurses	<ul style="list-style-type: none"> • Administrative penalty authority of \$1,000 per violation per day • Civil penalty authority of \$1,000 per violation per day

ISSUE 12: The statutes should be changed to require mandatory continuing education.**BACKGROUND**

The primary goal of licensing and regulation of professions by the state is to ensure that licensees have the knowledge, skills, and abilities to competently practice a profession in a manner that does not threaten public health, safety, or welfare. The licensing system is based on restricting practice by requiring applicants for licensure to meet certain training and experience requirements and passage of a licensing examination. This process ensures that at the time of original licensure, an applicant has achieved the minimum level of competence to practice a profession in the state. Once an individual achieves initial licensure, the license is renewed on an annual basis as long as the licensee pays various fees and does not commit offenses that result in the revocation of the license. During the 1960's and 1970's, licensing came under attack for failure to ensure that minimal levels of competency were maintained after initial licensure. In 1971, a report from the Secretary of Health, Education, and Welfare recommended that professional associations and states should include requirements that ensure a minimum level of competence as one condition of license renewal. The report mentioned both continuing professional education and re-examination as alternatives. Because re-examination was viewed as being a more onerous requirement for licensed professionals, the majority of programs developed to ensure continued competency involved some type of continuing professional education.

In Texas, the legislature, through the statutes of various licensing agencies, has provided for continuing education as a means to ensure continued professional competency. The majority of Texas licensing boards, whether business or health related, require their licensees to take continuing professional education courses on a yearly or biennial basis. Most of the agencies' statutes provide for continuing education. A smaller number of agencies are authorized, through a standard statutory recommendation of the Sunset Commission, to establish voluntary continuing education programs.

Generally, continuing education programs are intended to fill the gap between the initial licensure of an applicant and enforcement action against incompetent or negligent licensees. This gives the public a degree of assurance that, once licensed, licensees will maintain a certain level of competence. Continuing education is a cost effective method of ensuring that licensed professionals maintain minimum skills, are exposed to advances in their field of practice, and get additional training. The state should have a process to ensure the continued competency of licensed professionals. A well-structured continuing professional education program is a cost effective method of ensuring that licensed professionals maintain a minimum level of competence. Below are findings from a review of continuing education based on an analysis of continuing education programs in Texas and in other states.

FINDINGS

- ▶ **A survey of the 20 boards under review indicated that current policies regarding continuing education are inconsistent. Some boards require continuing education for license renewal, while other boards do not. (Exhibit 9 provides information concerning the continuing education programs of the various boards.)**
 - Fourteen of the 20 boards require continuing education, three through rule and eleven through statutory mandate.
 - Six health care licensing boards do not require continuing education. These agencies include the Board of Veterinary Medical Examiners, the Board of Medical Examiners, the Board of Dental Examiners, the Board of Examiners of Dietitians, the Board of Examiners of Marriage and Family Therapists, and the Board of Psychologists.
- ▶ **Most other states require continuing education of licensed professionals. The chart below indicates, for a selected group of health care licensees, the number of states that currently require continuing education.**

<u>Profession</u>	<u>Number of States that Require CE</u>
Chiropractors	43
Dentists	25
Nurses	25
Nursing Home Administrators	45
Optometrists	48
Psychologists	25
Pharmacists	45
Physical Therapists	11
Social Workers	28
Veterinarians	34
Vocational Nurses	25

- ▶ **The continuing education programs conducted by the boards do not have the necessary components to ensure continued competency. Analysis of empirical data concerning continuing education found that the following six key components under review are needed to have an effective program:**

- 1) Determination of the key factors which lead to competence;
- 2) Development of and assessment of continuing education courses;
- 3) Assessment of the needs of licensees to determine strengths and weaknesses;
- 4) Assignment of required courses;
- 5) Evaluation of the performance of licensee; and
- 6) Evaluation of the effectiveness of the continuing education program.

CONCLUSION

The policies of state health care licensing boards concerning continuing professional education are inconsistent. Some boards require mandatory continuing education for license renewal, while others do not. In addition, the programs developed by those boards that require continuing education do not contain the components that have been identified as essential to ensuring continued competency.

RECOMMENDATION

- **The statutes should be changed to require that each of the boards develop a mandatory continuing education program.**

The continuing education programs used by health licensing boards in Texas do not contain all the components which are necessary to ensure a minimum level of competence. An effective program should identify the key factors required to practice competently and measure the competence of licensees in key areas. To do this the board should have the authority to offer self-administered self-assessment exams and examine complaint files. It is also important that the board evaluate and approve courses and providers and have the authority to require that licensees take courses in areas of specialization or deficiency. A program should also measure the performance of licensees in continuing education. In addition, the board should periodically evaluate the continuing education program to determine if it is maintaining a minimum level of competence among professionals and make changes when necessary.

A survey of the 20 health licensing boards indicated that two specific areas should be covered in continuing education course work, courses in ethics and courses in statutory and rule changes. Both of these subjects are important to consumers and their inclusion in a continuing education program would ensure that services provided by licensed professionals are ethical and legal.

FISCAL IMPACT

Agencies which currently do not require continuing education would incur some costs associated with developing a continuing education program. These costs can be recovered by increasing licensing fees. The impact on agencies that already require continuing education would be minimal.

**Exhibit 9
Continuing Professional Education**

Profession\ CPE	CPE required for continued licensure	CPE requirements set in statute or rule	CPE requirements are mandatory or voluntary	Number of CPE hours required per year	Number of CPE hours set in statute or rule	Penalties for failure to meet CPE requirements
Chiropractors	yes	both	mandatory	16	rule	yes
Dentists	no	--	--	--	--	--
Dietitians	no	--	--	--	--	--
Hearing Aid Fitters and Dispensers	yes	both	mandatory	10	rule	yes
Marriage & Family Therapists	yes	rule	voluntary	*	*	*
Midwives	yes	statute	mandatory	**	**	**
Nurses	yes	both	mandatory	20/2 years	both	yes
Nursing Home Administrators	yes	both	mandatory	24/2 years	rule	yes
Occupational Therapists	yes	rule	mandatory	10	rule	yes
Optometrists	yes	both	mandatory	12	statute	yes
Pharmacists	yes	both	mandatory	12	statute	yes
Physical Therapists	yes	both	mandatory	30	rule	yes
Physicians	no	--	--	--	--	--
Podiatrists	yes	rule	mandatory	15	rule	yes
Professional Counselors	yes	both	mandatory	75/3 years	rule	yes
Psychologists	no	--	--	--	--	--
Social Workers	yes	both	mandatory	30	rule	yes
Speech-Lang. Pathologists/ Audiologists	yes	both	mandatory	10	rule	yes
Veterinarians	no	--	--	--	--	--
Vocational Nurses	yes	both	mandatory	20/2 years	both	yes

* The marriage and family therapists' continuing professional education program is currently voluntary and will become mandatory in 1995. Number of CPE hours and penalties have not yet been determined.

** The midwives' continuing professional education program will become effective in 1993. The number of CPE hours and penalties have not yet been determined.

POLICY OPTIONS FOR SPECIFIC BOARDS

INTRODUCTION

In addition to the issues that apply across-the-board to all agencies, a number of additional policy issues were identified through the course of the sunset review of the twenty health care licensing boards. Throughout the review process, input was solicited from the boards under review and their staffs, associations, other interest groups, and interested members of the public. This resulted in the identification of a large number of issues related to specific boards under review that involved changes in regulation which were unique to the profession regulated. The number and complexity of many of these issues, balanced against the available time, precluded the standard analysis of the issue and subsequent development of a recommendation. The approach decided on resulted in a document that the commission can use to begin a dialogue on policy changes at the public hearing stage.

The issues presented in this section are not staff recommendations but were developed and presented as options to current policy. Presented in an option format, the issues include the source of the issue, background information needed, the option proposed to address the issue, and the potential benefits and drawbacks to the proposals.

Chiropractors

ISSUE 13: Should the statute be changed to require that, beginning in 1996, all applicants for licensure must obtain a four-year bachelor's degree?

SOURCE Nancy Zini-Jones, member, Texas Board of Chiropractic Examiners

BACKGROUND

The Texas Chiropractic Licensing Act requires that applicants for licensure shall present satisfactory evidence to the board that they have completed sixty semester hours of college courses plus completion of chiropractic curriculum. The curriculum includes instruction on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health.

The proposed change would require that, beginning in 1996, examinees obtain at least a four-year, 120-hour bachelor's degree, instead of the current minimum requirement of 60 semester hours. Twenty states presently require that an applicant for chiropractic licensure obtain a bachelor's degree.

CONCLUSION

The current requirement for applicants to have a minimum of 60 semester hours of non-chiropractic courses is insufficient when compared to the standard being used in many other states. A four-year bachelor's degree is needed to provide for adequate education of the licensee.

POLICY OPTION

- **The act should be changed to require that, beginning in 1996, all applicants for licensure have a four-year bachelor's degree.**

BENEFITS

- ▶ **The proposed change would raise the standard of chiropractic practice in Texas by raising educational standards to the level of those used in 20 other states.**
- ▶ **The proposed change may prevent licensees of other states that have lower standards from being licensed in Texas through endorsement.**
- ▶ **Increasing educational requirements will improve the quality of chiropractic services in Texas.**

DRAWBACKS

- ▶ **The costs to persons entering chiropractic programs would be increased due to the added educational requirement. Under current requirements, a person entering a chiropractic college can satisfy prerequisite educational requirements in a junior college. The proposed change would require at least partial attendance at a four-year college or university.**
- ▶ **No objective evidence is available that demonstrates that requiring chiropractors to have a bachelor's degree will improve the ability of a person to practice as a chiropractor. Unless all licensees, both current and prospective, are required to meet the four-year degree requirement, little improvement will be made in the standard of practice.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 14: Should the statute be changed to allow the board to limit, by rule, the number of times an applicant may take a licensure examination and to define educational qualifications that must be met before re-examination?

SOURCE Texas Chiropractic Association

BACKGROUND

Under the Texas Chiropractic Licensing Act, the licensing examination is constructed by subject. If an applicant fails a subject, he or she can retake that part of the exam after one year. The board's rules state that if an applicant fails part of the examination the first time, the applicant can retake the failed part within one year. If the applicant fails again, or does not apply for re-examination within one year after the first failure, the entire examination must be retaken before a license will be issued.

Neither the act nor the board's rules set a limit on the number of times an applicant can retake the examination, nor does the act or the rules specify any additional education or training requirements that an applicant must meet before retaking the examination.

CONCLUSION

Currently, the chiropractic act does not set nor does it authorize the board to set a limit on the number of times an applicant can retake an examination. Neither law nor rule require any additional education or training before an applicant can retake the examination.

POLICY OPTION

- **The statute should be changed to give the board the authority to set, in rule, a limit on the number of times an applicant can retake the examination and to specify additional education and training requirements that an applicant must meet before re-examination.**

BENEFITS

- ▶ **Limiting the number of exam retakes would ensure that applicants for licensure have sufficient knowledge and training to pass the examination and have not passed the examination through sheer repetition.**
- ▶ **Other agencies currently have this authority. For example, of the boards currently under review, several, including the Board of Dental Examiners and the Board of Chiropractic Examiners, have statutory authority to limit the number of exam retakes.**

- ▶ **The proposed change allows the board to identify the areas of study in which an applicant is deficient and provides the applicant an opportunity to take additional courses or training in order to pass the examination.**

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**
- ▶ **Additional education and training are the business of educational institutions, not the licensing board.**

FISCAL IMPACT

No fiscal impact to the state.

Dentists

ISSUE 15: Should the statute be changed to move the regulation of dental hygienists from the Board of Dental Examiners to a newly created independent licensing board or to the Texas Department of Licensing and Regulation?

SOURCE Texas Dental Hygienists Association

BACKGROUND

Dental hygienists are regulated by the state under Article 4551e of the Dental Practice Act, which places the responsibility for licensing and regulating dental hygienists under the dental board. Individuals seeking licensure as dental hygienists must meet certain educational requirements and pass an examination administered by the board. The Dental Practice Act defines the practice of dental hygiene and authorizes the board, through rules, to outline procedures, services, and limitations on the practice of dental hygiene. Currently, two members of the 15 member dental board are dental hygienists. In addition, the Act establishes the Dental Hygiene Advisory Committee, composed of eight dental hygienists, to advise the dental board on matters relating to dental hygiene. However, the Texas Dental Hygienists Association indicated that the dental board continues to be dominated by the dental licensees. The association indicated that, because dentists are the only legally-permitted employers of dental hygienists, the current structure of the board creates a conflict of interest where the issues and concerns affecting the practice of dentistry are given greater consideration than those affecting the practice of dental hygiene. To alleviate these problems, the regulation of dental hygienists should be separated from the dental board.

CONCLUSIONS

Dental hygienists are licensed and regulated by the dental board. The concerns and interests of dental hygienists are represented by two dental hygienists who serve on the dental board and by a committee that advises the board on matters related to the practice of dental hygiene. However, the Texas Association of Dental Hygienists indicates that the current structure of the dental board creates a conflict of interest and, therefore, dental hygienists should be independent from the dental board.

POLICY OPTION

- **The regulation of dental hygienists should be moved from the dental board and carried out by a newly created independent licensing agency or transferred to the Texas Department of Licensing and Regulation.**

BENEFITS

- ▶ **The proposed change would remove a potential conflict of interest on the part of the dental board. Under the current licensing scheme, licensing and regulation of dental hygienists is carried out by a board dominated by dentists who are the only practitioners who can legally employ dental hygienists. Independent status would provide an important check and balance against undue regulation, control, or influence of the practice of dental hygiene by the dental profession.**
- ▶ **A separate licensing board regulating dental hygiene would provide the dental hygienists and the public with better access when questions or issues arise regarding dental hygiene.**

DRAWBACKS

- ▶ **Removing the regulation of dental hygiene from the dental board, and either creating a separate dental hygiene board or placing it in the Department of Licensing and Regulation, would result in increased costs to the state. In addition, efficiency of enforcement because two boards would be involved may be less efficient.**
- ▶ **A separate board is not needed because the dental hygienists are represented on the board by two hygienists and the board receives input from the Dental Hygiene Advisory Committee.**

FISCAL IMPACT

Creating an independent agency to regulate dental hygienists would result in increased costs. However, costs would be less, if the proposed board was placed in the Texas Department of Licensing and Regulation, which could provide the bulk of the board's support services at a lower cost than a small independent agency. The actual cost to the state of either approach cannot be determined at this time. However, any additional costs would be recovered by fees.

ISSUE 16: Should the statute be changed to provide the board with authority to summarily suspend the license of a dentist?

SOURCE Texas State Board of Dental Examiners

BACKGROUND

Situations arise when a licensee may become unfit to practice. The dentist's inability to perform competently may be caused by physical or emotional illness or substance abuse. In addition, a dentist may be blatantly violating established standards of practice which could affect the public's safety. When these conditions exist, the licensee's ability to practice should be immediately suspended to ensure the safety of the public and to allow the board to resolve the situation. The dental board has the authority to seek injunctive relief to stop a dentist from practicing whose actions have resulted in a significant threat to the public's health, safety or welfare. Injunctive relief must be sought in the county where the dentist is practicing. The board indicates that this authority, even though useful, does not allow quick action in emergency situations.

Authority for summary suspension would allow the board to temporarily suspend a dentist's license, with just cause, for a limited period of time. This action would prevent a licensee from continuing to practice legally. Once the license is suspended, the board would immediately initiate formal proceedings to suspend or revoke the license under the Administrative Procedure and Texas Register Act. This procedure will allow the dentist the right to due process before any permanent action is taken.

The board would be authorized use of a summary suspension for the worst violators of the laws and rules governing the practice of dentistry. Summary suspension would only be used in those limited situations when a licensee represents an imminent threat to the consuming public.

Other state agencies and dental boards in other states are able to summarily suspend the licenses of practitioners under certain conditions. For example, the Texas Board of Medical Examiners has the ability to summarily suspend licenses when there is a threat to the public welfare. This approach is used in other state dental boards in Michigan, Virginia and Indiana.

CONCLUSION

Situations may arise when a licensee may become unfit to practice. The board should be able to take action to suspend the licensee's professional activities immediately. Summary suspension authority would allow immediate action in those instances. Formal action would be required for permanent action by the board thus allowing due process for the licensee.

POLICY OPTION

- **The Board of Dental Examiners should be authorized to summarily suspend the license of a dentist.**

BENEFITS

- ▶ **The board would be able to act quickly to stop the practice of a licensee who is an obvious threat to the public. Knowledge that the board had this authority would give the board more leverage with licensees in getting prompt compliance.**

DRAWBACKS

- ▶ **Summary suspension could be used indiscriminately and not allow a licensee due process before the ability to practice and earn a living is stopped.**
- ▶ **Unless the board's authority is restricted through law, this process could be abused. The legislature should clearly define when such suspensions can be used and how long they can be in effect.**

FISCAL IMPACT

No fiscal impact to the state. The board would initiate formal proceedings in these cases anyway.

ISSUE 17: Should the statute be changed to allow the board to limit, by rule, the number of times an applicant may retake the licensure examination and to define any conditions to be met before re-examination?

SOURCE Texas Board of Dental Examiners

BACKGROUND

The statute requires all applicants seeking dental licensure to pass the National Board of Dental Examiners examination and a state written and clinical examination. The statute specifies that any applicant who fails shall be permitted to take a subsequent examination. However, the statute does not limit the number of exam retakes allowed, nor does it require additional training. The board lacks the statutory authority to limit the number of times that an applicant may retake the examination and can not require additional training. In FY 1992, 31 applicants retook the exam. Twenty-five applicants took the exam for the second time, five applicants took it for the third time and one applicant took the exam for the fourth time.

CONCLUSION

The statute does not limit the number of times an applicant can retake the licensure examination nor does it require that an applicant who fails the exam repeatedly receive additional educational training. Statutory guidelines are being sought.

POLICY OPTION

The statute should be changed to limit the number of times an applicant may retake the licensure examination and should allow the board to require additional coursework for an applicant who repeatedly fails the licensure examination.

BENEFITS

- ▶ **Limitations on licensing examination retakes provide an additional regulatory check on potential licensees. The limitation will help the board assure that applicants are truly competent and meet minimum standards before licensure and have not passed the exam through sheer repetition.**
- ▶ **Identifying areas of study that an applicant is deficient in and providing an opportunity to receive additional educational training would address educational deficiencies before the applicant retakes the exam.**

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**
- ▶ **Additional education and training is the business of educational institutions. If the students perceive that the training provided leads to poor examination scores, better training will be demanded.**

FISCAL IMPACT

No significant fiscal impact to the state is anticipated.

**Hearing Aid Fitters
and Dispensers**



ISSUE 18: Should the statute be changed to require that all activities of a temporary trainee must be under the direct supervision of a licensee-sponsor?

SOURCE Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

BACKGROUND

Article 4566, Section 9(a), relating to the fitting and dispensing of hearing aids, authorizes the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids to grant a temporary training permit to individuals seeking licensure who meet qualifications established by the board. The permit is good for six months and can be extended one time for an additional six months. The temporary training permit allows individuals to fit and dispense hearing aids but, only under the supervision of an individual licensed under this act. The purpose of the temporary permit is to train individuals to fit and dispense hearing aids and to provide these individuals with the information necessary to pass the licensing examination.

Section 9(b) of the licensing act requires the application for a temporary training permit to be accompanied by the affidavit of a person licensed to fit and dispense hearing aids. The affidavit states that the applicant for the temporary training permit will be supervised by the person supplying the affidavit. Board rules define "supervision" to mean: "to coordinate, direct, and inspect continuously and at first hand the accomplishment of all work done by the applicant under such training permit." Because supervision is not adequately defined in statute or rules, the supervision of trainees is inconsistent. While a trainee is not allowed to administer hearing tests to customers or sell hearing aids in an office unless the licensee-sponsor is present, the statute does not specifically address the licensee-sponsor's responsibility for supervision or presence when the trainee administers hearing tests or sells hearing aids in the field.

CONCLUSION

A temporary training permit allows an individual to fit and dispense hearing aids under the supervision of a licensed hearing aid fitter and dispenser for up to one year. "Supervision" is not clearly defined in statute or rules and this has led to differing interpretations of what a temporary permittee can and can't do in the presence of the licensee. Currently, permittees are not allowed to fit and dispense hearing aids in the office unless they are supervised by the licensee, but these same permittees can fit and dispense hearing aids in the field without supervision.

POLICY OPTION

- **The statute should be changed to require that all activities of a temporary trainee must be under the direct supervision of a licensee-sponsor.**

BENEFITS

- ▶ **The proposed change would make the trainee approach consistent. Trainees would not be prohibited from performing tasks in one location and allowed to do them in another.**
- ▶ **Redefining "supervision" to require the licensee-sponsor's presence when a trainee administers hearing tests or sells hearing aids ensures that the licensee is responsible for all the trainee's actions and that professional care will be provided at all times. This protects consumers from receiving inaccurate information or purchasing unnecessary hearing devices. In addition, without direct supervision, the trainee receives less instruction and training.**

DRAWBACKS

- ▶ **Redefining "supervision" to prevent trainees from testing hearing or selling hearing aids without direct supervision would require the licensee to be present at all times and would reduce the services that could be provided by the temporary trainee.**

FISCAL IMPACT

No fiscal impact to the state.

Midwives

ISSUE 19: Should the statute regulating the practice of midwifery be strengthened by requiring midwives to be permitted, establishing enforcement capability, and placing regulation in the Professional Licensing and Certification Division of the Department of Health?

SOURCE Texas Department of Health

BACKGROUND

Midwifery, or the assistance of women during child birth is the care and counsel of women during pregnancy, labor and delivery, and the postpartum period including newborn care. The practice includes prenatal care, assessment of abnormal conditions in the mother, consultation and referral to medical care, and the use of emergency techniques in the absence of medical help. In 1983, the regulation of midwives began with the creation of the Midwifery Board as an advisory committee to the Texas Department of Health (TDH) for the purpose of identifying Texas midwives. The original regulation of midwives required annual identification with their local county clerk. Today, the board requires midwives to be "documented" with the TDH. The applicant must be annually certified for cardiopulmonary resuscitation; must have received training to perform newborn screening; and, the applicant must pay the \$50 documentation fee. In addition, the midwife must disclose to prospective patients/clients the limitations in the practice of midwifery and special information on their own knowledge, skills, and experience in midwifery. In 1991, the laws applying to midwives were expanded and, in 1993, midwives will be required to complete basic and continuing education before practicing as a midwife.

Current regulations and the educational structure set to begin in 1993 are insufficient to protect the safety and welfare of women and infants. The statute lacks a definition for normal childbirth and the scope of midwifery practice. In addition, the act does not prescribe any means by which to measure the competency of the midwife. For example, the board currently offers a voluntary exam for midwives with previous experience but, in 1993, examinations will not be offered by the program. Also, "documentees" are not subject to any administrative processes such as the issuance of a permit, therefore, no mechanism exists to stop incompetent or dangerous practice by midwives. The act does not provide for a standard complaint process for those who have been harmed by an incompetent midwife or have concerns about a midwife's practices.

CONCLUSION

The current statutory structure for regulating midwifery is insufficient to adequately regulate the practice. The basic components of regulation, ensuring competency, a complaint process, and enforcement authority, are missing.

POLICY OPTION

- **The statute should be changed to:**
 - **require a permit for the practice of midwifery, upon the completion of specified educational requirements;**
 - **provide for the reporting and investigation of complaints;**
 - **specify prohibited acts as related to the definition of the normal practice of midwifery;**
 - **authorize the Midwifery Board, subject to approval of the Board of Health, to probate, suspend or revoke a midwife's permit;**
 - **specify that the Midwifery Board is an advisory council to the Board of Health within its Professional Licensing and Certification Division;**
 - **authorize the Board of Health to define, in rule, maternal, fetal, and infant medical conditions that preclude a midwife from providing antepartum, intrapartum, postpartum, and neonatal care; and**
 - **upgrade the criminal penalty for practicing without a permit to a Class B misdemeanor.**

BENEFITS

- ▶ **The changes in statute would make the regulatory structure for midwives more consistent with other state regulatory programs.**
- ▶ **Permitting of midwives would allow the state to ensure that midwives in Texas meet the minimum competency standards.**
- ▶ **Permitting midwives would allow the state to take action against midwives performing acts prohibited by statute.**
- ▶ **The establishment of an administrative complaint process will assist women and other members of the public in obtaining accurate information on practicing midwives and allow reporting of questionable and incompetent practice.**

DRAWBACKS

- ▶ **Some midwives in Texas would rather remain unregulated, to preserve the philosophy and integrity of nonintervention birth methods associated with midwifery. Opponents will argue that women, aware of any potential risks to mother and child, have the right to give birth with whomever and wherever they choose.**
- ▶ **Members of the medical community could be opposed to the permitting of midwives because of disagreements about the type of training and level of expertise needed for safely assisted childbirth. Some physicians are opposed to the existence of midwives because most midwives, with the exception of those certified, are not formally trained to practice midwifery.**

FISCAL IMPACT

An increase in costs could occur from the new regulatory functions of the board. However, these expenditures could be covered by the current \$50 application fee collected from midwives.

Nurses

ISSUE 20: Should the statute be changed to give the board more flexibility in determining potentially harmful actions by nurses that must be reported?

SOURCE State Board of Nurse Examiners

BACKGROUND

The Texas Nurse Practice Act was amended in 1987 to establish mandatory reporting requirements for potentially harmful actions by registered nurses. State law requires that nurses be reported to the State Board of Nurse Examiners if they expose patients to a risk of harm by failing to meet the minimum standards of acceptable nursing practice. A wide range of professionals, facilities, and nurse employers are specifically required to file reports on the improper conduct of nurses including: all registered nurses, hospitals, nursing homes and other types of health-care facilities, state agencies, political subdivisions, other employers, professional liability insurers, professional associations, and, in cases of criminal convictions, prosecuting attorneys. The statute authorizes the appropriate entity to take action against any licensed practitioner, facility, or agency for failure to comply with the mandatory reporting requirements.

The board indicates that complaints have increased dramatically since the enactment of the mandatory reporting requirements. While many serious incidents have been reported as a result of the requirements, the board has identified a need to improve the statutory requirements. According to the board, the definition of a reportable incident is too broad and needs to be refined by the board through rules. Current statutory language requires reporting of all activities that "have exposed or are likely to expose a patient...to a risk of harm." This language encompasses many minor infractions and has resulted in the reporting of incidents that do not actually result in harm to a patient and need not be reported to the state board. The board gives the following example, a nurse may have failed to administer a vitamin pill or some similar, non-critical type of medication which could arguably expose a patient to a risk of harm and fall under the requirement. Since a nurse or other practitioner can be disciplined by the state for failing to report, many minor incidents are reported. Most reported incidents under the current requirement involve minor infractions as only about 22 percent of incidents reported result in any disciplinary action.

The board's enabling statute does not provide it with specific authority to establish rules that specifically define the actions that should be reported. Authorizing the board to clarify, by rule, what constitutes a reportable incident would make the requirement more workable for the board, the nursing profession and other health care professionals required to report.

CONCLUSION

State law places requirements on registered nurses, employers, and many others to report actions by registered nurses who expose a patient to an unnecessary risk of harm to the

State Board of Nurse Examiners. The statutory mandate to report potentially harmful actions by registered nurses applies to a wide cross-section of professionals and facilities that work with nurses and allows an appropriate entity to sanction licensed professionals and facilities for failure to comply with the reporting requirement. The board indicates that the statutory definition as to what constitutes a reportable incident is too broad and needs to be refined by the board through rules.

POLICY OPTION

- **The statute should be changed to authorize the board to clarify, by rule, the types of incidents that are included under the mandatory reporting requirement.**

BENEFITS

- ▶ **Further refinement of the reporting requirements would eliminate the reporting of minor infractions. In addition, clarifying the types of incidents that must be reported will allow the board to focus its enforcement efforts.**
- ▶ **Compliance with the reporting requirements may improve because health care professionals may better understand the requirements and view them as reasonable.**

DRAWBACKS

- ▶ **Allowing the board to set the definition by rule could result in too narrow a definition thus allowing actions with serious consequences to go unnoticed.**

FISCAL IMPACT

Clarifying what constitutes a reportable incident may reduce the time and resources allocated for complaint investigation of minor infractions and allow the board to focus enforcement efforts on more serious violations.

ISSUE 21: Should the statute be changed to give the board the authority to summarily suspend the license of a nurse?

SOURCE Board of Nurse Examiners

BACKGROUND

Situations arise when a licensee may become unfit to practice. The nurse's inability to perform competently may be caused by physical or emotional illness or substance abuse. In addition, a nurse may be blatantly violating established standards of practice which could affect the public's safety. When these conditions exist, the licensee's ability to practice should be immediately suspended to ensure the safety of the public and to allow the board to resolve the situation. The board has the authority to seek injunctive relief to stop a nurse from practicing whose actions have resulted in a significant threat to the public's health, safety or welfare. Injunctive relief can either be sought in the county where the nurse is practicing or in Travis County. The board indicates that this authority, even though useful, does not allow quick action in emergency situations.

Authority for summary suspension would allow the board to temporarily suspend a nurse's license, with just cause, for a limited period of time. This action would prevent a licensee from continuing to practice legally. Once the temporary suspension is enacted, the board would immediately initiate formal proceedings to suspend or revoke the license under the Administrative Procedure and Texas Register Act. This procedure will allow the nurse the right to due process before any permanent action is taken.

The board would use a summary suspension for only the worst violators of the laws and rules governing the practice of nursing. Summary suspension would only be used in those limited situations when a licensee represents an imminent threat to the public. The agency has less than five cases each year that would warrant summary suspension.

Other state agencies and nursing boards in other states are able to summarily suspend the licenses of practitioners under certain conditions. For example, The Texas Board of Medical Examiners has the ability to summarily suspend licenses when there is a threat to public welfare.

CONCLUSION

Situations may arise when a licensee may become unfit to practice. The board should be able to take action to suspend the licensee's professional activities immediately. Summary suspension authority would allow immediate action in those instances. Formal action would be required for permanent action by the board thus allowing due process for the licensee.

POLICY OPTION

- **The statute should be changed to authorize the board to summarily suspend the license of a nurse.**

BENEFITS

- ▶ **The board would be able to act quickly to stop the practice of a licensee who is an obvious threat to the public.**

DRAWBACKS

- ▶ **Summary suspension could be used indiscriminately and not allow a licensee due process before the ability to practice and earn a living is stopped.**
- ▶ **Unless the board's authority is restricted through law, this process could be abused. The legislature should clearly define when such suspensions can be used and how long they can be in effect.**

FISCAL IMPACT

No fiscal impact to the state. The board would initiate formal proceedings in these cases anyway.

ISSUE 22: Should the statute be changed to require state agencies that license, or operate, health facilities to develop memoranda of understanding with the Board of Nurse Examiners to ensure compliance with the nursing peer review requirements?

SOURCE State Board of Nurse Examiners

BACKGROUND

The Texas Nurse Practice Act was amended in 1987 to establish mandatory reporting requirements for registered nurses and a peer review process to review reported incidents. All health care facilities that employ ten or more registered nurses are required, by law, to establish a written peer review plan to identify and review reportable incidents that occur in the facility. The facility must also establish a peer review committee with a majority of members who are registered nurses. The committee's role is to review each incident that is reported in the facility and advise the facility's nursing administration as to whether the incident meets the state's criteria for a reportable incident. If the facility administration ultimately takes disciplinary action against the nurse on the basis of the incident, the administration must report its action and the determination of the peer review committee to the Board of Nurse Examiners.

The peer review process is an important step in the state's mandatory reporting requirements. While the statute requires facilities to establish a peer review process, the State Board of Nurse Examiners does not have the authority to enforce the requirement. As a result, the board is unable to monitor the existence and effectiveness of the peer review process.

The board indicates that specific monitoring of the nursing peer review process is needed to ensure that facilities establish effective peer review procedures. Since most larger health care facilities are licensed by the state, requiring the licensing programs to monitor the process as part of facility licensing would be an efficient and effective way for the state to ensure that peer review procedures are established. It would also help the State Board of Nurse Examiners identify facilities that may need some training to institute an effective program. In addition, several state agencies operate large institutions, such as prison units, state schools, and chest hospitals, that employ more than ten nurses and are required to establish a nursing peer review process. The board indicates that these agencies should work with the board to ensure that effective peer review procedures are established at these facilities. Memoranda of understanding are a useful tool for developing a process that spans the activities of more than one agency.

CONCLUSION

State law places strong mandatory reporting requirements on registered nurses and requires facilities that employ ten or more nurses to establish a peer review process to identify and review reportable incidents. While state law allows licensing agencies to sanction facilities for failing to comply with this requirement, these agencies do not routinely monitor licensees' compliance. Requiring state agencies that license, or operate, health facilities to work with the State Board of Nurse Examiners to develop a process to monitor the effectiveness of the peer review process would strengthen this important component of the state's approach to nurse regulation.

POLICY OPTION

- **The statute should be changed to require state agencies that license, or operate, health facilities to develop memoranda of understanding with the State Board of Nurse Examiners to ensure compliance with the nursing peer review requirements.**

BENEFITS

- ▶ **Improved monitoring of health facilities in Texas that are required to establish a nursing peer review process will ensure that effective programs are available throughout the state.**
- ▶ **Involving the state agencies that already have responsibility for licensing or operating the facilities will ensure that the monitoring is done in an efficient manner that involves the agencies that have primary responsibility for the standards under which the facility operates.**

DRAWBACKS

- ▶ **Memoranda of understanding can be difficult to negotiate. Agencies can work together without legislative requirements.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 23: Should the statute be changed to authorize the board to limit, by rule, the number of times an applicant may take a licensure examination and to define any conditions to be met before re-examination?

SOURCE State Board of Nurse Examiners

BACKGROUND

The statute requires all applicants for licensure as a registered nurse to successfully pass an examination as determined by the board. Applicants are currently required to complete the national nursing examination. State law specifies that any applicant who fails the examination is entitled to take a subsequent examination. If the applicant scores satisfactorily, the state board may grant the license. The statute does not, however, limit the number of exam retakes allowed nor does it authorize the board to establish conditions for retaking the examination.

The state board has concerns about the lack of statutory authority to establish requirements for applicants who fail the examination. Although the pass rate for first time applicants is high, at 93 percent, a portion of applicants retake and fail the examination repeatedly. The statute does not give the board the authority to establish additional course work requirements, a waiting time between retakes, or a limit on the number of exam retakes allowed.

CONCLUSION

The statute does not provide the board with the authority to place conditions or limits on applicants retaking the licensing examination. Additional flexibility is needed to allow the board to establish conditions for re-examination such as refresher courses, time limits, or retake limits.

POLICY OPTION

- **The statute should be changed to authorize the board to limit, by rule, the number of times an applicant may take a licensure examination and to define any conditions to be met before re-examination.**

BENEFITS

- ▶ **Flexibility to establish limitations on licensing examination retakes would provide an additional regulatory check on potential licensees. The limitations will help the board assure that applicants are truly competent and meet the minimum**

standards of competence before licensure and have not passed the examination through sheer repetition.

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**
- ▶ **Additional education and training are the business of educational institutions, not the licensing board.**

FISCAL IMPACT

No fiscal impact to the state.

Optometrists

ISSUE 24: Should the statute be changed to remove the provisions regulating the relationship between optometrists and dispensing opticians?

SOURCE Texas Association of Retail Optical Companies

BACKGROUND

The practice of optometry and the activities of opticians are closely related. Optometrists conduct eye health examinations, measure the vision of patients, prescribe glasses or contact lenses to correct any defects or abnormal vision, and can dispense glasses and contact lenses. Dispensing optometrists can provide "one-stop" shopping for optical services. They can prescribe glasses and contact lenses and provide their patients with the glasses and contact lenses that they prescribe. Opticians are authorized by law to fill the prescriptions provided by optometrists. Opticians can grind and shape lenses and dispense glasses and contact lenses, but are prohibited by law from performing the measurement and prescription functions of an optometrist. Patients of non-dispensing optometrists rely on opticians to fill their prescriptions.

Sections 5.14 and 5.15 of the Texas Optometry Act regulate the business relationships between optometrists, opticians, and retail optical companies. These provisions are referred to as the "two-door" requirement. The purpose of these provisions is to prevent dispensing opticians or retail optical companies from controlling an optometrist's practice. Sections 5.14 and 5.15 of the act regulate the leasing relationship between the optometrist and mercantile establishment and the retail optical company. These sections allow an optometrist to work in space leased from a mercantile establishment, an optician or retail optical company as long as the practice, prescription files, and business records remain under the control and ownership of the optometrist. In addition these sections require that the physical office and practice of the optometrist be completely and totally separate from the business of any dispensing optician, and specifically requires solid walls between the optometrists and optician with absolutely no opening or connection between the two, separate doors for public entrance from the street, and separate common areas.

The Texas Association of Retail Optical Companies (TAROC) indicated that the "two-door" requirement is not justified except as a protection for dispensing optometrists from competition from non-dispensing optometrists who contract with dispensing opticians or retail optical companies. According to the association, approximately 70 percent of the yearly income of dispensing optometrists comes from the sale of the eyeglasses and contact lenses that they prescribed. If the "two-door" requirement were removed, dispensing optometrists would have to compete directly with business arrangements that could also provide "one-stop" shopping at more convenient locations with extended hours and at lower prices.

CONCLUSION

The optometry act regulates business practices between optometrists and opticians, and requires separate facilities where business relationships between the two exist. This regulation is referred to as the "two-door" requirement and is considered by TAROC as discriminatory in favor of dispensing optometrists. Currently, dispensing optometrists are allowed to prescribe and sell what they prescribe. The TAROC proposes abolition of the "two-door" requirement to increase competition and provide the public with more convenient services at lower costs.

POLICY OPTION

- **The statute should be changed to remove the provisions regulating the relationship between optometrists and dispensing opticians.**

BENEFITS

- ▶ **This proposed change would not affect the practice of optometry but would allow non-dispensing optometrists to compete equally with dispensing optometrists.**
- ▶ **This proposed change would provide the public with greater convenience and access in seeking optical services and goods by increasing "one-stop" shopping facilities.**

DRAWBACKS

- ▶ **Retail optical companies might place production quotas on optometrists with whom they contract. This could put pressure on the optometrists to prescribe more expensive glasses or more contact lenses than are medically necessary. In addition, quotas could cause optometrists to spend less time with each patient, resulting in misdiagnosis.**
- ▶ **Removing the "two-door" requirement could result in retail optical companies controlling the practice of optometry resulting in difficulty placing responsibility in liability cases.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 25: Should the statute be changed to authorize the board to define, in rules, unprofessional conduct of licensees?

SOURCE Texas Optometry Board

BACKGROUND

Section 4.04 of the Texas Optometry Act provides that the board may, when certain infractions of law occur, refuse to issue a license to an applicant or revoke or suspend a license, probate a suspension or reprimand a license. Many of the complaints the board receives do not involve specific violations of the act, but relate to issues involving professional conduct. Examples of unprofessional conduct range from rudeness to a patient, patterns of substandard care, to sexual abuse and misconduct. Currently, the board cannot take action on these types of complaints because the act does not define what constitutes unprofessional conduct and the board lacks the authority to develop and promulgate such rules.

In Texas, many professional healthcare licensing boards have statutory authority to define in rules what constitutes unprofessional conduct for their respective professions. For example, most of the boards under review have such authority such as the Board of Medical Examiners, the Board of Dental Examiners, the Board of Nurse Examiners, and the Board of Veterinary Medical Examiners.

CONCLUSION

The Texas Optometry Act does not define nor does it authorize the board to develop rules governing professional conduct. Consequently, the board is unable to respond to complaints involving unprofessional conduct. Other professional licensing boards have the authority to develop a definition of what constitutes unprofessional conduct.

POLICY OPTION

- **The statute should be changed to authorize the board to define, in rules, unprofessional conduct of licensees.**

BENEFITS

- ▶ **The proposed change would provide the licensees with clear standards that define unprofessional conduct and the board could respond to complaints regarding the professional conduct of licensed optometrists.**

DRAWBACKS

- ▶ **The proposed change could result in vague prohibitions that could be used to unnecessarily harass licensees.**
- ▶ **Some may argue that professional standards should be set by the legislature, not by appointed board members.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 26: Should the statute be changed to create a limited license to be granted to full-time faculty members who hold an optometry degree but do not practice as an optometrist?

SOURCE Texas Optometry Board

BACKGROUND

The Texas Optometry Act provides for certain exceptions to licensure under the act. One exception is for agents of the state of Texas in the discharge of their official duties. The board has interpreted this section to apply to educational institutions and exempts faculty members from licensure so long as their practice is limited to and under the sovereignty of the teaching institution. As a result, faculty members of the University of Houston College of Optometry are able to practice optometry without a license if the practice is related to faculty duties.

Even though optometry faculty members are allowed to practice optometry in university programs without a license, the lack of license prevents them or the college from receiving third party reimbursement for their services. These faculty members often provide services for the poor and indigent. Most third party payors require medical services to be provided by licensed practitioners. Therefore faculty members' services are not reimbursable. The only licensing option available to these individuals is to go through the normal licensing process required of every applicant entering the profession. This factor has discouraged faculty at other optometry colleges in the country from moving to the University of Houston College of Optometry. In most other states with colleges of optometry, faculty members who are providing services under the auspices of the university are provided a limited teaching license. In these states, the dean of the institution certifies that the individual seeking the limited license is on the faculty and is teaching in programs sponsored by the school.

CONCLUSION

Currently, faculty members at the University of Houston are not required to have a license to practice in university sponsored programs. However, without a license, faculty members are unable to get third party reimbursement from insurance companies or the federal government for services provided. The board requests the authority to grant limited licenses to these faculty.

POLICY OPTION

- **The statute should be changed to create a limited license to be granted to full-time faculty members who hold an optometry degree but do not practice as an optometrist.**

BENEFITS

- ▶ **Providing limited licensure would allow faculty members with optometry degrees to be reimbursed by third party payors for services provided by the university.**
- ▶ **The University of Houston College of Optometry would be in a better position to attract senior clinical faculty members with expertise in teaching and patient care.**

DRAWBACKS

No drawbacks were identified.

FISCAL IMPACT

Depending on the fee the board establishes for the faculty license, the board will receive a small increase in revenue.

Pharmacists

ISSUE 27: Should the statute be changed to expand the definitions of the "practice of pharmacy" to reflect the broadening scope of the profession?

SOURCE State Board of Pharmacy

BACKGROUND

Major forces, including technology, economics, and social changes, are forcing rapid changes in the health care system. These forces are causing an evolution in the practice of pharmacy and are requiring pharmacists to provide services beyond the traditional duty of dispensing drugs. The Texas Pharmacy Act currently defines the practice of pharmacy as "interpreting and evaluating prescription or medication orders, dispensing and labeling drugs or devices, selecting drugs and reviewing drug utilization, storing prescription drugs and devices and maintaining prescription drug records in a pharmacy, advising or consulting when necessary or required by law about therapeutic value, content, hazard, or use of drugs or devices, or offering or performing the services and transactions necessary to operate a pharmacy." While pharmacists will continue to perform these duties, the definition needs to be expanded to clearly enumerate the pharmacists' responsibility in providing pharmaceutical care, patient counseling, performing drug regimen reviews, compounding, and prospective drug use review.

An expanded role for pharmacists in health care delivery is supported by trends in other states and at the federal level. Other states have expanded the role of the pharmacist through regulatory and statutory means. For example, the state of Washington requires mandatory patient counseling by pharmacists and the maintenance of mandatory patient profiles. Florida has given pharmacists limited prescriptive authority. The federal government, through the Health and Human Services Office of the Inspector General, has supported the role of consulting pharmacists in the health care delivery system. The federal government has also set federal standards for the role of the pharmacist whose patients are receiving Medicare assistance through language in the Omnibus Budget Reconciliation Act of 1990. This act states that pharmacists are responsible for prospective drug utilization review which includes patient counseling and the maintenance of patient profiles.

CONCLUSION

While pharmacists will continue to perform the traditional responsibilities associated with the delivery of drugs, they will also be required to provide additional services related to counseling and drug use review. An expanded role for pharmacists in health care delivery is supported by trends in other states and the federal government. Other states have expanded the role of the pharmacist through regulatory and statutory means and the federal government has set federal standards for the role of the pharmacist.

POLICY OPTION

- **The statute should be changed to modify the definitions of the "practice of pharmacy" by:**
 - **adding definitions for pharmaceutical care, patient counseling, drug regimen review, compounding, and prospective drug use review; and**
 - **changing the definition of "pharmacy" from "a facility where the practice of pharmacy occurs" to "a facility licensed by the Texas State Board of Pharmacy."**

BENEFITS

- ▶ **Pharmacists are already trained to provide these services and in many cases are already providing counseling. Including the expanded definition of pharmacist in statute will allow the board to regulate all aspects of the contemporary practice of pharmacy.**
- ▶ **Expanding the role of the pharmacist in the health care delivery system will improve the health care provided to patients. Thousands of people die and hundreds of thousands are hospitalized each year for failure to properly use prescription medication.**

DRAWBACKS

- ▶ **Increasing the duties and responsibilities of pharmacists will increase the pharmacist's liabilities. In addition, pharmacists will be required to provide additional services for which they may not be reimbursed.**
- ▶ **Other health care professions may view the expansion of the definition of the practice of pharmacy as encroachment on their areas of practice.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 28: Should the statute be changed to give pharmacists limited prescription authority subject to the success of a demonstration project conducted by the board?

SOURCE Texas Society of Hospital Pharmacists

BACKGROUND

Delivery of cost effective health care to persons in rural or medically underserved areas of the state is a problem that has received considerable attention during the last few legislative sessions. Many alternatives for the delivery of health care have been explored and some have been implemented. In 1989, the 71st Legislature passed HB 18 that allows some registered nurses and physician assistants to prescribe drug orders, in certain medically underserved areas, if the registered nurse or physician assistant is working under standing orders of a physician.

In 1985, the Florida legislature enacted legislation that allowed pharmacists to order and dispense to the public, certain approved drugs designated by a formulary committee. The committee was authorized to select drugs to be prescribed by pharmacists from five major categories: drugs approved for over-the-counter (OTC) sales in other strengths; drugs containing an antihistamine or decongestant; drugs recommended for change from prescription to non-prescription status; drugs containing lindane; and drugs containing fluoride. The intent of this legislation was to provide services to consumers in rural areas and save consumers money by allowing uncomplicated medical conditions to be treated with drugs prescribed by pharmacists without having to see a physician. Guidelines for pharmacists prescribing drugs are specified in rule. To date, Florida is the only state that has granted pharmacists limited prescription authority.

To study the feasibility of granting such authority in Texas, a demonstration project could be developed for pharmacists in Texas. This program would be conducted by the Board of Pharmacy. The board would develop rules to regulate the program and a procedure for selecting the types of drugs that could be prescribed by pharmacists. These guidelines should be developed with input from representatives of other health care professions. The demonstration project could be used to evaluate the cost effectiveness and safety of pharmacists being given limited prescription authority in Texas.

CONCLUSION

Pharmacists do not have prescription authority in Texas. Florida has granted limited prescription authority to pharmacists. The purpose of allowing pharmacists to prescribe a limited group of drugs is to increase service to individuals in rural or medically underserved areas and reduce the health care costs for consumers. A demonstration project conducted

by the board could be used to study the feasibility of allowing pharmacists in Texas to have limited prescription authority.

POLICY OPTION

- **The statute should be changed to give pharmacists limited prescription authority subject to the success of a demonstration project conducted by the board.**

BENEFITS

- ▶ **Costs for medical services would be reduced, because consumers would not be required to see a physician to get a prescription for common medical conditions.**
- ▶ **Access to medical services in rural and medically underserved areas would be improved because of the increased access to prescription medicine.**

DRAWBACKS

- ▶ **Pharmacists do not receive medical training and are not as qualified as doctors to prescribe drugs. Some doctors would view prescribing by another health care professional as "the practice of medicine without a license".**
- ▶ **Consumers may have serious medical problems that, if treated, could quickly be cured. However, because of price concerns, consumers may tend to go to the pharmacists instead of the doctor, which could prolong the illness.**

FISCAL IMPACT

The board estimates that the minimum cost to implement a demonstration project for limited prescription authority would be approximately \$100,000 for one year.

ISSUE 29: Should the statute be changed to authorize the board to license and regulate clinical pharmacists?

SOURCE State Board of Pharmacy

BACKGROUND

While many pharmacists continue to perform the traditional responsibilities associated with dispensing drugs, other pharmacists, in nursing homes, hospitals, and in other settings only provide counseling and information services including drug utilization reviews and drug interaction analyses. Currently, the board licenses only pharmacists who perform the traditional functions of pharmacists which include distributing and dispensing prescription drugs. Clinical pharmacists who provide counseling and information services, but do not dispense drugs, are not licensed or regulated by the board. These individuals are not required to meet any educational standards or levels of competence and are not subject to the disciplinary actions brought by the board for incompetent or unsafe practice. These individuals work with other health care professionals such as doctors and nurses, and have a direct impact on the health, safety and welfare of the public.

The board believes that a relatively small number of clinical pharmacists are currently practicing in the state (estimated to be less than 100). This number is small because a large segment of these "clinical" pharmacists are practicing as nursing home consultants and are required by the Texas Department of Health to be licensed pharmacists. However, the board believes that the number of clinical pharmacists practicing in other settings will continue to grow. Regulation of these pharmacists is needed to provide protection for the public.

CONCLUSION

The State Board of Pharmacy regulates traditional pharmacists, individuals who distribute or dispense drugs. However, there are many pharmacists who do not dispense drugs, but do provide drug counseling services to patients in nursing homes and hospitals. These clinical pharmacists are not regulated by the state, but they work with doctors and nurses and directly affect the health, safety and welfare of the public. The board believes that the number of clinical pharmacists will continue to grow and should be licensed and regulated by the board.

POLICY OPTION

- The statute should be changed to authorize the board to license and regulate clinical pharmacists.

BENEFITS

- ▶ **Clinical pharmacists should be regulated because they are directly involved in the care of the patient and the control and use of medication by that patient. As a result, the potential harm to the patient is great if incorrect information concerning drug usage or dosage is given to the patient or physician caring for the patient.**
- ▶ **Authorizing the board to license clinical pharmacists would allow the board to set education requirements, set minimum competency levels, and take disciplinary action against those licensees who violate laws and rules.**

DRAWBACKS

- ▶ **The costs of regulating all clinical pharmacists are greater than the benefits gained from having the ability to deal with a small number of illegal practitioners.**

FISCAL IMPACT

Costs to the agency would probably increase if the board was given the authority to regulate clinical pharmacists. The costs of developing new rules and hiring a person with clinical pharmacy expertise would be approximately \$50,000 per year. There would be no additional costs to the state if licensing fees are set to cover costs of regulation.

ISSUE 30: Should the statute be changed to authorize the board to define, by rule, unprofessional conduct by the holder of a pharmacy license?

SOURCE State Board of Pharmacy

BACKGROUND

Pharmacists licensees can be disciplined for unprofessional conduct. Holders of a pharmacy license, most of whom are not pharmacists, cannot be disciplined for unprofessional conduct.

The board has defined in rules "unprofessional conduct" as applied to pharmacists. This rule contains 28 different types of conduct that the board considers to be contrary to professional pharmacy practice. Pharmacy license holders are not held to the same standards, because the act does not allow the board to define unprofessional conduct for pharmacy license holders. The grounds for discipline against a pharmacy's license is limited to a finite list of violations set out in Section 26(b) of the act. Because of the limited and specific list, the board is unable to define additional conduct that can threaten the public health, safety, and welfare and is unable to take action against pharmacies that operate in an unhealthy or unsafe manner. The board estimates that, in fiscal year 1992, it should have been able to take action against the holder of a pharmacy for unprofessional conduct in six instances but could not because of limited authority.

CONCLUSION

Although the Pharmacy Act allows the board to define, by rule, "unprofessional conduct" for pharmacists, the act does not provide the board similar authority for pharmacies. The list of acts in statute that constitute "unprofessional conduct" for holders of a pharmacy license is incomplete and limits the board's ability to take action against pharmacies that operate in a manner that can threaten the public health, safety, and welfare.

POLICY OPTION

- **The statute should be changed to authorize the board to define, by rule, unprofessional conduct by the holder of a pharmacy license.**

BENEFITS

- ▶ **The board would have the authority to take disciplinary action against the holder of pharmacy licenses for unprofessional conduct.**

- ▶ **This change would eliminate the inconsistency that exists in the disciplining of pharmacies and pharmacists.**

DRAWBACKS

- ▶ **This change would grant additional regulatory authority to the board and the board would be able to regulate business practices and restrict business operations.**
- ▶ **Unprofessional conduct is a concept that could allow the board too much discretion over business operations.**

FISCAL IMPACT

The board estimates that the costs generated by investigating complaints related to unprofessional conduct by the holders of pharmacy licenses would be minimal and could be absorbed within the board's current budget.

ISSUE 31: Should the statute be changed to provide the board with authority to summarily suspend the license of a pharmacist or pharmacy?

SOURCE State Board of Pharmacy

BACKGROUND

Situations arise when a licensee may become unfit to practice. The pharmacist's inability to perform competently may be caused by physical or emotional illness or substance abuse. In addition, a pharmacist may be blatantly violating established standards of practice which could affect the public's safety. When these conditions exist, the licensee's ability to practice should be immediately suspended to ensure the safety of the public and to allow the board to resolve the situation. The pharmacy board has the authority to seek injunctive relief to stop a pharmacist from continuing to practice when his or her actions have resulted in a significant threat to the public's health, safety or welfare. Injunctive relief must be sought in Travis County. The board indicates that this authority, even though useful, does not allow quick action in emergency situations.

Authority for summary suspension would allow the board to temporarily suspend a pharmacist's license, with just cause, for a limited period of time. This action would prevent a licensee from continuing to practice legally. Once the license is suspended, the board would immediately initiate formal proceedings to suspend or revoke the license under the Administrative Procedure and Texas Register Act. This procedure will allow the pharmacist the right to due process before any permanent action is taken.

The board would use a summary suspension for only the worst violators of the laws and rules governing the practice of pharmacy, or pharmacists who were practicing in an impaired condition. This includes instances when a pharmacist is diverting drugs or when a pharmacist is addicted to drugs, but will not get treatment. Summary suspension would only be used in those limited situations when a licensee represents an imminent threat to the consuming public. The agency has three to four cases each year that would warrant summary suspension.

Other state agencies and pharmacy boards in other states are able to summarily suspend the licenses of practitioners under certain conditions. For example, the Texas Board of Medical Examiners has the ability to summarily suspend licenses when there is a threat to public welfare.

CONCLUSION

Situations may arise when a licensee may become unfit to practice. The board should be able to take action to suspend the licensee's professional activities immediately. Summary

suspension authority would allow immediate action in those instances. Formal action would be required for permanent action by the board thus allowing due process for the licensee.

POLICY OPTION

- **The Board of Pharmacy should be authorized to summarily suspend the license of a pharmacist or pharmacy.**

BENEFITS

- ▶ **The board would be able to act quickly to stop the practice of a licensee who is an obvious threat to the public.**

DRAWBACKS

- ▶ **Summary suspension could be used indiscriminately and not allow a licensee due process before the ability to practice and earn a living is stopped.**
- ▶ **Unless the board's authority is restricted through law, this process could be abused. The legislature should clearly define when such suspensions can be used and how long they can be in effect.**

FISCAL IMPACT

No fiscal impact to the state. The board would initiate formal proceedings in these cases anyway.

ISSUE 32: Should the statute be changed to provide the board with the authority to inspect the financial records of pharmacies?

SOURCE State Board of Pharmacy

BACKGROUND

The Board of Pharmacy is responsible for enforcing the laws and rules pertaining to the practice of pharmacy. However, Section 18 of the Pharmacy Act states that board inspections may not extend to financial, pricing or sales data, other than shipment data. As a consequence, several laws cannot be enforced by the board because it does not have the statutory authority to inspect financial records.

Section 40 of the Pharmacy Act pertains to the substitution of generic drugs by pharmacists. This provision is intended to save consumers money by allowing the pharmacist to substitute lower-priced, generically equivalent, drug products for brand name products with the savings passed on to the consumer. Section 40(e) states that a pharmacist may not substitute a drug unless it costs less than the prescribed brand name product and that a pharmacist may not charge a higher fee for dispensing a generic drug than the pharmacist would charge for dispensing the brand name drug prescribed. Complaints by the board relating to the pricing of generic drugs cannot be pursued by the board because the Pharmacy Act prevents the board from examining sales and pricing data. During the last three fiscal years, the board has received more than 40 complaints relating to the distribution and pricing of generic drugs.

In 1987, congress passed the Prescription Drug Marketing Act (PDMA), which placed additional controls on prescription drugs to ensure that they were not diverted from normal pharmaceutical channels. For example, under the PDMA, drugs that are bought by hospitals for their exclusive use, may not be bought, sold, traded, bartered, or exchanged, except in certain limited situations. When the Pharmacy Board receives complaints involving a pharmacy or pharmacist who has allegedly violated the PDMA, the board refers these complaints to other agencies. The board takes this action because it has limited authority to inspect financial records which restricts its ability to detect violators of the PDMA. During fiscal year 1992, the board received three complaints related to the PDMA. While the number appears low, one such complaint can involve hundreds of thousands of dollars and several licensees.

CONCLUSION

Section 18 of the Pharmacy Act states that board inspections may not extend to financial, pricing or sales data, other than shipment data. As a result of this restriction, the board is unable to investigate complaints that allege violations of provisions of the Pharmacy Act and other related laws.

POLICY OPTION

- **The statute should be changed to provide the board with the authority to inspect the financial records of pharmacies.**

BENEFITS

- ▶ **Authorizing the board to inspect a pharmacy's or pharmacist's financial, sales, and pricing data would provide the board with authority to carry out its statutory responsibilities and allow the board to enforce other laws regulating the practice of pharmacy.**

DRAWBACKS

- ▶ **Authorizing the board to inspect a pharmacy's or pharmacist's financial, sales, and pricing data would give the board power beyond the regulation of the practice of pharmacy and would allow the board to regulate business practices.**
- ▶ **Expanding the authority of the board to inspect financial, sales, and pricing data would increase the expenditures of the agency and divert the focus of the agency away from the regulation of pharmacy to the regulation of business practices.**

FISCAL IMPACT

The board will incur some additional costs associated with the initial training of enforcement officers and added enforcement efforts. However, the agency believes that these costs will be minimal because of the relatively low number of complaints received.

ISSUE 33: Should the statute be changed to require that pharmacies maintain prescription records for four years?

SOURCE State Board of Pharmacy

BACKGROUND

Each pharmacy establishes its own record retention policies and procedures based on the number of records produced each day, space available for storage, and whether the pharmacy uses a manual or computerized record-keeping system. Pharmacies that generate a large number of records each day or with space limitations generally keep records for no longer than two years. State laws require a pharmacy to retain prescription records of controlled substances and other dangerous drugs for two years. In addition, pharmacies that participate in the Medicaid program are required by the Department of Human Services to retain records for up to four years.

The board sometimes receives complaints alleging improper dispensing of prescription drugs over the course of many years. In pharmacies where records are not kept longer than two years, the board is unable to inspect records that, if available, might establish a long-term pattern of prohibited practices. Also, the board occasionally receives complaints regarding prescriptions that were dispensed several years earlier, and the complaint was held up because of a lawsuit or some other reason. In both of these situations, the board is limited in its ability to investigate a complaint due to a lack of records.

CONCLUSION

State laws require pharmacies to maintain prescription records of controlled substances and other dangerous drugs for two years. Frequently, complaints are filed that involve records dating beyond the two-year period. As a result, the board is unable to investigate possible violations that occurred more than two years previously.

POLICY OPTION

- **The statute should be changed to require that pharmacies maintain prescription records for four years.**

BENEFITS

- ▶ **The board would be able to investigate alleged violations that occurred more than two years before the complaint was filed.**

- ▶ **Many pharmacies are already required by the Department of Human Services to retain records for four years for Medicaid Program reviews. Having one record retention requirement would provide pharmacies with a standard time requirement.**

DRAWBACKS

- ▶ **Requiring pharmacies to maintain records for more than two years would require extra storage space and increase storage expenses for pharmacies.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 34: Should the statute be changed to specify that investigative files are not subject to discovery for litigation purposes?

SOURCE State Board of Pharmacy

BACKGROUND

The Pharmacy Act exempts certain records and complaint investigation files from the Open Records Act. However, the Act is not specific as to whether complaint investigation files are also protected from discovery for legal purposes. Complaint investigation files have been subpoenaed in only one instance. The board fought this attempt to subpoena information, but, the court ruled that the information be released with sensitive information blocked out.

Complaint investigation files are subpoenaed by lawyers in civil cases against pharmacists or pharmacies in order to obtain additional information about a licensee. Many times the information contained in a complaint investigation file is very sensitive. Some files contain information concerning efforts of the Drug Enforcement Administration or undercover operations conducted by the agency. Releasing this information could threaten on-going investigations or the safety of undercover investigators. In other cases, the file may also contain the name of a complainant who wishes to remain anonymous.

The enabling acts of other agencies protect investigative files from discovery. For example, the Nurse Practices Act specifies that complaint investigation files and all information compiled by the board in connection with a complaint or investigation are confidential. This information is not subject to disclosure under the Open Records Act, discovery, subpoena, or any other legal means to compel release to anyone other than the board or its employees.

CONCLUSION

The Pharmacy Act does not include language that protects the investigative files from discovery for litigation purposes. Information in these files is often sensitive. Allowing this information to be released could threaten the success of an on-going investigation, the safety of undercover investigators, or the anonymity of complainants.

POLICY OPTION

- **The statute should be changed to specify that investigative files are not subject to discovery for litigation purposes.**

BENEFITS

- ▶ **Protecting investigative files would ensure that the agency's on-going investigative efforts would not be compromised by the release of sensitive information.**
- ▶ **The ability to protect the identity of an individual is essential. Many individuals would not be willing to file complaints against licensees who are violating the statute or rules unless their identity could be kept confidential.**
- ▶ **The agency conducts joint investigations with the Texas Department of Safety and the Federal Drug Enforcement Administration. Investigative files need to be protected to ensure the safety of undercover investigators and ensure that these agencies continue to cooperate with the board.**
- ▶ **The board would no longer be required to spend time and money fighting the release of complaint investigation files.**

DRAWBACKS

- ▶ **Attorneys would not have access to investigative information that may be used in a lawsuit against a pharmacist or pharmacy thereby limiting the ability of the attorney to prepare a case against a licensee.**

FISCAL IMPACT

No fiscal impact to the state.

Physical Therapists

ISSUE 35: Should the statute be changed to clearly prohibit other health care professionals from representing themselves as providers of physical therapy services?

SOURCE Texas Board of Physical Therapy Examiners and Texas Physical Therapy Association

BACKGROUND

Article 4512e, Section 6 of the Texas physical therapy act exempts certain other health-care professionals from licensing requirements. The exemptions include licensees of another state agency performing health-care services within the scope of the applicable licensing act; occupational therapists who confine their practice to occupational therapy; certified corrective therapists who confine their practice to corrective therapy; and, speech-language pathologists or audiologists who confine their practice to the treatment of communication disorders. In addition, Section 7 of the act states that a person may not practice or represent himself as able to practice physical therapy, or act or represent himself as being a physical therapist or physical therapist assistant unless he is licensed under the act.

The board and the association have indicated that the intention of the exemptions in Section 6 of the act is to exclude those professionals from the licensing requirements. Because of the similarities of the services provided by these related professions, the act could otherwise be interpreted as requiring those professionals to obtain a physical therapy license to continue practicing their own profession. The exemptions were never intended to allow other health-care professionals to represent themselves as a provider of physical therapy services without meeting the licensing requirements of physical therapy. Section 7 of the act should be the controlling provision.

In 1990, the Attorney General was requested to rule on whether a chiropractor, because of Section 6, was exempted from the prohibitions found in Section 7. The Attorney General issued Opinion JM-1211 that found Sections 6 and 7 of the act contradictory. The opinion concluded that a licensed chiropractor may advertise that his services includes physical therapy because, as a licensee of another state agency performing health-care services, he or she is totally exempted from the scope of the physical therapy act. As a result of the Attorney General's opinion, other persons licensed by another health care licensing agency may conclude that they are exempted from the physical therapy act, and may advertise as being a provider of physical therapy services.

CONCLUSION

Sections 6 and 7 of the Texas Physical Therapy Act are contradictory. One section exempts persons from the act if they are licensed by another state health-care licensing agency, and another section prohibits persons from presenting themselves as physical therapy providers

if they are not licensed under the physical therapy act. As a result, the attorney general has ruled that the act is flawed and that other health care professionals may advertise that they provide physical therapy services.

POLICY OPTION

- **The statute should be changed to clarify that exemptions from the physical therapy licensing act do not allow other health care professionals to represent themselves as providers of physical therapy services.**

BENEFITS

- ▶ **The proposed change would provide necessary protection to the public by ensuring that only licensed physical therapists and physical therapist assistants can represent themselves to the public as providers of physical therapy. Any representation by other health-care professionals regarding physical therapy services would be a violation of the physical therapy act.**

DRAWBACKS

- ▶ **Health care professionals licensed under other acts, would argue that they should be able to represent themselves as providers of physical therapy because they have the skills necessary to provide those services and are exempted from the physical therapy act.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 36: Should the statute be changed to give the board clear authority to license foreign-trained applicants?

SOURCE Lila Cross, member, Texas State Board of Physical Therapy Examiners and the Texas Physical Therapy Association

BACKGROUND

The Texas Physical Therapy Practice Act provides guidelines on qualifications for licensure of physical therapists and physical therapist assistants. The act requires that applicants complete an accredited physical therapy or physical therapist assistant program and other educational or training requirements. The act requires the board to issue temporary licenses to applicants for licensure if they meet the prescribed criteria. Temporary licenses allow applicants to practice physical therapy without supervision while they wait for their examination scores. These licenses expire upon the determination of the examination scores, whether or not the applicants pass the examination.

The board is unsure about its authority to license foreign-trained applicants using the same criteria used for other applicants. The reason is that the act requires applicants to complete an "accredited" physical therapy program and that foreign physical therapy programs are not accredited by a U.S. accrediting body.

Despite its lack of clear statutory authority, the board adopted its first rule to license foreign-trained applicants in 1977. The current rule provides that all foreign-trained applicants submit their transcripts of non-professional courses for evaluation by the admissions office of the University of Texas in Austin and submit their transcripts in physical therapy courses for evaluation by a board-approved credentialing agency. The University of Texas in Austin and the credentialing agency inform the board whether the credentials are equivalent to their standards in undergraduate and in physical therapy education respectively. Once the application is accepted by the board, the applicant will be eligible to take the licensure examination and will be issued a temporary license.

The board has been licensing foreign-trained applicants since 1971. In fiscal year 1992, more than 30 percent of all applicants for licensure had received physical therapy education and training in a foreign country. The results of the examinations of foreign-trained applicants reveal that, in general, their professional competence is less than that of applicants educated and trained in the United States. In a recent examination, 75 of the total 260 examinees failed the examination, 74 of the 75 were trained in foreign countries. The board believes that, because of the growing demand for physical therapy services in Texas, it should continue to license foreign-trained applicants but under stricter controls. In addition, the board wants specific rule-making authority regarding the issuance of temporary licenses to this type of applicants.

CONCLUSION

The statute does not give the board clear authority to license foreign-trained individuals. However, the board has adopted a rule to license these applicants and issues temporary licenses for them, as it does for all other applicants. The temporary license allows them to practice physical therapy without supervision. Poor performance of these applicants in licensure examinations indicates that this policy does not provide adequate protection to the public against incompetent foreign-trained applicants who have been granted temporary licenses. The public would be better protected if the board had clear statutory authority to license these applicants.

POLICY OPTION

- **The statute should be changed to give the board clear authority to license foreign-trained applicants.**

BENEFITS

- ▶ **The proposed statutory provision would give the board clear authority to license foreign-trained applicants and allow the board to adopt rules for implementation.**
- ▶ **Additional protection to the public against incompetent practice would be provided.**
- ▶ **The public and potential applicants would know the board's criteria for licensing foreign-trained individuals.**

DRAWBACKS

No drawbacks were identified.

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 37: Should the statute be changed to allow the board to limit, by rule, the number of times an applicant may take a licensure examination?

SOURCE Texas Physical Therapy Association

BACKGROUND

Article 4512e, Section 13 sets out statutory guidelines on re-examination. The provision allows an applicant to retake the part or parts of the examination that the applicant fails. Upon the second and subsequent failure, the applicant is required to complete additional courses of study designated by the board.

The statute does not specify that the board can set a limit on the number of times an applicant can retake an examination. The agency has adopted an informal schedule that specifies additional educational requirements for applicants to meet for re-examination. The amount of additional education required is progressive, related to the number of failures and the number of points by which the last examination was failed. The schedule allows an applicant to retake an examination up to eight times. Upon failing the eighth examination, the applicant is required to repeat an accredited physical therapy or physical therapist assistant program to take any subsequent examinations.

CONCLUSION

Neither the statute nor the board's rules set a limit on the number of times an applicant can retake an examination upon failure of the previous examination. The board has developed an informal schedule that allows up to eight re-examinations, if certain conditions are met. After the eighth failure, an accredited educational program must be repeated.

POLICY OPTION

- **The statute should be changed to allow the board to limit, by rule, the number of times an applicant may take a licensure examination.**

BENEFITS

- ▶ **The proposed change would provide the board with specific authority for the procedure that it has been using to limit the number of times of re-examination and the conditions an applicant must meet to retake the examination.**

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**

FISCAL IMPACT

No fiscal impact on the state.

Physicians

ISSUE 38: Should the statute be changed to clarify that passage of the Educational Council for Foreign Medical Graduates examination is not required if the applicant has met the other statutory requirements for licensure of foreign-trained medical students?

SOURCE Walter Ray Seidel Jr., M.D.

BACKGROUND

Students of foreign medical schools are currently required to meet different licensing standards than medical students who are trained in the United States and Canada. Specifically, Sec. 5.04 of the Medical Practice Act requires the candidate to have studied medicine in a reputable school as defined by the board. In addition, the candidate must have completed all of the work required by the foreign medical school, passed a qualifying exam selected by the Liaison Committee on Medical Education, completed one year of supervised clinical training, passed the Educational Council for Foreign Medical Graduates (ECFMG) examination, and passed the board-required exams.

Currently under question is language specifying that satisfaction of the requirements outlined above shall substitute for being certified by the ECFMG. This would allow a student to forego being certified by the ECFMG and still qualify for licensure. Foreign-trained medical students contend that the statutory provision under debate was provided by the legislature to allow a license to be granted without having to take the ECFMG exam. However, the Board of Medical Examiners does not agree with this interpretation and currently requires passage of this exam.

CONCLUSION

The current statutory language that regulates the licensure of foreign trained medical students has resulted in controversy about whether or not the ECFMG examination is actually required in all cases of licensure for foreign-trained medical students.

POLICY OPTION

- **The statute should be changed to clarify that passage of the Educational Council for Foreign Medical Graduates examination is not required if the applicant has met the other statutory requirements for licensure of foreign-trained medical students.**

BENEFITS

- ▶ **More foreign-trained medical students will be granted licensure. Students that can meet all of the other licensing requirements, which is what the legislature intended, will be able to practice medicine in the state.**

DRAWBACKS

- ▶ **The Board of Medical Examiners will no longer be able to check competence and qualifications of foreign-trained medical students through the exam specifically designed for that purpose.**

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 39: Should the statute be changed to create an autonomous council, attached to the State Board of Medical Examiners, to oversee licensure of physician assistants?

SOURCE Texas Academy of Physicians Assistants

BACKGROUND

Starting in 1967, physician assistants practiced solely under the delegation privileges afforded to physicians under the Medical Practice Act. More direct regulation of physician assistants did not take place until 1976 with the issuance of rules by the State Board of Medical Examiners to guide supervision of physician assistants. In 1979, physician assistants came under statutory regulation that more clearly defined and expanded the role of physician assistants in providing health care.

The statute requires that physician assistants perform under the supervision of a licensed physician. In providing that supervision, physicians must consider skill level, the amount of supervision needed, risk to patients, and other related factors. The state does not directly license or certify physician assistants. Instead, physician assistants are registered by their supervising physicians with the medical board. In 1981, an advisory committee to the medical board was established by statute to aid physician assistants in providing input on the rules and regulations governing their practice. In fiscal year 1992, 758 physician assistants were registered by the board.

According to physician assistants, numerous problems have occurred related to their practice. These problems were identified as: 1) overly rigid interpretation of statute resulting in unnecessarily limited use of physician assistants; 2) the medical board's general unfamiliarity with practice of physician assistants in addition to a disregard for input provided by the advisory committee created to assist the board; 3) inconsistent interpretation of rules and regulations caused by continual reassignment of agency staff attorneys; 4) refusal by the board's staff to work directly with physician assistants on questions related to the status of their applications; and 5) unduly burdensome requirements placed by staff investigators on physicians, in rural health clinics, who want to use physician assistants. These problems can best be solved by creating an autonomous governing body to oversee the regulation of physician assistants.

CONCLUSION

The current nature of the regulation of the practice of physician assistants is unsatisfactory to many physician assistants. The state does not directly license or certify physician assistants. Instead, physician assistants are registered by their supervising physicians. Numerous problems have been reported related to the current regulatory structure.

POLICY OPTION

- **The statute should be changed to create an autonomous council, attached to the State Board of Medical Examiners, to oversee licensure of physician assistants.**

BENEFITS

- ▶ **The accountability of the practice of physician assistants would be increased. If licensed, physician assistants who violate standards could be more directly disciplined. The documentation of physician assistants would become more efficient. The current system requires re-registration of physician assistants whenever they change employers. Licensing would eliminate this process.**
- ▶ **Licensure would allow patients, physicians, and hospitals to verify that the individual is a fully qualified physician assistant. Regulation would become more consistent by removing the variability associated with changing board membership and agency staff.**
- ▶ **Efforts to provide increased health services in rural settings and to the medically unserved would be improved by reducing unduly burdensome barriers to providing medical service by physician assistants.**
- ▶ **Increased regulation will improve the assessment of the physician assistants' impact on medical care services by allowing regular monitoring and data collection on the quality of care provided.**

DRAWBACKS

- ▶ **The medical board's role in the regulation of physician assistants would be decreased, thus reducing its ability to regulate the practice of medicine.**
- ▶ **The practice of physician assistants would become too independent from oversight by licensed physicians.**
- ▶ **Licensure of physician assistants may cause confusion for the patient as to the difference between a physician and a physician's assistant.**

FISCAL IMPACT

Revenue generated through licensing fees would cover cost of additional regulation.

ISSUE 40: Should the statute be changed to allow the board to consider physician impairment a medical problem instead of strictly a disciplinary matter, thus allowing the board to decide whether releasing such information is appropriate?

SOURCE State Board of Medical Examiners

BACKGROUND

The State Board of Medical Examiners is provided the authority by statute to discipline any physician involved in the intemperate use of alcohol or drugs, or who shows an inability to practice medicine due to illness, drugs, or other mental or physical condition. Although the board does not collect data on the number of impaired physicians in the state, published estimates of the number of impaired professionals range from 10 percent to 30 percent, or from 4,000 to 13,000 of the licensed population. On an annual basis, the board receives approximately 43 complaints, or 2.2 percent, that allege violations of this nature.

If the board takes action against an impaired physician, the statute requires the board to report that action because all disciplinary orders made against physicians licensed in Texas must be publicly disseminated. The information must be sent to all licensed physicians, health-care entities, health-related legislative committees, to the public upon request, and to public libraries throughout the state. Such active distribution of sensitive information may be considered unfair to physicians and counterproductive to current efforts being made to identify and help impaired physicians. The board has indicated that approximately 12-15 of current disciplinary orders in effect against impaired physicians might be considered unsuitable for publication, if the board had the option to make such a decision.

CONCLUSION

The board is currently required to publish and disseminate all disciplinary actions taken against licensees. This requirement includes publication of actions taken against impaired physicians even when the impairment is considered a medical problem. Consequently, in some cases, the publication and dissemination of the information is unfair and counterproductive to treatment of the physician's problem.

POLICY OPTION

- **The statute should be changed to allow the board to consider physician impairment a medical problem instead of strictly a disciplinary matter, thus allowing the board to decide if releasing such information is appropriate.**

BENEFITS

- ▶ **Frequently, impaired physicians are considered to be suffering from a disease, such as alcoholism or some form of illness. By limiting access to board actions related to impairment, physicians will not be unfairly penalized for having a disease or illness.**
- ▶ **More impaired physicians may seek treatment, if the impairment is not treated as a disciplinary matter and open to public scrutiny.**

DRAWBACKS

- ▶ **The public has the right to know whether their physician has had any disciplinary, corrective, or rehabilitative action taken by the board. Non-disclosure about physician impairment may unnecessarily expose the public to risk.**

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 41: Should the statute be changed to allow the board to limit, by rule, the number of times an applicant may retake the licensure examination and to define any conditions to be met before re-examination?

SOURCE State Board of Medical Examiners

BACKGROUND

The statute requires all applicants for physician licensure to successfully pass an examination as determined by the board. Applicants are currently required to complete the Federation of State Medical Board's FLEX examination. The statute specifies that any applicant who fails shall be permitted to take a subsequent examination on any subjects required in the original exam. If the applicant scores satisfactorily, the board may grant the license. The statute does not, however, limit the number of exam retakes allowed.

Conditions for retaking the exam have been set through board rules. The rules require applicants, after failing the licensing exam three times, to successfully complete one year of training. If the applicant continues to fail the exam, the applicant must complete one year of training after each subsequent failure before retaking the exam. Approximately, 160 applicants retake the exam each year.

CONCLUSION

The statute does not specifically limit the number of times an applicant can retake the licensing exam. Instead, conditions for retaking the exam have been set through board rule. Additional statutory guidelines are being sought.

POLICY OPTION

- **The statute should be changed to allow the board to limit, by rule, the number of times an applicant may retake the licensure examination and to define any conditions to be met before re-examination.**

BENEFITS

- ▶ **Limitations on licensing examination retakes provide an additional regulatory check on potential licensees. The limitation will help the board assure that applicants are truly competent and meet minimum standards before licensure and have not passed the exam through sheer repetition.**
- ▶ **The board would have the authority to identify areas in which the applicant needs additional training to improve the chances of passing the exam.**

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**
- ▶ **Additional education and training is the business of educational institutions. If the students perceive that the training provided leads to poor examination scores, better training will be demanded.**

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 42: Should the statute be changed to establish an acupuncture advisory board, attached to the State Board of Medical Examiners?

SOURCE Texas Acupuncture Association and the Texas Association of Acupuncturists

BACKGROUND

Considered to be the practice of medicine, acupuncture is regulated by the Board of Medical Examiners. The state's regulation of acupuncture has been developing over the past 20 years. In the mid 1970's, acupuncture became more well-known in the United States. The board determined that the practice was under its purview and adopted a policy that significantly restricted the practice of acupuncture. In 1980, a U.S. District Court declared the board's rules on acupuncture unconstitutional, thus causing the board to issue new rules that restricted the practice of acupuncture. These rules resulted in a similar conflict and the Attorney General of Texas declared them unconstitutional. Consequently, the board changed its rules again in 1989, to remove any constitutional problems related to the regulations.

Current rules require acupuncturists to practice under the supervision of a physician. The supervising physician must apply to the board for approval to supervise an acupuncturist. The physician is responsible for providing all necessary information about the acupuncturist and is legally responsible for the patient care as provided by the acupuncturist. The physician must provide active and continuous oversight of the acupuncturist and review the patient's historical and physical data. The acupuncturist is not allowed to perform any procedure that requires the exercise of independent medical judgment. All enforcement actions by the board regarding poor practice of acupuncture are taken against the supervising physician.

Acupuncturists are not satisfied with the current rules and procedures and have indicated that the current regulations are unworkable. According to acupuncturists, current regulations have not sufficiently addressed practice or disciplinary standards, supervision requirements, registration or licensure of acupuncturists, or the oversight of acupuncture schools. The acupuncturists have been seeking statutory changes in the regulation. The 72nd Legislature, Regular Session considered passage of SB 1556, which was developed to represent both the interests of the acupuncturists and the physician community. Although the bill was not passed into law, it represented an apparently agreeable compromise between the acupuncturists and state's physician community.

Most recently, the Board of Medical Examiners has reconstituted the Acupuncturist Advisory Committee that was formally established by the board in the late 1970's. The seven member committee, composed of both acupuncturists and physicians, is currently considering standards for licensure or registration of acupuncturists, practice parameters, disciplinary options, continuing education requirements, and oversight of acupuncture

schools. The committee will recommend significant changes in the regulation of acupuncture to the board in December 1992, in preparation for the 73rd Legislative Session. The acupuncturists want to amend the board's enabling statute to require the continuation of an advisory committee.

CONCLUSION

The regulation of acupuncture has been a matter of continuing debate. Past regulation by the Board of Medical Examiners, entirely through board rule, has not been structured to the satisfaction of acupuncturists. Efforts to improve the regulation were considered by the legislature during the last regular session. Current efforts are being made through an Acupuncturist Advisory Committee, recently established by the Board of Medical Examiners. The acupuncturists recommend a statutory mandate for such an advisory committee.

POLICY OPTION

- **The statute should be changed to:**
 - **establish a nine-member advisory board composed of four acupuncturists, two physicians experienced in acupuncture, and three public members;**
 - **require the advisory board members to be appointed by the governor and confirmed by the senate, for six-year terms;**
 - **administratively attach the advisory board to the Board of Medical Examiners;**
 - **authorize the advisory board, with approval by the Board of Medical Examiners, to set fees in amounts necessary to administer the regulatory program;**
 - **authorize the advisory board to set standards and requirements for minimum education and training, accreditation of acupuncture school programs, licensing, examinations, and enforcement;**
 - **provide for regulation of both the title of acupuncturist and the practice of acupuncture;**
 - **provide for exemptions of licensed physicians, licensed dentists, licensed chiropractors, licensed physical therapists, or other health care professionals acting within the scope of their licenses;**

- **require patients to sign a release statement offered by the acupuncturist that indicates that the patient has been advised, if not satisfied with the acupuncture treatment, to seek treatment by a physician;**
- **provide a limited grandfather clause for currently qualified acupuncturists; and**
- **provide for sunset review of the advisory board within six years.**

BENEFITS

- ▶ **Statutory provisions that provide additional oversight of acupuncturists will provide a more direct and efficient method for documenting acupuncturists, ensuring competence, and enforcing state standards.**
- ▶ **Licensing would provide the public with a greater level of protection by allowing the public to verify fully qualified acupuncturists.**
- ▶ **Eliminating the necessity for a supervising physician will not endanger the public health and will end an awkward, unnecessary regulatory process.**

DRAWBACKS

- ▶ **Providing the advisory board with a substantial degree of autonomy over rules will allow another board to have an impact on an activity that falls within the scope of the Board of Medical Examiners to regulate the practice of medicine.**

FISCAL IMPACT

Costs to the state that result from increased regulation of acupuncturists can be recovered through fees.

ISSUE 43: Should the statute be changed to establish one-third public membership on the Board of Medical Examiners?

SOURCE Senator Moncrief, Sunset Advisory Commission

BACKGROUND

Continuing interest remains in efforts to increase the number of public members on the Board of Medical Examiners. Before 1981, the Board of Medical Examiners was composed of 12 members, all of whom were doctors of medicine. In 1981, as part of the sunset review process, the size of the board was increased to 15 members. The composition of the board was changed to include nine doctors of medicine, three doctors of osteopathy, and three public members. The board was modified to provide representation for both the general public as well as segments of the population regulated by the board. The Health Policy Task Force, a blue ribbon committee of the legislature, has tentatively recommended an increase in the number of public members on the board.

Board members are responsible for a wide variety of activities including interviewing licensure candidates, considering disciplinary matters, holding public hearings on the practice of medicine, and adopting substantive and procedural rules. The board is also responsible for conducting licensing examinations.

The legislature has established a trend of including at least one-third public membership on state licensing boards in Texas. Including public members on policy boards is important because the public and consumer groups are not involved in the activities of the board while the interests of the profession on any issue are strongly represented. Surveys of, and discussions with, public members indicate that issues generally facing board members are not too technical to be understood by public members. Sixty percent of all licensing boards in Texas have at least one-third public membership and 12 of the 20 health care licensing boards currently under review, have at least one-third public membership. This group includes the Board of Nurse Examiners, the Texas Optometry Board, the State Board of Podiatry Examiners, and the State Board of Veterinary Medical Examiners.

CONCLUSION

Interest continues in increasing the number of public members on the board. In 1981, the board was expanded to include three public members. The purpose of including public members on the board was to provide the public with greater input in state government. The legislature includes at least one-third public membership on most state licensing boards.

POLICY OPTION

- **The statute should be changed to establish one-third public membership on the Board of Medical Examiners. This could be done by changing the board's composition to consist of eight medical doctors, two doctors of osteopathy, and five public members.**

BENEFITS

- ▶ **Increasing the number of public members on the board would help ensure that the board's actions reflect the interests of the public and not just those of the profession.**

DRAWBACKS

- ▶ **The board is responsible for many technical functions that public members do not have the expertise to perform. Reducing the number of physicians on the board will reduce the technical expertise available to make enforcement decisions and administer examinations.**

FISCAL IMPACT

No fiscal impact to the state.

ISSUE 44: Should the statute be changed to provide patients improved access to medical and mental health records?

SOURCE Senator Moncrief, Sunset Advisory Commission

BACKGROUND

The Medical Practices Act requires a physician to furnish copies of medical records requested by a patient, the legal guardian of a patient, or an attorney ad litem appointed for a patient. The Act requires a written consent form that specifies the records covered by the release, reasons for the release and the person to whom the records will be released. The physician must release the medical records or a summary or narrative of the records. However, if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, the physician does not have to release the records. Under the Health and Safety Code, the release of confidential mental health records is also required. However, the requirement does not always result in a patient receiving his or her records. Like the provision in the Medical Practices Act, the responsible practitioner can withhold the records if access to the records is not in the patient's best interest. However, under the Mental Retardation Act, the practitioner is required to sign a statement explaining the withholding of the record.

Testimony received by the Senate Interim Committee on Health and Human Services indicated that many former patients from psychiatric hospitals were denied access to their medical records. In many cases, former patients and parents or guardians of former patients were told that the records were not being released under current law, with the explanation given that the records could simply be withheld legally without any other justification. Through the testimony provided, the public has demonstrated significant interest in changing the statutory requirements governing the release of medical records to improve access. The interim committee has recommended several statutory changes designed to improve access to medical and mental health records.

CONCLUSION

State law requires physicians to release medical records upon the request of a patient or an appropriate patient representative. However, exceptions that allow physicians to withhold the records, or portions of the records, have proved unsatisfactory to former patients. Recent public testimony indicates a need to improve patient access to medical records and mental health records.

POLICY OPTION

- **The statute should be changed to provide patients improved access to medical and mental health records by:**

- requiring the professional from whom the records are requested to issue a written statement, signed and dated, declaring the reason the patient is being denied any portion of the records; and,
- requiring a copy of each written denial to be maintained in the patient's records and establish a time frame within which the patient's request must be reconsidered.

BENEFITS

- ▶ Because practitioners would be required to explain why records cannot be released, patients will receive more consideration before practitioners withhold records. In addition, patients will be better informed based on the explanation required by the practitioner.
- ▶ If a record of patient requests is maintained and a time frame for reconsideration is established, a patient who has been denied access to his or her records may receive a more favorable consideration of subsequent requests.

DRAWBACKS

No drawbacks were identified.

FISCAL IMPACT

No fiscal impact to the state.

Professional Counselors

ISSUE 45: Should the statute be changed to expand the regulation of professional counseling to a practice act?

SOURCE Texas State Board of Examiners of Professional Counselors

BACKGROUND

State law regulates professional counselors through a title protection act. This means that the state licensing requirements only apply to practitioners who use the title "licensed professional counselor". Twenty-two of the 35 states that regulate professional counselors, do so through a title protection act, and the other 13 states regulate both the practice of counseling as well as the use of the title.

In Texas, essentially three forms of occupational regulation exist. Registration is the least restrictive form of regulation. All that is required is that a person must agree to follow certain standards and register with the state. Licensing through a title act is the next most restrictive form of occupational regulation used in Texas. This form of licensing establishes minimum qualifications, competency examinations, and standards of conduct for practitioners who advertise under a title regulated by the state. The third and most restrictive form of occupational regulation is licensing through a practice act. This form of state regulation includes title protection and also prohibits unlicensed individuals from performing acts covered by the practice act.

The board indicates that regulating professional counselors under a title act has caused some problems, particularly in the area of unlicensed practice. The board is able to provide some assurance that practitioners who advertise as a licensed professional counselor have met certain minimum standards. However, the board does not have the authority to address many complaints because many counselors do not use the regulated title. In addition, the board's enforcement efforts are less effective under a title act. License revocation only prohibits the counselor from using the regulated title and does not prohibit continued practice. A practitioner may provide avoid state regulation by providing counseling under a non-regulated title, such as "counselor", "caseworker", or "therapist".

CONCLUSION

Professional counseling is regulated in Texas through a title protection act. While this type of state regulation provides some protection to the public, it does not ensure that all practitioners who provide counseling services are subject to disciplinary actions or are required to meet minimum qualifications and standards of conduct. According to the board, increasing the level of regulation to a practice act would provide added protection to the public and prevent counselors from avoiding state requirements by using a different title.

POLICY OPTION

- **The statute should be changed to expand the regulation of professional counseling to a practice act.**

BENEFITS

- ▶ **Changing the degree of state regulation from a title protection act to a practice act would ensure that all practitioners who provide counseling services would have to meet state qualification standards and that their practice would be under the jurisdiction of the program.**
- ▶ **State regulation of professional counseling through a practice act would ensure that counselors whose licenses are revoked through the program's enforcement process cannot continue to practice counseling. With only title regulation, the licensee whose license has been revoked can change his or her title to some unregulated title and continue to practice.**

DRAWBACKS

- ▶ **The practice of counseling is difficult to define and involves many practices that are common to other health care fields and professions. A satisfactory statutory definition that sufficiently describes the practice but does not encroach into other fields or professions may be unattainable.**
- ▶ **Publicly operated or funded agencies that rely heavily on unlicensed practitioners to provide counselling services may experience increased costs due to more extensive regulation.**

FISCAL IMPACT

Increasing the degree of regulation would increase the cost of the regulatory program. However, any increase in cost would be recovered through licensing fees.

ISSUE 46: Should the statute be changed to authorize licensed professional counselors, if they have completed adequate training, to administer and interpret all types of psychological tests?

SOURCE Texas State Board of Examiners of Professional Counselors

BACKGROUND

Professional counselors are authorized by law to provide counseling services and to assess an individual's aptitudes, characteristics and attitudes through testing. The administration of nationally approved tests is one way the professional counselor can help people assess their current situation or problem and plan a way to reach reasonable goals. Under state board rule, professional counselors are only allowed to administer, score and interpret standardized tests to the degree that they have had the appropriate specialized training and experience.

State law limits the licensed professional counselors' authority to administer certain types of psychological tests. Licensed professional counselors are prohibited by law from using "projective tests" to assess personality. The authority to administer such tests is reserved for licensed psychologists. Projective tests use ambiguous stimuli, such as ink blots, to elicit impressions from the individual that the practitioner uses to analyze the psychological constitution of the individual. Psychologists argue that such tests should only be administered by highly trained psychologists since the results of the test require a high degree of interpretation and provide an assessment of the individual's personality characteristics. Such an assessment can identify traits of which the individual may be unaware, and can have a dramatic impact on the individual's self-concept, treatment, and relationships with others. Counselors argue that they can attend the same training that is available to psychologists and, if they can demonstrate competence in projective testing, the law should not limit their ability to use this testing technique.

CONCLUSION

While state law clearly authorizes professional counselors to administer, score and interpret tests to assess an individual's characteristics and abilities, it prohibits licensed counselors from using projective tests. Such tests require a high degree of interpretation of the individual's responses and result in an assessment of the individual's personality characteristics. Current law restricts the use of these tests to licensed psychologists.

POLICY OPTION

- **The statute should be changed to authorize licensed professional counselors, if they have completed adequate training, to administer and interpret projective tests.**

BENEFITS

- ▶ **This change would allow professional counselors, once appropriately trained, to offer a full range of testing, as appropriate for the client. Projective testing can provide important information about a person's characteristics that is not readily available from other types of testing.**
- ▶ **Expanding the number of licensed professionals who can administer projective tests will make this type of test more easily available when needed.**

DRAWBACKS

- ▶ **Projective testing involves a high degree of interpretation and provides an assessment of the individual's psychological characteristics. The characteristics identified can have a significant impact on a client's self-concept, treatment, and relationships with others. Therefore, this type of assessment technique should be reserved for the profession with the most extensive psychological training, the psychologist.**
- ▶ **Once use of the tests is authorized, licensed professional counselors would use the tests and incorrectly interpret the results which could harm the public.**

FISCAL IMPACT

No fiscal impact to the state.

Psychologists

ISSUE 47: Should the statute be changed to expand the definition of the practice of psychology and increase the authority of the board to enforce the licensing act?

SOURCE Texas Board of Examiners of Psychologists

BACKGROUND

The Board of Examiners of Psychologists was established in 1969. The nine-member board is responsible for the examination, licensing, and regulation of approximately 4,000 psychologists and psychological associates in the state. Because of problems enforcing the practice aspects of the statute, the board is proposing significant restructuring of the Psychologists' Certification and Licensing Act.

In recent years, the interpretation of the scope of the board's authority has varied. The statute can be interpreted as being both a "title" and a "practice" act. This means that persons calling themselves "psychologists" must be licensed by the board and that anyone offering "psychological services" must be licensed by the board.

The title requirements have been enforced by the board. However, the board has had some difficulty enforcing the practice requirements. With the current statutory definition for psychological services, unlicensed individuals calling themselves psychotherapists or therapists have been providing services that, according to the board and the psychological profession, could be considered the practice of psychology. To prevent this type of unlicensed practice, the board has submitted a proposed rewrite of the act. The proposed statutory changes would expand the definition of the practice, expand the title protections and increase the board's enforcement authority. In addition, the board's proposed statutory changes address various other licensing and enforcement requirements.

CONCLUSION

The Board of Examiners of Psychologists have submitted a proposal to significantly restructure the Psychologists' Certification and Licensing Act. To improve the board's ability to regulate the practice of psychology, the board is proposing to expand the title protections, the definition of the practice of psychology, and the board's regulatory authority.

POLICY OPTION

- **The statute should be changed to expand the definition of the practice of psychology and increase the authority of the board to enforce the licensing act. These changes include:**

- increasing title protection by protecting the use of terms such as **psychometrist, psychotherapist, and psychoanalyst;**
- expanding the definition of the practice of psychology to include **psychological testing, projective testing, evaluation of personal characteristics (such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning), counseling, career counseling, psychoanalysis, psychotherapy, marriage and family therapy, hypnosis and hypnotherapy, biofeedback, behavior analysis and behavior therapy, diagnosis and treatment of mental and emotional disorders, alcoholism and substance abuse, disorders of habit or conduct, as well as psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation; and**
- expanding the grounds for disciplinary action to include **fraud, immoral, unprofessional or dishonorable conduct, endangerment of public welfare, felony convictions that relate to practice of psychology, sexual intercourse with or sexual assault of a client or patient, and the exploitation of clients or patients for financial or other personal advantage.**

BENEFITS

- ▶ **The expanded title protections would further reduce the number of unlicensed individuals offering psychological services under terms such as psychotherapy and psychoanalysis.**
- ▶ **The additional grounds for discipline would give the board more authority to take action against licensees inappropriately practicing psychology and harming the public.**

DRAWBACKS

- ▶ **The expansion of the board's authority over related practices would place a regulatory board in charge of regulating practices that the board is not prepared to regulate. For example, including the term "behavior analysis," in the practice of psychology, poses a threat to a specialty field that operates outside the scope of the psychology board. The profession of behavior analysis is a well-defined occupation that requires specific preparation from degree programs in behavior analysis at the undergraduate and graduate level. This preparation is frequently provided outside of academic departments of psychology. According to behavior analysis practitioners, their practice is significantly different from the practice of psychology because it does not rely on cognitive therapies and expressly excludes psychoanalysis, hypnotherapy, and long-term counseling - treatment modalities**

that are frequently used by licensed psychologists. (Sources - Texas Association for Behavior Analysis and the Texas Department of Mental Health and Retardation)

- ▶ Large numbers of professionals in related business fields could be found in violation of the psychology act and be prevented from performing in their occupations because the proposed expanded definition of practice could include their job practices. For example, counseling, career counseling, hypnosis, biofeedback, and the evaluation of personal characteristics such as intelligence, personality, abilities, interests, and aptitudes are aspects of many business professionals who are not licensed psychologists.

FISCAL IMPACT

Increasing the level of regulation could result in more enforcement effort by the board resulting in a need for additional funding to conduct complaint investigations and necessary administrative hearings.

ISSUE 48: Should the statute be changed to provide for licensure and supervision of psychological associates?

SOURCE Texas Psychological Association - Division of Psychological Associates and the Psychological Associates - Austin Group

BACKGROUND

Psychological associates are currently certified by the Board of Examiners of Psychologists. The statute requires the board to set qualification standards and issue certificates for applicants who have completed a master's degree in a program that is primarily psychological in nature. Psychological associates practice under the supervision and guidance of licensed psychologists.

Supervision guidelines for psychological associates have been developed by board rule. The rules address the requirements placed on both the licensed psychologist and the psychological associate. Specifics on the conditions of employment, level of supervisory contact, standards for supervised private practice, and requirements related to professional fees and billing are included. Currently, the board has 1,353 certified psychological associates.

According to psychological associates, numerous problems have occurred related to their practice. These problems were identified as: 1) being subject to overly strict supervision guidelines; 2) being forced to pursue licenses as licensed professional counselors or marriage and family therapists to qualify for insurance reimbursements; 3) being subject to restrictions on business arrangements including a requirement of a salary or hourly wage instead of being allowed to work on a contract basis; and 4) being subject to consistent efforts by the board and the professional association to restrict the practice of psychological associates in exempt settings like schools and state agencies.

CONCLUSION

The current certification and supervision of psychological associates by the Board of Examiners of Psychologists has proven to be unsatisfactory to many psychological associates in the state. The psychological associates indicate numerous problems with the oversight by the board that restrict their ability to practice.

POLICY OPTION

- **The statute should be changed to provide licensure and supervision of psychological associates and establish supervisory guidelines. The statute should:**

- require all applicants to be certified and licensed by the Board of Examiners of Psychologists as psychological associates;
- require three years or, 3,000 hours, of supervision to qualify as a certified psychological associate, providing a grandfather clause;
- require a written supervisory agreement, filed with the board, between the psychological associate and a licensed psychologist;
- require the supervising psychologist to assess the psychological associate's training and experience to determine appropriate areas of practice;
- establish supervisory guidelines that are consistent with professional standards and would allow the psychological associate to work on a contractual basis and at locations independent of their supervising psychologist;
- allow, as appropriate, psychological associates to evaluate and treat individual patients without direct supervision;
- allow psychological associates to set fees and bill for services independent of their supervising psychologists;
- allow limited private practice with a written agreement from the supervising psychologist;
- require 75 hours of continuing education, including ethics training, every three years for renewal of licensure; and
- exempt from the licensing requirements, psychological associates certified or employed by the Texas Education Agency, colleges or universities, educational service centers or local school districts, and most governmental agencies.

BENEFITS

- ▶ **Licensing of psychological associates and changes in supervision guidelines would allow a larger number of trained professionals to provide mental health counseling throughout the state.**
- ▶ **Psychological associates would be able to provide services to the criminal justice system, the indigent population, the elderly, pregnant teenagers, and individuals with alcohol and substance abuse problems.**

- ▶ **Changes in the regulation of psychological associates would increase the psychological services available in rural and isolated areas.**

DRAWBACKS

- ▶ **The practice of psychological associates would become too independent of oversight of licensed psychologists, which would weaken the profession by lowering standards of practice.**
- ▶ **The importance and value of doctoral level training would be diminished by creating a license for master-level candidates.**
- ▶ **Licensure of psychological associates may cause confusion for the patient in understanding the difference between the levels of practitioners in the field.**

FISCAL IMPACT

Revenue generated through licensing fees would cover the costs of additional regulation.

Social Workers

ISSUE 49: Should the statute be changed to expand the regulation of social work to a practice act?

SOURCE Council for Social Work Certification

BACKGROUND

State law regulates the social work profession through a title protection act. This means that licensing requirements only apply to professionals who use titles that infer that they are state licensed social workers such as "certified social worker" or "social work associate". All states regulate the profession of social work and about 15, including Texas, limit that regulation to title protection.

In Texas, essentially three forms of occupational regulation exist. Registration is the least restrictive form of regulation. All that is required is that a person must agree to follow certain standards and register with the state. Licensing through a title act is the next most restrictive form of occupational regulation used in Texas. This form of licensing establishes minimum qualifications, competency examinations, and standards of conduct for practitioners who advertise under a title regulated by the state. The third and most restrictive form of occupational regulation is licensing through a practice act. This form of state regulation includes title protection but also prohibits unlicensed individuals from performing acts covered by the practice act.

The social work council indicates that regulating social workers under a title protection act has caused some problems, particularly in the area of unlicensed practice. The council is able to provide some assurances that practitioners who advertise as certified social workers have met certain minimum standards. However, the council does not have the authority to address many complaints because many social work service providers do not use the regulated titles. In addition, the council's enforcement efforts are less effective under a title act. License revocation only prohibits the social worker from using the regulated title and does not prohibit continued practice. A practitioner may avoid state regulation by providing social work services under a non-regulated title, such as "social service worker" or "caseworker".

CONCLUSION

The profession of social work is regulated in Texas through a title protection act. While this type of state regulation provides some protection to the public, it does not ensure that practitioners who provide social work services meet minimum qualifications and standards of conduct. According to the social work council, increasing the level of regulation to a practice act would provide added protection to the public and prevent social work providers from evading state requirements by using a different title.

POLICY OPTION

- **The statute should be changed to expand the regulation of social work to a practice act.**

BENEFITS

- ▶ **Changing the degree of state regulation from a title protection act to a practice act would ensure that all practitioners who provide social work services would have to meet state qualification standards and that their practice would be under the jurisdiction of the program.**
- ▶ **State regulation of social work through a practice act would ensure that social workers whose licenses are revoked through the council's enforcement process cannot continue to practice social work. With only title regulation, the revoked licensee can change his or her title to some unregulated title and continue to practice unregulated.**

DRAWBACKS

- ▶ **The practice of social work is difficult to define and involves many practices that are common to other health care fields and professions. A satisfactory statutory definition that sufficiently describes the practice but does not encroach into other fields or professions may be unattainable.**
- ▶ **Publicly operated or funded agencies that rely heavily on unlicensed social work service providers may experience increased costs due to more extensive regulation.**

FISCAL IMPACT

Increasing the degree of regulation would increase the cost of the regulatory program. However, any increase in cost would be recovered through licensing fees.

ISSUE 50: Should the statute be changed to authorize the DHS board, with advice from the council, to establish, by rule, conditions to be met before licensing re-examination and alternative methods of competency testing?

SOURCE Council for Social Work Certification

BACKGROUND

State law requires all applicants for licensure as a social worker to successfully pass an examination as determined by the Texas Department of Human Services (DHS) board, with advice from the social work council. Applicants are currently required to complete the national social work examination. State law specifies that any applicant who fails the examination may retake the examination up to three times for any one category of licensure. If the applicant scores satisfactorily, the council may grant the license. While the statute limits the number of exam retakes allowed, it does not authorize the council to establish conditions for retaking the examination or alternative methods of competency testing.

The council indicated concerns about the lack of statutory authority to establish requirements for applicants who fail the examination. The pass rate for the national tests is 78 percent and a portion of applicants retake and fail the examination repeatedly. The statute does not give the council the authority to establish additional course work requirements, a waiting time between retakes, or alternative methods of competency testing.

CONCLUSION

The statute does not authorize the DHS board, with advice from the social work council, to place conditions on the retaking of the licensing examination. Additional flexibility is needed to allow the council to establish conditions for re-examination such as refresher courses, time limits, or alternative methods of competency testing.

POLICY OPTION

- **The statute should be changed to authorize the DHS board, with advice from the council, to establish, by rule, conditions to be met before licensing re-examination and alternative methods of competency testing.**

BENEFITS

- ▶ **Flexibility to establish conditions for licensing examination retakes would provide an additional regulatory check on potential licensees. The authority to develop such conditions, by rule, will help the program assure that applicants are truly**

competent and meet the minimum standards of competence before licensure and have not passed the examination through sheer repetition.

- ▶ **Authorizing the program to develop alternative methods of competency testing will give the program the ability to work with applicants who can demonstrate a strong ability to practice but cannot pass the standard national test.**

DRAWBACKS

- ▶ **The proposed change would arbitrarily limit the ability of a person to gain the means to make a living.**
- ▶ **Alternative competency exams, no matter how fair, do not require all persons seeking licensure to meet the same standards.**
- ▶ **Additional education and training is the business of educational institutions, not the licensing board.**

FISCAL IMPACT

No fiscal impact to the state.

**Speech-Language Pathologists
and Audiologists**

ISSUE 51: Should the statute be changed to allow individuals licensed as audiologists to dispense hearing aids without meeting additional licensing requirements?

SOURCE State Committee of Examiners for Speech-Language Pathology and Audiology

BACKGROUND

Article 4512j, Subsection 9(k), relating to the regulation of speech-language pathology and audiology, specifies that audiologists are not licensed to sell hearing aids under that statute. Article 4566, relating to the fitting and dispensing of hearing aids, provides for the licensure of individuals to fit and dispense hearing aids and specifies the requirements that must be met to qualify for a license. Audiologists are not allowed to sell hearing aids unless they have met the requirements of Article 4566 and receive a license to sell hearing aids.

Audiologists are trained to evaluate hearing, use amplification devices including hearing aids, and make ear molds for fitting hearing aids, as part of their academic programs. Audiologists are also required to complete a nine-month full-time apprenticeship under the supervision of a licensed audiologist. However, fitting and dispensing hearing aids is a small part of an audiologist's total training. Individuals who go through the apprenticeship program for a license to fit and dispense hearing aids receive more hands-on training related to hearing aids than audiologists. These individuals work in a hearing aid business directly with a licensed fitter and dispenser and are trained to measure human hearing, make ear molds to fit hearing aids, sell hearing aids, and repair defective hearing aids.

Forty-one states regulate audiologists through a licensing system. In 10 of these states, audiologists are authorized to fit and dispense hearing aids without being licensed by the state's hearing aid board. Interviews with several of these states indicated that there were no problems associated with allowing audiologists to fit and dispense hearing aids.

CONCLUSION

Audiologists are not allowed to sell hearing aids unless they obtain a license to fit and dispense hearing aids. Audiologists receive some training in fitting hearing aids, however, it is not as extensive as the training that a hearing aid apprentice receives. Other states allow audiologists to sell hearing aids and have not experienced problems.

POLICY OPTION

- **The statute should be changed to authorize individuals licensed as audiologists to dispense hearing aids without meeting additional licensing requirements.**

BENEFITS

- ▶ **If audiologists were authorized to fit and dispense hearing aids under Article 4512j, they would not be required to take two licensing examinations, obtain two licenses, and pay two sets of licensing and renewal fees.**

DRAWBACKS

- ▶ **Allowing audiologists to fit and dispense hearing aids would exempt them from the examination required for licensure as a hearing aid fitter and dispenser. This examination is designed specifically to evaluate an applicant's ability to competently fit and dispense hearing aids. To ensure that audiologists are competent to fit and dispense hearing aids, the State Committee of Examiners for Speech-Language Pathology and Audiology would need to develop or contract for a similar examination to test the abilities of audiologists in the area of fitting and dispensing hearing aids. A dual examination process would result in duplication of effort between the board and the committee.**
- ▶ **The fitting and dispensing of hearing aids should be regulated consistently, regardless of who is providing the service. Having two agencies regulating the same profession could cause inconsistencies in regulation and confusion to the public as to whom to contact when a problem arises.**

FISCAL IMPACT

If individuals licensed as audiologists are not required to obtain a license to fit and dispense hearing aids, initial licensure and renewal fees currently paid to the state would be lost. In fiscal year 1992, 425 audiologists licensed to fit and dispense hearing aids paid approximately \$47,000 in license renewal fees. Additional revenue was generated from examination fees and initial licensure fees. These individuals would no longer pay these fees to the Board of Examiners in the Fitting and Dispensing of Hearing Aids. However, the board would also experience a reduction in workload. Any additional testing of audiologists would also involve a cost, however, fees could be charged to offset the additional expense.

ISSUE 52: Should the statute be changed to require colleges and universities to inform students that they must be licensed to practice speech-language pathology or audiology?

SOURCE State Committee of Examiners for Speech-Language Pathology and Audiology

BACKGROUND

A large number of individuals who complete either a baccalaureate or master's degree program are unaware that, unless exempted, they must be licensed to practice speech-language pathology or audiology. Colleges and universities in Texas are not required to provide information about licensing laws and requirements to students in speech-language pathology or audiology programs. The committee provides information about licensing to professors at colleges and universities twice a year and asks that this information be distributed to students.

CONCLUSION

Colleges and universities do not provide information about licensing to students. Many students are unaware that the state has licensing requirements for the practice of speech-language pathology and audiology.

POLICY OPTION

- **The statute should be changed to require Texas colleges and universities to provide licensing information to speech-language pathology and audiology students at the baccalaureate and master's level.**

BENEFITS

- ▶ **If students are informed of licensing requirements, there would be less chance that an individual would violate the law by practicing without a license. Information concerning licensure could be provided to students by their academic counselor or in a brief presentation by a professor. Dissemination of this information would not require a great deal of class time.**

DRAWBACKS

- ▶ **This type of information should not be included in an academic program. Class time used for providing this information could be better used on other topics.**

FISCAL IMPACT

No fiscal impact to the state.

Veterinarians

ISSUE 53: Should the statute be changed to update and add new definitions that relate to the practice of veterinary medicine?

SOURCE Texas Veterinary Medical Association

BACKGROUND

The Veterinary Licensing Act regulates the use of the title of veterinarian, the practice of veterinary medicine, and includes definitions of other related terms. Changes related to the practice have been addressed by the American Veterinary Medical Association (AVMA) through the development of a model practice act. The Texas Veterinary Medical Association (TVMA) has proposed a series of changes in the statute to update definitions to match those in the model act.

Among the definitions that the TVMA recommends be changed is the definition of practice of veterinary medicine. The current definition has general terms such as surgery, dentistry, diagnosis, treatment, prescription and administration of any drug for any physical ailment, injury, deformity, or condition of animals. The proposed new definition should include a more specific list of conditions that a veterinarian might treat and the techniques that might be used. The changes would also add the following acts or procedures to those that currently constitute the practice of veterinary medicine: the use of any mechanical, manual, or surgical procedure for artificial insemination, oocyte (immature eggs) and embryo collection, pregnancy or reproductive soundness evaluation, or the rendering of advice about any of these.

Another definition recommended for change is the definition of the veterinarian-client-patient relationship. The act defines that the relationship exists when a veterinarian, through personal examination of an animal or a representative sample of a herd or flock, obtains sufficient information to make at least a general or preliminary diagnosis of the medical condition thereof, and that information is expanded through medically appropriate visits to the premises where the animals are kept. The proposed change would make current elements of the definition more specific and would add the requirement that the veterinarian is readily available or has provided follow-up medical care in case of adverse reactions or failure of the regimen of therapy.

The TVMA proposes that compensation be defined in the act. Current law lists compensation as a condition that constitutes the practice of veterinary medicine, but does not define it. The new definition says that compensation shall include, but not be limited to, all fees, monetary rewards, discounts, and emoluments received directly or indirectly.

Two new definitions are also proposed regarding the levels of supervision that a veterinarian may have over an employee, specifically related to the delegation by the veterinarian to the employee. General supervision would mean that the actual physical

presence of the responsible veterinarian is not necessary, but some means of communication is readily available. Direct supervision would mean that the responsible veterinarian is physically present on the premise.

CONCLUSION

Changes related to the practice of veterinary medicine have led to the development of a model act. The TVMA has a proposed series of changes to the state act to make it more consistent with a model act developed by the AVMA. The proposed changes include modifications to the current definitions of the practice of veterinary medicine and the veterinarian-client-patient relationship. A definition for the term, compensation, is proposed because the term is used in the act but is not defined. Also, new definitions are proposed for general and direct supervision of employees of a veterinarian. These changes are intended to update the act and allow for better regulation through clearer definition of the practice.

POLICY OPTION

- **The statute should be changed to:**
 - **modify the definitions for the practice of veterinary medicine and the veterinarian-client-patient relationship;**
 - **include a definition for the term compensation; and**
 - **include the terms veterinary medicine, general supervision, and direct supervision and definitions for each.**

BENEFITS

- ▶ **The Texas licensing act for veterinary medicine would be more aligned with the model act developed by the AVMA, which is designed for the contemporary practice of veterinary medicine.**
- ▶ **Adding a definition for compensation will allow veterinarians to clearly understand what does and does not constitute compensation.**
- ▶ **The addition of the new terms of general and direct supervision would provide more specific guidelines to a veterinarian about what is authorized delegation and would allow additional, more efficient use of non-licensed personnel.**
- ▶ **These changes will assist both the state licensing board and the profession in actions against untrained, unscrupulous and unlicensed individuals.**

DRAWBACKS

- ▶ **Proposed changes to the definitions of the practice of veterinary medicine would include procedures that are currently performed by non-veterinarians, such as college graduate animal science and animal husbandry people. Under the proposed changes, their continued performance of these procedures would be in violation of the act.**

FISCAL IMPACT

While some of these changes may result in increased board action against licensed and unlicensed persons, no estimate of the impact can be made at this time.

ISSUE 54: Should the statute be changed to modify the exemptions from the Act?

SOURCE Texas Veterinary Medical Association

BACKGROUND

The Veterinary Licensing Act regulates the use of the title of veterinarian and the practice of veterinary medicine. The act is a practice act in that it regulates the practice of veterinary medicine and prohibits unlicensed individuals from engaging in the practice. Section 3 of the act lists 11 specific practices and persons who are exempt from the act. For example, the act does not apply to the owner of an animal or the owner's employee if a treatment is performed. Also exempt are certain, specific practices that are surgical or intrusive in nature such as dehorning, treatment for internal parasites, and castration, which are practices that are normally and customarily performed by animal owners and other lay people. Specific groups of people such as full-time veterinary students under direct supervision of a licensee are also exempt.

Changes in technology, terminology, and treatment in veterinary medicine have caused the Texas Veterinary Medical Association (TVMA) to propose that four of the 11 detailed subsections be simplified and modernized, and that new exemptions be added to the act. The four specific exemptions would be replaced by language allowing the board to determine, within specifically stated guidelines, acts that would define accepted livestock management practices and could be performed by non-veterinarians.

The TVMA also proposes new exemptions that would exempt employees of veterinarians who perform duties involving food production animals and veterinarians licensed in other states that consult with veterinarians in this state. The TVMA also proposes to exempt persons performing artificial insemination of food production animals; this practice is not addressed in current law.

CONCLUSION

Changes in technology, terminology, and treatment techniques have led the TVMA to propose modifications to the Veterinary Licensing Act that simplify and modernize current exemptions. In addition, new exemptions are proposed for persons working with food production animals and veterinarians from other states consulting with Texas veterinarians. The TVMA also proposes exempting persons who perform artificial insemination of food production animals.

POLICY OPTION

- **The statute should be changed to:**
 - **delete current specific exemptions to the act and allow the board to determine, within stated guidelines, acts that would constitute accepted livestock management and would not require a licensed veterinarian; and**
 - **provide specific exemptions from licensure for persons who work with artificial insemination, veterinarians' employees working with food production animals, and veterinarians licensed in another state consulting with Texas veterinarians.**

BENEFITS

- ▶ **Placing the authority with the board to define accepted livestock management that is exempt from the act will allow the board to adjust definitions with changes in the industry.**
- ▶ **Removing restrictions against qualified out-of-state veterinarians to enter the state in a consulting role will allow Texas veterinarians to obtain expertise in diagnosis and treatment of exotic food and pet animals not common in Texas. Current law is not clear if this practice is legal under the act.**
- ▶ **The exemption for veterinarians' employees who work with food production animals, combined with the association's proposed new definitions for general and direct supervision, will clarify the role of assistants to veterinarians and permit their increased use, particularly in rural, ranch situations.**

DRAWBACKS

- ▶ **The new language that consolidates current exemptions places responsibility on the board to define "accepted livestock management". Not all people and groups in the livestock industry may agree that the board should have this broad authority.**
- ▶ **Exempting persons who perform artificial insemination in food production animals from the act has the effect of prohibiting non-veterinarians who are currently engaged in this activity with non-food production animals, such as horses and dogs, from continuing to do so. The agriculture industry is not in total agreement about the issue of veterinarians being the only people authorized to perform artificial insemination in other than food production animals. Opponents feel that animal husbandry and animal science college graduates**

should be permitted to perform artificial insemination and embryo transfer in horses, dogs, and other non-food production animals without involvement of a veterinarian.

- ▶ The livestock marketing industry may object to continuing the current restriction on castration to food animals. In the past, the industry has expressed a desire to have non-veterinarians castrate horses brought to auction barns.
- ▶ The proposed exemption for out-of-state veterinarians may not provide adequate protection against abuse of this privilege since no restrictions are placed on the circumstances for consultation or the time the out-of-state veterinarian is allowed to be involved in any given situation.

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 55: Should the statute be changed to authorize the board to make rules to ensure that only a veterinarian performs, or is involved in, alternative therapies on animals?

SOURCE Texas Veterinary Medical Association

BACKGROUND

The dynamic nature of the health care field is affecting veterinary medicine. Many techniques and technologies used in human health care are now alternative therapies used in animal care and treatment. These alternative therapies include animal behavior consultants, ultrasound diagnosis and therapy, magnetic field therapy, holistic medicine, equine dentistry, chiropractic treatments, acupuncture, and laser therapy.

The Texas Veterinary Medical Association (TVMA) is concerned about the encroachment of unlicensed persons into the practice of veterinary medicine. Since alternative therapies, some of which are intrusive in nature, are intended to diagnose and or treat physical or behavioral conditions in animals, they constitute the practice of veterinary medicine. However, the TVMA believes the fields of alternative therapies affecting veterinary medicine are emerging and evolving at such a dynamic rate that authorizing the board to regulate their use by rule would be more effective than statutory provisions. The TVMA is concerned about these alternative therapies and recommends that only a licensed veterinarian perform or oversee their use.

CONCLUSION

New techniques and technologies are increasingly being used on animals and are affecting the practice of veterinary medicine. Regulating these areas is difficult because most are very dynamic in nature and, therefore could be best controlled through rules of the board. Further, the TVMA recommends that only licensed veterinarians perform or oversee these alternative therapies.

POLICY OPTION

The statute should be changed to:

- **authorize the board to make rules to ensure that only a veterinarian performs, or oversees alternative therapies on animals.**

BENEFITS

- ▶ **Non-traditional methods of treatment are becoming increasingly popular. Without regulation by the state, the public is unprotected from false claims and potentially fraudulent and harmful treatment for their animals.**
- ▶ **Inclusion of this provision in the act will require the board to recognize and deal with non-traditional aspects of veterinary medicine and ensure that the public has a state regulated professional responsible for their animals.**

DRAWBACKS

- ▶ **The TVMA and the veterinary profession may want to control competition from individuals who use any non-traditional techniques and technologies even though they may be beneficial.**
- ▶ **The requirement that a veterinarian be directly involved is unwarranted since the provider of the alternative therapy is at least as qualified, if not more, than the veterinarian to make the diagnosis or perform any treatment under the specialized techniques and technologies of alternative therapies.**

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 56: Should the statute be changed to require registration of veterinary technicians?

SOURCE Texas Veterinary Medical Association and the Texas Association of Registered Veterinary Technicians

BACKGROUND

Most veterinarians have employees who assist them in caring for and treating animals and maintaining the facilities. These assistants also administer medications and perform some follow up treatment as directed by the veterinarian. The Rules of Professional Conduct adopted by the State Board of Veterinary Medical Examiners include conditions and limitations on the duties and services that assistants can perform. For example, assistants are prohibited from performing surgery, diagnosing, or prescribing medications, but under the veterinarian's direct supervision, can inoculate an animal or clean and polish teeth on small domestic animals. An estimated 4,000 assistants are employed in the state, or an average of two per veterinary clinic.

The role of the veterinarian's assistant has evolved into an occupation that has gained formal recognition in many states. The term most often used for these persons is registered veterinary technician. Thirty-three states regulate the occupation through state licensing boards. Ten states, including Texas, have a voluntary registration program for registered veterinary technicians. In Texas, as in most states that have voluntary registration, the current program is operated jointly by the state veterinary association and the Texas Association of Registered Veterinary Technicians. Requirements for registration include completion of higher education programs for initial certification and compliance with continuing education requirements. Both state associations favor having the state agency charged with regulating the practice of veterinary medicine assume the role of regulating registered veterinary technicians.

CONCLUSION

Most veterinarians employ persons to assist them with their practice. The role of the veterinarian's assistant has evolved into an occupation that has gained formal recognition in many states. The state associations of veterinarians and veterinary technicians favor state registration of veterinary technicians.

POLICY OPTION

- **The statute should be changed to require registration of veterinary technicians.**

BENEFITS

- ▶ **State registration of veterinary technicians would elevate the status of the occupation, provide more recognition to the veterinary technician, lead to more responsibility, and improve pay levels.**
- ▶ **Minimum educational requirements and continuing education would allow the veterinarian to delegate responsibility to a more qualified employee, and would improve the overall quality of care to clients' animals.**

DRAWBACKS

- ▶ **While the costs of administering a registration program could be recovered by fees for registration, adding a regulatory function to state government is unwarranted unless some benefit can be shown. Little or no evidence is available to show that the absence of state regulation of veterinary assistants has resulted in harm to animals or caused economic damage to clients.**
- ▶ **The proposal by the associations is to register veterinary technicians. Registration has little regulatory value because authorized practice is not defined and, therefore, no enforcement action can be taken if a veterinary technician commits an unauthorized act.**
- ▶ **The TVMA already has an effective registration and continuing education program in place that prepares technicians to practice their profession. No additional benefits may be realized by having veterinary technicians registered by the state.**

FISCAL IMPACT

Additional costs to state for a registration program would be recovered by fees.

Vocational Nurses



ISSUE 57: Should the statute be changed to remove the current two-year educational requirement for registered nurse candidates seeking licensure as a vocational nurse?

SOURCE Texas Board of Vocational Nurse Examiners

BACKGROUND

Generally, in Texas, two types of nurses currently practice - the professional, or registered nurse (RN), and the licensed vocational nurse (LVN). Both registered and vocational nurses learn basic patient care skills, leadership, and management skills. The Vocational Nurse Act requires a one-year program for licensure. In contrast, the Nurse Practice Act requires completion of a more rigorous curriculum in a two, three or four year program, because registered nurses must learn more complex patient care skills.

The Vocational Nurse Act allows persons studying to become a registered nurse in a professional nursing school to apply for a vocational nurse license. In fiscal year 1992, 102 candidates from professional nursing programs took the vocational nurse licensing exam. These applicants generally seek a vocational nurse license to work as an LVN while still in nursing school. A vocational nurse license also offers invaluable job experience in health care settings. The course content for registered and vocational nurses is similar. Because the two practices share common knowledge and skills, a student of professional nursing may qualify to take the vocational nurse exam based on what they have learned in the professional nursing school, in advance of completing their nursing program.

The statute specifically requires registered nurse candidates to complete two years of nursing education before sitting for the LVN examination. This requirement has prevented some registered nurse students who have fulfilled the curricular requirements for vocational nurse licensure from being able to sit for the exam before the end of two years.

CONCLUSION

Currently, the Vocational Nurse Act requires persons enrolled in a professional nursing school program to complete two years of education before taking the vocational nurse examination. The two-year requirement has presented some registered nurse candidates, qualified to take the examination in less than two years, from being able to obtain a vocational nursing license.

POLICY OPTION

- **The statute should be changed to remove the two year educational requirement for registered nurse candidates seeking licensure as a vocational nurse, and allow the Board of Vocational Nurse Examiners to establish, by rule, the education required.**

BENEFITS

- ▶ **Applicants who have completed the required nursing courses in less than two years would not have to wait unnecessarily to take the vocational nursing examination.**
- ▶ **The change would increase the number of qualified vocational nurses and allow registered nurse candidates to gain the job experience and financial benefits available through a vocational nurse license.**

DRAWBACKS

No drawbacks were identified.

FISCAL IMPACT

Although the board would experience an increase in workload for its education division, no actual fiscal impact is expected.

ISSUE 58: Should the state be changed to remove the current 12-month course length required for vocational nursing programs?

SOURCE Texas Board of Vocational Nurse Examiners

BACKGROUND

Historically, vocational nursing programs were one calendar-year, hospital-based apprenticeship programs. As the costs of nursing education escalated, the number of hospital nursing programs declined. The majority of these programs were administratively transferred to public education institutions, most often, community or junior colleges. The trend of moving nursing education out of hospitals and into a formal educational setting is not unique to Texas. Nationally, most vocational nursing programs are offered at community colleges or post-secondary vocational/technical schools. Unlike the hospital-based programs, these programs operate on an "academic year" of nine months rather than a 12-month calendar year. However, the Vocational Nurse Act requires an applicant to complete a vocational nurse program within 12 months. By rule, vocational nursing programs must contain a minimum of 1,398 clock hours over a 12-month period.

This requirement is outdated and as a result, some vocational nursing programs' academic schedules have been altered to meet the 12-month requirement. Some colleges must remain open during semester breaks in winter and spring to provide services for this one program. In addition, some colleges have built in a lengthy vacation at the end of the program to meet the 12-month requirement.

CONCLUSION

Currently, the Vocational Nurse Act requires an approved course in vocational nursing to be 12 months in length. Nationally, most vocational nursing programs are offered in community or post-secondary colleges that operate on an academic year of nine months. The requirement for vocational nursing programs is outdated and no longer necessary.

POLICY OPTION

- **The statute should be changed to remove the 12-month program length requirement for vocational nursing programs and allow the Board of Vocational Nurse Examiners to establish the program length by rule.**

BENEFITS

- ▶ **Elimination of the 12-month requirement would help to facilitate the transition of vocational nurses into registered nurse programs that are offered on a semester basis. The greater educational mobility of nursing students would help to increase the number of nurses in the state of Texas.**
- ▶ **Schools would be allowed to design more innovative programs that are based on semester hour credits. Vocational nursing students would have access to college-level academic courses, such as anatomy, nutrition, and psychology, which follow a semester-based program.**
- ▶ **Public education institutions would benefit by offering all programs on the same academic calendar. Operating colleges between semesters, in winter and spring to provide services for the vocational nurse program, adds to the costs of offering the nursing program.**

DRAWBACKS

No drawbacks were identified.

FISCAL IMPACT

The board would experience an increase in workload as schools apply for approval of their curriculum, but no actual fiscal impact is expected.

***ACROSS-THE-BOARD
RECOMMENDATIONS***

INTRODUCTION

From its inception, the Sunset Commission has identified common areas where agencies have had difficulties either because of statutory language or board rules. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely recommended for all agencies under review, detail on them is not repeated throughout the evaluation reports. The following is a listing of the recommendations which is followed by charts indicating their application to the boards under review.

General Across-the-Board Recommendations

1. Require public membership on boards and commissions.
2. Require specific provisions relating to conflicts of interest.
3. Provide that a person registered as a lobbyist under Chapter 305, Government Code, may not act as general counsel to the board or serve as a member of the board.
4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
5. Specify grounds for removal of a board member.
6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
7. Require the board to establish skill-oriented career ladders.
8. Require a system of merit pay based on documented employee performance.
9. Provide for notification and information to the public concerning board activities.
10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
11. Require files to be maintained on complaints.
12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
13. Require development of an E.E.O. policy.

14. Require the agency to provide information on standards of conduct to board members and employees.
15. Provide for public testimony at agency meetings.
16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
17. Require development of accessibility plan.
18. Place agency under the state's competitive cost review program.

Licensing Across-the-Board Recommendations

1. Require standard time frames for licensees who are delinquent in renewal of licenses.
2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
3. Provide an analysis, on request, to individuals failing the examination.
4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
5. (a) Provide for licensing by endorsement rather than reciprocity.
(b) Provide for licensing by reciprocity rather than endorsement.
6. Authorize the staggered renewal of licenses.
7. Authorize agencies to use a full range of penalties.
8. Specify board hearing requirements.
9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
10. Authorize the board to adopt a system of voluntary continuing education.

GENERAL ACROSS-THE-BOARD RECOMMENDATIONS

Profession	General ATB 1	General ATB 2	General ATB 3	General ATB 4	General ATB 5	General ATB 6	General ATB 7	General ATB 8	General ATB 9
Chiropractors	A**	A**	A**	A**	A**	A**	A**	A**	A**
Dentists	A**	A**	A**	A**	A**	A**	A**	A**	A**
Dietitians	A**	A**	A**	A**	A**	A**	A	A	A
Hearing Aid Fitters and Dispensers	A**	A**	A**	A**	A**	A**	A**	A**	N*
Marriage & Family Therapists	A**	A**	N*	N*	N*	N*	A	A	A**
Midwives	A**	A	A	A	A	A	A	A	A
Nurses	A**	A**	A**	A**	A**	A	A	A**	A**
Nursing Home Administrators	A**	A**	N*	A**	A**	A**	A	A	N*
Occupational Therapists	A**	A**	A**	A**	A**	A**	A**	A**	A**
Optometrists	A**	N*	A**	A**	A**	A**	A**	N*	A**
Pharmacists	A**	A**	A**	A**	A**	A**	A**	A**	A**
Physical Therapists	A**	A**	N*	A**	A**	A**	A**	A**	A**
Physicians	N*	A**	A**	A**	A**	A**	N*	N*	A**
Podiatrists	A**	A**	A**	A**	A**	A**	A	A	A**
Professional Counselors	A**	A**	A**	A	A**	A**	A	A	A**
Psychologists	A**	A**	A**	A**	A**	A**	A**	A**	A**
Social Workers	A**	A**	A**	A**	A**	A**	A	A	A**
Speech-Language Pathologists\ Audiologists	A**	A**	N*	A**	A	A	A	A	A
Veterinarians	A**	A**	A**	A**	A**	A**	A**	N*	A**
Vocational Nurses	A**	A**	A**	A**	A**	A**	A	A**	A**

A Applied
A** Applied, existing language updated
N* Not applied, already in statute
N Not applied

GENERAL ACROSS-THE-BOARD RECOMMENDATIONS

Profession	General ATB 10	General ATB 11	General ATB 12	General ATB 13	General ATB 14	General ATB 15	General ATB 16	General ATB 17	General ATB 18
Chiropractors	N*	A**	A**	A**	A**	A**	A**	A**	A**
Dentists	N*	A**	A**	A	A	A	A	A	A
Dietitians	N*	A**	A**	A	A	A	A	A	A
Hearing Aid Fitters and Dispensers	N*	A**	A**	A	A	A	A	A	A
Marriage & Family Therapists	N*	N*	A**	A	A	N*	A	A	A
Midwives	N*	A	A	A	A	A	A	A	A
Nurses	N*	A**	A**	A	A	A	A	A	A
Nursing Home Administrators	N*	A**	A**	A	A	N*	A	A	A
Occupational Therapists	N*	A**	A**	A	A**	N*	N*	A	A
Optometrists	N	A**	A**	A	A	A	A	A	A
Pharmacists	N*	A**	A**	A**	A**	A**	A**	A**	A**
Physical Therapists	N*	A**	N*	A	A	A	A	A	A
Physicians	N*	A**	A**	A	A	A	A	A	A
Podiatrists	N*	A**	N*	A	A	A	A	A	A
Professional Counselors	N*	A**	A**	A	A	A	A	A	A
Psychologists	N*	A**	A**	A	A	A	A	A	A
Social Workers	N*	A**	A**	A	A	A	A	A	A
Speech-Language Pathologists\ Audiologists	N*	A	A	A	A	A	A	A	A
Veterinarians	N*	A**	A**	A	A	A	A	A	A
Vocational Nurses	N*	A**	A**	A	A	A	A	A	A

A Applied
 A** Applied, existing language updated
 N* Not applied, already in statute
 N Not applied

LICENSING ACROSS-THE-BOARD RECOMMENDATIONS

Profession	Licensing ATB 1	Licensing ATB 2	Licensing ATB 3	Licensing ATB 4	Licensing ATB 5	Licensing ATB 6	Licensing ATB 7	Licensing ATB 8	Licensing ATB 9	Licensing ATB 10
Chiropractors	A**	A**	N*	N*	A**	N*	A**	N	A**	N
Dentists	N*	N*	N*	N*	N*	N*	N*	N	N*	N
Dietitians	A**	N*	N*	N*	A	A**	A**	N	N*	N
Hearing Aid Fitters and Dispensers	A**	N*	N*	N*	A**	A**	A**	N	A	N
Marriage & Family Therapists	A**	A**	N*	N*	A**	N*	N*	N	A	N
Midwives	A	A	A	N*	A	A	A	N	A	N
Nurses	A**	A**	A**	N*	A**	A**	A**	N	A**	N
Nursing Home Administrator	A**	A	N*	N*	N*	N*	A**	N	N	N
Occupational Therapists	A	A	A	N*	N*	N*	A**	N	A	N
Optometrists	A**	N*	N*	N*	N*	N*	A**	N	A**	N
Pharmacists	A**	N*	N*	N*	N*	N*	A**	N	N*	N
Physical Therapists	A	N*	N*	N*	N*	N*	A**	N	N*	N
Physicians	A**	A**	N*	N*	N*	N*	N*	N	A	N
Podiatrists	A**	A**	N*	N*	N*	N*	A**	N	N*	N
Professional Counselors	A**	A**	N*	N*	N*	N*	A**	N	N*	N
Psychologists	A**	A**	N*	N*	A**	N*	A**	N	N*	N
Social Workers	A**	N*	N*	N*	N*	N*	A**	N	N*	N
Speech-Language Pathologists\ Audiologists	A	A	A	N*	A**	A	A**	N	A	N
Veterinarians	A**	A**	A**	N*	N*	N*	A**	N	N*	N
Vocational Nurses	A	A**	A**	N*	N*	A**	N*	N	A**	N

A Applied
 A** Applied, existing language updated
 N* Not applied, already in statute
 N Not applied

APPENDIX

TEXAS BOARD OF CHIROPRACTIC EXAMINERS**Statutory Reference:** Article 4512b, V.T.C.S.**Date Created:** 1949**Board Size/Composition:** 9 members: 6 chiropractors, 3 public members**Number of Employees (FY 1992)**

FTE: 3

Funding

Source: Chiropractic Examiners Fund No. 140

FY 1992 Expended: \$139,000

FY 1993 Appropriated: \$162,279

Revenue Generated (FY 1992)

\$877,600

Number of Licensees (FY 1992)

Chiropractors: 2,901

Examinations (FY 1992)

Number of Exams Given: 260

Exam Pass Ratio: 77%

Enforcement Actions (FY 1992)

Number of Complaints: 363

Number of Investigations: 182

Number of Suspensions: 14

Number of Revocations: 4

Overview of Agency Operations

The Texas Board of Chiropractic Examiners has the responsibility and authority to examine, license, and regulate the practice of chiropractic in the state. The board's enabling act is a practice act in that it regulates the practice of chiropractic and prohibits unlicensed individuals from engaging in the practice. The practice of chiropractic involves the analysis, examination, and evaluation of the biomechanical condition of the spine and musculoskeletal system of the body. The practice of chiropractic also involves the use of adjustment, manipulation, and other procedures to improve the subluxation or the biomechanics of the musculoskeletal system. To fulfill its responsibilities, the board adopts rules regarding the practice of chiropractic, determines the qualifications of applicants, administers a state examination on Texas jurisprudence, X-ray, and clinical competency, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

STATE BOARD OF DENTAL EXAMINERS

Statutory Reference: Article 4543, et seq., V.T.C.S.

Date Created: 1897

Board Size/Composition: 15 member board: 10 dentists, 2 dental hygienists, 3 public members

Number of Employees (FY 1992)

FTE: 20

Funding

Source: Dental Registration Fund No. 86

FY 1992 Expended: \$817,233

FY 1993 Appropriated: \$872,691

Revenue Generated (FY 1992)

\$1,246,764

Number of Licensees (FY 1992)

Dentists: 11,080

Dental Hygienists: 7,056

Dental labs: 1,108

Examinations (FY 1992)

Number of Exams Given:

Dental Exams: 366

Dental Hygienist Exams: 389

Enforcement Actions (FY 1992)

Number of Complaints: 555

Number of Investigations: 499

Number of Suspensions: 28

Number of Revocations: 4

Exam Pass Ratio:

Dentists: 68%

Dental Hygienists: 77%

Overview of Agency Operations

The Texas State Board of Dental Examiners has the responsibility and authority to examine, license, and regulate the practice of dentistry in the state. The board's enabling act is a practice act in that it regulates the practice of dentistry and prohibits unlicensed individuals from engaging in the practice. The practice of dentistry involves the cleaning of teeth or to remove stains, concretions or deposits. The practice of dentistry also involves diagnosing, treating, operating, or prescribing by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws. To fulfill its responsibilities, the board adopts rules regarding the practice of dentistry, determines the qualifications of applicants, administers a state exam, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

Statutory Reference: Article 4512h, V.T.C.S.

Date Created: 1983

Board Size/Composition: 9 members: 6 dietitians, 3 public members
(Administratively attached to the Texas Department of Health)

Number of Employees (FY 1992)

FTE: 1.5

Funding

Source: Licensed Dietitians Fund No. 498
FY 1992 Expended: \$66,048
FY 1993 Appropriated: \$98,810

Revenue Generated (FY 1992)

\$85,018

Number of Licensees (FY 1992)

Licensed Dietitians: 3,010
Provisionally Licensed Dietitians: 51

Examinations (FY 1992)

Number of Exams Given: 6
Exam Pass Ratio: 50%

Enforcement Actions (FY 1992)

Number of Complaints: 2
Number of Investigations: 2
Number of Suspensions: 7
Number of Revocations: 0

Overview of Agency Operations

The Texas State Board of Examiners of Dietitians has the responsibility and authority to examine, license, and regulate the title of licensed dietitian in the state. The board's enabling act is a title act in that it regulates licensed dietitians in the state and prohibits unlicensed individuals from using the title of licensed dietitian without meeting the state's qualifications. Licensed dietitians apply and integrate scientific principles of nutrition under different health, social, cultural, physical, psychological, and economic conditions for the proper care and nourishment of people. To fulfill its responsibilities, the board adopts rules regarding the profession of dietetics, determines the qualifications of applicants, administers a national exam, and issues initial and renewal licenses. The board also receives complaints against licensees or unlicensed individuals who represent themselves as licensed dietitians and takes disciplinary action to enforce its enabling act.

TEXAS BOARD OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING AIDS

Statutory Reference: Article 4556, V.T.C.S.

Date Created: 1970

Board Size/Composition: 9 members: 5 fitters and dispensers, 2 doctors, 1 audiologist, 2 public members

Number of Employees:

FTE: 2

Funding

Source: General Revenue Fund

FY 1992 Expended: \$66,737

FY 1993 Appropriated: \$67,141

Revenue Generated (FY 1992)

\$134,410

Number of Licensees (FY 1992)

Fitters and Dispensers License: 991

Temporary Training Permits: 197

Examinations (FY 1992)

Number of Exams Given: 159

Exam Pass Ratio: 74%

Enforcement Actions (FY 1992)

Number of Complaints: 152

Number of Investigations: 152

Number of Suspensions: 0

Number of Revocations: 0

Overview of Agency Operations

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids has the responsibility and authority to examine, license, and regulate the practice of fitting and dispensing hearing aids in the state. The board's enabling act is a practice act in that it regulates the practice of fitting and dispensing hearing aids and prohibits unlicensed individuals from engaging in the practice. The practice of fitting and dispensing hearing aids involves the measurement of human hearing with an audiometer; making impressions for ear molds; and making selections, adaptations or sales of hearing aids. To fulfill its responsibilities, the board adopts rules regarding the practice of fitting and dispensing hearing aids, determines the qualifications of applicants, administers a state written and practical examination, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board adopts requirements for continuing education for licensees under this act.

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

Statutory Reference: Article 4512c-1, V.T.C.S.

Date Created: 1991

Board Size/Composition: 9 members: 5 marriage and family therapists (1 of whom must be an educator), 4 public members (Administratively attached to the Texas Department of Health. Board's rulemaking authority is subject to approval by Board of Health.)

Number of Employees (FY 1992)

FTE: 3

Funding

Source: General Revenue Fund first year of program operation (FY 1992). Special fee account in the General Revenue Fund after the first year.

FY 1992 Expended: \$60,987

FY 1993 Appropriated: \$163,345

Revenue Generated (FY 1992)

\$167,287

Number of Licensees (FY 1992)

Marriage and Family Therapists: 2,512

Examinations (FY 1992)

None

Enforcement Actions (FY 1992)

Number of Complaints: n/a*

Number of Investigations: n/a*

Number of Suspensions: n/a*

Number of Revocations: n/a*

n/a* - not applicable, created in 1991

Overview of Agency Operations

The Texas State Board of Examiners of Marriage and Family Therapists has the responsibility and authority to examine, license, and regulate the practice of marriage and family therapy in the state. This advisory board and the regulation of licensed marriage and family therapists was first authorized in September 1991. To allow for program development, the restrictions on the practice and use of the title became effective March 1992 and examinations are required starting September 1993.

The enabling act is a practice act in that it regulates the practice of marriage and family therapy and prohibits unlicensed individuals from practicing marriage and family therapy and using the title of licensed marriage and family therapist. The practice of marriage and family therapy involves providing professional therapy services to individuals, families, or married couples using the application of family systems theories and techniques. To fulfill its responsibilities, the State Board of Examiners of Marriage and Family Therapists is authorized to adopt rules regarding the licensing of marriage and family therapists, adopt a professional code of ethics for licensees, determine the qualifications of applicants, administer an examination, issue initial and renewal licenses, investigate complaints against licensees, and take disciplinary action to enforce its enabling act.

BOARD OF MEDICAL EXAMINERS

Statutory Reference: Article 4495b, V.T.C.S.

Date Created: 1907

Board Size/Composition: 15 members: 9 doctors of medicine, 3 doctors of osteopathic medicine, 3 public members

Number of Employees (FY 1992)

FTE: 80

Funding

Source: Medical Registration Fund No. 55
and Medical Licensing Fund (local fund)
FY 1992 Expended: \$3,915,605
FY 1993 Appropriated: \$3,364,550

Revenue Generated (FY 1992)

\$6,094,500

Number of Licensees (FY 1992)

Physicians: 44,671
Physician assistants: 758
Acupuncturists: 85
Radiologic technologists: 3,339

Examinations (FY 1992)

Number of Exams Given: 3,658
Exam Pass Ratio: 93%

Enforcement Actions (FY 1992)

Number of Complaints: 1,930
Number of Investigations: 1,709
Number of Suspensions: 26
Number of Revocations: 38

Overview of Agency Operations

The Board of Medical Examiners has the responsibility and authority to examine, license, and regulate the practice of medicine in the state. The board's enabling act is a practice act in that it regulates the practice of medicine and prohibits unlicensed individuals from engaging in the practice. The practice of medicine involves diagnosing, treating, and curing a disease, injury or disorder which can be mental or physical. To fulfill its responsibilities, the board adopts rules regarding the practice of medicine and determines the qualifications of applicants. The board administers a national competency exam and a state jurisprudence exam and issues initial and renewal licenses. The board also investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board provides oversight to physician assistants, acupuncturists, and radiologic technicians.

MIDWIFERY BOARD

Statutory Reference: Article 4512i, V.T.C.S.

Date Created: 1983

Board Size/Composition: 12 members: 6 midwives, 3 public members, 1 certified nurse midwife, 1 obstetrician-gynecologist, 1 pediatrician
(Administratively attached the Texas Department of Health. Board members are appointed by the Board of Health.)

Number of Employees (FY 1992)

FTE: 2

Funding

Source: Title V - Federal Block Grant through the Dept. of Health

FY 1992 Expended: \$25,762

FY 1993 Appropriated: none

Revenue Generated (FY 1992)

\$18,870

Number of Licensees (FY 1992)

Documented Midwives: 273

Examinations (FY 1992)

Number of Exams Given: n/a*

Exam Pass Ratio: n/a*

Enforcement Actions (FY 1992)

Number of Complaints: 23

Number of Investigations: n/a*

Number of Suspensions: n/a*

Number of Revocations: n/a*

*not applicable, not a regulatory program

Overview of Agency Operations

The Midwifery Board has the responsibility and authority to identify the name and address of midwives in the state. The board also must document the midwives' training in newborn screening tests and cardiopulmonary resuscitation (CPR). The board's enabling act is neither a practice nor a title act in that it only documents midwives in the state with no administrative power. The practice of midwifery involves prenatal care, internatal care (labor and delivery), and postnatal care. However, the act limits the practice of midwifery to "normal" pregnancy, labor and childbirth. To fulfill its responsibilities, the board adopts rules regarding the identification of Texas midwives, provides the methodology for safe childbirth procedures through the Texas Midwifery Manual, offers voluntary educational courses for midwives, administers a voluntary state exam for midwives who have completed the education course, and issues initial and renewal letters of documentation. The board has no enforcement powers; consumers must call their district attorney or the Texas Department of Health to register a complaint. By September 1993, the board must develop and require completion of a basic midwifery education course before the midwife is documented. In addition, continuing education courses for midwives will be mandatory for midwives seeking to renew their documentation.

STATE BOARD OF NURSE EXAMINERS

Statutory Reference: Art. 4513 through 4528, V.T.C.S.

Date Created: 1909

Board Size/Composition: 9 members: 6 registered nurses (3 of whom must be educators), 3 public members

Number of Employees (FY 1992)
FTE: 44

Funding

Source: Professional Nurse Registration
Fund No. 138
FY 1992 Expended: \$ 2,630,016
FY 1993 Appropriated: \$ 2,026,354

Revenue Generated (FY 1992)
\$2,995,202

Number of Licensees (FY 1992)

Registered Nurses: 131,015
Board accredited nursing programs: 75
Advanced Nurse Practitioners: 3,782
Advanced Nurse Practitioners with
prescription authority: 272
Nurse Anesthetists: 2,090
Nurse Midwives: 247
Nurse Practitioners: 1,138
Clinical Nurse Specialists: 742

Examinations (FY 1992)

Number of Exams Given: 6,691
Exam Pass Ratio: 87%

Enforcement Actions (FY 1992)

Number of Complaints: 1,063
Number of Investigations: 1,136
Number of Suspensions: 8
Number of Revocations: 107

Overview of Agency Operations

The State Board of Nurse Examiners has the responsibility and authority to examine, license, and regulate the practice of professional nursing in the state. The board's enabling act is a practice act in that it regulates the practice of professional nursing and prohibits unlicensed individuals from engaging in the practice and from using the title "registered nurse". The practice of professional nursing involves providing nursing care for compensation. To fulfill its responsibilities, the board adopts rules regarding the practice of professional nursing, determines the qualifications of applicants, administers a national exam, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board accredits nursing education programs.

TEXAS BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS

Statutory Reference: Art. 4442-d, V.T.C.S.

Date Created: 1969

Board Size/Composition: 12 members: 4 nursing home administrators, 1 physician, 1 educator in public health, medical, or nursing home administration, 3 public members, 3 non-voting ex-officio members from the Texas Department of Health, the Texas Department of Human Services, and Texas Department of Aging

Number of Employees (FY 1992)

FTE: 7

Funding

Source: Nursing Home Administrators
Fund No. 137

FY 1992 Expended: \$315,196 (Appropriations -
\$231,451 Governor's grant - \$83,745)

FY 1993 Appropriated: \$358,147 (\$231,451
Governor's grant \$126,696)

Revenue Generated (FY 1992)

\$449,447

Number of Licensees (FY 1992)

Nursing Home Administrators: 2,509

Examinations (FY 1992)

Number of Exams Given: 323

Exam Pass Ratio: 87.5%

Enforcement Actions (FY 1992)

Number of Complaints: 2,141

Number of Investigations: 97

Number of Suspensions: 1

Number of Revocations: 1

Overview of Agency Operations

The Texas Board of Licensure of Nursing Home Administrators has the responsibility and authority to examine, license, and regulate the practice of nursing home administration in the state. The board's enabling act is a practice act in that it regulates the practice of nursing home administration and prohibits unlicensed individuals from engaging in the practice. The nursing home administration act defines a nursing home as a nursing home or custodial care home that is licensed by the Texas Department of Health. The practice of nursing home administration involves the general administration, management, and supervision of a nursing home. To fulfill its responsibilities, the board adopts rules regarding the practice of nursing home administration, determines the qualifications of applicants, develops and administers a two part state exam, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board provides continuing education courses for licensees and reviews for approval continuing education courses provided by other people and organizations. As a courtesy, the board also administers a national exam for persons in the state who may want to apply for licensure in a state that requires the national exam for licensure.

TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY

Statutory Reference: Article 8851, V.T.C.S.

Date Created: 1983

Board Size/Composition: 6 members: 3 licensed occupational therapists, 1 licensed occupational therapy assistant, 2 public members
(Administratively attached to the Texas Rehabilitation Commission)

Number of Employees (FY 1992)
FTE: 4

Funding

Source: 100% General Revenue
FY 1992 Expended: \$149,915
FY 1993 Appropriated: \$157,288

Revenue Generated (FY 1992)
\$215,413

Number of Licensees (FY 1992)
Occupational Therapists: 2,578
Occupational Therapist Assistants: 468

Examinations (FY 1992)

Number of Exams Given: 411
Exam Pass Ratio:
Occupational Therapists: 92%
Occupational Therapists Assistants: 66%

Enforcement Actions (FY 1992)

Number of Complaints: 10
Number of Investigations: 11
Number of Suspensions: 1
Number of Revocations: 0

Overview of Agency Operations

The Texas Advisory Board of Occupational Therapy has the responsibility and authority to examine, license, and regulate the practice of occupational therapy in the state. The board's enabling act is a title act in that it regulates the practice of occupational therapy and prohibits unlicensed individuals from engaging in the practice. The practice of occupational therapy involves the evaluation and treatment of individuals whose ability to perform the task of living is threatened or impaired, so as to prevent and correct physical or emotional dysfunction and to maximize function in the individual's life. To fulfill its responsibilities, the board adopts rules regarding the practice of occupational therapy, determines the qualifications of applicants, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

TEXAS OPTOMETRY BOARD**Statutory Reference:** Article 4552, V.T.C.S.**Date Created:** 1921**Board Size/Composition:** 9 members: 6 optometrists, 3 public members**Number of Employees (FY 1992)**

FTE: 4

Funding

Source: Optometry Fund No. 34

FY 1992 Expended: \$224,416

FY 1993 Appropriated: \$214,981

Revenue Generated (FY 1992)

\$871,161

Number of Licensees (FY 1992)

Optometrists: 2,513

Examinations (FY 1992)

Number of Exams Given: 197

Exam Pass Ratio: 82%

Enforcement Actions (FY 1992)

Number of Complaints: 158

Number of Investigations: 79

Number of Suspensions: 0

Number of Revocations: 0

Overview of Agency Operations

The Texas Optometry Board has the responsibility and authority to examine, license, and regulate the practice of optometry in the state. The board's enabling act is a practice act in that it regulates the practice of optometry and prohibits unlicensed individuals from engaging in the practice. The practice of optometry involves ascertaining and measuring the powers of vision of the human eye, examining and diagnosing visual defects, abnormal conditions, and diseases of the human eye and adnexa, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. In addition to these elements, the practice of therapeutic optometry involves the prescribing of a drug or physical treatment and treating the eye and adnexa in a manner authorized by the Texas Optometry Act. To fulfill its responsibilities, the board adopts rules regarding the practice of optometry and therapeutic optometry, determines the qualifications of applicants, administers a state exam which includes a clinical and jurisprudence section, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board also approves continuing education courses.

TEXAS STATE BOARD OF PHARMACY**Statutory Reference:** Article 4542a-1, V.T.C.S.**Date Created:** 1907**Board Size/Composition:** 9 members: 7 pharmacists, 2 public members**Number of Employees (FY 1992)**

FTE: 32

Funding

Source: Local Funds

FY 1992 Expended: \$1,953,708

FY 1993 Appropriated: \$1,746,022

Revenue Generated (FY 1992)

\$2,379,759

Number of Licensees (FY 1992)

Pharmacists: 16,883

Pharmacies: 4,938

Examinations (FY 1992)

Number of Exams Given: 1,436

Exam Pass Ratio: 91%

Enforcement Actions (FY 1992)

Number of Complaints: 596

Number of Investigations: 141

Number of Suspensions: 54

Number of Revocations: 4

Overview of Agency Operations

The Texas State Board of Pharmacy has the responsibility and authority to examine, license, and regulate the practice of pharmacy in the state. The board's enabling act is a title and practice act in that it regulates the practice of pharmacy and prohibits unlicensed individuals from engaging in the practice or calling themselves pharmacists or operating a pharmacy. The practice of pharmacy involves dispensing prescription medication, compounding drugs, analyzing drug interactions, knowing the side effects of drugs and interacting with other members of the health care profession such as doctors and nurses to provide the best medical care possible. Pharmacists must also follow provisions in statute and rule governing record keeping and the use and storage of controlled substances. To fulfill its responsibilities, the board adopts rules regarding the practice of pharmacy, determines the qualifications of applicants, administers a national exam and a state jurisprudence exam, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board cooperates with other state and federal agencies in the enforcement of dangerous drug and controlled substances laws or other laws pertaining to the practice of pharmacy.

TEXAS STATE BOARD OF PHYSICAL THERAPY EXAMINERS**Statutory Reference:** Article 4512e, V.T.C.S.**Date Created:** 1971**Board Size/Composition:** 9 members: 6 licensed physical therapists, 3 public members**Number of Employees (FY 1992)**

FTE: 7

Funding

Source: General Revenue Fund

FY 1992 Expended: \$352,420

FY 1993 Appropriated: \$314,471

Revenue Generated (FY 1992)

\$679,847

Number of Licensees (FY 1992)

Physical Therapists: 5,305

Physical Therapist Assistants: 1,350

Examinations (FY 1992)

Number of Exams Given: 965

Exam Pass Ratio: 84%

Enforcement Actions (FY 1992)

Number of Complaints: 137

Number of Investigations: 18

Number of Suspensions: 0

Number of Revocations: 0

Overview of Agency Operations

The Texas State Board of Physical Therapy Examiners has the responsibility and authority to examine, license, and regulate the practice of physical therapy in the state. The board's enabling act is a practice act in that it regulates the practice of physical therapy and prohibits unlicensed individuals from engaging in the practice. The practice of physical therapy involves the examination, treatment, or instruction of individuals in order to detect, assess, prevent, and alleviate physical disability and pain and also involves the planning, administration, and modification of a patient's treatment. To fulfill its responsibilities, the board adopts rules regarding the practice of physical therapy, determines the qualifications of applicants, administers three national examinations annually, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

TEXAS STATE BOARD OF PODIATRY EXAMINERS**Statutory Reference:** Article 4567, V.T.C.S.**Date Created:** 1923**Board Size/Composition:** 9 member board: 6 licensed podiatrists, 3 public members**Number of Employees (FY 1992)**

FTE: 3

Funding

Source: Podiatry Board Fund No. 130

FY 1992 Expended: \$102,997

FY 1993 Appropriated: \$95,784

Revenue Generated (FY 1992)

\$137,600

Number of Licensees (FY 1992)

Total: 1,123

Podiatrists: 773

Radiological technologists: 350

Examinations (FY 1992)

Number of Exams Given: 28

Exam Pass Ratio: 88%

Enforcement Actions (FY 1992)

Number of Complaints: 50

Number of Investigations: 1

Number of Suspensions: 5

Number of Revocations: 0

Overview of Agency Operations

The Texas State Board of Podiatry Examiners has the responsibility and authority to examine, license, and regulate the practice of podiatry in the state. The board's enabling act is a practice act in that it regulates the practice of podiatry and prohibits unlicensed individuals from engaging in the practice. The practice of podiatry involves the treatment of any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. To fulfill its responsibilities, the board adopts rules regarding the practice of podiatry, determines the qualifications of applicants, administers the state portion of the podiatry examination, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

Statutory Reference: Article 4512g, V.T.C.S.

Date Created: 1981

Board Size/Composition: 9 members: 4 counselors in private practice, 1 counselor educator, 4 public members (Administratively attached to Texas Department of Health. Board's rulemaking authority is subject to approval by the Board of Health.)

Number of Employees (FY 1992)

FTE: 8

Funding

Source: Professional Counselors Licensure
Fund No. 139

FY 1992 Expended: \$332,443

FY 1993 Appropriated: \$256,503

Revenue Generated (FY 1992)

\$396,827

Number of Licensees (FY 1992)

Total: 9,000

Examinations (FY 1992)

Number of Exams Given: 638

Exam Pass Ratio: 83%

Enforcement Actions (FY 1992)

Number of Complaints: 49

Number of Field Investigations: 22

Number of Suspensions: 0

Number of Revocations: 0

Overview of Agency Operations

The Texas State Board of Examiners of Professional Counselors has the responsibility and authority to examine, license, and regulate the use of the title "licensed professional counselor" in the state. The board's enabling act is a title protection act in that it regulates professional counselors and prohibits unlicensed individuals from using the title of licensed professional counselors. The practice of professional counseling involves providing counseling services for compensation. To fulfill its responsibilities, the board adopts rules regarding the licensing of professional counselors, adopts a code of ethics for licensees, determines the qualifications of applicants, administers a state examination, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Reference: Article 4512c, V.T.C.S.

Date Created: 1969

Board Size/Composition: 9 members: 6 psychologists, 1 psychological associate,
2 public members

Number of Employees (FY 1992)

FTE: 8

Funding

Source: Psychologists Licensing Fund No. 24

FY 1992 Expended: \$557,621

FY 1993 Appropriated: \$528,285

Revenue Generated (FY 1992)

\$621,006

Number of Licensees (FY 1992)

Psychologists: 2,790

Certified psychologists: 202

Psychological associates: 1,353

Examinations

Number of Exams Given: 826

Exam Pass Ratio: 85%

Enforcement Actions (FY 1992)

Number of Complaints: 120

Number of Investigations: 167

Number of Suspensions: 6

Number of Revocations: 3

Overview of Agency Operations

The Board of Examiners of Psychologists has the responsibility and authority to examine, license, and regulate licensed psychologists in the state. The board's enabling act is a title act in that it prohibits unlicensed individuals from calling themselves licensed psychologists. The act also addresses the practice of psychology by prohibiting individuals from offering psychological services unless licensed by the state. The act prohibits persons from representing themselves as psychologists without being appropriately licensed. The practice of psychology involves providing services that describe, explain, and ameliorate behavior. The practice addresses normal behavior and behavioral disorders related to psychological, emotional, and mental wellness and interpersonal, and learning capabilities. To fulfill its responsibilities, the board adopts rules regarding the practice of psychology, determines the qualifications of applicants, administers a national competency examination and a state jurisprudence exam and issues initial and renewal licenses. The board investigates complaints against licensees and takes disciplinary action to enforce its enabling act. In addition, the board licenses psychologist associates.

COUNCIL FOR SOCIAL WORK CERTIFICATION

Statutory Reference: Chapter 50, Human Resources Code

Date Created: 1981

Board Size/Composition 9 members: 3 certified social workers, 3 social workers or social work associates; and 3 public members (Administratively attached to Texas Department of Human Services. Council members are appointed by the DHS board. Council's rulemaking and sanction authority are subject to the DHS Board.)

Number of Employees (FY 1992)

FTE: 4

Funding

Source: Social Work Fund No. 143

FY 1992 Expended: \$293,391

FY 1993 Appropriated: \$304,115

Revenue Generated (FY 1992)

\$399,370

Number of Licensees (FY 1992)

Certified Social Workers: 4,575

Social Workers: 3,193

Social Work Associates: 1,715

Advanced Clinical Practitioners: 3,058

Examinations (FY 1992)

Number of Exams Given: 1,382

Exam Pass Ratio: 78%

Enforcement Actions (FY 1992)

Number of Complaints: 43

Number of Investigations: 40

Number of Suspensions: 1

Number of Revocations: 2

Overview of Agency Operations

The Department of Human Services (DHS), with advice from the Council for Social Work Certification, has the responsibility and authority to examine, license, and regulate the use of titles related to the profession of social work in the state. The board's enabling act is a title protection act in that it regulates professional social workers and prohibits unlicensed individuals from using titles associated with social work. The practice of social work involves the professional application of social work values, principles, and techniques for compensation. To fulfill its responsibilities, the DHS board, with the advice of the advisory council, adopts rules regarding the licensing of social workers, adopts standards of conduct and ethics for licensees, determines the qualifications of applicants, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

STATE COMMITTEE OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY**Statutory Reference:** Article 4512j, V.T.C.S.**Date Created:** 1983**Board Size/Composition:** 9 members: 6 licensees, 3 public members (one of whom must be a medical doctor) (Administratively attached to the Texas Department of Health. Rulemaking authority is subject to approval by the Board of Health.)**Number of Employees:** (FY 1992)
FTE: 4**Funding**Source: Speech-Language Pathology
& Audiology Fund No. 515
FY 1992 Expended: \$166,114
FY 1993 Appropriated: \$134,879**Revenue Generated** (FY 1992)
\$169,082**Number of Licensees** (FY 1992)Total: 5,027
Speech language pathologists: 4,229
Associates in speech language pathology: 201
Audiologists: 590
Associates in audiology: 7**Examinations** (FY 1992)Number of Exams Given: 0
Exam Pass Ratio: - not available**Enforcement Actions** (FY 1992)Number of Complaints: 2
Number of Investigations: 1
Number of Suspensions: 0
Number of Revocations: 0**Overview of Agency Operations**

The State Committee of Examiners for Speech-Language Pathology and Audiology is located within the Department of Health and has the responsibility and authority to examine, license, and regulate the practice of audiology and speech-language pathology in the state. The board's enabling act is a practice and title act in that it regulates the practice of audiology and speech-language pathology and prohibits unlicensed individuals from engaging in the practice or calling themselves audiologists or speech-language pathologists. The practice of audiology involves testing, evaluating, appraising, habilitation, and rehabilitation of human hearing, training persons in the use of hearing aids, and making impressions for ear molds. Unlike hearing aid fitters and dispensers, audiologists cannot sell hearing aids. The practice of speech-language pathology involves making non-medical evaluations of speech and speech, voice, and language disorders and the development of plans to treat these disorders. Speech-language pathologists may perform basic audiometric screening tests and hearing therapy procedures consistent with their training. To fulfill its responsibilities, the committee adopts rules regarding the practice of audiology and speech-language pathology, determines the qualifications of applicants, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act.

BOARD OF VETERINARY MEDICAL EXAMINERS**Statutory Reference:** Article 8890, V.T.C.S.**Date Created:** 1911**Board Size/Composition:** 9 members: 6 veterinarians, 3 public members**Number of Employees (FY 1992)**

FTE: 8

FundingSource: Veterinary Medical Examiners Fund
No. 35

FY 1992 Expended: \$454,118

FY 1993 Appropriated: \$479,324 (includes
national examination rider)**Revenue Generated (FY 1992)**

\$568,309

Number of Licensed (FY 1992)

Veterinarians: 5,397

Special Licenses: 44

Examinations (FY 1992)

Number of Exams Given:

State: 208 - pass ratio 82%

National: 311 - pass ratio 83%

Special: 2 - pass ratio 100%

Enforcement Actions (FY 1992)

Number of Complaints: 160

Number of Investigations: 160

Number of Suspensions: 11

Number of Revocations: 3

Overview of Agency Operations

The Veterinary Medical Examiners Board has the responsibility and authority to examine, license, and regulate the practice of veterinary medicine in the state. The board's enabling act is a practice act in that it regulates the practice of veterinary medicine and prohibits unlicensed individuals from engaging in the practice. The practice of veterinary medicine involves performing a surgical or dental operation or diagnoses, treatment, immunization or prescription of any prescription drug, prescription medicine, or veterinary appliance for any physical ailment, injury, deformity, or condition of animals for compensation. To fulfill its responsibilities, the board adopts rules regarding the practice of veterinary medicine, determines the qualifications of applicants, administers a national and state examination, issues initial and renewal licenses, investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. The board issues a regular veterinary medical license and four types of special licenses. The special licenses are for faculty teaching in veterinary schools, veterinarians employed by the Texas Animal Health Commission, veterinarians employed by the Texas Veterinary Diagnostic Laboratory, and veterinarians in specialty areas employed by one employer at one location or special environment.

BOARD OF VOCATIONAL NURSE EXAMINERS

Statutory Reference: Article 4528c, V.T.C.S.

Date Created: 1951

Board Size/Composition: 12 members: 7 vocational nurses, 1 registered nurse, 1 physician, 1 hospital administrator, 2 public members

Number of Employees (FY 1992)

FTE: 18

Funding

Source: Vocational Nurse Examiners Fund

FY 1992 Expended: \$992,540

FY 1993 Appropriated: \$992,940

Revenue Generated (FY 1992)

\$1,483,514

Number of Licensees (FY 1992)

Licensed Vocational Nurses: 74,540

Examinations (FY 1992)

Number of Exams Given: 4,205

Exam Pass Ratio: 91%

Enforcement Actions (FY 1992)

Number of Complaints: 1,167

Number of Investigations: 961

Number of Suspensions: 183

Number of Revocations: 65

Overview of Agency Operations

The Board of Vocational Nurse Examiners has the responsibility and authority to examine, license, and regulate licensed vocational nurses in the state. The board's enabling act is a title act in that it regulates the title of licensed vocational nurse by prohibiting unlicensed individuals from identifying themselves as licensed vocational nurses. The practice of vocational nursing involves entry-level nursing for acute and chronically ill patients, with predictable health outcomes in structured settings. To fulfill its responsibilities, the board adopts rules regarding unlicensed practice, determines the qualifications of applicants, administers a national exam, and issues initial and renewal licenses. The board also investigates complaints against licensees, and takes disciplinary action to enforce its enabling act. In addition, the board oversees the approval of nursing school programs, continuing education courses for licensees, and assists nurses with a peer assistance program for chemical dependency and mental illness.

HEALTH CARE LICENSING BOARDS

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