

# SUNSET ADVISORY COMMISSION

## STAFF REPORT WITH COMMISSION DECISIONS

### *Texas State Board of Examiners of Psychologists*



2016–2017  
85TH LEGISLATURE

# SUNSET ADVISORY COMMISSION

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*Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood*

# **TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

**SUNSET STAFF REPORT WITH COMMISSION DECISIONS  
2016-2017  
85TH LEGISLATURE**

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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: **The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.**

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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# — SUNSET COMMISSION DECISIONS





# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas State Board of Examiners of Psychologists, as well as modifications and new issues raised during the public hearing.

As a small, independent occupational licensing agency, the psychology board faces a number of administrative hurdles that detract from its ability to efficiently serve the people of Texas. When considering the recommendations in the separate *Health Licensing Consolidation Project Sunset Staff Report*, the commission chose to recommend consolidating the psychology board with the boards governing the regulation of marriage and family therapists, professional counselors, social workers, and sex offender treatment providers as well as the regulation of licensed chemical dependency counselors. The proposed umbrella licensing agency, the Texas Behavioral Health Executive Council (BHEC), will allow for improved services to license holders, while ensuring each profession continues to set standards of practice.

The commission also recommends eliminating a number of unnecessary barriers to entry into the psychology profession to help address the shortage of mental health care providers in Texas. These recommendations include eliminating the subjective oral examination that places a significant strain on agency resources and creates a bottleneck to licensing, as well as the requirement for psychologists to complete a year of supervised work experience after receiving a Ph.D. Other recommendations aim to better ensure fair and effective regulation of psychology in Texas by updating licensing and enforcement processes that have not kept up with best practices. The commission also directed the psychology board to appoint a working group of stakeholders to develop proposed definitions of psychology for consideration by the 85th Legislature to replace the current definition that was ruled unconstitutional in a recent court case.

## ISSUE 1

*The Board's Oral Exam Is an Unnecessary Requirement for Licensure.*

**Recommendation 1.1, Adopted** — Eliminate the statutory authority for the psychology board to administer an oral exam.

## ISSUE 2

*Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.*

**Recommendation 2.1, Adopted** — Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

## ISSUE 3

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

**Recommendation 3.1, Adopted** — Remove the statutory limitation restricting the board's authority to set fees.

**Recommendation 3.2, Adopted** — Remove subjective licensure qualifications.

**Recommendation 3.3, Adopted** — Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.

**Recommendation 3.4, Adopted** — Authorize the board to provide biennial license renewal.

**Recommendation 3.5, Adopted** — Authorize the board to issue remedial plans to resolve minor complaints.

**Recommendation 3.6, Adopted** — Clarify the agency's authority to require physical or mental evaluations and hold related hearings for noncompliance.

**Recommendation 3.7, Adopted** — Extend confidentiality of complaint and investigative information to applicants and non-licensees.

**Recommendation 3.8, Adopted** — Direct the board to remove the requirement for letters of reference. (Management action – nonstatutory)

**Recommendation 3.9, Adopted** — Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint. (Management action – nonstatutory)

## ISSUE 4

### *Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.*

**Recommendation 4.1, Modified** — This decision was made as part of the consideration of the *Health Licensing Consolidation Project Sunset Staff Report*.

As a modified approach to the staff recommendation, the commission recommends continuing the regulation of psychologists and merging the Texas State Board of Examiners of Psychologists with the five behavioral health boards and programs currently housed at the Department of State Health Services to create the Texas Behavioral Health Executive Council (BHEC), a functionally aligned umbrella licensing agency. The merger would take place no later than September 1, 2018, and have a Sunset date of 2029.

The current governor-appointed psychology board would remain intact and retain responsibility for developing rules and guiding matters relating to the psychology profession. The board would appoint one of its professional members and one of its public members to serve on the nine-member executive council. The executive council would review and have final approval authority over the rules relating to scope of practice, standards of care, and ethics written by the board, and would have the responsibility

to adopt rules relating to BHEC operations and standardized regulatory procedures such as license applications, investigatory practices, and enforcement processes.

**Recommendation 4.2, Adopted** — Update the standard across-the-board requirement related to board member training.

## ISSUE 5

### *A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.*

**Recommendation 5.1, Modified** — Rather than directing the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology, the Sunset Commission directed the board to appoint a working group of stakeholders to develop the proposed definitions. The stakeholders may include, but not be limited to, psychologists, counselors, therapists, life coaches, self-help groups, and medical professionals and their respective associations. The proposals must include at least three options, including one broad and one narrow definition of psychology. The narrow definition should attempt to capture what core psychological services are as compared to other similar services such as counseling or therapy. The psychology board should provide these proposals to the Senate Health and Human Services Committee and the House Public Health Committee, as well as to the Sunset Commission, no later than January 31, 2017. (Management action – nonstatutory)

**Recommendation 5.2, Not Adopted** — Request the Senate Health and Human Services Committee and the House Public Health Committee to take action to define the practice of psychology, as well as to potentially clarify the scope of practice of other mental health professionals. (Management action – nonstatutory)

## ADOPTED NEW ISSUES

### **Psychological Services in Private Schools**

Direct the Texas State Board of Examiners of Psychologists to amend its rules to allow Licensed Specialists in School Psychology to practice in both public and private schools. (Management action – nonstatutory)

### **Psychology Interjurisdictional Compact**

Adopt the Psychology Interjurisdictional Compact (PSYPACT) in statute.

### **Review of Potential Anti-Competitive Rules**

Direct the Texas State Board of Examiners of Psychologists to evaluate all rules in the context of the Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* to ensure rules do not run afoul of the anti-competitive prohibitions of the Sherman Antitrust Act and clearly reflect state policies expressed by the Legislature in statute. The board should repeal any rule that, after its evaluation, it deems susceptible to legal challenge based on precedent in the Supreme Court ruling. If unclear about the impact of certain rules, the board may request an opinion from the Attorney General. (Management action – nonstatutory)

## Fiscal Implication Summary

### Texas Behavioral Health Executive Council

Consolidating the five programs from DSHS and the Board of Examiners of Psychologists into the Texas Behavioral Health Executive Council would have an initial negative fiscal impact to the state over the next five fiscal years. The majority of these costs are necessary to transfer and maintain electronic data at the level needed for effective regulation, as well as eliminate the large backlogs of enforcement cases and complaints that have accrued at DSHS. The new agency would have 45.5 full time staff positions. This figure includes the existing staff positions from each consolidated agency and program and three new staff positions to address the backlog of cases. Once the backlog is resolved, these positions would no longer be necessary. Once the merger is complete and fully operational, additional FTE reductions would be expected from efficiencies gained from removing duplication of effort.

#### *Health Licensing Consolidation Project*

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Current Agency FTEs</b>	<b>BHEC FTEs</b>	<b>FTE Change From FY17</b>
2018	\$469,692	42.5	1	+1
2019	\$223,523	0	45.5	+3
2020	\$206,618	0	45.5	+3
2021	\$27,752	0	42.5	0
2022	\$27,752	0	42.5	0

### Texas State Board of Examiners of Psychologists

The Sunset Commission's recommendations related to the Board of Examiners of Psychologists would result in a small negative fiscal impact to the state over the next five years, primarily resulting from the elimination of the board's oral exam. The board collects about \$77,000 in oral examination fees each year. The agency estimates administering the oral exam costs about \$46,000 annually, which would offset some of the lost revenue.

#### *Texas State Board of Examiners of Psychologists*

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2018	\$31,000
2019	\$31,000
2020	\$31,000
2021	\$31,000
2022	\$31,000

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# **SUMMARY OF SUNSET STAFF RECOMMENDATIONS**



# SUMMARY

Overall, the Sunset review found the psychology board is a generally well-run agency. However, unlike 35 other states, Texas continues to regulate psychology through an independent board, inefficiently paying for all the administrative trappings required of an independent agency. The small size of the psychology board has also placed a number of administrative millstones on it. Most notably, the board's unnecessary oral examination places an extraordinary strain on agency staff and resources and creates a bottleneck to entry into the profession. As in the previous Sunset review in 2004, Sunset staff found the oral examination is an outdated practice that introduces subjectivity into the licensing process and offers little value in assessing candidates' minimum competency to practice psychology. Additionally, requiring candidates for licensure to complete a year of supervised work experience after receiving a Ph.D. adds another unnecessary hurdle to licensure, one that is no longer universally accepted. Together, these practices add minimal extra protection to the public and could affect the mental health provider shortage in Texas.

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*The board unnecessarily limits entry into the profession.*

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Scope of practice is typically well-outside the purview of a Sunset review, unless a scope issue prevents the agency from carrying out its statutory responsibilities. In this case, a significant court ruling has effectively prevented the psychology board from taking legitimate actions for any unlicensed practice of psychology. In January 2016, the U.S. Court of Appeals for the 5th Circuit found Texas' definition of "psychological services" to be unconstitutionally overbroad and a violation of free speech. In essence, the court found that under the current definition, many individuals who provide advice or counseling as part of day-to-day life — from yoga instructors to advice columnists — could be considered to be practicing psychology without a license and subject to enforcement by the board. While focused on preventing such obvious overreach, the court's opinion creates both obstacles and an opportunity to establish a new definition of psychology to appropriately protect the practice of psychology for Texans who receive services.

Finally, in common with many of the other small licensing agencies currently under review, Sunset staff considered whether an independent agency is the most appropriate structure to regulate the practice of psychology. However, the decision to recommend an alternative organizational structure for the agency must be made in conjunction with the Sunset reviews of other health licensing agencies, due for completion in mid-November. Together, these reviews will consider the potential benefits of consolidation and determine if they are significant enough to justify a major organizational change. Regardless of the organizational structure, the agency should implement the best practices outlined in this report to gain efficiencies and better ensure fair and effective regulation of psychological services.

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

## Issues and Recommendations

### *Issue 1*

#### **The Board's Oral Examination Is an Unnecessary Requirement for Licensure.**

The oral examination is an outdated licensing requirement that offers little value in assessing candidates' minimum competency to practice psychology. Licensure as a psychologist already requires a doctoral degree, passage of a national written examination and jurisprudence examination, and completion of 3,500 hours of supervised experience. In addition to concerns about the fairness and consistency of the exam administration, conducting an oral exam twice a year puts an undeniable strain on agency staff and resources, while creating a bottleneck to entry into the profession. Nationally, the psychology profession has moved away from using oral examinations. With only eight states continuing to use an oral exam to assess competency, this exam prevents psychologists from easily moving their practice to Texas to help meet the state's mental health provider shortage.

#### **Key Recommendation**

- Eliminate the statutory authority for the psychology board to administer an oral exam.

### *Issue 2*

#### **Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.**

Psychologist candidates must complete two years of supervised work experience before becoming fully licensed. Statute requires half of this experience to be completed after candidates receive their Ph.D. Current doctoral degree programs include substantially more practical experience than at the time Texas enacted this post-doctoral supervision requirement. Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set number of hours be completed in a post-doctoral setting. Today, 15 states and the American Psychological Association have adopted policies that do not distinguish between pre-doctoral and post-doctoral work experience. Requiring candidates to often repeat hours of experience earned during their degree program adds minimal protection and delays licensure of psychologists at a time when Texas faces a shortage of mental health care providers.

#### **Key Recommendation**

- Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their doctoral degree.



## ***Issue 3***

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

Sunset staff found some of the board's licensing and enforcement processes do not match model standards or common practices observed in other regulatory agencies. Specifically, requirements to apply for a provisional license and to submit letters of recommendation make the process for becoming a licensed psychologist overly burdensome. The board also lacks certain tools, such as issuing remedial non-disciplinary sanctions and ordering show-cause hearings regarding competency, necessary to effectively enforce the psychology statute and board rules.

#### **Key Recommendations**

- Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.
- Authorize the board to issue remedial plans to resolve minor complaints.
- Clarify the agency's authority to require physical or mental evaluations for those suspected of impairments and hold related hearings for noncompliance.
- Direct the board to remove the requirement for letters of reference.
- Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint.

## ***Issue 4***

### **Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.**

Texas has a continuing need to regulate the practice of psychology. Licensed psychologists provide a wide range of psychological services such as individual and group therapy to vulnerable populations. Treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. However, as a small, independent agency with limited resources and high staff turnover, the board faces hurdles to providing effective regulation and consistent service to the public.

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

#### **Key Recommendation**

- Continue the regulation of psychologists, but postpone the decision on continuation of the Texas State Board of Examiners of Psychologists until completion of the Sunset reviews of other health licensing agencies.

## Issue 5

### A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.

A recent decision by the U.S. Court of Appeals for the 5th Circuit held the definition of psychological services in Texas statute unconstitutionally infringes on free speech. The court found the Psychologists' Licensing Act as written could require occupations such as life coaches, fitness instructors, or advice columnists be licensed as psychologists. By ruling that provision of the act unconstitutional, however, the court's decision seemingly prevents the psychology board from taking enforcement action against someone practicing psychology in Texas without a license. In addition, the impact of the court's decision could also affect the practice and regulation of marriage and family therapy, professional counseling, and social work.

#### Key Recommendations

- Direct the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology.
- Request the Senate Health and Human Services Committee and the House Public Health Committee to take action to define the practice of psychology and consider clarifying the scope of practice of other mental health professionals.

### Fiscal Implication Summary

Overall, the recommendations in this report would result in a small negative fiscal impact to the state over the next five years resulting from the elimination of the board's oral exam.

**Issue 1** — The board collects about \$77,000 in oral examination fees each year. The agency estimates administering the oral exam costs about \$46,000 annually, which would offset some of the lost revenue.

#### ***Texas State Board of Examiners of Psychologists***

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2018	\$31,000
2019	\$31,000
2020	\$31,000
2021	\$31,000
2022	\$31,000

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**AGENCY AT A GLANCE**  
**NOVEMBER 2016**



# AGENCY AT A GLANCE

Since its creation in 1969, the Texas State Board of Examiners of Psychologists has engaged in the examination, licensing, and monitoring of individuals practicing psychology. The board's mission is to protect the public by ensuring psychological services are provided by qualified and competent practitioners who adhere to established professional standards. To achieve this mission, the board carries out the following key activities:

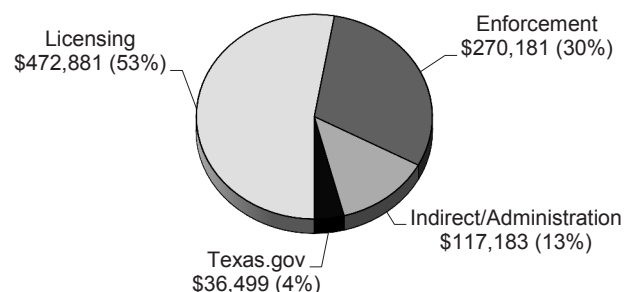
- Adopts rules governing the educational, experience, and examination requirements to be licensed, as well as the standards of care for providing psychological services in Texas
- Issues and renews licenses for psychologists, psychological associates, and licensed specialists in school psychology
- Enforces violations of the Psychologists Licensing Act and board rules by investigating complaints, taking action against violators, and monitoring compliance of disciplined licensees

The practice of psychology includes a wide range of services in a wide range of settings, but is generally focused on the interaction between the mind and a person's behavior. For example, a clinical psychologist evaluates and treats individuals for mental health disorders or provides group mental health therapy sessions. A quantitative psychologist performs statistical and analytical research into human behavior and cognition. An industrial and organizational psychologist studies human behavior in workplace settings and applies psychological principles to organizational management. All psychologists are trained to provide a variety of cognitive and behavioral therapies and assessments.

## Key Facts

- **Texas State Board of Examiners of Psychologists.** The board consists of nine members who serve staggered six-year terms: four psychologists, two psychological associates, and three public members. At least one of the psychologists or psychological associates must also be a licensed specialist in school psychology. The governor appoints board members, with the advice and consent of the Senate, and designates the presiding officer.
- **Funding.** In fiscal year 2015, the agency operated on a budget of almost \$897,000, with about 87 percent coming from general revenue funds generated through fees paid by licensees and applicants. The remaining revenue came from interagency contracts and appropriated receipts from fees for record collection and license verification. The pie chart, *Texas State Board of Examiners of Psychologists Expenditures*, breaks out the agency's spending by major program areas. Licensing program costs accounted for approximately 50 percent of expenditures.

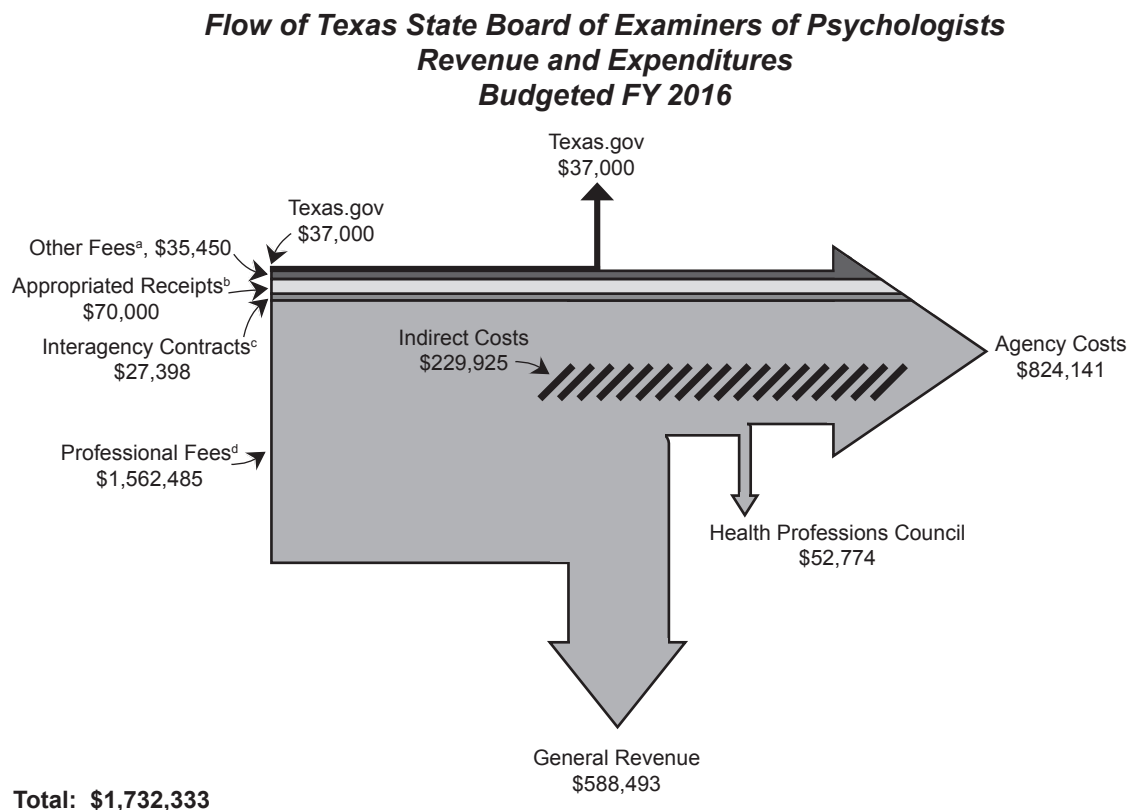
**Texas State Board of  
Examiners of Psychologists  
Expenditures – FY 2015**



**Total: \$896,744**

Appendix A, *Historically Underutilized Businesses Statistics*, describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2013–2015.

The agency generates revenue through fees in excess of what is needed to cover agency expenditures, as shown in the chart, *Flow of Texas State Board of Examiners of Psychologists Revenue and Expenditures*. The agency expects to generate approximately \$1.7 million in revenue in fiscal year 2016, primarily from licensing and other fees.<sup>1</sup> After accounting for the agency's expenditures and indirect costs, the agency expects excess revenue of about \$588,000 to remain in the General Revenue Fund.



- <sup>a</sup> Includes administrative penalties, returned check fees, and credit card charge fees
- <sup>b</sup> Includes fees for copying records, sale of publications, and third-party reimbursements
- <sup>c</sup> Contract for budget and accounting services with the Texas Funeral Services Commission
- <sup>d</sup> Includes new licensing applications, renewals fees, exam fees, and late fees

- **Staffing.** In fiscal year 2015, the agency employed 14 staff at their office located in Austin. Appendix B, *Equal Employment Opportunity Statistics*, compares the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years. Additionally, the agency is a member of the Health Professions Council, which provides supplemental information technology staffing for the agency and other health professional licensing agencies. Appendix C, *Health Professions Council*, provides a more detailed description of the Health Professions Council.
- **Licensing.** The agency determines eligibility and processes initial applications and renewals for four license types: provisionally licensed psychologists, licensed psychologists, licensed psychological associates, and licensed specialists in school psychology. The table on the following page, *Psychology Licenses by Type*, shows the number of practitioners in each category regulated by the board in fiscal year

2015. Generally, all applicants for licensure must hold a master's or doctoral degree focused in psychology, pass a national exam and a state jurisprudence exam, and complete a period of supervised work experience. All licensees must renew their licenses annually and the agency audits 10 percent of renewals every quarter to ensure compliance with continuing education requirements.

**Provisionally Licensed Psychologist.** A candidate must have received a doctoral degree in psychology from a regionally accredited university and passed the national Examination of Professional Practice of Psychology and the board's jurisprudence exam. A provisional licensee may only practice psychology under the supervision of a licensed psychologist, typically while the provisional licensee works toward full, unrestricted licensure as a psychologist.

**Licensed Psychologist.** A provisional licensee may apply to become a licensed psychologist once the candidate has performed two years (approximately 3,500 hours) of supervised work — one of which must occur after receiving the doctoral degree — and passed the agency's oral exam.

**Licensed Psychological Associate.** A candidate must have received a master's level degree or higher that is primarily psychological in nature; passed the national psychology exam and the jurisprudence exam; and completed 450 hours of supervised experience. An associate may only practice psychology under the supervision of a licensed psychologist.

**Licensed Specialist in School Psychology.** Regulation of specialists in school psychology was transferred from the Texas Education Agency to the board in 1995. A candidate must hold a master's level degree or higher from a program accredited by the National Association of School Psychologists, or a program with sufficient training in psychological and educational foundations. In addition, a candidate must pass the National School Psychology Examination and complete 1,200 hours of internship, half of which must be in a public school setting. A specialist in school psychology may only practice school psychological services in Texas public schools.

- **Enforcement.** The agency investigates complaints against licensees and takes disciplinary action for violations of statute or rule. The agency receives complaints from licensees or members of the public, and agency staff also initiate complaints. Each year, about half of the complaints opened involve continuing education violations initiated by the agency, while the other half involve either administrative violations or violations of professional standards. The agency may impose administrative penalties, probation periods, continuing education, or monitoring requirements when a violation is found. For serious violations, the board may reprimand, suspend, or revoke a license. The table on the following page, *Texas State Board of Examiners of Psychologists Enforcement Actions*, details the type and disposition of complaints resolved for fiscal year 2015. Staff monitors licensee compliance with disciplinary actions to ensure the terms and conditions of board orders are met.

### ***Psychology Licenses By Type – FY 2015***

<b>Type of License</b>	<b>Number of Licenses</b>
Provisionally Licensed Psychologists	231
Licensed Psychologists	4,826
Licensed Psychological Associates	1,105
Licensed Specialists in School Psychology	3,350
Total Licenses Issued	9,512
Number of Dual License Holders	1,209

**Texas State Board of Examiners of Psychologists  
Enforcement Actions – FY 2015**

<b>Disciplinary Action</b>	<b>Continuing Education Violation</b>	<b>Administrative Violation</b>	<b>General Therapy</b>	<b>General Forensic</b>	<b>Sexual Misconduct</b>	<b>Child Custody</b>	<b>School</b>	<b>Miscellaneous</b>	<b>Cease and Desist</b>	<b>Total</b>
Agreed Orders	0	8	0	0	0	0	0	0	0	8
Disciplinary Actions	1	16	3	1	1	0	0	1	0	23
Dismissed	178	15	26	8	1	24	3	1	10	266
Resigned	4	0	0	0	4	0	0	0	0	8
Revoked	0	1	0	0	1	0	0	0	0	2
<b>Total</b>	<b>183</b>	<b>40</b>	<b>29</b>	<b>9</b>	<b>7</b>	<b>24</b>	<b>3</b>	<b>2</b>	<b>10</b>	<b>307</b>

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<sup>1</sup> During the 84th Legislative Session, the Legislature repealed a \$200 professional fee previously collected by the board and other licensing agencies, which decreased the amount of revenue collected by the Board by around \$800,000.



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# ISSUES



# ISSUE 1

## *The Board's Oral Exam Is an Unnecessary Requirement for Licensure.*

### Background

Since 1987, the Texas State Board of Examiners of Psychologists has required candidates for licensure as a psychologist to pass an oral exam designed to test a candidate's competency to practice. The board hosts exams twice a year and contracts with currently licensed psychologists to serve as examiners. For the exam, candidates select one of six practice areas on which to be tested and are given a vignette describing a typical client or situation in that practice area. Two examiners then ask the candidate a series of pre-determined questions corresponding to nine content areas of professional skills. Appendix D, *Oral Exam Process*, provides more detailed information about the oral exam process. In fiscal year 2016, each of the 238 candidates paid \$320 to take the oral exam.

During the 2004 Sunset review of the psychology board, the Sunset Commission concluded the oral exam added little value to evaluating applicants for licensure and instead found it to be a potentially subjective barrier to entry into the profession. In response, the 79th Legislature enacted reforms to improve the exam's objectivity and consistency, including a prohibition on assessing personal characteristics through the exam and the creation of a work group to identify and recommend changes to the administration of the oral exam.<sup>1</sup>

Since then, additions to the Sunset Act direct staff to consider additional criteria when reviewing occupational licensing agencies, specifically focused on minimizing regulatory burdens.<sup>2</sup> These new directives, along with Sunset staff's previous concerns, led staff to once again consider the oral exam's necessity and efficacy as a requirement for licensure.

### Findings

#### **The oral exam offers minimal additional value in assessing applicants' competency to practice.**

By the time candidates sit for the oral exam, they have already exhibited minimum competency to practice psychology by meeting rigorous educational, training, and testing requirements. Every applicant for the oral exam has earned a doctoral degree in psychology — a six-year program of study that typically includes a year-long internship. Many candidates will have already completed the 3,500 hours of supervised practice required to become fully licensed. Candidates must also pass a national written exam — the Examination for Professional Practice in Psychology (EPPP) — that tests candidates' knowledge of psychological skills and practices, as well as a Texas-specific jurisprudence exam that evaluates knowledge of applicable state laws and ethics. Arguably, completing these requirements demonstrates the minimum entry-level competency necessary to obtain licensure.

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*Education, training, and written exam requirements fully test entry-level competency for a license.*

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Consistently high passage rates indicate the oral exam does not serve the purpose of identifying individuals who are not competent for entry-level practice of psychology. In the past four fiscal years, 90 percent of candidates passed the

oral exam on their first attempt. Further, the exam has extraordinary overall passage rates over time, as candidates can re-take the exam. As detailed in the table, *Psychology Oral Exam Passage Rates*, nearly every candidate that takes the oral exam eventually qualifies for licensure. This appears to make the exam more of a rite of passage than a necessary determinate of skills.

***Psychology Oral Exam Passage Rates  
FYs 2013–2016***

	January 2013	July 2013	January 2014	July 2014	January 2015	July 2015	January 2016	July 2016	Total
Examinees	71	109	82	117	110	101	94	144	828
Number of Overall Passes	71	106	81	116	107	98	88	130	797
Percent of Overall Passes	100%	97%	99%	99%	97%	97%	94%	90%	97%

**The oral exam does not consistently evaluate candidates' entry-level competency.**

Despite changes made to improve the administration of the oral exam, reliability remains an inherent concern. The exam is inconsistently administered among candidates, may or may not test a candidate on their specific area of practice, and often relies on examiners' personal judgment in scoring.

- The board provides examiners with pre-formulated questions intended to standardize candidates' experiences, but each examiner is permitted to ask as few or as many of the questions he or she believes is necessary to best test and evaluate the candidate. In addition, although examiners are instructed to only use the questions provided, Sunset staff witnessed several examiners ask follow-up questions or prompt candidates for more complete answers. Other examiners did not give candidates such opportunities.
- Vague expectations for responses to exam questions can lead to subjectivity in the answers elicited and scored. The oral exam's open-ended questions typically require a non-standardized answer that is only "right" if the examiner judges it so, in light of his or her knowledge and experiences. For example, open-ended questions asking applicants to discuss their professional limitations seem more akin to a job interview than an objective measurement of minimum competency.
- The questions asked of candidates may not relate to an individual's eventual field of practice, raising questions regarding the value of the exam in testing competency to practice. Psychologists hold a general licenses to practice in any field within the profession, but the oral exam only tests candidates' competency in one of six practice areas with a single fictional scenario.

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*The oral exam  
is more a rite  
of passage than  
a necessary  
determinate  
of skills.*

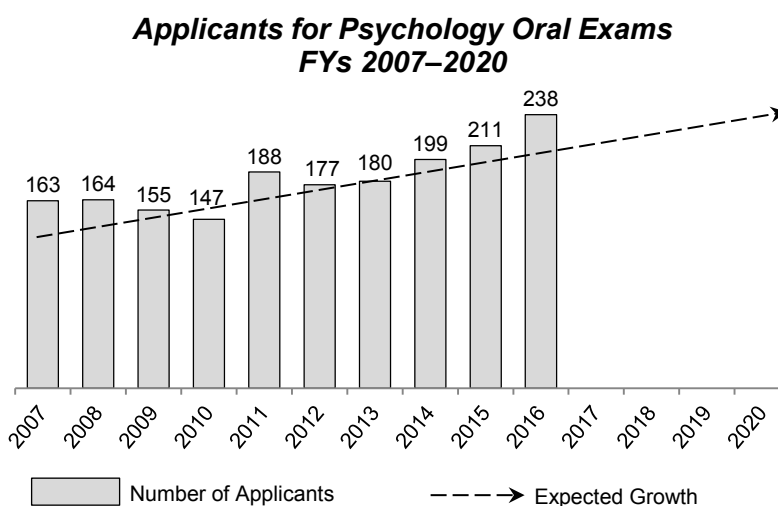
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**The oral exam is an unsustainable burden to the agency.**

Conducting the oral exam significantly strains agency staff and resources. Since the last Sunset review 12 years ago, the number of licenses regulated by the

board has grown significantly, while the size of the agency's staff has remained constant. Likewise, the board has seen the number of candidates applying to take the oral exam increase each year, as shown in the chart, *Applicants for Psychology Oral Exams*. Every six months, staff estimate spending hundreds of hours to assemble materials, arrange testing locations and examiners, answer phone calls from applicants, and otherwise prepare for the administration of the exam. This time spent necessarily detracts from other staff duties, often creating a backlog in processing licenses and enforcing the Psychologists' Licensing Act.

Meanwhile, other exam resources are becoming increasingly limited. The pool of psychologists willing to serve as examiners has decreased from about 400 in 2004 to 193 in 2016.<sup>3</sup> In addition, appropriate testing facilities are only available two times a year. In the face of increased applications for the oral exam compared to the shortage of examiners and facilities, the board has questioned whether it will be feasible to administer the oral exam in the near future. Agency staff struggle with what has become a Herculean task of coordinating two qualified examiners and an exam room for every candidate in every desired practice area, two times per year, as well as extra examiners for any split decisions that require retesting, to meet the growing demand to be licensed as a psychologist. Should the board be unable to find qualified examiners or to use requisite facilities in the future, the agency will be hard pressed to find a workable solution.



### The oral exam creates an undue barrier to entering the profession.

The oral exam creates a bottleneck for applicants seeking entry into practicing psychology, which can carry significant hardship. The timing of exams effectively means an individual can qualify for licensure only two times a year. Meanwhile, individuals waiting to take the exam to become fully licensed may lose out on job opportunities or delay employment. Candidates working under supervision are not fully reimbursed by insurance and may be paying a portion of their income to their supervisors.<sup>4</sup> As approximately 20 percent of the total fees applicants pay towards becoming licensed psychologists, the cost of oral exam is itself a heavy financial burden, as reflected in the textbox, *Costs of Psychologist Licensure*.

#### **Costs of Psychologist Licensure**

Oral Exam Fee .....	\$320
National EPPP Exam Fee .....	\$600
Jurisprudence Exam Fee .....	\$234
Provisional Licensure Fee .....	\$340
Full Licensure Fee .....	\$180
Total .....	\$1,674

### Other states have eliminated oral exam requirements.

Other states' psychology licensing boards have been steadily moving away from using oral exams. In 2003, Sunset staff identified 25 states that used oral exams in their licensure process. Since that time, oral exams have been discontinued in 11 of those states, and no new states have adopted the practice. Of the 14 states that still require an oral exam requirement, only eight test candidates' competency to practice, as shown in the textbox, *States with Oral Competency Exams*. The other six states only use an oral exam as a method of testing jurisprudence. In total, 42 states do not test competency using oral exams. This trend coincides with changes in national psychology association standards for license mobility that no longer include an oral exam component.

#### **States With Oral Competency Exams – FY 2015**

- |             |                 |
|-------------|-----------------|
| • Arkansas  | • Mississippi   |
| • Georgia   | • Montana       |
| • Kentucky  | • Texas         |
| • Louisiana | • West Virginia |

### Discontinuing the oral exam could expand opportunities for reciprocity.

Discontinuing the oral exam could greatly improve mobility for psychologists interested in practicing in Texas. Texas currently shares reciprocity with only four other states — Arkansas, Louisiana, Missouri, and Nebraska. Reciprocity is limited in large part due to the requirement that reciprocal states have an oral exam. For example, agency staff report many out-of-state applicants come from California and New York, which ended their oral exams in 2001 and 1990, respectively. Many of the applicants must contend with the expense and effort of taking the oral exam, regardless of their qualifications and licensure in another jurisdiction. Ending the oral exams would enable Texas to potentially enter into reciprocity agreements with states not currently requiring an oral exam and allow more psychologists to move to and practice in Texas.

## Recommendation

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

#### **1.1 Eliminate the statutory authority for the psychology board to administer an oral exam.**

Under this recommendation, the board would no longer have authority to require an oral exam for licensure. The board would retain its ability to adopt new or different written exams in the future. The board would continue to comply with remaining statutory directions that exams focus on applicants' knowledge of the profession and relevant state laws and rules. Eliminating the oral exam would bring the board in line with the licensing practices of other Texas professions and put Texas on par with the vast majority of states who do not require an oral exam for licensure as a psychologist.

## Fiscal Implication

This recommendation would have a small negative fiscal impact of about \$31,000 annually, resulting from the lost revenue attributable to the oral exam fees collected by the board. The board collects about \$77,000 in exam fees annually, but the agency estimates administering the oral exam costs about \$46,000 each year.

### ***Texas State Board of Examiners of Psychologists***

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2018	\$31,000
2019	\$31,000
2020	\$31,000
2021	\$31,000
2022	\$31,000

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<sup>1</sup> Section 16, Chapter 143 (H.B. 1015), Acts of the 79th Legislature, Regular Session, 2005.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.0115(b), Texas Government Code.

<sup>3</sup> Sunset Advisory Commission, *Texas State Board of Examiners of Psychologists Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, February 2004), 6.

<sup>4</sup> 1 T.A.C. Section 355.8085(f).





# ISSUE 2

## *Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.*

### Background

To become a licensed psychologist in Texas, individuals must earn a doctoral degree in psychology, complete two years (3,500 hours) of supervised work experience, and pass an oral exam.<sup>1</sup> Psychologist candidates may complete half of the work experience (1,750 hours) during their doctoral degree program, typically through a supervised internship occurring within the last two years of the program. Candidates must complete the other half after receiving their Ph.D. As of September 1, 2016, candidates must hold a provisional license or be designated a trainee while they complete their remaining work experience and sit for the oral exam.<sup>2</sup> Each year, approximately 250 provisionally licensed psychologists are under supervision.

### Findings

#### **Requiring a full year of supervised, post-doctoral practice is no longer a universally accepted requirement.**

The requirement to complete a specified amount of supervised work experience outside of a doctoral degree program has outlived its original purpose. Like most states, Texas adopted a supervision requirement several decades ago at a time when many doctoral degrees did not include substantial practical experience. Statute required a candidate to complete a total of two years of supervised experience, specifying that at least one year of that experience occur outside the degree setting. The post-doctoral supervision year was seen as necessary to ensure candidates for licensure had the skills to adequately practice psychology.

Today, psychology doctoral programs already include substantial amounts of direct practical experience. On average, psychology students earn about 2,000 hours of supervised work experience during the required doctoral internship at the end of their degree, with some earning significantly more. These hours are in addition to the 500 to 1,500 “practicum” hours students earn in practical experience through university clinics during their coursework. Overall, doctoral educational requirements have increased over time from four to six years of education. As a result, students typically complete 10 years of post-secondary education before receiving their Ph.D. in psychology.

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*Psychology doctoral programs today include substantial direct practical experience.*

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Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set amount of post-doctoral experience. In 2006, the American Psychological Association adopted a policy recommending states require only “supervised professional experience equivalent to two years of full-time training that can be completed prior or subsequent to the granting of the doctoral degree.”<sup>3</sup> Since then, a growing number of states

***States Without a Post-Doctoral Supervision Year***

- Alabama
- Arizona
- Connecticut
- Indiana
- Kentucky
- Maryland
- Massachusetts
- New Hampshire
- New Mexico
- North Dakota
- Ohio
- Pennsylvania
- Utah
- Washington
- Wyoming

have shifted away from requiring a post-doctoral supervision year. Today, 15 states no longer require supervised experience outside of the doctoral degree program, as reflected in the textbox, *States Without a Post-Doctoral Supervision Year*. Instead, these states typically require a total amount of supervised experience, allowing that experience to occur both during and after the degree program.

**The full year of supervised, post-doctoral experience delays licensure of psychologists at a time when Texas faces a shortage of mental health care providers.**

By requiring all psychologist candidates to complete a full year of supervised post-doctoral work experience, the Texas Psychologists' Licensing Act fails to consider a candidate's actual experience. This requirement delays qualified individuals from becoming fully licensed psychologists. A doctoral student can only receive credit for 1,750 hours of supervised work experience during school, even if the student earns significantly more hours. In fact, most candidates earn more than 1,750 hours during a doctoral internship. However, they must repeat those supervised hours in a *post*-doctoral setting before being licensed.

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*The post-doctoral supervision year delays licensing of needed mental health care providers.*

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Psychologist candidates can have difficulty finding a placement to earn supervised hours after receiving their Ph.D., adding to the delay in licensure. Not enough organized post-doctoral programs exist to meet the number of psychology graduates, making it competitive to earn spots. For example, Texas has only 10 formal programs registered with the Association of Psychology Postdoctoral and Internship Centers, but has nearly 300 applicants for provisional licensure each year. Thus, many candidates must arrange their own post-doctoral supervision with an individual psychologist licensed by the board. Additionally, many supervisors charge a fee or retain a portion of insurance or Medicaid reimbursements the candidates generate, which can range from 20 to as much as 70 percent.

This delay in licensure occurs while Texas, like the nation generally, faces a shortage of mental health care providers. The federal Department of Health and Human Services has identified 405 geographic areas in Texas, which are home to over 8 million Texans, without sufficient mental health care providers.<sup>4</sup> Requiring psychologist candidates to duplicate supervised work experience merely because it occurred before receiving their Ph.D. adds a delay to licensing qualified professionals that potentially contributes to this shortage.

Removing the post-doctoral supervision year could also encourage more psychologists to move to Texas and help combat the shortage of mental health care providers. The number of states participating in psychology reciprocity agreements with Texas has dwindled over time. As states have updated their

requirements for licensing, only those states that have maintained the original complement of strict licensing requirements can retain reciprocity with Texas. For example, Kentucky lost reciprocity in 2010 when it repealed its post-doctoral supervision year requirement. Today, Texas retains reciprocity with only four states — Arkansas, Louisiana, Missouri, and Nebraska. Focusing qualifications for licensure on the total amount of supervised experience a person earns, rather than when the person earns it, would allow the board to endorse or fast-track licensees from other states and could encourage more psychologists to move to Texas.

### **Requiring a full year of supervised, post-doctoral experience adds minimal extra protection to the public.**

Requiring candidates to repeat experience hours in a post-doctoral setting does not ensure candidates achieve a greater level of competency. Candidates typically receive more substantial supervision within their doctoral program than the psychology board requires for post-doctoral settings. Board rules require a supervising psychologist to meet directly with post-doctoral supervisees for only one hour per week, half of which can be through video conference.<sup>5</sup> As such, supervisees can practice largely independently with the supervising psychologist acting more as a mentor. In comparison, the board requires internships during the doctoral degree program to provide at least two hours per week of formal, face-to-face supervision and an additional two hours per week of “learning activities.”<sup>6</sup> In addition, enforcement data does not indicate post-doctoral supervisees have a higher risk of causing harm. In the past two years, the board has not received a single complaint concerning any of the nearly 250 provisionally licensed psychologists’ qualifications or conduct.

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*Candidates typically receive more supervision within their doctoral program than is required for post-doctoral settings.*

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## **Recommendation**

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

#### **2.1 Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.**

This recommendation would maintain the current statutory requirement that a psychologist candidate have at least two years of supervised experience to become a licensed psychologist. Candidates would still be required to earn a total of 3,500 hours of supervised experience. However, statute would allow that experience to occur while the candidate is pursuing the doctoral degree, in a post-doctoral setting, or in some combination thereof. The board would retain authority to adopt rules regarding the nature of the supervised experience that would count toward the two-year requirement.

## **Fiscal Implication**

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

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 501.252 (b), Texas Occupations Code; 22 T.A.C. Section 463.11.

<sup>2</sup> 22 T.A.C. Sections 461.10 and 463.10(b).

<sup>3</sup> American Psychological Association, *Council Policy Manual*, Board of Directors, “Doctorate as minimum entry into the professional practice of psychology,” (2006).

<sup>4</sup> Bureau of Health Workforce Health Resources and Services Administration, U.S. Department of Health and Human Services, *Designated Health Professional Shortage Areas Statistics*, accessed September 19, 2016, <https://datawarehouse.hrsa.gov/Tools/hdwreports/reports.aspx>.

<sup>5</sup> 22 T.A.C. Section 465.2.

<sup>6</sup> 22 T.A.C. Section 463.11(c)(2).

# ISSUE 3

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

### Background

The mission of the Texas State Board of Examiners of Psychologists is to protect the public's health and safety by ensuring providers of psychological services are qualified, competent, and adhere to appropriate professional standards. The agency accomplishes its mission through licensing psychologists, psychological associates, and specialists in school psychology, and by investigating complaints and taking disciplinary action when necessary.

The Sunset Advisory Commission has a long history of evaluating licensing agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed more than 100 reviews of licensing agencies, documenting standards to guide future reviews of licensing programs. While these standards provide guidance for evaluating a licensing agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Findings

#### **Licensing provisions in the board's statute and rules do not follow model standards and could potentially affect the fair treatment and efficient regulation of licensees.**

- **Restrictive fee authority.** A licensing agency should have the authority to set appropriate fees to collect sufficient revenue to fund its operations. Setting a fee floor in statute limits an agency's ability to lower fees as conditions and policies change. Currently, statute prevents the psychology board from reducing certain fees below the amount set as of September 1, 1993.<sup>1</sup> As a result, among other set fees, the jurisprudence exam fee cannot be set lower than \$200, and the fee for full licensure as a psychologist cannot be lower than \$160. Removing statutory fee minimums would clarify the board's fee management authority to determine appropriate funding requirements, while still remaining accountable to the Legislature through the appropriations process.
- **Subjective licensure criteria.** Qualifications for licensure should not be subjective or unreasonably restrict entry to practice. Currently, statute requires provisional psychologists applying for the oral exam to be of "good moral character."<sup>2</sup> Board rules extend that requirement to other licensees.<sup>3</sup> Good moral character is not defined in the Psychologists' Licensing Act, making it a subjective, vague requirement that may be inconsistently applied by the board. In practice, the agency generally relies instead on Chapter

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*Qualifications for licensure should not be subjective or unreasonably restrictive.*

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53 of the Occupations Code, which sets out more specific guidelines for denying a license based on an applicant's criminal history.<sup>4</sup> Removing references in statute and rule to good moral character would better reflect the board's current practice of reviewing applicants' criminal histories under Chapter 53 and ensure, going forward, all applicants for licensure are objectively evaluated.

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*The board's two-step process requires candidates to apply for licensure twice.*

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- **Unnecessary and burdensome license application requirements.** Licensure requirements should not arbitrarily burden applicants or create unreasonable barriers to entering the profession, and licensure processes should be designed to reduce administrative inefficiencies.

Unnecessary provisional license. Statute requires an inefficient and unnecessary two-step licensing process, which creates an unreasonable bureaucratic hurdle to licensure. Psychologist candidates must apply for licensure twice — once to receive a provisional license in order to take the national exam and again to attain full licensure once all other requirements have been met.<sup>5</sup> Currently, a provisionally licensed psychologist must hold a doctoral degree in psychology, meet character and fitness requirements, and pay a license fee. To become fully licensed, a provisionally licensed psychologist must pass the national exam and the board's oral and jurisprudence exams, complete a year of supervised work experience, and pay an additional license fee. For the agency, the process of tracking and maintaining multiple applications and licensure information for the same individual is duplicative and inefficient. Having a single, streamlined application to become a licensed psychologist would simplify the licensure process for applicants and alleviate administrative burdens on the agency. The agency could simply grant applicants provisional status until they meet the requirements for full licensure. In addition, if the recommendations in this report to remove the oral exam and post-doctoral supervised year requirements are adopted, the provisional license will become practically unnecessary.

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*The board requires letters of reference it does not use.*

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Subjective reference letters. The psychology board, by rule, requires applicants to submit three letters of reference from currently licensed psychologists.<sup>6</sup> Letters of reference are a subjective measure of competency and allow other licensees to weigh in on a prospective licensee's application. Reference letters are not a standard requirement for other health occupations. In practice, the board merely requires applicants to obtain and submit the letters with their applications and does not consider or evaluate the quality of the references. Additionally, statute already provides more objective and meaningful criteria for evaluating the experience and qualifications for licensure.<sup>7</sup> Removing the requirement for letters of reference would eliminate an unnecessary hurdle to entering the profession and better align the board's requirements with standard occupational licensing practices.

- **Overly prescriptive license renewal requirements.** Regulatory agencies should have renewal processes that ensure adequate oversight of licensees and balance staff workload. While renewal processes help agencies



ensure regulated individuals meet ongoing licensure requirements, like continuing education, having flexibility in timing of renewal can ease administrative burdens on agency staff. Currently, statute requires the board to annually renew licenses.<sup>8</sup> In recent years, other health licensing agencies have begun renewing licenses on a two-year cycle, including the boards overseeing physicians, pharmacists, and occupational therapists. Removing unnecessarily specific requirements for annual renewals would give the board more flexibility in considering staff and resource availability, and allow transition to a two-year renewal period in the future, if appropriate, without sacrificing oversight of license holders.

Licensing agencies should also have clear authority to stagger renewals to prevent an influx of renewal applications overwhelming agency operations and jeopardizing timely processing. The board's statute specifies the date on which particular licenses expire, but also authorizes the board to adopt a system under which licenses expire throughout the year.<sup>9</sup> Currently, the board uses a staggered system for license expiration, but clarifying this in statute would provide better notice of renewal requirements to licensees.

### **Nonstandard enforcement practices could reduce the board's effectiveness in protecting the public.**

- **Inadequate case resolution authority.** Authorizing an agency to issue remedial action plans provides a more complete range of enforcement actions and can promote fair and timely resolution of minor infractions. The board currently has authority to issue a full range of disciplinary actions based on the nature and severity of violations.<sup>10</sup> However, some minor, first-time violations may not necessarily warrant disciplinary action and could be more appropriately addressed through a non-disciplinary, remedial action. Other occupational licensing agencies, such as those regulating physicians and dentists, use similar remedial plans to address violations with low potential for patient harm. Authorizing the board to offer licensees a one-time remedial plan for minor violations would provide an additional option for resolving complaints quickly and effectively.
- **Unclear authority to require competency evaluations.** An agency should have clear authority to ensure compliance with enforcement efforts. Most agencies that regulate healthcare providers can require licensees to submit to physical or mental evaluations if there is probable cause of impairment due to a physical or mental health condition or substance abuse. Noncompliant licensees may then be ordered to show cause at a hearing as to why they should not be required to submit to a physical or mental evaluation and may face disciplinary actions for further noncompliance. Currently, statute allows the psychology board to *request* a licensee submit to a physical or mental evaluation.<sup>11</sup> If a licensee refuses to undergo an evaluation requested by the board, the agency may only require some categories of licensees to attend a hearing to show cause.<sup>12</sup> This limits the board's ability to prevent all potentially impaired practitioners from possibly putting patients at

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*The board should offer remedial plans for minor violations.*

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risk of harm. Clarifying statute will align the board's process with that of other occupational licensing boards and will affirm the board's authority to require physical or mental evaluations and to order hearings to show cause for noncompliance.

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*Complaint investigation information should not be subject to disclosure.*

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- **Narrow confidentiality for complaint information.** Agencies should make final enforcement information accessible to the public, but information relating to a complaint or investigation should not generally be subject to disclosure. Potentially injurious allegations may not be substantiated during an investigation, or the alleged misbehavior may not be within an agency's authority to discipline. Furthermore, requests for information related to an ongoing investigation may complicate or even prevent an agency's enforcement operations. Currently, the board's statute only recognizes confidentiality of complaint and investigatory information for licensees, despite the fact that the board may open investigations on applicants or other non-licensees.<sup>13</sup> By expanding the confidentiality of complaint and investigative information to applicants and non-licensees, the board's statute will be more consistent with regulatory standards.

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*Discontinuing board member involvement in investigations would preserve the fairness of enforcement procedures.*

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- **Inappropriate board involvement in investigations.** Board members should not be involved in the investigation of complaints. Involvement in both investigative and subsequent disciplinary activities of a case creates a conflict of interest that can detract from the fairness and transparency of enforcement processes. The agency currently uses an enforcement committee made up of board members to occasionally review complaint files to determine whether cases should be dismissed or referred to an informal settlement conference. Those committee members may also ultimately vote on disciplinary actions, creating a potential conflict. However, the board already entrusts agency staff with determining the need for the vast majority cases to be set for informal settlement conferences. Any additional expertise needed for an individual case could be sought through the use of expert reviewers, with whom the agency already periodically contracts. Discontinuing the enforcement committee and allowing staff to determine the appropriate investigatory process for complaints would preserve the integrity and fairness of enforcement procedures.

Furthermore, board member involvement in investigations of complaints can also introduce biases that ultimately prejudice the case resolutions. Psychology board members occasionally become aware of complaints through personal or professional connections, which may unintentionally motivate an improper curiosity or involvement in case outcomes. Requiring the board to establish detailed rules for recusing board members aware of or involved in specific complaint investigations would better ensure disciplinary decisions are made without bias and respondents are treated fairly.



## Recommendations

### *Change in Statute*

#### **3.1 Remove the statutory limitation restricting the board's authority to set fees.**

This recommendation would remove the fee floor currently listed in statute. The board would have greater discretion to set its own fees, giving the agency increased autonomy over its funding structure while still being subject to legislative oversight through the appropriations process.

#### **3.2 Remove subjective licensure qualifications.**

This recommendation would remove the requirement for applicants to be of "good moral character," a vague, subjective, and difficult to enforce standard. The board would continue to receive and review criminal history information to determine an applicant's eligibility for licensure according to requirements in Chapter 53, Occupations Code.

#### **3.3 Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.**

This recommendation would remove the statutory requirement for the board to issue a separate provisional psychologist license and allow the board instead to grant provisional status to licensure applicants until they meet the requirements for full licensure. Under this recommendation, candidates would submit a single application for licensure and pay a single application fee. The board would have authority to grant provisional status to those applicants who have received a Ph.D. in psychology but must still complete other licensure requirements, such as passing the national and jurisprudence exams. This recommendation would not alter the current requirements of provisionally licensed candidates or the requirements they must complete to gain full licensure. This recommendation would simply remove bureaucratic hurdles for both the applicants and agency staff and improve the efficiency of the agency's licensing process.

#### **3.4 Authorize the board to provide biennial license renewal.**

This recommendation would reduce staff time spent on renewing licenses without compromising agency oversight of licensees. This recommendation would also clarify the board's ability to stagger license renewals based on the license holders' birth month.

#### **3.5 Authorize the board to issue remedial plans to resolve minor complaints.**

This recommendation would provide the agency authority to resolve minor violations with a non-disciplinary remedial plan. In keeping with the process used by other licensing boards, this authority should be limited to once per licensee and only for violations that do not present a significant risk of harm to patients, such as basic record keeping violations. The board should specify the types of violations that are ineligible for resolution with a remedial plan, which must include any violations that could be appropriately resolved by license revocation or suspension. The agency should maintain information on the number of remedial plans entered into and the types of violations for which the plans were imposed.

#### **3.6 Clarify the agency's authority to require physical or mental evaluations and hold related hearings for noncompliance.**

This recommendation would clarify that, in conjunction with the agency's existing authority to request an applicant or licensee to undergo a physical or mental evaluation based on reasonable suspicion of impairment, the board would also be authorized to hold hearings and take disciplinary action against

applicants and licensees for noncompliance.<sup>14</sup> Ultimately, this recommendation would better equip the board to address suspected impairment and protect the public.

### **3.7 Extend confidentiality of complaint and investigative information to applicants and non-licensees.**

This recommendation would remove the reference to “license holder” from the board’s confidentiality statute to extend confidentiality of complaint or investigative information to individuals subject to the board’s existing enforcement authority. This recommendation would bring the board’s practices in line with other occupational licensing agencies.

## ***Management Action***

### **3.8 Direct the board to remove the requirement for letters of reference.**

Under this recommendation, the board would no longer impose the burdensome requirement that applicants submit three letters of reference from currently licensed psychologists that go unused by the board. Eliminating this requirement would help ensure the board relies on more objective tools to evaluate licensure applicants and standardize the board’s approach with other licensing agencies.

### **3.9 Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint.**

This recommendation would direct the board to eliminate its enforcement committee. Instead, staff should determine, as it already does for the majority of cases, whether a complaint should go to an informal settlement conference for resolution. Additionally, this recommendation would direct the board to develop rules for recusal of board members aware of specific facts surrounding a complaint or involved in investigations from participating in any resulting disciplinary proceeding, including an informal settlement conference. This recommendation would promote impartiality and a fair enforcement process.

## **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the state. The board would be able to implement the recommendations with existing resources. The recommendation to eliminate the provisional psychologist license as a separate license would eliminate the fee authority for and revenue from that license, which was \$123,760 in fiscal year 2016. However, the board would retain authority to adjust its application fee for full licensure to prevent any loss of revenue. In addition, the board should see some savings in the form of administrative efficiencies by not having to process two separate applications for licensure.

- .....
- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 501.152(b), Texas Occupations Code.
  - <sup>2</sup> Section 501.255(a)(3), Texas Occupations Code.
  - <sup>3</sup> 22 T.A.C. Sections 463.8(b), .9(d), .10(a), .11, and .13.
  - <sup>4</sup> Chapter 53, Texas Occupations Code; 22 T.A.C. Section 469.7(e).
  - <sup>5</sup> Sections 501.252–.254, Texas Occupations Code.
  - <sup>6</sup> 22 T.A.C. Sections 463.5(4) and 463.9(a)(3).
  - <sup>7</sup> Section 501.252, Texas Occupations Code.
  - <sup>8</sup> Section 501.301, Texas Occupations Code.
  - <sup>9</sup> Sections 501.301(a) and (b), Texas Occupations Code.
  - <sup>10</sup> Sections 501.401–.410 and .451, Texas Occupations Code; and 22 T.A.C. Sections 470.21–.22.
  - <sup>11</sup> Section 501.158(b), Texas Occupations Code.
  - <sup>12</sup> Ibid, (c).
  - <sup>13</sup> Section 501.205(a), Texas Occupations Code. A 2012 attorney general opinion interpreting the board's statute affirmed the limited applicability of confidentiality to licensees. Op. Tex. Att'y Gen. No. OR2012-05337 (2012).
  - <sup>14</sup> Sections 501.158(b) and (c), Texas Occupations Code.



# ISSUE 4

## *Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.*

### Background

Texas has regulated the practice of psychology since the creation of the Texas State Board of Examiners of Psychologists in 1969. The board employs 14 staff with an annual budget of about \$900,000. Licensed psychologists provide a wide range of psychological services, including performing psychological assessments and testing; providing individual or group therapy; conducting cognitive or neuro-cognitive assessments; and publishing academic research. The board also issues licenses for psychological associates, master's-level practitioners who may perform the same services under the supervision of a psychologist. In 1995, the Legislature transferred the responsibility to regulate specialists in school psychology from the Texas Education Agency to the board. These practitioners primarily work within the public school system, assessing students for learning disabilities or emotional disturbances.

To protect those who seek out mental health care, the board ensures individuals meet minimum qualifications to provide psychological services through its licensing program. Since the last Sunset review in 2004, the number of licensees overseen by the board has grown significantly. Today, the board licenses about 5,000 psychologists, 1,000 psychological associates, and 3,500 licensed specialists in school psychology. While the board oversees approximately 9,500 licenses, more than 1,200 individuals hold multiple licenses, meaning the board regulates around 8,300 individuals. The board, through its enforcement program, also pursues complaints against licensees who violate the Psychologists' Licensing Act and board rules, and takes disciplinary action when appropriate.<sup>1</sup>

### Findings

#### **Texas has continuing need to regulate the practice of psychology.**

- **Potential for harm.** Psychologists work directly with the public, including vulnerable populations the state seeks to protect through the regulation of occupations. Many patients suffer from mental disorders or impairments, placing them in an especially sensitive position. Treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. The authority and trust given to psychologists creates an opportunity for abuse, whether financial, emotional, sexual, or otherwise.

Psychological professionals delve into sensitive topics and their conclusions carry significant impact. Psychologists treat patients suffering from trauma, abuse, drug or alcohol addiction, or other mental health conditions. Courts and other governmental entities rely on psychologists' opinions to help make decisions that can substantially affect the lives of Texans. Psychologists

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*Psychologists treat vulnerable populations suffering from trauma, abuse, addiction, or other mental health conditions.*

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may assert whether a parent should have custody of children, whether an individual deserves a harsh or more lenient prison sentence, whether someone is competent to work, or whether to involuntarily commit an individual to a state hospital. Conclusions often rest on nuanced interpretations of a patient's biological, cognitive, and social history, making oversight or later review of these conclusions especially difficult.

- **Qualified practice.** The board mitigates the risk of harm to the public by ensuring practitioners are qualified to provide psychological services. Psychologist candidates must hold a doctoral degree in psychology, pass national and state exams covering both standards of practice and jurisprudence, and complete two years of supervised work experience.<sup>2</sup> In addition, licensees must maintain continuing education in the field. The board promotes compliance with standards of care by investigating complaints against licensees and taking disciplinary actions that may include removing practitioners who do not act within acceptable standards.

**As a small, independent agency with limited resources, the board could benefit from an umbrella agency structure to improve certain agency operations.**

While the agency generally does a good job performing its core licensing and enforcement functions, and seems well regarded by most licensees and consumers, the agency's small size and budget limits its effectiveness and efficiency.

- **Staff turnover.** Unlike larger agencies able to absorb and adjust to changing circumstances, smaller, independent licensing boards have little to no flexibility when reacting to events such as loss of staff. Several staff in key leadership positions at the psychology board are or will soon be eligible to retire, including the Deputy Executive Director, Chief Financial Officer, and the managers of the agency's licensing and enforcement programs. Though the agency anticipates these retirements, the ongoing day-to-day operations already keep existing staff working at full capacity, making it difficult for the agency to implement succession planning efforts or to train existing staff to fill expected gaps. In addition, smaller agencies frequently report losing mid-level staff to larger agencies that can offer longer-term career growth and higher salaries simply not feasible at a small agency.

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*Several staff in key leadership positions at the board are or will soon be eligible to retire.*

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Over the past few years, the psychology board has seen larger than usual staff turnover and has had difficulty attracting talented new staff. When staff leave, licensing boards often lose years of training invested in those individuals, as well as key experience in the functions of the agency. Taken together, the potential for retirements in leadership positions and the agency's struggles to retain experienced staff creates a significant risk that the board will lose vital institutional knowledge and may suffer setbacks in their ability to effectively regulate the profession.

- **Customer service.** A common complaint Sunset staff heard throughout the review centered on the agency's struggle to provide consistent customer service. Responses from surveys of license holders frequently mentioned being unable to get answers to basic licensing questions when individual staff take leave for illness or other reasons. The review found agency staff strain to field questions on the status of applications or complaints while carrying out the day-to-day grind of processing applications and investigating complaints.

With its limited number of staff, the board does not have the luxury of having several staff assigned to each function, such as processing license applications or answering customer service inquiries. Instead, the board assigns several tasks to a specific individual. This "silo" division of responsibilities creates the potential for gaps in service and other administrative problems. For example, the executive director recently faced the choice of limiting the hours licensing staff are available to take calls from applicants, to focus staff time on other functions. Such choices become the proverbial "robbing Peter to pay Paul;" in this case, the agency's already-strained ability to provide customer service would have suffered if the resources were shifted.

- **Technology.** The agency does not have sufficient staff, resources, or ability to develop other services typically seen at larger regulatory boards, particularly in the form of using technology to improve services. Licensees at larger boards, such as physicians and nurses, have access to a sophisticated online portal for accepting applications and complaints; a website interface that provides public access to information relating to licensees; user-friendly systems for licensees to input continuing education and other information; and opportunities for proactive licensee education through online resources or peer support services. While the psychology board's website provides useful information to consumers and licensees, including a public licensee search, its capabilities are limited. Limited resources have also presented a barrier to the agency's efforts to develop an online application system.
- **Litigation costs.** When small boards become involved in litigation, either an appeal from an enforcement action by the board or a suit brought against the board directly, the agencies typically do not have money in their operating budget or extra staff to litigate the case. As a result, the board must redirect money and staff time away from core regulatory functions, regardless of any detriment to its public mission. For example, the psychology board currently faces an order to pay attorney fees from a lawsuit, which it must pay from an operating budget that had not accounted for such an expense. Agency staff from other boards similarly have expressed concerns to Sunset staff over the difficulties their boards would face if involved in serious litigation.

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*The agency does not have sufficient staff, resources, or ability to develop services typically seen at larger regulatory boards.*

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### **Texas misses an opportunity to more cost-effectively regulate psychology.**

The struggles the psychology board faces in effectively regulating as an independent agency with limited resources could improve if the regulatory



functions of the board were consolidated under an umbrella licensing agency. An umbrella agency structure offers distinct advantages compared to an independent agency structure. By having a large staff specialized along functional lines, umbrella agencies have the flexibility to reallocate resources across programs to maintain regulatory functions, while ensuring long-term institutional knowledge. In addition, larger umbrella agencies have the resources to focus beyond basic licensing and enforcement duties, enabling them to pursue more sophisticated technology or other services and to react to unplanned costs from litigation or other sources. The time has come to closely examine the costs and benefits of an umbrella agency.

**While the agency's functions should continue, its organizational structure must be evaluated in conjunction with the Sunset Commission's review of other comparable health licensing agencies.**

***Health Licensing Agencies Under  
Sunset Review 2016–2017***

Texas Board of Chiropractic Examiners  
 State Board of Dental Examiners  
 Texas State Board of Examiners of Marriage and  
 Family Therapists  
 Texas Medical Board  
 Texas Board of Nursing  
 Texas Board of Occupational Therapy Examiners  
 Texas Optometry Board  
 Texas State Board of Pharmacy  
 Executive Council of Physical Therapy and Occupational  
 Therapy Examiners  
 Texas Board of Physical Therapy Examiners  
 Texas State Board of Podiatric Medical Examiners  
 Texas State Board of Examiners of Professional Counselors  
 Texas State Board of Examiners of Psychologists  
 Texas State Board of Social Worker Examiners  
 State Board of Veterinary Medical Examiners

The Texas State Board of Examiners of Psychologists is one of many agencies that regulate healthcare professionals in Texas. The licensing, regulation, and enforcement of the profession under the board's enabling act require activities that mirror those taken by comparable health licensing boards, many of which are under Sunset review at this time, as shown in the textbox, *Health Licensing Agencies Under Sunset Review*.

These reviews will explore the benefits of consolidation, with the goal of eliminating duplication of effort and maximizing agency time spent on core licensing and regulatory functions. Additionally, opportunities may exist to achieve administrative efficiencies, provide greater coordination, and deliver more consistent regulation across Texas' health licensing agencies. These reviews, including an analysis of the benefits of consolidation, will be completed in November 2016.

**Most other states regulate psychology through some form of consolidated agency.**

All states regulate the practice of psychology, but most perform that regulation through an umbrella regulatory agency. The chart on the following page, *Regulation of Psychology in the United States*, describes the structure of psychology regulatory agencies in the United States. Only 15 states, including Texas, regulate psychologists through an independent agency. In contrast, 35 states regulate psychologists through some kind of umbrella licensing agency — 10



through health-specific licensing agencies and 25 through general umbrella licensing agencies that regulate a variety of occupations, similar to the Texas Department of Licensing and Regulation.

### ***Regulation of Psychology in the United States***

Independent Agency	AL, AZ, AR, LA, MN, MS, NV, NH, NC, ND, OH, OK, OR, TX, WV	15
Health Licensing Agency	CT, FL, IA, KS, MD, NE, RI, TN, VA, WA	10
General Umbrella Licensing Agency	AK, CA, CO, DE, GA, HI, ID, IL, IN, KY, ME, MA, MI, MO, MT, NJ, NM, NY, PA, SC, SD, UT, VT, WI, WY	25

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

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed reflecting “good government” standards designed to ensure open, responsive and effective government. One such standard relates to board member training. The board's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain a newer requirement that the agency create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.

## **Recommendations**

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

#### **4.1 Continue the regulation of psychologists, but postpone the decision on continuation of the Texas State Board of Examiners of Psychologists until completion of the Sunset reviews of other health licensing agencies.**

While state regulation of psychologists should be continued, this recommendation would postpone the Sunset Commission's decision on the status of the board as a separate agency until completion of the Sunset reviews of other health licensing agencies under review this biennium. A report concerning consolidation of health licensing programs will be published in mid-November 2016. The results of these future reviews should be used to determine if administrative efficiencies and greater operational effectiveness could be achieved in the organization of the state's separate health licensing agencies. Delaying the decision on continuation of the agency would allow Sunset staff to finish its work on all the health professional licensing agencies, and base its recommendation on the most complete information.

The Texas State Board of Examiners of Psychologist would be a candidate for consolidation. As discussed in the findings, the agency faces difficulties maintaining its operations in the future due to staff attrition.

In addition, the agency's small size limits its ability to efficiently carry out its regulatory duties or to grow in sophistication of its services to licensees and the public. Consolidation could allow for a focus on the implementation of best practices and more robust regulation designed to better protect the public.

#### **4.2 Update the standard across-the-board requirement related to board member training.**

This recommendation would require the agency to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy and boards have rulemaking authority necessary to implement legislative policy.

### **Fiscal Implication**

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

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapter 501, Texas Occupations Code and 22 T.A.C. part 21, respectively.

<sup>2</sup> Sections 501.252–.256, Texas Occupations Code.

# ISSUE 5

## *A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.*

### Background

On January 12, 2016, the U.S. Court of Appeals for the 5th Circuit (5th Circuit) struck down Texas' definition of psychological services in the Psychologists' Licensing Act in the opinion *Serafine v. Branaman*.<sup>1</sup> The court's ruling effectively prevents the Texas State Board of Examiners of Psychologists from taking action against an individual practicing psychology in Texas without a license. Whether the ruling will affect only the psychology board or be felt throughout Texas' other mental health professions remains to be seen.

The case arose after the psychology board issued a cease-and-desist letter to Dr. Mary Louise Serafine, a candidate running for a seat in the Texas Senate who described herself as a "psychologist" in campaign materials. Although Dr. Serafine held advanced degrees and had previously taught in psychology departments at Yale University and Vassar College, she did not hold a license as a psychologist in Texas nor would she have qualified for one. Dr. Serafine sued the psychology board, arguing that the statutory restrictions on using the term "psychologist" and on the practice of psychology violated her constitutionally protected free speech and were overly broad.

The 5th Circuit concluded the Act's definition of "psychological services" was unconstitutionally overbroad. As a "practice" act, the statute defines the practice of psychology and prohibits anyone not licensed from performing any services that fall under the definition, as illustrated in the chart on the follow page, *Scope of Practice of Mental and Behavioral Health Professionals in Texas*. The court found the definition of psychology as written could include the types of services provided by groups like Alcoholics Anonymous, Weight Watchers, life coaches, and fitness coaches, or even writers of marriage-advice columns or parenting blogs. The definition could be read to prohibit individuals from providing these services if they are not licensed as a psychologist. The court noted the "ability to provide guidance about the common problems of life — marriage, children, alcohol, health — is a foundation of human interaction and society, whether this advice be found in an almanac, at the feet of grandparents, or in a circle of friends." The 5th Circuit held the Act's attempt to restrict the ability to provide such advice or guidance went beyond regulating commercial speech, becoming unconstitutionally overbroad and infringing free speech.

### Findings

**The *Serafine* decision prevents the psychology board from taking enforcement action against someone practicing psychology without a license.**

The absence of a statutory definition of "psychological services" has created a conspicuous gap in the psychology board's ability to enforce its act. As a result of the 5th Circuit's decision, any person in Texas may now be able to provide psychological services without any training or assurance of at least minimum qualifications, as long as the person does not call themselves a psychologist. If a

### **Scope of Practice of Mental and Behavioral Health Professionals in Texas**

<b>Psychology</b> Section 501.003(c)(2), Texas Occupations Code	<b>Marriage and Family Therapy</b> Section 502.002(6), Texas Occupations Code	<b>Counseling</b> Section 503.003(a), Texas Occupations Code	<b>Social Work</b> Section 505.0025(a), Texas Occupations Code
Addresses normal behavior and involves evaluating, preventing, and remediating psychological, emotional, mental, interpersonal, learning, and behavioral disorders of individuals or groups, as well as the psychological disorders that accompany medical problems, organizational structures, stress, and health.	Providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction in the context of marriage or family systems.	The application of mental health, psychotherapeutic, and human development principles to: (1) facilitate human development and adjustment throughout life; (2) prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health; (3) conduct assessments and evaluations to establish treatment goals and objectives; and (4) plan, implement, and evaluate treatment plans using counseling treatment interventions that include: (A) counseling; (B) assessment; (C) consulting; and (D) referral.	The application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.

person uses the specific terms “psychologist” or claims to perform “psychological services,” the board has jurisdiction to take action. In contrast, if a person denies they are providing psychological services, then the board believes it cannot take action. The board has already refrained from taking enforcement action in some cases where it otherwise believes a violation of the law has occurred. For example, in one case an individual not licensed by the board provided therapy and hypnotherapy services the board believed were psychological, but the individual did not refer to herself as a psychologist. In another, the agency discovered an individual had worked as a psychological fellow for 10 years without seeking a license, far in excess of the one year allowed by board rules. In response to these challenges, the psychology board is developing a new definition of psychological services for consideration by the Legislature. Without legislative action, the psychology board may be unable to prosecute future, potentially egregious, unlicensed practice of psychology and could have difficulty enforcing practice standards against licensees who deny a particular activity (such as hypnotherapy) constitutes the practice of psychology.

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*Without legislative action, the psychology board may be unable to prosecute unlicensed practice of psychology.*

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### **The impact of the *Serafine* decision could bleed over to the other three behavioral health professions boards.**

While the *Serafine* opinion only directly affects the psychology board and its act, other behavioral health licensing boards could face similar challenges in the future. The marriage and family therapist, professional counselor, and social work acts also prohibit unlicensed individuals from engaging in any services

encompassed by the definitions under the acts. As shown in the chart on the previous page, *Scope of Practice of Mental and Behavioral Health Professionals in Texas*, the definitions of the practice of psychology, marriage and family therapy, counseling, and social work each use broad language to describe the wide-ranging services its profession is allowed to provide.<sup>2</sup> These definitions use intentionally general concepts like evaluating, assessing, preventing, remediating, and treating to describe the acts performed by mental health professionals. Further, these professionals may direct their services toward the full range of human experience — psychological, emotional, mental, interpersonal, learning, behavioral, cognitive, relational, physical, social, moral, educational, and spiritual.<sup>3</sup> These definitions create expansive scopes of practice for each field and include considerable overlap across the professions. That overlap is more than intellectual, as licensees across the four professions use many of the same diagnoses, evaluation methods, and treatments in their practices.

To a certain extent, scope of practice definitions are necessary to create an enforceable practice act; without one, any individual could engage in the unlicensed practice of one of these professions. However, the breadth of the services included in the definitions raises serious concerns of encroachment into professions not meant to be regulated by these acts. Just as the 5th Circuit concluded when reviewing the psychology act, the services of self-improvement/self-help groups, life gurus, seminar lecturers, and fitness coaches could all potentially come under the regulatory scope of all four of these mental health occupations.

### **Legislative actions is necessary to clarify the scope of practice of mental and behavioral health professionals in Texas.**

The 5th Circuit’s opinion, though centered on issues surrounding free speech, has brought to focus the breadth and lack of clarity between the scopes of practice of mental and behavioral health professionals in Texas. Under the current statutes, the Legislature has expressed its desire to regulate professions providing mental health care services to the public, including restricting each practice to trained, tested, and licensed individuals. For each of the reviews of the boards over these professions, Sunset staff recommends continuing this regulation to protect the health and safety of Texans. However, the Legislature likely did not intend almost all occupations that “facilitate human development and adjustment throughout life” to require license as a psychologist, marriage and family therapist, counselor, or social worker.<sup>4</sup> A natural tension exists in regulating occupations between the need to identify the full breadth of a licensed professional’s permitted scope of practice and recognition that the practice of other, unregulated professions may legitimately overlap portions of that scope. All the boards would benefit from guidance on the extent to which the Legislature intends mental health care practices to be protected from unlicensed practice.

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*All the boards  
would benefit  
from legislative  
guidance on their  
regulatory scope.*

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## Recommendations

### *Management Action*

#### **5.1 Direct the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology.**

Although the ability to enforce a practice act affects the operations of an agency — something clearly within the scope of a Sunset review — defining the specific scope of practice of mental health professionals in Texas exceeds the mandate of a Sunset review and the professional expertise of Sunset staff. In such a circumstance, Sunset staff refrains from making recommendations without express direction from the Legislature or the Sunset Commission. However, given the significance of the *Serafine* opinion and potential implications for the practice of psychology and the other mental health professions, this is an area of concern warranting discussion in this report.

This recommendation would direct the psychology board to develop no less than three proposals offering different approaches to defining the practice of psychology in response to the 5th Circuit's opinion. The board should provide these proposals, ranked or unranked, with a description of the advantages and disadvantages of each, to the Senate Health and Human Services Committee and the House Public Health Committee no later than January 31, 2017. A copy of these proposed definitions should also be provided to the Sunset Commission. In developing the recommended definitions, the agency should solicit input from all relevant stakeholder organizations and hold at least one public meeting to discuss possible language and stakeholder concerns. Stakeholders would be allowed to submit their own recommended definitions to the committees and the Sunset Commission as well.

#### **5.2 Request the Senate Health and Human Services Committee and the House Public Health Committee to take action to define the practice of psychology, as well as to potentially clarify the scope of practice of other mental health professionals.**

This recommendation would request the Senate Health and Human Services Committee and the House Public Health Committee to consider the proposed definitions provided by the psychology board, in light of the *Serafine* opinion. The committees should adopt, at a minimum, a definition of psychological services to ensure the psychology board has the statutory authority to take action against the unlicensed practice of psychology.

In addition, the recommendation would request the committees to examine whether the language in the marriage and family therapy, counseling, and social work statutes should also be updated based on the concerns expressed by the 5th Circuit. The situation created by the *Serafine* opinion provides the Legislature the opportunity to comprehensively address the scope of practice for each of the four mental health professions, particularly important in a time of increased demand for high quality mental health services. The provision of mental health care services in Texas would benefit from a cohesive approach to make clear to licensees and the public the services each profession may provide and which services unlicensed individuals in other professions may provide.

## Fiscal Implication

These recommendations would not have a fiscal impact.

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<sup>1</sup> *Serafine v. Branaman*, 810 F.3d 354 (5th Cir. 2016).

<sup>2</sup> Appendix E, *Statutory Scope of Mental and Behavioral Health Professions*, provides the complete scope of practice definitions for the psychologists, marriage and family therapist, professional counselor, and social work acts.

<sup>3</sup> For example, the definition of “counseling” includes “assisting a client through a therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client’s life.” All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 503.003(b)(3), Occupations Code.

<sup>4</sup> Section 503.003(a)(1), Occupations Code.





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## APPENDICES



# APPENDIX A

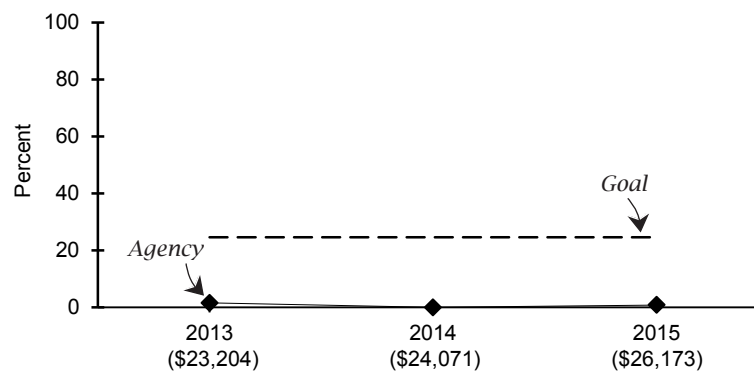
## ***Historically Underutilized Businesses Statistics 2013 to 2015***

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas State Board of Examiners of Psychologists' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2013 to 2015. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The Texas State Board of Examiners of Psychology has complied with most HUB program requirements. The board does not make purchases within most state procurement categories, but does report data on purchases in the categories of other services and commodities.

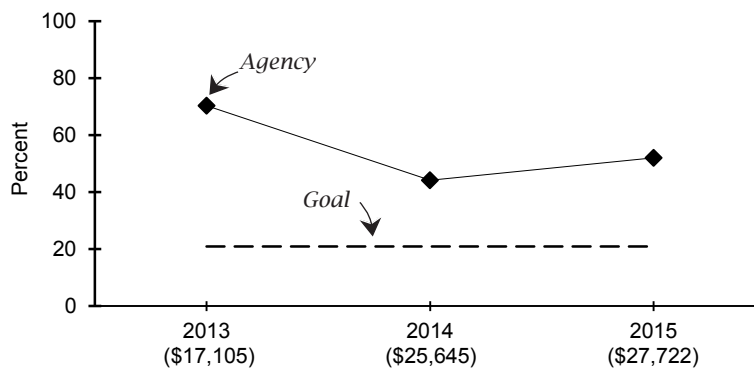
### **Other Services**



The board has had difficulty meeting the statewide purchasing goal for other services, failing to meet the statewide goal during the last three fiscal years. The board's expenditures in other services typically consist of contracts with licensees who assist the board in administering the oral exam; serve on committees and working groups established by the board; and serve as professional reviewers of enforcement cases. Due to the specialized nature of these services, the board often has difficulty securing the services from a HUB vendor.

## Appendix A

### Commodities



The board exceeded the statewide goal for commodity purchases during the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

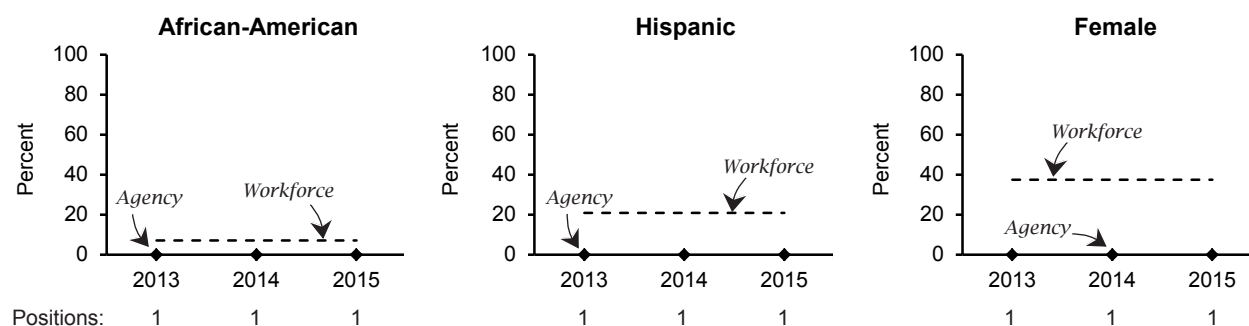
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX B

## ***Equal Employment Opportunity Statistics 2013 to 2015***

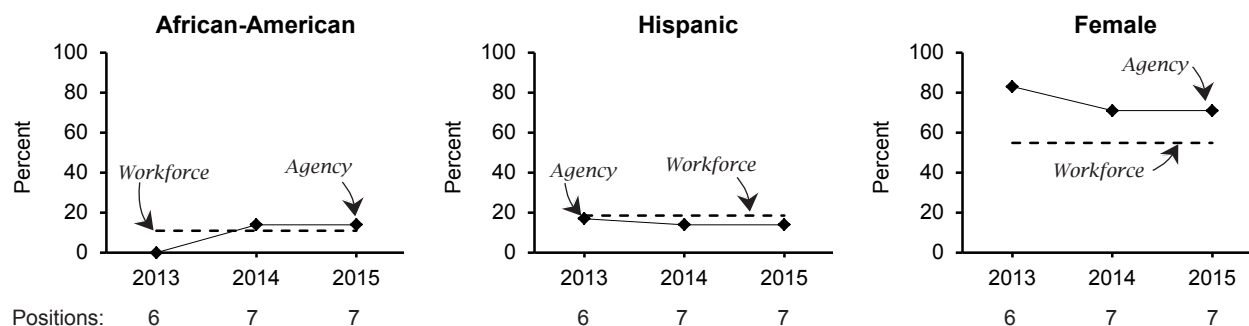
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas State Board of Examiners of Psychologists.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2013 to 2015. The board met or exceeded several statewide civilian workforce percentages for the past three fiscal years, but fell short on its employment of women and minorities in its one administration position.

### **Administration**



The board did not meet the statewide civilian workforce percentages in administration for African-American, Hispanic, or female employees. However, the board only has one administration position.

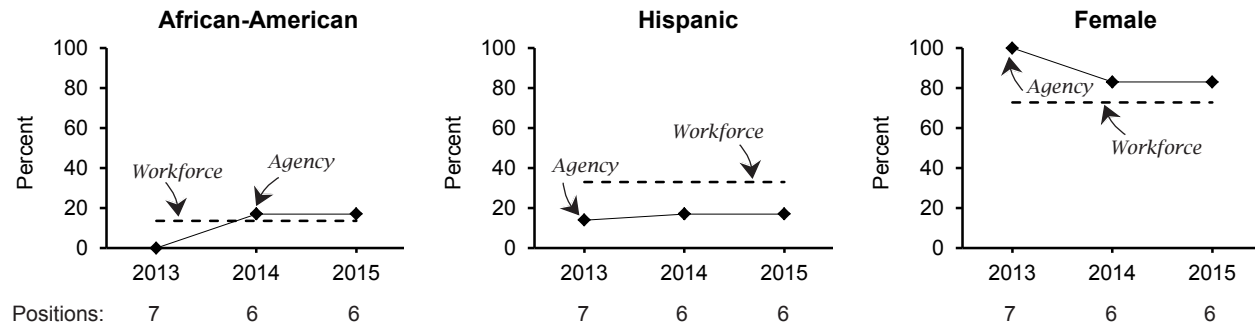
### **Professional**



The board generally exceeded the workforce percentages for African-Americans and women in professional positions. The board fell slightly below the percentages for Hispanics in all three years.

## Appendix B

### Administrative Support



The board generally exceeded the workforce percentages for African-Americans and women in administrative support positions. However, the board fell below the percentages for Hispanics in these positions in all three years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

# APPENDIX C

## *Health Professions Council*

In 1993, the 73rd Legislature created the Health Professions Council (HPC) to increase efficiency across member agencies by providing administrative support services. The council consists of representatives from 12 independent licensing boards and the Department of State Health Services Professional Licensing and Certification Unit (PLCU), as reflected in the table, *HPC Member Agencies*.

### *HPC Member Agencies – FY 2016*

Agency	Licenses (at start of FY16)	Funds Transferred to HPC in FY16
Texas Board of Chiropractic Examiners	6,537	\$20,361
State Board of Dental Examiners	31,280	\$257,118
Texas Funeral Service Commission	4,811	\$43,845
Texas Medical Board	85,244*	\$32,378
Texas Board of Nursing	419,685	\$71,651
Texas Board of Occupational Therapy Examiners	13,985	\$33,527
Texas Board of Physical Therapy Examiners	24,412	
Texas Optometry Board	4,409	\$27,715
Texas State Board of Pharmacy	113,806	\$331,400
Texas State Board of Podiatric Medical Examiners	1,162	\$13,401
Texas State Board of Examiners of Psychologists	9,512	\$52,774
Department of State Health Services – PLCU	175,140	\$11,846
State Board of Veterinary Medical Examiners	9,770	\$31,038
<b>Non-Member Agencies Receiving Limited Services</b>		
Texas Board of Professional Geoscientists receives information technology support services		\$13,000
Texas Board of Professional Land Surveying receives database administration and support		\$11,808
Texas State Board of Plumbing Examiners receives database administration and support		\$130,658
Office of Public Insurance Counsel receives information technology support services		\$6,641
<b>Total</b>		<b>\$1,089,161</b>

\* As of August 31, 2015

- **Funding and staffing.** The council's funding comes from transferred appropriations from member agencies, with each agency paying for services it receives. Council members elect a chair and vice chair to preside over the council for two-year terms. The council has seven employees to perform its main functions and occasionally uses staff from member agencies to carry out specific programs. For

## ***Appendix C***

example, an Optometry Board staff member provides added technology support to the eight smallest member agencies, and a Board of Nursing staff member offers new employee Equal Employment Opportunity (EEO) training to all member agencies.

- **Services.** HPC offers the following services to member agencies:
  - Website, information technology, and document imaging software support
  - Shared regulatory database and database administration
  - Purchasing, payroll, and human resources support
  - Trainings relating to state finance, accounting, auditing, and EEO guidelines
  - Shared toll-free telephone line for consumer complaints



# APPENDIX D

## Oral Exam Process

<b>Step 1: Selection of Practice Area</b>	<b>Step 2: Testing Professional Skills</b>	<b>Step 3: Scoring</b>
<i>Candidates choose one of six practice areas in which to be tested, but are able to practice in any under a general license as a psychologist.</i>	<i>Examiners ask pre-determined questions intended to assess candidates' competency in nine content areas related to professional skills.</i>	<i>Results are determined by each candidate's aggregate scores in the content areas tested. Candidates need a score of 64 from each examiner to pass.</i>
<b>Practice Areas</b> <ul style="list-style-type: none"> <li>• Clinical Psychology</li> <li>• Counseling</li> <li>• School Psychology</li> <li>• Neuropsychology</li> <li>• Child Clinical Psychology</li> <li>• Industrial/Organizational Psychology</li> </ul>	<b>Content Areas</b> <ul style="list-style-type: none"> <li>• Identifies problem</li> <li>• Identifies and obtains information or psychometrics</li> <li>• Develops and proposes the implementation of a plan of action and/or intervention</li> <li>• Awareness of professional limitations</li> <li>• Handles crisis situations</li> <li>• Attends to cultural and relevant differences</li> <li>• Application of ethics</li> <li>• Application of laws</li> <li>• Application of professional standards</li> </ul>	<b>Scores</b> <ul style="list-style-type: none"> <li>• <b>Pass-plus</b> (9 points) – An unusually well-articulated answer</li> <li>• <b>Pass</b> (8 points) – A good, passing answer</li> <li>• <b>Questionable</b> (3 points) – A weak, vague, or incomplete answer</li> <li>• <b>Unacceptable</b> (-10 points) – An answer that is substantially incomplete or incorrect</li> </ul>



# APPENDIX E

## ***Statutory Scope of Mental and Behavioral Health Professions***

### **Psychologists' Licensing Act – Chapter 501, Texas Occupations Code**

#### Sec. 501.003. PRACTICE OF PSYCHOLOGY.

(a) In this section, “psychological services” means acts or behaviors that are included within the purview of the practice of psychology.

(b) A person is engaged in the practice of psychology within the meaning of this chapter if the person:

(1) represents the person to the public by a title or description of services that includes the word “psychological,” “psychologist,” or “psychology”;

(2) provides or offers to provide psychological services to individuals, groups, organizations, or the public;

(3) is a psychologist or psychological associate employed as described by Section 501.004(a)(1) who offers or provides psychological services, other than lecture services, to the public for consideration separate from the salary that person receives for performing the person’s regular duties; or

(4) is employed as a psychologist or psychological associate by an organization that sells psychological services, other than lecture services, to the public for consideration.

(c) The practice of psychology:

(1) includes providing or offering to provide services to an individual or group, including providing computerized procedures, that include the application of established principles, methods, and procedures of describing, explaining, and ameliorating behavior;

(2) addresses normal behavior and involves evaluating, preventing, and remediating psychological, emotional, mental, interpersonal, learning, and behavioral disorders of individuals or groups, as well as the psychological disorders that accompany medical problems, organizational structures, stress, and health;

(3) includes:

(A) using projective techniques, neuropsychological testing, counseling, career counseling, psychotherapy, hypnosis for health care purposes, hypnotherapy, and biofeedback; and

(B) evaluating and treating mental or emotional disorders and disabilities by psychological techniques and procedures; and

(4) is based on:

(A) a systematic body of knowledge and principles acquired in an organized program of graduate study; and

(B) the standards of ethics established by the profession.

## ***Appendix E***

### **Licensed Marriage and Family Therapist Act – Chapter 502, Texas Occupations Code**

#### **Sec. 502.002. DEFINITIONS.**

In this chapter: . . .

(6) “Marriage and family therapy” means providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction in the context of marriage or family systems.

### **Licensed Professional Counselor Act – Chapter 503, Texas Occupations Code**

#### **Sec. 503.003. DEFINITION: PRACTICE OF PROFESSIONAL COUNSELING.**

(a) In this chapter, “practice of professional counseling” means the application of mental health, psychotherapeutic, and human development principles to:

- (1) facilitate human development and adjustment throughout life;
- (2) prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;
- (3) conduct assessments and evaluations to establish treatment goals and objectives; and
- (4) plan, implement, and evaluate treatment plans using counseling treatment interventions that include:

(A) counseling; (B) assessment; (C) consulting; and (D) referral.

(b) In this section:

(1) “Assessment” means the selection, administration, scoring, and interpretation of an instrument designed to assess an individual’s aptitudes, attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders, and the use of methods and techniques for understanding human behavior that may include the evaluation, assessment, and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, alcoholism and substance abuse, and conduct disorders. The term does not include the use of standardized projective techniques or permit the diagnosis of a physical condition or disorder.

(2) “Consulting” means applying scientific principles and procedures in counseling and human development to assist in understanding and solving current or potential problems that the person seeking consultation may have with regard to another person, including an individual, group, or organization.

(3) “Counseling” means assisting a client through a therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client’s life.

(4) “Counseling treatment intervention” means the application of cognitive, affective, behavioral, psychodynamic, and systemic counseling strategies, including strategies for developmental, wellness,

## ***Appendix E***

and psychological dysfunction that reflect a pluralistic society. The term does not permit or include the diagnosis or treatment of a physical condition or disorder. The term includes:

- (A) an intervention specifically implemented in the context of a professional counseling relationship;
- (B) individual, group, or family counseling or psychotherapy;
- (C) the assessment, evaluation, and treatment of a person with a mental, emotional, or behavioral disorder;
- (D) guidance and consulting to facilitate normal growth and development, including educational and career development;
- (E) the use of functional assessment and counseling for a person requesting assistance in adjustment to a disability or handicapping condition;
- (F) research; and
- (G) referrals.

(5) “Referral” means:

- (A) evaluating and identifying the needs of a person being counseled to determine the advisability of referral to another specialist;
- (B) informing the person of that judgment; and
- (C) communicating to the person to whom the referral is made as requested by the person being counseled or as appropriate.

(c) The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained in the use of those methods, techniques, or modalities.

### **Social Work Practice Act – Chapter 505, Texas Occupations Code**

Sec. 505.0025. PRACTICE OF SOCIAL WORK.

- (a) The practice of social work is the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.
- (b) The practice of social work may include the provision of individual, conjoint, family, and group psychotherapy using the Diagnostic and Statistical Manual of Mental Disorders, the International Classification of Diseases, and other diagnostic classification systems in assessment, diagnosis, treatment, and other activities by a person licensed under this chapter.



# APPENDIX F

## ***Staff Review Activities***

During the review of the Texas State Board of Examiners of Psychologists, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings and other agency meetings; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and relevant literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Attended the administration of the board's oral exam and observed staff involvement, examinations, and scoring procedures; and reviewed materials related to past oral examinations
- Spoke with representatives from university departments of psychology and education across Texas, as well as representatives from public school districts and private schools
- Interviewed representatives from state psychology associations, the American Psychological Association, and the Association of State and Provincial Psychology Boards
- Attended a meeting of the Jurisprudence Examination Consultants Workgroup
- Reviewed agency enforcement case files and observed informal settlement conferences of agency enforcement actions
- Surveyed state and national interest groups, individual licensees, and other stakeholders





# Sunset Staff Review of the *Texas State Board of Examiners of Psychologists*

————— *Report Prepared By* —————

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