

Self-Evaluation Report

Texas State Board of Examiners of Professional Counselors



Presented to the

Sunset Advisory Commission
August 2003

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Texas State Board of Examiners of Professional Counselors Self-Evaluation Report

I. Key Functions, Powers, and Duties

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

The Texas State Board of Examiners of Professional Counselors is the licensing and regulatory authority for professional counselors in Texas. The board's primary mission is to enforce licensure rules and ethical standards for professional counselors as a means to protect and promote public health and welfare. The board accomplishes its mission within the parameters established by Texas Occupations Code, Chapter 503.

The board's mission was set out in a 1993 amendment to its enabling statute, which included the statement that "It is the policy of this state that the activities of a person who provides services to the public as a counselor and uses the title licensed professional counselor should be regulated to protect the health, safety, and welfare of the public." (VTCS, Art. 4512g, Sec. 1A)

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

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

- To determine the qualifications and fitness of an applicant for a license, license renewal, or provisional license (Occupations Code § 503.201(a)(1)).
- To examine for, deny, approve, issue, revoke, suspend, suspend on an emergency basis, place on probation, and renew the license of a professional counselor or applicant (Occupations Code § 503.201(a)(2)).
- To adopt and publish a code of ethics for professional counselors (Occupations Code § 503.201(a)(3)).
- To adopt, by rule, a list of authorized counseling methods or practices that a license holder may undertake or perform (Occupations Code § 503.201(a)(4)).
- To establish, by rule, fees for the board's services in amounts reasonable and necessary to cover the costs of administering the regulatory program without accumulating an unnecessary surplus (Occupations Code § 503.202(a)).
- To adopt rules necessary to administer Occupations Code, Chapter 503 (Occupations Code § 503.203(a)).
- To prepare a registry of persons licensed as professional counselors (Occupations Code § 503.207(a)).
- To identify the key factors for the competent performance by a license holder of the license holder's professional duties (Occupations Code § 503.208).
- To adopt a form to standardize information concerning complaints made to the board and prescribe information to be provided to a person when the person files a complaint with the board (Occupations Code § 503.209).

- To prepare and distribute information of public interest describing the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board (Occupations Code § 503.251(a)).
- To adopt rules concerning the investigation and disposition of a complaint filed with the board. (Occupations Code §§ 503.254 – 503.255).
- To establish the minimum number of hours of continuing education required to renew a professional counselor license. (Occupations Code § 503.356(a)).

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

Yes.

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

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

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

Public information is necessary to inform professional counselors and Texans of counseling standards and complaint procedures.

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

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

According to the American Association of State Counseling Boards, 42 states and the District of Columbia regulate the practice of mental health counseling through licensure or certification programs established under state boards or agencies. These states vary in defining counseling practice and in the professional titles that licensees may use.

E. Describe any major agency functions that are outsourced.

Occupations Code § 503.305 requires the Texas State Board of Examiners of Professional Counselors to administer examinations to determine the competence of qualified applicants at least twice each calendar

year. The law also requires that the board’s examination be validated under the direction of a testing professional.

The board owns the Texas Licensed Professional Counselor Examination. Until 1995, the examination was administered by board staff at least twice annually in Austin. TDH, on behalf of the board, contracted with Assessment Systems, Inc. (ASI) in 1995 for the administration, scoring, and scheduling of the examination. ASI was recently purchased by Promissor of Bala Cynwyd, PA. The examination is offered continuously at locations throughout the state. The Candidate Handbook is labeled as Attachment 32.

The board’s Education Committee researches and develops test items, pilots test items, approves items for inclusion on the exam, and reviews statistical exam analyses. The Director of TDH’s Professional Licensing Division, a doctorate-level psychometrician, oversees the committee’s examination development process and validates the final product.

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

None anticipated.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Public Information (Open Records) Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1999 - 2003, or earlier significant Attorney General opinions, that affect the agency’s operations.

| Texas State Board of Examiners of Professional Counselors Exhibit 1: Statutes/Attorney General Opinions | |
|--|--|
| Statutes | |
| Citation/Title | Authority/Impact on Agency (e.g., “provides authority to license and regulate nursing home administrators”) |
| Occupations Code, Chapter 503 Licensed Professional Counselor Act | Creates the Texas State Board of Examiners of Professional Counselors within the Texas Department of Health and provides authority to regulate and discipline professional counselors. |
| Occupations Code, Chapter 101 Health Professions Council Act | Creates the Health Professions Council and defines membership to include the licensing boards and programs of the health licensing division of Texas Department of Health (including the Texas State Board of Examiners of Professional Counselors). |
| Occupations Code, Chapter 53 Consequences of Criminal Conviction | Provides authority to revoke, suspend, or deny a license based on criminal convictions in certain circumstances. |

| | |
|---|---|
| Education Code, § 57.491 Loan Default Ground for Nonrenewal of Professional or Occupational License | Prohibits the board from renewing the license of a licensee whose name is on a default list provided by the Texas Guaranteed Student Loan Corporation. |
| Family Code, Chapter 232 Suspension of License | Requires the board to suspend a license upon receipt of a court order suspending the license for failure to comply with the terms of a child custody order or failing to pay child support. |
| Title IV, Public Law 99-660, Health Care Quality Improvement Act of 1986 and 45 CFR Part 60. | Established the National Practitioners Data Bank. Requires the board to report certain disciplinary actions to the NPDB. |
| Attorney General Opinions | |
| Attorney General Opinion No. | Impact on Agency |
| No current opinions impacting the agency. | |

H. Please fill in the following chart:

| Texas State Board of Examiners of Professional Counselors Exhibit 2: Agency Contacts | | | | |
|---|---------------------------------------|--|--------------------------------------|-------------------------------------|
| | Name | Address | Telephone & Fax Numbers | E-mail Address |
| Agency Head | Bobbe Alexander Executive Director | 1100 West 49 th Street Austin TX 78756 | (512) 834-6658 (512) 834-6789 fax | bobbe.alexander@ tdh.state.tx.us |
| Board Chair | Judith Powell Public Member | | | |
| Agency's Sunset Liaison | Stephen Mills Program Specialist | 1100 West 49 th Street Austin TX 78756 | (512) 834-6628 (512) 834-6677 fax | stephen.mills@ tdh.state.tx.us |

II. History and Major Events

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

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

1981 The 67th Legislature enacted the Licensed Professional Counselor Act to be effective September 1, 1981. The law was codified in Vernon's Texas Civil Statutes, Article 4512g. Texas Counseling Association worked closely with legislators as the bill went through the legislative process. The Act created a title protection regulatory program under the general direction of the Texas State Board of Examiners of Professional Counselors.

1981 The Texas State Board of Examiners of Professional Counselors first met on November 20, 1981, at Texas Department of Health in Austin, Texas. The board was empowered to qualify, license, and regulate professional counselors in order to protect the public health, safety, and welfare. The board was created within the Texas Department of Health and organizationally placed in the Hospital and Professional Licensure Division.

1983 The 68th Legislature amended VTCS, Art. 4512g, to include counseling services related to marriage and family therapy in the list of exemptions identified in the original Act and to add a provision to prohibit the board from establishing a specialty in marriage and family counseling.

1984 The first licensure examination for professional counselors was administered on June 2.

1985 The 69th Legislature amended the Act to modify requirements for board membership.

1985 The Professional Licensing and Certification Division (PLCD) was formed within TDH and the licensing program for professional counselors was placed within PLCD.

1985 State Medicare officials applied the federal requirement that medicare certified hospital personnel must hold any available state license relating to the services provided. As a result, certain previously unlicensed practitioners performing psychotherapy and other mental health services were required to obtain licenses as professional counselors.

1989 The 71st Legislature amended the Insurance Code to require that health insurance policies written or renewed after January 1, 1990 must include licensed professional counselors as professionals eligible to receive payments for the provision of mental health services.

1989 The Licensed Professional Counselor Act was amended to provide the board with the authority to discipline a licensee, even if the licensee provides services in a setting exempt from the licensure requirement. The Act was also amended to provide authority to require examinations for certain specialties.

1991 The 72nd Legislature amended the Act to modify the section relating to the nature and composition of the board.

1993 The 73rd Legislature considered recommendations from the Sunset Advisory Commission and amended the Act from title protection to practice protection. The practice of counseling as defined by the Act is prohibited unless a person holds a license issued by the board or falls under one of the exemptions in the Act. The board was authorized to adopt by rule a system under which temporary licenses may be issued to individuals who have met all academic requirements for licensing and who have entered into a supervisory agreement with a board-approved supervisor. The board's authority to establish specialty designations was deleted. The academic requirements for examination and licensure were increased to 48 graduate semester hours.

1995 The 74th Legislature amended the Act to redefine "practice of counseling" and "counseling services," to exempt occupational therapists, to establish an art therapy specialty designation, and to modify the examination requirement for provisional license applicants.

1997 The 75th Legislature amended the Act to increase the post-graduate experience requirement for examination and licensure to 3,000 clock-hours. Certified rehabilitation counselors were exempted from the licensing requirements of the statute.

1999 The 76th Legislature recodified the Act as Texas Occupations Code, Chapter 503. The Act was also amended to exempt music therapists, to change the title of Executive Secretary to Executive Director, to delete the phrase "or the substantial equivalent" from the academic requirements section, to clarify provisional license procedures, to clarify initial license fee calculations, and to grant subpoena authority.

2003 The 78th Legislature amended the Act to grant authority to assess administrative penalties for violations of the Act and/or rules.

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

III. Policymaking Structure

| Texas State Board of Examiners of Professional Counselors Exhibit 3: Policymaking Body | | | | | |
|---|---|--|---------|----------------------------------|----------------|
| Member Name | 6 Year Terms/ Appointment Dates/ Appointed by ____ | Qualification | Address | Telephone & Fax Numbers | E-mail Address |
| Judith Powell Chair | May 1999 – February 2005 Governor | Public/Consumer | | | |
| Ana C. Bergh | February 1998 – February 2005 Governor | Public/Consumer | | | |
| Glynda Corley | June 2001 – February 2005 | Licensed Professional Counselor – Private Practice | | | |
| Michelle A. Eggleston | June 2001 – February 2007 | Public/Consumer | | | |
| J. Lee Jagers | February 1997 – February 2003 | Licensed Professional Counselor – Private Practice | | | |
| Alma G. Leal | June 2001 – February 2003 | Licensed Professional Counselor – Counselor Educator | | | |
| Gay T. McAlister | January 1999 – February 2003 | Licensed Professional Counselor | | | |
| Dan F. Wilkins | June 2001 – February 2007 | Licensed Professional Counselor – Private Practice | | | |
| Vacant | | Public/Consumer | | | |

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

Occupations Code § 503.106(a) provides that “The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.”

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

Powers and duties of the board are set out in Occupations Code, §§ 503.201-503.256.

The board's primary role is to adopt and enforce rules relating to the licensure and regulation of professional counselors, including discipline of professional counselors found to be in violation of the Licensed Professional Counselor Act or board rules.

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

There are no special circumstances or unique features that distinguish the board from other regulatory boards administratively attached to TDH, Professional Licensing and Certification Division.

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

Occupations Code § 503.109 requires the Texas State Board of Examiners of Professional Counselors to meet at least semiannually. In FY 2002, the board held four meetings. In FY 2003, the board held three meetings.

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

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

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

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

Yes. Occupations Code § 503.154 requires the board to develop and implement policies that clearly define the respective responsibilities of the board and the board's staff. The policy delineates 18

responsibilities of the board and 22 responsibilities of the board's staff. A copy of the policy is included as Attachment 22.

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

| Texas State Board of Examiners of Professional Counselors Exhibit 4: Subcommittees and Advisory Committees | | | |
|---|--|--|--|
| Name of Subcommittee or Advisory Committee | Size/Composition/How are members appointed? | Purpose/Duties | Legal Basis for Committee |
| Complaints Committee | 4 members Two public board members and two professional board members. Committee members are appointed by the Chair of the board for one year terms. | To consider complaints filed against professional counselors. Determines whether matters should be closed or whether disciplinary action proposed. | The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or temporary basis (Occupations Code § 503.205.) The board's rules at 22 TAC § 681.9 relate to requirements for board committees. |
| Administration and Finance Committee | 3 members 2 public and 1 professional board members Committee members are appointed by the Chair of the board for one year terms. | To review quarterly budget reports and consider matters relating to program administration and management. | The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or temporary basis (Occupations Code § 503.205.) The board's rules at 22 TAC § 681.9 relate to requirements for board committees. |
| Testing and Continuing Education Committee | 4 members 1 public and 3 professional board members Committee members are | To consider matters relating to examination administration and continuing education. | The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a |

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| | | | |
|--|--|--|---|
| | <p>appointed by the Chair of the board for one year terms.</p> | | <p>permanent or temporary basis (Occupations Code § 503.205.)</p> <p>The board's rules at 22 TAC § 681.9 relate to requirements for board committees.</p> |
| Applications Committee | <p>4 members</p> <p>1 public and 3 professional board members</p> <p>Committee members are appointed by the Chair of the board for one year terms.</p> | <p>To consider matters relating to licensure applications.</p> | <p>The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or temporary basis (Occupations Code § 503.205.)</p> <p>The board's rules at 22 TAC § 681.9 relate to requirements for board committees.</p> |
| <i>Ad Hoc</i> Rules Committee | <p>5 members</p> <p>2 public and 4 professional board members</p> <p>Committee members are appointed by the Chair of the board for one year terms.</p> | <p>As needed, to consider matters relating to rule amendments, new rules, and rule reviews.</p> | <p>The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or temporary basis (Occupations Code § 503.205.)</p> <p>The board's rules at 22 TAC § 681.9 relate to requirements for board committees.</p> |
| Professional and Regulatory Trends Committee | <p>3 members</p> <p>1 public and 2 professional board members</p> <p>Committee members are appointed by the Chair of the</p> | <p>To consider matters relating to professional and regulatory counseling trends and make recommendations to the board for rule amendments, new rules,</p> | <p>The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or</p> |

| | | | |
|-------------------------------------|---|--|--|
| | board for one year terms. | or other action. | temporary basis (Occupations Code § 503.205.) The board’s rules at 22 TAC § 681.9 relate to requirements for board committees. |
| <i>Ad Hoc</i> Examination Committee | 7 members 1 professional board member, 1 TDH staff who is a testing professional, and 5 subject matter experts. Committee members are appointed by the Chair of the board for one year terms. | As needed, to research and draft test items, pilot items, review statistical examination analyses, and approve items for inclusion on the Texas Licensed Professional Counselor Examination. | The Licensed Professional Counselor Act provides that the board may delegate a function or activity to a committee on a permanent or temporary basis (Occupations Code § 503.205.) The board’s rules at 22 TAC § 681.9 relate to requirements for board committees. |

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

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

Each committee and board meeting agenda has a public comment item. Controversial or difficult issues and public comments on those issues are comprehensively discussed in both committee and board meetings. The board’s stakeholders regularly avail themselves of the opportunity to address the board and its committees.

The board’s membership structure and committee composition lend themselves to considerable input from the public. Four board members represent the public. Each board committee has at least one public member.

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

As funds allow, the board and its staff attend statewide and national conferences relating to the regulation of counseling and local area meetings to receive direct input from the regulated community, to provide information, and to answer questions regarding the board and its functions.

IV. Funding

Introduction

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

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

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

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

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

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

percentage. Projected revenue is based on the prior year's revenue and last year's third party reimbursement (not all programs collect third party reimbursement.)

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

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

| Texas State Board of Examiners of Professional Counselors Exhibit 5: Sources of Revenue — Fiscal Year 2002 (Actual) | |
|--|---------|
| Source | Amount |
| General Revenue Fund | 677,977 |
| Third Party Reimbursement | 46,656 |
| TOTAL | 724,633 |

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

| Texas State Board of Examiners of Professional Counselors Exhibit 6: Federal Funds — Fiscal Year 2002 (Actual) | | | | |
|---|---------------------------|-------------|---------------|---------------|
| Type of Fund | State/Federal Match Ratio | State Share | Federal Share | Total Funding |
| | | | | |
| | | | | |
| TOTAL | | N/A | | |

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

| Texas State Board of Examiners of Professional Counselors Exhibit 7: Fee Revenue and Statutory Fee Levels — Fiscal Year 2002 | | | | |
|---|-----------------------------------|--|----------------|--|
| Description/ Program/ Statutory Citation | Current Fee/ Statutory maximum | Number of persons or entities paying fee | Fee Revenue | Where Fee Revenue is Deposited (e.g., General Revenue Fund) |
| Professional Counselor Application Fee Occupations Code § 503.202 | 90.00/None | 1193 | 107,370 | General Revenue Fund |
| Professional Counselor Renewal fee Occupations Code § 503.202 | 50.00/None | 10,984 | 549,200 | General Revenue Fund |
| Professional Counselor | 25.00/None | 850 | 21,250 | General Revenue Fund |

| | | | | |
|--|--|--|--|--|
| Inactive Fee Occupations Code § 503.202 | | | | |
|--|--|--|--|--|

E. Show the agency's expenditures by strategy.

Please refer to the Section IV introductory information regarding the shared appropriation to TDH to fund strategy C.1.1. (Health Care Standards).

| Texas State Board of Examiners of Professional Counselors Exhibit 8: Expenditures by Strategy — Fiscal Year 2002 (Actual) | |
|--|--------|
| Goal/Strategy | Amount |
| | |
| | |
| GRAND TOTAL: | |

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

| Texas State Board of Examiners of Professional Counselors Exhibit 9: Expenditures and FTEs by Program — Fiscal Year 2002 (Actual) | | | | | |
|--|------------------------|-----------------------------------|------------------------|----------------------|---------------------------|
| Program | Budgeted FTEs, FY 2002 | Actual FTEs as of August 31, 2002 | Federal Funds Expended | State Funds Expended | Total Actual Expenditures |
| Licensing and Regulation of Professional Counselors | 9.25 | 9.25 | N/A | 396,918 | 396,918* |
| TOTAL | | | | | |

* Represents direct staff and investigation staff without fringe benefits and without indirect cost rate applied.

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

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

| Texas State Board of Examiners of Professional Counselors Exhibit 10: Objects of Expense by Program or Function -- Fiscal Year 2004 | | | |
|--|--|--|--|
| Object-of-Expense Informational Listing | Strategy, Program, Division, or Function ____ (insert strategy, division or program | Strategy, Program, Division, or Function ____ (insert strategy, division or program | Strategy, Program, Division, or Function ____ (insert strategy, |
| | | | |

| | | | |
|---|--------------|--------------|----------------------------------|
| | name) | name) | division or program name) |
| | | | |
| | | | |
| | | | |
| Total, FY 2004 Object-of-Expense Informational Listing | | | |

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

H. Please fill in the following chart.

Please refer to the Section IV introductory information regarding the board’s administrative attachment to TDH.

| Texas State Board of Examiners of Professional Counselors Exhibit 11: Purchases from HUBs | | | | |
|--|-----------------------|---------------------------|----------------|-----------------------|
| FISCAL YEAR 2000 | | | | |
| Category | Total \$ Spent | Total HUB \$ Spent | Percent | Statewide Goal |
| Heavy Construction | | | | 11.9% |
| Building Construction | | | | 26.1% |
| Special Trade | | | | 57.2% |
| Professional Services | | | | 20.0% |
| Other Services | | | | 33.0% |
| Commodities | | | | 12.6% |
| TOTAL | | | | |

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

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

Please refer to the Section IV introductory information regarding the board’s administrative attachment to TDH.

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

Not applicable

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

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

Not applicable

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

V. Organization

Introduction

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

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

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

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

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

| Texas State Board of Examiners of Professional Counselors Exhibit 12: FTEs by Location — Fiscal Year 2002 | | | |
|--|----------|----------------------------------|---|
| Headquarters, Region, or Field Office | Location | Number of Budgeted FTEs, FY 2002 | Number of Actual FTEs as of August 31, 2002 |
| Central Headquarters Texas Department of Health | Austin | 9.25 | 9.25 |
| TOTAL | | 9.25 | 9.25 |

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

Please refer to the Section V introductory information.

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

None

D. Please fill in the chart below.

Please refer to the Section V introductory information.

| Texas State Board of Examiners of Professional Counselors Exhibit 13: Equal Employment Opportunity Statistics | | | | | | | |
|--|-----------------|--------------------------------|------------------------|----------|------------------------|--------|------------------------|
| FISCAL YEAR 2000 | | | | | | | |
| Job Category | Total Positions | Minority Workforce Percentages | | | | | |
| | | Black | | Hispanic | | Female | |
| | | Agency | Civilian Labor Force % | Agency | Civilian Labor Force % | Agency | Civilian Labor Force % |
| Officials/Administration | | | 5% | | 8% | | 26% |
| Professional | | | 7% | | 7% | | 44% |
| Technical | | | 13% | | 14% | | 41% |
| Protective Services | | | 13% | | 18% | | 15% |
| Para-Professionals | | | 25% | | 30% | | 55% |
| Administrative Support | | | 16% | | 17% | | 84% |
| Skilled Craft | | | 11% | | 20% | | 8% |
| Service/Maintenance | | | 19% | | 32% | | 27% |
| FISCAL YEAR 2001 | | | | | | | |
| Minority Workforce Percentages | | | | | | | |

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

FISCAL YEAR 2002

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

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

Please refer to the Section V introductory information.

VI. Guide to Agency Programs

A. Please complete the following chart.

**Texas State Board of Examiners of Professional Counselors
Exhibit 14: Program or Function Information — Fiscal Year 2002**

| | |
|--|--|
| Name of Program or Function | Licensing and Regulation of Professional Counselors |
| Location/Division | Texas Department of Health/Professional Licensing and Certification Division |
| Contact Name | Bobbe Alexander, Executive Director |
| Number of Budgeted FTEs, FY 2002 | 9.25 |
| Number of Actual FTEs as of August 31, 2002 | 9.25 |

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

Key services and activities are:

- rulemaking
- issuance of new, temporary, and renewal licenses to qualified applicants and professional counselors
- processing, evaluation, and approval of applications to become a licensed professional counselor;
- processing, evaluation, and approval of applicant examination scores
- processing, evaluation, and approval of new and renewal applications for intern supervisor approval
- processing, evaluation, and approval of new and renewal applications for continuing education provider
- processing of consumer complaints against professional counselors
- investigation and presentation of complaints to the Complaints Committee
- imposition of enforcement sanctions against licensees in violation of the law or rules
- provision of public information concerning professional counseling and the regulation of the profession.

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

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

The functions were created in order to protect and promote public health, safety, and welfare. Texas Occupations Code, Chapter 503 sets out requirements for these functions. The functions were established by legislative action in 1981 and have been modified several times over the years (see History section.)

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

The key functions of the Texas State Board of Examiners of Professional Counselors are ongoing and will continue to be needed as long as Texas citizens seek out mental health counseling services. The

regulation of professional counselors is intended to ensure that citizens are availing themselves of the services of a qualified and competent counselor.

The services and functions have changed from the original intent of the 1981 Act. Originally, the Act created a title protection licensing program. Persons who provided professional counseling services but did not use the title “Professional Counselor,” were not subject to the regulation. The statute was amended in 1993 to regulate the practice of professional counseling. Since 1993, persons who provide professional counseling services, as that term is defined statutorily, are subject to the regulation, unless exempt.

Generally speaking, amendments to the Licensed Professional Counselor Act have strengthened the intent of the licensing and regulatory functions over time. Examples include the change to practice protection, the authority to regulate interns through a temporary license, and the authority for additional enforcement sanctions.

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

The functions directly affect Texas consumers of counseling services and Texas professional counselors. There are over 12,000 licensed professional counselors. It is not known how many clients are served by those counselors.

Qualifications to become a professional counselor are set out in Occupations Code § 503.302 and board rules at 22 TAC §§ 681.61 – 681.83. Qualifications include a graduate degree in counseling or a counseling-related field, 3,000 clock-hours of post-graduate supervised counseling experience, and successful completion of the licensure examination.

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

Rulemaking processes are carried out in accordance with the Administrative Procedure Act. The application process for professional counselor licensure is detailed in the flowchart labeled Attachment 24. Applications for approved supervisor status and continuing education provider follow a similar approval process. The renewal process is detailed in the flowchart labeled Attachment 25. Renewals for supervisors and continuing education providers follow a similar process. The complaint processing and enforcement processes are detailed in the flowchart labeled as Attachment 26.

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

Program staff do not routinely interact with local units of government. Occasionally, there is a need for cooperation or coordination with local law enforcement concerning a complaint investigation.

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

| | |
|---------------------------|-----------|
| General revenue fund | \$677,977 |
| Third party reimbursement | \$46,656 |

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

Overall, current funding resources are appropriate to achieve the program's mission and goals. Some board members have expressed concern at the lack of funding available for in-state and out-of-state travel, which hampers the board's ability to exchange information with its regulatory counterparts in other states and gain information regarding national trends in counseling regulation.

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

There are no other state government programs engaged in the regulation of professional counselors. There are state boards and councils that license and regulate other mental health-related occupations, such as psychologists, social workers, marriage and family therapists, and sex offender treatment providers.

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

N/A

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

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

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

The regulation of professional counselors is necessary as a means to protect and promote public health, safety, and welfare. The regulation of professional counselors is intended to ensure that persons seeking mental health counseling services are availing themselves of the services of a qualified and competent counselor.

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

When non-compliance is identified, a number of follow-up actions may be taken. In a complaint matter, the professional counselor may be required to complete additional graduate level or continuing education in addition to enforcement sanctions, such as probation or suspension. In some enforcement matters, the Complaints Committee requires supervision by another mental health professional with quarterly progress reports. Program staff monitor these enforcement orders and report non-compliance to the Complaints Committee for additional action. If another complaint is received or if there is reason to believe the problem has not been resolved, program staff re-investigate and provide additional investigative results to the Complaints Committee for action.

The Texas State Board of Examiners of Professional Counselors is authorized to impose a broad range of enforcement sanctions to ensure compliance with the Act and rules. These sanctions include application or renewal application denial, administrative penalties, emergency suspension, reprimand, suspension, probation, and revocation. Additionally, the Board may resolve contested cases through the use of agreed orders, requirements for additional education, and practice limitations. (See Occupations Code §§ 503.401 - 403.)

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

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

Texas State Board of Examiners of Professional Counselors

| Exhibit 15: Complaints <u>Against</u> Regulated Entities or Persons – Fiscal Years 2001 and 2002 | | |
|---|----------------|----------------|
| | FY 2001 | FY 2002 |
| Number of complaints received | 84 | 116 |
| Number of complaints resolved | 127 | 89 |
| Number of complaints dropped/found to be without merit | 109 | 72 |
| Number of sanctions | 18 | 17 |
| Number of complaints pending from prior years | 8 | 13 |
| Average time period for resolution of a complaint | 71 days | 141 days |
| Number of entities inspected or audited by the agency | 0 | 0 |
| Total number of entities or persons regulated by the agency | 12,543 | 13,228 |

VII. Agency Performance Evaluation

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

Implementation of Legislative Initiatives Significant modifications to the scope of the board's regulatory authority and the licensing processes for professional counselors occurred through amendments to the Licensed Professional Counselor Act in the 1990's. These included the transition from a title protection program to a practice protection program, the granting of authority to regulate counselor interns through temporary licensing, the increase in academic requirements for licensure, the addition of the art therapy specialty designation, and the increase in the post-graduate experience requirement for licensure. Each of these initiatives required the board to engage in the rulemaking process utilizing stakeholder input, to compose and distribute public information, and to implement new or modified automation and workflow processes. These activities affected approximately 5,000 licensed professional counselors and interns, which is the increase in the regulated population since August 31, 1993.

Rulemaking During 2001, the board's Executive Director and Attorney met with the board chair concerning the need to implement the comprehensive rule review process required by Government Code, § 2001.039, and due to be completed by August 31, 2003. Staff identified numerous possibilities for improvements throughout the board's rules at 22 Texas Administrative Code, Chapter 681. Planning meetings were held with the Rules Committee Chair. During the early phase of the process, the governor appointed 6 new board members and designated a new board chair. Once the new members became oriented to the board's work, the review process continued. In December 2001, staff met with the Governmental Relations Director of Texas Counseling Association (TCA) to discuss the rule review process, the criteria for the review, the desired outcome, and to encourage TCA to fully participate during the development phase of the rules. Rules Committee meetings were held in early 2002 to conduct

intensive review sessions of each existing rule. TCA representatives were present throughout these sessions and provided valuable input, recommendations, and information. In December 2002, the board proposed to repeal the existing Chapter 681 and adopt a new Chapter 681 based on the extensive recommendations for improvements that came out of the Rules Committee meetings. The proposal was published in the *Texas Register* and public comments were provided during February and March 2003. The board convened in April 2003 to consider comments, to consider feedback from stakeholders present at the meeting, to modify the proposal based on stakeholder and staff comment, and to adopt the new Chapter 681. The existing Chapter 681, the new Chapter 681 effective September 1, 2003, and the rule review proposal and adoption preambles are labeled as Attachment 7.

Enforcement and Complaint Processing In 1997, representatives of TDH's Professional Licensing Division and the TDH Office of General Counsel implemented a process improvement team to study procedures for processing complaints, managing hearings, and making recommendations for improvements to current complaint and enforcement processes for the Texas State Board of Social Worker Examiners, the Texas State Board of Examiners of Marriage and Family Therapists, and the Texas State Board of Examiners of Professional Counselors (the boards). The team was formed in December 1997 and a Steering Committee charge to the team was developed. The team included chairs of the affected boards, executive directors, investigators, and program attorneys. The Steering Committee included board chairs, the TDH General Counsel, and the TDH Associate Commissioner for Health Care Quality and Standards. The team collected data, identified problem areas, and developed 27 recommendations for process improvement. A final report was prepared and most recommendations were implemented by early 1999. This significant accomplishment resulted in evaluation and upgrading of the complaint tracking systems, adoption of uniform investigation referral and case referral documents, streamlined routing of complaints for investigation, monthly meetings between mental health board management to review common cases, adoption of a uniform Report of Investigation, increased use of informal conferences to avoid the time and expense of formal hearings, the assignment of regular investigators and attorneys for mental health board cases, uniform case presentation formats to boards and committees, and other improvements intended to reduce the processing time associated with enforcement and to prioritize severity levels of allegations and findings.

Application Processing and Customer Satisfaction As the number of professional counselor applicants increased dramatically in the 1990's, board management recognized the need for streamlining the application, renewal application, and examination processes. An in-depth review of all application forms, procedures, and requirements was undertaken, including a comparison of in-house forms and procedures with the requirements of the statute and rules. Recommendations for rule amendments were developed and implemented as a means to improve customer satisfaction with the process. Significant improvements were implemented, including a reduction in the number of forms in the application packet. This resulted in a corresponding reduction in the amount of time required to process an initial application. Customer satisfaction surveys were implemented for all new licenses issued. Feedback from the surveys, as well as other statements from stakeholders and customers, strongly indicates that this project was a success.

Examination Administration In 1995, through its contract with Assessment Systems, Inc. (now Promissor), the board significantly improved the availability and accessibility of the Texas Licensed Professional Counselor Examination. Prior to 1995, the examination was administered on paper several times a year in Austin to a large group of applicants. Since 1995, the examination is administered electronically at locations in cities throughout the state on a weekly basis. This provides greater flexibility for interns and applicants to obtain regular professional counselor licensure.

Examination Development The board owns the Texas Licensed Professional Counselor Examination, which is valid, professionally constructed, criterion-referenced, and legally defensible. From 1996 to 2003, the Ohio State Counselor and Social Worker Board contracted with the board to administer a modified form of the Texas examination to Ohio counselor applicants.

National Perspectives in Counseling Regulation The board has maintained continued and active involvement with the American Association of State Counseling Boards (AASCB). The association is an affiliation of state counseling board members and staff that meet to consider regulatory issues and problems of mutual concern. The chair of the Texas State Board of Examiners of Professional Counselors, Judith Powell, is currently serving as the President of AASCB.

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

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

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

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

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

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

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

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

There are no other entities involved in functions related to the regulation of professional counselors. Program staff regularly communicate with other entities, including regulatory boards for social workers, marriage and family therapists, and sex offender treatment providers, to coordinate on matters of mutual interest to mental health care providers.

Currently the board works closely with the Texas State Board of Social Workers, Texas State Board of Examiners of Marriage and Family Therapists, and the Council on Sex Offender Treatment regulatory bodies regarding complaints and other functions. If one program receives a complaint, the investigations unit verifies the licensure status of the licensee and if licensee falls within multiple jurisdictions, the complaint is referred to all appropriate jurisdictions. Although each board initially hears the complaint case independently, often the boards will hold collaborative informal settlement conferences with a licensee who is licensed by more than one board to save on administrative costs of the hearing and the travel expenses of witnesses. The board also refers complaints not within the jurisdiction of the TSBEP to those programs that may regulate the individual.

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

No. Professional counselors occupy a unique role in the field of mental health care.

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

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

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

G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.

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

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

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

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

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

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

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

| Texas State Board of Examiners of Professional Counselors Exhibit 17: Contacts | | | |
|---|--|---|--------------------------|
| INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions) | | | |
| Group or Association Name/ Contact Person | Address | Telephone & Fax Numbers | E-mail Address |
| Texas Counseling Association (TCA) Jan Friese, Executive Director and TCA Divisions: Texas Association for Adult Development Aging Texas Association of Marriage and Family Counselors Texas Mental Health Counselors Association Texas Association for Assessment in Counseling Texas Association for Humanistic Education and Development Texas School Counselor Association Texas Association for Counselor Education and Supervision Texas Career Development Association Texas College Counselors Association Texas Association for Gay, Lesbian, and Bisexual Issues in Counseling Texas Association for Multicultural Counseling and Development | 316 West 12 th Street Suite 402 Austin TX 78701 | (512) 472-3403 (512) 472-3756 fax | jan@txca.org |
| INTERAGENCY, INTRA-AGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with the agency) | | | |
| Group or Association Name/ Contact Person | Address | Telephone & Fax Numbers | E-mail Address |
| American Association of State Counseling Boards | 3-A Terrace Way Greensboro, NC 27403-3660 | (336) 547-0914 (336)547-0017 fax | AASCB@cce- global.org |

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| | | | |
|---|---|---|------------------------------------|
| National Board for Certified Counselors | 3 Terrace Way, Suite D Greensboro, NC 27403-3660 | (336) 547-0607 (336) 547-0017 fax | nbcc@nbcc.org |
| American Counseling Association Scott Barstow, Legislation and Public Policy | 5999 Stevenson Ave. Alexandria, VA 22304 | (800) 347-6647 (800) 473-2329 fax | sbarstow@ counseling.org |
| LIAISONS AT OTHER STATE AGENCIES (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office) | | | |
| Agency Name/Relationship/ Contact Person | Address | Telephone & Fax Numbers | E-mail Address |
| Office of the Governor Appointments Division Polly Sowell | P.O. Box 12428 Austin TX 78711 | (512) 463-1828 | |
| Health Professions Council Charles Horton, Administrative Officer | 333 Guadalupe Street, Tower 2, Suite 220 Austin TX 78701-3942 | (512) 305-8550 (512) 305-8553 | Charles.Horton@ hpc.state.tx.us |

VIII. 78th Legislative Session Chart

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

IX. Policy Issues

A. Brief Description of Issue

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

B. Discussion

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

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

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

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

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

The commission also recommended “TDH should examine its regulatory programs and determine which ones could benefit from being functionally organized. It may be possible in some cases to combine staff in different programs performing similar activities to carry out common practices, such as licensing, investigations, enforcement, and compliance.” The commission’s rationale was “There may be opportunities for the regulatory programs at TDH to share additional costs and functions by organizing like programs along functional lines. Such arrangements have been demonstrated to be effective and efficient alternatives to having distinct and perhaps duplicative functions when organizing along program lines.”

C. Possible Solutions and Impact

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

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

An examination of the different regulatory models set out in the HHSC Report illustrates the options for placement of regulatory programs within state government. The models include regulatory programs as autonomous boards, boards with shared administrative functions, administratively attached boards with shared authority, administratively attached boards with limited authority, and centralized licensing agencies. Each model has perceived advantages and disadvantages in terms of cost-effectiveness, effective consumer protection, and effective professional regulation. The board has closely examined each model, but has not taken a position on whether it should become a free-standing agency within the Health Professions Council, remain within TDH, or be administratively attached to another agency. The board strongly believes that the Bomer recommendation should not be implemented and that rulemaking and disciplinary authority over licensed professional counselors should remain with the board.

In February 2003, the associations representing the professions of counseling, marriage and family therapy, and social work met to discuss the possibility of creating an independent agency of the boards regulating mental health professions, utilizing a “council” format. The group’s recommendations are available upon request from the Texas Counseling Association.

A. Brief Description of Issue

Should the Act be amended to facilitate national license portability?

B. Discussion

Professional counselor license portability from state-to-state has become a priority for many state counselor regulatory boards and for many professional counselors. The issue is multi-faceted, as there are numerous statutory and rule barriers to portability. National standards for counselor qualifications are

advocated by groups such as the American Counseling Association and the American Association of State Counseling Boards (AASCB). The standards include, generally speaking, moving toward an academic requirement of 60 graduate semester hours and the completion, not of a state-developed or state-specific examination, but of the National Counselor Examination developed and administered by the National Board for Counselor Certification. Additionally, there is a model of a two-tiered licensing structure, in which a higher level of license may be issued to counselors meeting the higher requirements and another level of license issued to those meeting less stringent requirements. The adoption of these standards in Texas would require revisions to the Licensed Professional Counselor Act.

Currently, counselors from other states who meet the national standards are able to obtain licenses to practice in Texas through the Act's provisional licensing provisions. The challenge is that the majority of the nation's regulated populations, including the Texas counselor population, became licensed at a time when less stringent requirements were in effect. Most of these licensees may have held licenses in good standing and effectively practiced counseling for a number of years in their state of origin. These out-of-state licensees currently may not obtain a permanent license to practice in Texas without completing additional graduate level coursework and/or supervised post-graduate experience. This may prevent qualified, competent individuals from entering this state and providing mental health services to Texans.

By the same token, many Texas professional counselors may experience difficulty obtaining an occupational license to engage in counseling if they relocate to another state and seek to continue in their vocation.

C. Possible Solutions and Impact

The American Association of State Counseling Boards (AASCB) approved a Draft Portability Plan in May 2003. It is labeled Attachment 31 and may also be found on the association's website at www.aascb.org. The plan proposed a National Credential Registry to be established by AASCB. Using pre-defined substitution equivalencies, the registry would certify individuals as meeting recommended licensure standards for member boards. Any history of disciplinary action would disqualify an individual from the registry. The adoption of such a plan would require amendment to Occupations Code §§ 503.310 – 503.311 (Provisional License) to allow flexibility in the comparison of the applicant's credentials with the academic and experience requirements of the chapter.

There may be differing opinions among stakeholder groups on the question of portability. The question must be resolved keeping in mind the board's mission to protect the public. Some stakeholders have indicated that amending the statute to provide greater flexibility in portability matters dilutes that mission. Others maintain that the opposite will occur.

A. Brief Description of Issue

Should the Act be amended to delete Occupations Code § 503.302(c), relating to the completion of academic requirements while pursuing the post-graduate supervised experience requirement?

B. Discussion

The provision appears to provide relief to applicants who completed a graduate degree with fewer than 45 semester hours in counseling at a time that Texas law did not require 45 hours. However, the provision is

ambiguous and has proven difficult to apply. It says the applicant may complete up to six hours of coursework “during or after” the time the person completes the supervised experience (during which time the person must also hold a temporary license), but does not clearly provide that a regular license may not be issued to such a person until all requirements are met.

C. Possible Solutions and Impact

Delete the provision, which appears to conflict with other provisions in the same section. Since a temporary license is required in order to pursue the post-graduate supervised experience, it is not in the public interest to allow a person to hold a temporary license who has not completed the academic requirements for licensure.

A. Brief Description of Issue

Should the Act be amended to delete references to a field examination found in Occupations Code, § 503.305?

B. Discussion

The Act provides that the license examination may be a field examination or another type of examination as prescribed by the board. The board has never developed or authorized a field examination and questions whether such an examination could be developed and administered objectively. The board has administered a valid and professionally constructed written examination since 1985.

In 1999, a lawsuit was filed against the board in Travis County District Court. The petitioner, who had repeatedly failed the board’s written examination, sought a field examination as an alternative. When informed that the board did not offer a field examination, the applicant filed suit. The matter came to trial and the outcome upheld the board’s discretionary authority to prescribe a written examination.

C. Possible Solutions and Impact

Delete references to a field examination. It is the board’s understanding that the language, which was part of the original 1981 bill, was inserted to provide discretion to the board, since a written examination had not been developed at that time. The references should be deleted, as they are misleading to applicants and are interpreted by some to indicate that a field examination may be requested and will be provided. The board firmly believes that it is not possible to objectively administer a licensure examination based on written case studies, taped interviews with instructors and clients, and documentary evidence of the quality and scope of the applicant’s experience and competence. The board believes that the most reliable and objective indicator of competence is a professionally constructed and validated written examination.

A. Brief Description of Issue

Should the Act be amended to delete Occupations Code § 503.309 regarding the issuance of a temporary license to practice art therapy?

B. Discussion

The section provides that the board may issue a temporary license to an art therapy applicant who has completed 42 graduate semester hours and has filed a plan acceptable to the board to complete the remaining 6 hours. Other temporary license applicants must have completed all academic requirements before a temporary license may be issued.

C. Possible Solutions and Impact

Delete the section. All interns should be required to meet the same academic qualifications in order to hold a temporary license as a professional counselor intern.

A. Brief Description of Issue

Should the Act be amended to delete the phrase “or a related field” in the license qualifications language set out in Occupations Code § 503.302(a)(3)?

B. Discussion

Currently, the Act requires that a license holder must hold a master’s or a doctorate degree in counseling or a related field. The board has defined counseling-related field by rule as “a mental health discipline utilizing human development, psychotherapeutic, and mental health principles, including, but not limited to, psychology, psychiatry, social work, marriage and family therapy, and guidance and counseling.”

During the 2001 legislative session, a bill was introduced to amend the Act to require that a license applicant must hold a master’s or doctorate degree in counseling, instead of “in counseling or a related field.” The bill, a legislative initiative of the Texas Counseling Association, was not passed out of committee.

C. Possible Solutions and Impact

The deletion of the phrase would require all applicants to hold a degree in counseling, thereby disqualifying other mental health professionals, such as social workers or psychologists, from holding the licensed professional counselor credential, since those professionals typically hold degrees and licenses specific to their discipline. A number of licensed professional counselors hold dual licensure and are also licensed as social workers, psychologists, and marriage and family therapists.

Some stakeholders strongly believe that the professional counselor credential should be available only to those who have completed an advanced degree in counseling.