

Sunset Advisory Commission



**Texas State
Board of Podiatric
Medical Examiners**

Staff Report
April 2004

**TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**

**SUNSET STAFF REPORT
APRIL 2004**

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SUMMARY

Summary

Texas State Board of Podiatric Medical Examiners

The Texas State Board of Podiatric Medical Examiners is in a difficult situation in meeting its responsibility to protect the public as an independent agency. Like other licensing agencies, it is obligated to pay its own way, with fees collected from practitioners. While the Board satisfies this basic requirement, the small number of podiatrists in Texas – 850 – limits the ability to raise the revenue needed to regulate the profession in a way that best protects the public.

Licensing fees and other charges generate annual revenue sufficient to support an agency staff of three, pay indirect costs, and return about \$87,000 to the General Revenue Fund for other state uses. However, podiatrists' licensing fees, at \$420 annually, are the highest among the health practitioners – twice the fee paid by medical doctors. Increasing these fees to provide additional revenue to the Board would work a significant hardship on the licensed population. Further, the needs of the agency are greater than simply hiring one or two additional employees.



The Board's needs are greater than simply hiring one or two additional employees.

Small agencies, like the Podiatry Board, have a difficult time performing the administrative tasks common to all agencies and taking adequate enforcement action to protect the public. For the Podiatry Board, this difficulty is especially acute, given the seriousness of medical practices performed by podiatrists, and the need for a commensurate regulatory response. The lack of resources has particularly hampered the agency's ability to fully prosecute enforcement cases, causing the agency to rely instead on negotiated settlements that some Board members have acknowledged are not as tough as they would like.

While significant concerns exist about the agency's ability to adequately function independently, the decision on the specific organizational structure for the agency should be made after the Sunset review of other health licensing agencies. Whatever that organizational structure ultimately is, the Podiatry Board should have the regulatory authority necessary, as outlined in this report, to perform the important job expected of it.

A summary of the recommendations in this report is provided in the following material.

Issues/Recommendations

Issue 1

Decide on Continuation of the Board After Completion of Sunset Reviews of Other Health Licensing Agencies.

Key Recommendation

- Decide on continuation of the Texas State Board of Podiatric Medical Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

Issue 2

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Recommendations

- Standardize the Board's licensing functions by ensuring that the Board addresses criminal convictions as defined in general statute, streamlining the licensing by endorsement process, and changing the basis for assessing late renewal fees.
- Improve the Board's ability to protect the public by authorizing inspections during an investigation, allowing a panel of the Board to temporarily suspend a license, and granting the Board authority to issue cease-and-desist orders.
- Update elements related to the policy body, such as prohibiting Board members from serving as voting members on advisory committees.

Fiscal Implication Summary

This report contains two recommendations that would have a small fiscal impact to the State. The fiscal impacts of the recommendations are summarized below:

- *Issue 2* - Basing late license renewal fees on the cost of the renewal, rather than the cost of the licensing exam, would result in an estimated annual revenue gain of \$6,000 because the renewal fee is higher than the examination fee. The Board would need \$820 a year to cover travel costs associated with requiring a public member to attend informal conferences.

ISSUES

Decide on Continuation of the Board After Completion of Sunset Reviews of Other Health Licensing Agencies.

Summary

Key Recommendation

- Decide on continuation of the Texas State Board of Podiatric Medical Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

Key Findings

- The mission of the Texas State Board of Podiatric Medical Examiners is to protect the public by regulating podiatry.
- Texas has a continuing need to regulate podiatry.
- The small size of the podiatry profession makes it difficult to support an independent agency responsible for regulation, potentially putting the public at risk.
- Three-quarters of states regulate podiatry through some form of consolidated agency.

Conclusion

The Sunset review evaluated the continuing need to regulate podiatry in Texas, as well as the need for the Texas State Board of Podiatric Medical Examiners as the agency to provide this function. While the review found that the State should continue to regulate podiatry, several options exist for how to structure the oversight, ranging from continuing the Board as an independent agency, enhancing coordination of administrative functions through a consortium like the Health Professions Council, and consolidating the Board with other health professions agencies. Because of the small size of the profession in Texas, however, the practice of podiatry has difficulty generating licensing fees sufficient to support an independent agency that can provide the sophisticated regulatory effort needed to meet its responsibility to protect the public. The review concluded that the decision on the appropriate structure of the agency responsible for this regulation should be delayed until the Sunset reviews of other health licensing agencies are completed later this year, to draw on insights gained from those reviews.

Support

The mission of the Texas State Board of Podiatric Medical Examiners is to protect the public by regulating podiatry.

- Texas has regulated podiatrists since 1923, first through the Board of Medical Examiners, and since 1939 through an independent agency. The State added regulation of podiatric medical radiologic technicians to the Board's duties in 1989. Technicians work directly under the supervision of licensed podiatrists and may only perform foot and ankle radiological procedures.
- The Board is charged with protecting the public by ensuring that only qualified podiatrists and technicians are licensed, and by sanctioning licensees who violate the Podiatric Medical Act and Board rules. To this end, the Board performs two core functions: licensing and examination, and enforcement.
- In fiscal year 2003, the Board regulated about 850 podiatrists and 270 technicians. Also in 2003, the Board initiated 49 complaints and received 80 complaints from the public, insurance companies, and other government agencies. That same year, the Board resolved 125 complaints, with seven resulting in sanctions against licensees. The Board, composed of a majority of podiatrists, operates on an annual budget of about \$233,000 with a staff of three.



In fiscal year 2003, the Board resolved 125 complaints, with seven resulting in sanctions against licensees.

Texas has a continuing need to regulate podiatry.

- Podiatry has evolved into a complex profession over the last 50 years, and podiatrists now have full prescriptive authority, perform surgery, and admit patients to hospitals. Only medical and osteopathic doctors also have all of the same privileges. The Board receives complaints of serious allegations against podiatrists, including death, fraud, and substance abuse.
- The Board licenses individuals to ensure their competence to provide podiatric services to the public. To be licensed by the Board as a podiatrist, a person must have completed 90 hours of undergraduate course work and four years at an approved podiatry school, in addition to passing all three parts of the national podiatry exam and the Board's jurisprudence exam. Applicants must also have taken a Board-approved one-year podiatric medical residency. Technicians must complete at least 20 hours of training approved by the Texas Department of Health.
- The Board also develops and implements rules to ensure that licensees engage in safe practices. The Texas Podiatric Medical Act is designed to protect clients and give them recourse if laws are violated. Further, the public needs an agency that can receive and investigate complaints about podiatrists and, if necessary, discipline those who violate the law to bring them into compliance.



Podiatrists have full prescriptive authority, perform surgery, and admit patients to hospitals.

The small size of the podiatry profession makes it difficult to support an independent agency responsible for regulation, potentially putting the public at risk.

- The Board has only three staff and struggles to keep up with daily responsibilities. Even though the agency generates more revenue than it receives in appropriations, its licensees already pay the highest licensing fees among medical professionals in Texas, as shown in the chart *Health Professions Licensing Fees*. With 850 podiatrists in Texas, the profession is not large enough to generate additional funds to perform the administrative duties common to all agencies *and* the sophisticated regulatory activities needed to adequately oversee medical practitioners. Raising this already high licensing fee to increase the agency’s funding so that it can regulate podiatry at the level needed would be unduly burdensome on podiatrists. In addition, the Board’s tight financial situation magnifies the impact of unexpected expenses, as it did in 2003, when attorneys’ fees and unemployment compensation caused the Board to need a \$16,500 deficiency grant.

Health Professions Licensing Fees		
Profession	Initial License Fee*	Annual Renewal Fee*
Podiatrists	\$420	\$420
Pharmacists	\$278	\$215
Medical Doctors	\$210	\$210
Dentists	\$155	\$111
Chiropractors	\$125	\$125
Optometrists	\$75	\$170
* Podiatrists do not pay the \$200 professional fee, and other fees listed here do not include it.		

- Budget and staff shortages severely restrict the Board’s ability to regulate podiatrists as needed to protect the public. The agency has one investigator to handle approximately 100 cases each year. When the agency hired the current investigator in October 1999, he faced a backlog of 53 enforcement cases, and no formal complaint investigation procedures existed. As a result, the investigator devoted considerable time establishing procedures before being able to address outstanding cases, and the agency issued only four orders in fiscal years 1999 through 2002. While the Board’s enforcement processes are now in place, and the Board is issuing more orders, staff limitations require the investigator to also help answer the telephone and maintain the agency’s Web site.
- Because the agency’s resources are significantly limited, agency staff concentrate on the most egregious violators, and typically negotiate agreements with more lenient sanctions to avoid the additional time and expense of preparing contested cases for the State Office of Administrative Hearings (SOAH). Due to funding shortages, the Board has not taken a case to SOAH since 1997. Respondents have exploited this lack of action on contested cases to negotiate settlements that could leave the public at risk. For example, in 2003, the Board found a podiatrist in violation of state law for fraud and negligence, with his actions contributing to the death of a patient. The Board’s initial order included revocation, but subsequent negotiations resulted in a ten-year suspension, with all but three months probated. The podiatrist continues to practice surgery as long as another podiatrist approves the procedures.

In another case, a podiatrist illegally prescribed large amounts of controlled substances, but the Board could not obtain the podiatrist’s medical records because he simply ignored the agency’s subpoena. In


The Board has only three staff and struggles to keep up with daily responsibilities.

the end, the podiatrist paid only a \$2,500 fine – the same fine the Board charges for continuing education violations – because he repeatedly refused to agree to Board orders, and the agency did not take the case to SOAH.

In a final example, the Board conditionally waived a \$5,000 fine, which the agency had already reduced, for a licensee convicted of federal health-care fraud. The Board also suspended the podiatrist's license for five years, but the podiatrist had moved to another state where she continued to practice. The podiatrist, who maintains her Texas license, could conceivably return after the term of the suspension and resume practice. Some Board members expressed concern about waiving the fine at a January 2004 Board meeting, with one member characterizing the punishment as a "slap on the hand."¹ The agency's Executive Director stated that "this (punishment) was as good as we were going to do" while the investigator added that if the podiatrist had been assessed the fine, the case would have to go to SOAH at the expense of other, more important cases.²

Different organizational options for regulating licensed health-care practitioners offer advantages and disadvantages to the Board.

- The regulation of podiatrists could occur through several organizational structures – an independent board, a consortium similar to the Health Professions Council, a merger with another health licensing agency, or a consolidation of similar licensing agencies. The chart, *Organizational Structure Options*, describes the advantages and disadvantages of each of these organizational types.
- Traditionally, Texas has approached the regulation of most health-care professions, including podiatry, through an independent agency that pays for itself through licensing fees, focuses on customer service, and provides expertise for the regulation of its licensees. However, the Board faces challenges performing its mission as an independent agency because of its small size. While some other very small agencies in Texas operate independently, none must prosecute complex enforcement cases of death, fraud, and substance abuse among their licensees. Also, the Legislature has recently merged other very small agencies with larger ones, including consolidating the three-employee Office of Court Reporters with the Office of Court Administration in 2003. That same year, the Legislature also combined the functions of the three-person Aerospace Commission with the Texas Economic Development Office at the Governor's Office.
- The Health Professions Council currently functions as a coordinating body for 15 agencies representing 35 professional licensing boards and programs. Member agencies collocate in one state office building to facilitate resource sharing, including shared board and conference rooms, an imaging system, courier services, and information technology staff. HPC is currently making plans to coordinate human resource and financial activities among member agencies. The Legislature augmented the activities of HPC in 2003 by establishing the Office of Patient Protection, which will assist consumers with complaints about HPC



While some other very small agencies in Texas operate independently, none must prosecute complex enforcement cases.

Organizational Structure Options			
Type of Organization	Description	Advantages	Disadvantages
Independent Agency	Board appointed by Governor to represent podiatrists and make final decisions for regulation with own staff and budget.	<ul style="list-style-type: none"> • Expertise in podiatry applied to regulation of licensees. • Better accountability for licensing and enforcement decisions. • Focused customer service by Board and staff dedicated to single profession. 	<ul style="list-style-type: none"> • Limited resources may adversely affect administrative and enforcement functions. • Duplication of effort with other licensing agencies performing common functions. • Limited coordination with agencies with similar responsibilities.
Coordinating Council	Board appointed by Governor to make final decisions for regulation with own staff for licensing and enforcement. Receives some or all administrative support from coordinating council composed of comparable agencies, such as Health Professions Council, which may rely on staff from member agencies or may employ own staff.	<ul style="list-style-type: none"> • Administrative efficiency from standardizing functions among member agencies. • Better access to equipment and staff not afforded with smaller appropriations. • Better focus of limited resources on core licensing and enforcement functions. 	<ul style="list-style-type: none"> • Less autonomy for Board in meeting administrative program needs. • Fractured administrative services among agencies, with some favored more than others. • Duplication of effort with other licensing agencies performing common functions.
Consolidation of Similar Agencies	Board with final policymaking authority or an advisory board that makes recommendations to consolidated licensing oversight board, either for the regulation of medical practitioners specifically, or as part of the unified regulation of all health professions.	<ul style="list-style-type: none"> • Single point of contact for obtaining information or lodging complaints. • Improved economy of scale for administrative, licensing, and enforcement functions. • Improved coordination and standardization of rules and policies, especially among similar professions. • Reduced potential for regulated professions to dominate regulation. 	<ul style="list-style-type: none"> • Neglect of smaller professions in favor of larger, more powerful groups. • Diminished customer service and accountability resulting in increased response time for licensing and enforcement actions. • Lack of staff expertise in a specific profession.

member agencies. HPC could be given additional authority to coordinate all of the agencies' administrative functions, leaving member agencies to perform only licensing and enforcement functions.

- The regulation of podiatry could be consolidated with another similar state agency such as the Texas State Board of Medical Examiners. However, because podiatrists and orthopaedic medical doctors may compete directly for clients, careful consideration must be given to the governing structure of such a consolidated agency. It could be overseen by a public board, assisted by advisory committees representing each profession, or by a single board that represents all of the medical

practitioners that it regulates and makes final regulatory decisions. Alternatively, the Podiatry Board could retain policymaking authority and its own staff through an administrative attachment to the Medical Board. Consolidating the regulation of podiatry with the Medical Board could improve economies of scale, particularly with enforcement efforts since the Medical Board has 63 enforcement staff compared to one at the Podiatry Board. The similarity of the professions, and the types of complaints they generate, make combining enforcement efforts even more practical.

Alternatively, the Department of Health oversees 20 regulatory and advisory boards that are administratively attached to it, including perfusionists, dietitians, and midwives. A separate policy board for podiatrists could be attached to the Department with responsibility for licensing and enforcement of podiatry.

Finally, a single umbrella health licensing agency could regulate all of the health professions currently regulated under 35 separate boards and programs. Under this configuration, the regulation of podiatrists could be overseen by a board with final policymaking authority, or by an advisory committee that could provide expertise to a public board that would oversee all regulation. The structure of the agency could be modeled after the Texas Department of Licensing and Regulation (TDLR), which has a structure for occupational and professional examination, licensing, and enforcement for more than 20 regulatory programs. The agency’s all-public Board receives assistance from statutorily created advisory committees, composed of regulated trades, businesses, industries, and occupations.

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Only eleven states,
including Texas,
regulate podiatrists
through an
independent agency.

Three-quarters of states regulate podiatry through some form of consolidated agency.

- All 50 states regulate podiatry, and the chart, *Regulation of Podiatry in the United States*, describes the structure of state regulatory agencies. Only eleven states, including Texas, regulate podiatrists through an independent agency. Other states use umbrella organizational structures to regulate the profession, though the structures vary. Twelve states regulate through medical boards, thirteen regulate through health or health licensing agencies, and the remaining fourteen states regulate through general licensing umbrella agencies similar to TDLR. Almost all the states with health professions or general umbrella agency structures have

Regulation of Podiatry in the United States		
Structure	Number of States	States
Independent Agency	11	AL, AZ, AR, KY, MN, NV, NC, ND, OK, TX, WY
Medical Board	12	AK, CA, HI, LA, MS, MT, NJ, OH, OR, VT, VA, WV
Health Professions Agency	13	CT, FL, IN, IA, KS, MI, NE, NH, PA, RI, SD, TN, WA
General Umbrella Licensing Agency	14	CO, DE, GA, ID, IL, MA, ME, MD, MO, NM, NY, SC, UT, WI

podiatry boards with rulemaking authority. Among the states that regulate through medical boards, almost half have podiatrists represented on the board.

A complete study of organizational alternatives should consider the results of the Sunset Commission's reviews of other health licensing agencies this review cycle.

- Sunset reviews of other health licensing agencies are scheduled for completion in the fall of 2004, after the completion of this agency's review. The textbox, *Health Licensing Agencies Under Sunset Review*, lists the professional licensing agencies that will undergo Sunset review by the fall of 2004.
- The results of these reviews may indicate that further administrative efficiencies can be achieved among these agencies. Additionally, opportunities may exist to provide greater coordination and consistent regulation across Texas' health licensing agencies. Delaying decisions on continuation of the Board until that time would allow Sunset staff to finish its work on all the professional licensing agencies, and base its recommendation on the most complete information.

Health Licensing Agencies Under Sunset Review 2003-2005*
State Board of Acupuncture Examiners
Texas Board of Chiropractic Examiners
Texas State Board of Examiners of Dietitians
Texas State Board of Examiners of Marriage and Family Therapists
Texas State Board of Medical Examiners
Texas Midwifery Board
Texas Optometry Board
Texas State Board of Examiners of Perfusionists
Texas State Board of Pharmacy
State Board of Physician Assistant Examiners
Texas State Board of Podiatric Medical Examiners
Texas State Board of Examiners of Professional Counselors
Texas State Board of Examiners of Psychologists
State Board of Social Work Examiners
State Board of Veterinary Medical Examiners
* All of the above boards are members of HPC or are attached to the Texas Department of Health, which is an HPC member.

Recommendation

Change in Statute

1.1 Decide on continuation of the Texas State Board of Podiatric Medical Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

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 being reviewed this biennium.

Impact

Though the State should continue to regulate podiatrists and podiatric medical radiologic technicians, Sunset staff recommends that the Sunset Commission delay its decision on continuation of the Board as a separate agency until the Sunset reviews of other health licensing agencies are completed. At that time, Sunset staff will make recommendations to the Commission regarding continuing the Board. The results of each agency review should be used to determine if administrative efficiencies and greater coordination can be achieved in the organization of the State's separate health licensing agencies.

Fiscal Implication

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

¹ Texas State Board of Podiatric Medical Examiners, semiannual Board meeting (Austin, Texas, January 13, 2004).

² Ibid.

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Summary

Key Recommendations

- Standardize the Board's licensing functions by ensuring that the Board addresses criminal convictions as defined in general statute, streamlining the licensing by endorsement process, and changing the basis for assessing late renewal fees.
- Improve the Board's ability to protect the public by authorizing inspections during an investigation, allowing a panel of the Board to temporarily suspend a license, and granting the Board authority to issue cease-and-desist orders.
- Update elements related to the policy body, such as prohibiting Board members from serving as voting members on advisory committees.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.
- Certain administrative provisions of the Board's statute conflict with standard practice, potentially reducing the Board's efficiency.

Conclusion

Over the past 25 years, Sunset staff has reviewed more than 80 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing the Texas State Board of Podiatric Medical Examiners, staff found that various licensing, enforcement, and administrative processes in the podiatry statute do not match these model licensing standards. The Sunset review compared the Board's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the Board in line with the model standards.

Support

Regulating occupations, such as podiatry, requires common activities that the Sunset Commission has observed and documented over more than 25 years of reviews.

- The mission of the Texas State Board of Podiatric Medical Examiners is to protect the public by ensuring that Texans receive safe podiatric care. To provide this protection, the Board regulates the practice of podiatry, including 850 podiatrists and 270 radiologic technicians in fiscal year 2003. The Board also regulates the podiatry profession by enforcing the podiatry statute, investigating and resolving complaints alleging violations of the statute or Board rules, and taking disciplinary action when necessary.
- The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 80 licensing agency reviews.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the Board's statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

- *Criminal convictions.* Chapter 53 of the Occupations Code permits a licensing agency to revoke, suspend, or deny a license for conviction of a felony or misdemeanor that directly relates to the duties of the licensee. The Podiatry Board has not developed rules to identify convictions, such as misdemeanor offenses of alcohol abuse, that could affect a podiatrist's ability to practice safely. Rather, the Board relies on a general statutory provision that permits denial of a license for a felony conviction or a crime that involves moral turpitude.¹ Adopting rules under Chapter 53 to establish convictions that could affect a podiatrist's ability to practice safely would provide licensees and the Board with the clarity needed to determine which offenses warrant the denial of a license.
- *Endorsement.* An agency should establish a fair and equitable procedure for licensing applicants from other states. This procedure should protect the safety of Texans without being unduly burdensome to the licensee. Currently, the Board has no separate application requirements for podiatrists licensed in other states seeking to practice in Texas. These applicants must pass all three parts of the National Board of Podiatric Medical Examiners examination, and the Texas jurisprudence examination, regardless of whether the applicant has successfully

practiced for many years.² This requirement creates an inequitable burden on practitioners from other states wishing to practice in Texas, if they were licensed before the third part of the national examination, testing clinical skill, was required in Texas in 1996. This requirement does not apply to Texas podiatrists who have practiced the same amount of time and who have not passed this part of the exam. Treating out-of-state practitioners equitably with in-state podiatrists would remove a barrier to entry to the profession, while continuing to ensure public protection by recognizing practice experience, a clean disciplinary history, and other licensing requirements.

- **Late renewal penalties.** Penalties for delinquent renewal should be set at a level that encourages on-time renewals and that provides comparable treatment for all licensees. Board statute and rule base late renewal penalties for podiatry licenses on the cost of the examination required for licensure, which the Board interprets to be the \$250 jurisprudence examination fee.³ Requiring delinquent licensees to pay 1-1/2 to two times the standard renewal fee would encourage prompt renewal by increasing the late renewal penalty. In addition, doing so would ensure that the Board's late penalties are properly scaled to the cost of renewing a license and would bring the Board's late renewal fees in line with other licensing agencies.
- **Examination administration.** The Board's licensure examination should be administered with enough frequency and in enough locations to accommodate demand. Currently the Board administers its jurisprudence examination with agency staff, four times a year, in Austin. Administration of the jurisprudence exam by agency staff not only consumes time of the entire staff of three for administration, proctoring, and grading, but limits applicants to testing on only four days a year, and always in Austin. Outsourcing the Texas jurisprudence examination for podiatric licensure to a national testing service would save agency staff valuable time and money, as other health licensing agencies have found, as well as permitting applicants to take the examination at multiple testing centers, with a more flexible schedule.⁴
- **Staggered renewals.** License renewal should not create an undue burden on agency staff. However, the Board currently renews all podiatry licenses on November 1st of each year, even though it is statutorily authorized to stagger renewals throughout the year as many other licensing agencies do.⁵ As a result, during license renewal times, the agency must dedicate much of its resources to processing the renewals, and other agency duties are suspended. For example, the Board is unable to schedule a meeting during the months of September, October, and the first part of November because agency staff cannot prepare for the meeting during the ten-week period for renewal of all 850 podiatry licenses.⁶ Adopting a policy to stagger the renewals of podiatry licenses, taking into consideration renewals that can occur through Texas Online, would spread the work over the year and not interrupt the routine workings of the agency.



Treating out-of-state practitioners equitably with in-state podiatrists would remove a barrier to entry to the profession.



Outsourcing the Texas jurisprudence exam would save agency staff valuable time and money.

Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.

- **Inspections.** The Board should have authority to inspect the areas in which podiatrists practice to protect public safety. In the absence of clear statutory authority, the Attorney General has said that the Podiatry Board does not have authority to conduct warrantless inspections, even in response to a complaint and during the course of an investigation.⁷ In January 2004, the Board passed a rule permitting office inspections in response to a written complaint.⁸ However, the Attorney General's Opinion hinged on the Board's lack of statutory authority to conduct these inspections and did not make a distinction for inspections in response to complaints. Establishing statutory guidelines that enable the Board to develop rules regarding inspections of a licensee's premises would permit Board staff to thoroughly investigate relevant complaints, and ensure licensees comply with agency requirements and correct problems in a more timely manner.
- **Informal settlement conferences.** The Legislature, through legislation regarding alternative dispute resolution, has encouraged boards to settle enforcement cases using informal proceedings. Structured informal settlement conferences allow an agency to explore resolution without resorting to contested case hearings at the State Office of Administrative Hearings, thus saving time and resources. When a licensing board chooses to use a panel of its members to conduct informal settlement conferences, the panel should include at least one public member to help ensure a balance between occupational and public interests. Currently, the Board member serving as Podiatric Medical Reviewer liaison, who is a licensed podiatrist, is the only Board member who participates in informal settlement conferences. Requiring a public member to participate in the informal settlement would ensure public membership at all conferences.
- **Administrative penalties.** An agency's administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. The Board has authority to impose administrative penalties of up to \$2,500 per violation per day.⁹ Given the significant harm that can result from illegal activity related to podiatry, such as fraud and drug diversion, the current administrative penalty amount may not be adequate to deter illegal behavior. Other health licensing agencies are authorized to impose a penalty amount of up to \$5,000 per violation per day for violations of state law.¹⁰ Increasing the administrative penalty amount to \$5,000 per violation per day for any violation of the Podiatric Medical Act or Board rules would give the Board flexibility to address the potentially severe nature of deviant behavior.



At least one public member should be in all informal settlement conferences.

Agencies that use administrative penalties should also use a penalty matrix to establish penalties for specific violations in a way that is fair and consistent for all violators. The matrix should be adopted by an agency's policymaking body in procedure or rule so that opportunity exists for public awareness and debate. Currently, the Board has no

penalty matrix, although staff does research to ensure that the Board applies penalty consistently. Requiring the Board to adopt a penalty matrix would facilitate fair treatment of all violators.

- **Temporary suspension.** Granting an agency authority to summarily suspend a license without an initial hearing is useful in situations, such as potential gross negligence or engaging in substance abuse, where substantial harm can result if an activity is not stopped immediately. The Board currently has no statutory authority to temporarily suspend a podiatrist's license when it finds imminent harm to the public from illegal or negligent practices. Authorizing a panel of the Board to temporarily suspend a podiatrist's license, subject to subsequent due process provisions, would allow the Board to better protect the public in situations where the continued practice constitutes a threat to public welfare. In addition, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is impossible for the fast action required.
- **Restitution authority.** The goal of restitution is to allow a complainant to receive a refund for some or all of what was lost as a result of the act that caused the complaint. Refunds can be granted when a consumer has been defrauded or subjected to a loss that can be quantified, such as the cost of an examination or procedure. The Board's enforcement tools are designed to correct licensee behavior, but do not allow for repayment to the aggrieved party. Providing for restitution, not to exceed the fee the consumer paid, and as a part of an informal settlement conference, could help defrauded consumers recover the loss incurred.
- **Cease-and-desist orders.** A licensing agency should have enforcement authority not only over its licensees, but over those who engage in the unlicensed activity of the profession. Two tools for taking action against unlicensed violators include injunctive relief and cease-and-desist orders. Cease-and-desist authority serves as an interim step before seeking an injunction to stop unlicensed activity. Currently, the Board has authority to seek an injunction, but the statute does not provide for the Board to issue cease-and-desist orders.¹¹ Further, making violations of cease-and-desist orders subject to additional sanctions, such as administrative penalties, would help make them more enforceable. Because illegally practicing podiatry can have a detrimental effect on public health and safety, giving the Board cease-and-desist authority would allow the Board to better protect the public.

Certain administrative provisions of the Board's statute conflict with standard practice, potentially reducing the Board's efficiency.

- **Compensation.** Board members should be subject to reasonable standards for travel reimbursement, which should be reflected in statute. While the General Appropriations Act indicates that reimbursement for policy body members includes transportation, meals, lodging, and incidental expenses, the Podiatry Board's statute prohibits reimbursement of some travel expenses, such as meals and lodging.^{12, 13} Although Board members receive reimbursement according to the General Appropriations Act, the Podiatry Act conflicts with this



The Board cannot temporarily suspend a podiatrist's license when it finds imminent harm to the public.



Cease-and-desist authority would allow the Board to better protect the public from unlicensed activity.

provision. Eliminating this prohibition on travel reimbursement would make the Board's statute consistent with the General Appropriations Act.

- *Advisory committees.* Boards frequently use advisory committees or task forces to assist in policy development. To provide the independent, expert advice needed, the responsibilities of committee members should be clearly differentiated from Board duties. The Podiatry Board maintains an Exam Development Committee, which includes five podiatrists who are not Board members and is led by a Board member, the Exam Development Liaison. The committee writes a proposed jurisprudence examination that is approved by the Board, including the Board member who serves on the committee. To maintain objectivity in final decisionmaking, no Board members should serve as a voting member on an advisory body that makes recommendations to the Board, including the Exam Development Committee.

Recommendation

Licensing

Change in Statute

2.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Board's authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by specifically requiring the Board to develop rules, under the provisions of Chapter 53, defining which crimes affect the licensee's ability to practice podiatry.

2.2 Simplify the process for a podiatrist who holds an active license in another state to be licensed in Texas.

This recommendation would add a statutory provision that permits a podiatrist to receive a Texas license if the podiatrist holds an active, unencumbered license in another state and complies with other statutory licensing requirements, including taking the jurisprudence examination. The Board would not be required to issue a license, but must ensure that out-of-state applicants meet substantially the same licensing requirements as Texas podiatrists, and that they have been in continuous practice for an adequate amount of time and have maintained a clean disciplinary record. Under this change, the Board would no longer require a podiatrist from another state to pass an exam not required of a podiatrist in Texas with substantially the same experience.

2.3 Base delinquent license renewal fees on the Board's normally required renewal fee.

The renewal fee for podiatrists who are delinquent in renewing their licenses would be based on the normal renewal rate set by the Board, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would equal 1-1/2 times the standard renewal fee. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal two times the standard renewal fee.

Management Action

2.4 The Board should contract with an external entity for jurisprudence examination administration, if found to be cost effective.

The Board would develop a request for proposal to determine whether an external entity could administer its jurisprudence examination more efficiently and cost effectively than staff. In determining whether to contract for exam administration, the Board should consider advantages and disadvantages to licensees, such as more frequent testing opportunities and exam locations.

2.5 The Board should consider implementing staggered license renewals.

Under this recommendation the Board should strongly consider switching to staggered renewals, taking into account the tremendous burden on staff of the current approach. In considering whether to stagger renewals, the Board should take into account the effects of the increasing number of licensees who renew their licenses through Texas Online. If adopted, the Board would then create a system in which licenses expire on a licensee's birthday for podiatrists, at a minimum. If beneficial, the Board would also stagger renewals for radiologic technicians.

Enforcement

Change in Statute

2.6 Authorize the Board to conduct inspections of podiatrists' premises in the course of an investigation, or to determine compliance with a Board order.

Under this recommendation, the Board would be able to inspect – on an unannounced basis during reasonable business hours – the offices or clinics of podiatrists in response to a complaint and in the course of an investigation, or to determine compliance with a Board order.

2.7 Require the Board to include one of its public members in the informal settlement process.

This recommendation would ensure that the Board includes at least one public member in its informal settlement conferences. These conferences help the Board determine whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

2.8 Increase the amount of the Board's administrative penalty authority, and require the Board to adopt an administrative penalty matrix in rule.

The amount of an administrative penalty the Board would be able to impose on an individual who violates the podiatry statute or Board rule would be increased to \$5,000 per violation per day, from the current \$2,500 per violation per day. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply. This recommendation reflects the significant amounts of money that can be involved in cases of fraud and would pose as a larger deterrent than the existing penalty amount. The Board would be required to adopt an administrative penalty matrix in agency rules to ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Board's Act or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

2.9 Authorize the Board to temporarily suspend a license under certain circumstances.

Under this recommendation, the Board would be authorized to temporarily suspend a podiatrist's license upon determination by a committee of the Board that continued practice by the podiatrist threatens the public welfare. A panel of three Board members would be required to temporarily suspend a podiatry license. In addition, the disciplinary panel would be authorized to hold a meeting by telephone conference call under provisions in the Open Meetings Act if threat to public health and safety is imminent, and convening the panel at one location is impossible for the timely action required. The Board would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

2.10 Authorize the Board to require restitution as part of the settlement conference process.

The Board would be allowed under this recommendation to include restitution as part of an informal settlement conference. Authority would be limited to ordering a refund not to exceed the amount the consumer paid the podiatrist. Any restitution offer would not include an estimation of other damages or harm. The restitution may be in lieu of, or in addition to, a separate Board order assessing an administrative penalty.

2.11 Authorize the Board to issue cease-and-desist orders.

The Board would issue cease-and-desist letters when it receives a complaint or otherwise hears of an individual or entity practicing podiatry without a license. This recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders. The Board would still be authorized to refer these cases to local law enforcement agencies or the Attorney General for prosecution. However, the Board should count unauthorized practice cases as jurisdictional, and direct investigators to pursue and follow up with unlicensed individuals to ensure compliance.

Administration

Change in Statute

2.12 Authorize Board members to receive reimbursement for travel expenses.

This recommendation would remove the conflict between the Podiatry statute and the General Appropriations Act. As a result, Board members would have clear authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business.

2.13 Prohibit Board members from serving as voting members on task forces or advisory committees.

This recommendation would prevent Board members from serving as voting members of task forces or advisory committees that develop recommendations to the Board and then voting on the recommendations while serving on the Board.

Impact

The application of these recommendations to the Board would result in efficiency and consistency from fairer processes for licensees, additional protection for consumers, and standardization of Board procedures. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

Fiscal Implication

These recommendations would result in an overall gain to the State of about \$5,180. Changing the basis for the late renewal penalty would result in a positive fiscal impact of \$6,000 annually. The Board would need \$820 a year to cover travel costs associated with requiring a public member to attend informal conferences.

Benefits of Recommendations				
Recommendations	Efficiency of Operations	Administrative Flexibility	Fairness to Licensee	Public Protection
Licensing				
2.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.	✓	✓	✓	✓
2.2 Simplify the process for a podiatrist who holds an active license in another state to be licenced in Texas.	✓	✓	✓	
2.3 Base delinquent license renewal fees on the Board's normally required renewal fee.	✓		✓	
2.4 The Board should contract with an external entity for jurisprudence examination administration, if found to be cost effective.	✓	✓	✓	
2.5 The Board should consider implementing staggered license renewals.	✓	✓		
Enforcement				
2.6 Authorize the Board to conduct inspections of podiatrists' premises in the course of an investigation, or to determine compliance with a Board order.	✓	✓		✓
2.7 Require the Board to include one of its public members in the informal settlement process.			✓	✓
2.8 Increase the amount of the Board's administrative penalty authority, and require the Board to adopt an administrative penalty matrix in rule.	✓	✓		✓
2.9 Authorize the Board to temporarily suspend a license under certain circumstances.	✓	✓		✓
2.10 Authorize the Board to require restitution as part of the settlement conference process.		✓		✓
2.11 Authorize the Board to issue cease-and-desist orders.	✓	✓		✓
Administration				
2.12 Authorize Board members to receive reimbursement for travel expenses.	✓	✓		
2.13 Prohibit Board members from serving as voting members on task forces or advisory committees.			✓	✓

¹ Texas Occupations Code, sec. 202.253(a)(2).

² Texas Administrative Code, Title 22, part 18, rule 371.3(c).

³ Texas Occupations Code, sec. 202.301 and Texas Administrative Code, Title 22, part 18, rule 379.2.

⁴ Of the 23 health professional licensing boards in Texas, only the Athletic Trainers Board continues to administer its written exam by state employees. In 2003, the Podiatry Board's testing consultant recommended outsourcing the jurisprudence examination administration, however the Board has not acted on his recommendation.

⁵ Texas Occupations Code, sec. 202.301(a).

⁶ Texas State Board of Podiatric Medical Examiners, semiannual Board meeting (Austin, Texas, January 13, 2004).

⁷ Op. Tex. Att'y Gen. JC-0274 (2000).

⁸ Texas Administrative Code, Title 22, part 18, rule 376.11.

⁹ Texas Occupations Code, sec. 202.552(a).

¹⁰ The State Board of Medical Examiners, State Board of Physician Assistant Examiners, and State Board of Dental Examiners each have a \$5,000 per day per violation administrative penalty amount.

¹¹ Texas Occupations Code, sec. 202.601.

¹² House Bill 1, General Appropriations Act, 78th Legislature (2003), Article IX, Sec. 4.04.

¹³ Texas Occupations Code, sec. 202.057(b).

ACROSS-THE-BOARD RECOMMENDATIONS

Texas State Board of Podiatric Medical Examiners

Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Update	3. Require unbiased appointments to the agency's policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Modify	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The mission of the Texas State Board of Podiatric Medical Examiners is to protect the public by ensuring that those who provide podiatric services are qualified, competent, and adhere to established professional standards. The State began regulating the practice of podiatry in 1923 through the Board of Chiropractic¹ Examiners within the Board of Medical Examiners. It became an independent agency in 1939 and, in 1967, the Legislature changed the name of the agency to more accurately reflect its responsibility to regulate podiatry instead of chiropractic. In 1995, the Legislature gave the agency its current name of Board of Podiatric Medical Examiners.

To accomplish its mission, the Board:

- licenses qualified podiatrists and registers podiatric medical radiologic technologists;
- ensures compliance with the Podiatric Medical Practice Act and Board rules by investigating and resolving complaints alleging illegal or incompetent practice of podiatry, and by taking disciplinary action when necessary; and
- provides information to the public.



*On the Internet:
Visit the Texas State
Board of Podiatric
Medical Examiners at
www.foot.state.tx.us.*

Key Facts

- **Funding.** In fiscal year 2003, the Board's operating budget totaled approximately \$233,000, funded primarily from licensing and examination fees.
- **Staffing.** The Board has four staff positions, three of which are filled. All staff are based in Austin.
- **Licensing.** The Board regulates about 850 podiatrists and 270 podiatric medical radiologic technicians. In fiscal year 2003, the agency issued 23 new podiatrist licenses, and renewed about 825 existing licenses.
- **Enforcement.** In fiscal year 2003, the Board initiated 49 complaints and received 80 complaints from the public, insurance companies, and other government agencies. That same year, the Board resolved 125 complaints, with seven resulting in sanctions against licensees.

Organization

Policy Body

The Texas State Board of Podiatric Medical Examiners consists of six podiatrists and three public members, all appointed by the Governor to staggered, six-year terms. The Board elects a president, vice president,

Texas State Board of Podiatric Medical Examiners			
Member	Residence	Qualification	Term Expiration
Bradford Glass, DPM President	Midland	Podiatrist	2005
Bruce A. Scudday, DPM Vice President	El Paso	Podiatrist	2007
Richard C. Adam, DPM	San Antonio	Podiatrist	2009
Carol Lee Roberts Baker	Houston	Public Member	2007
Doris A. Couch	Burleson	Public Member	2005
Sandra Cuellar, DPM	Dallas	Podiatrist	2005
Paul Kinberg, DPM	Dallas	Podiatrist	2009
Matthew Lynch, DPM	Temple	Podiatrist	2007
Matthew Washington	Missouri City	Public Member	2009

and secretary at the first meeting of each biennium. The chart, *Texas State Board of Podiatric Medical Examiners*, identifies current Board members.

The Board adopts general rules to enforce podiatry law, appoints the Executive Director, and renders final decisions on certain disciplinary proceedings of licensees. Individual Board members may participate in a rules committee or serve as liaisons to agency staff on issues regarding examination, continuing education, or enforcement. Although required to meet semiannually, the Board generally meets three times a year.

Staff

The Board has three staff, all based in Austin. Employees perform two main functions – licensing and enforcement. The Executive Director, under the direction of the Board, manages the agency’s day-to-day operations and implements Board policy. Generally, the agency’s staff administer exams; process license applications, renewals, and fees; oversee continuing education requirements; and investigate complaints. The Board is a member of the Health Professions Council, which coordinates functions among various health-care licensing agencies. Because of the agency’s small staff size, no analysis was prepared comparing the agency’s workforce composition to the overall civilian labor force.

Funding

Revenues

In fiscal year 2003, the regulation of the podiatry profession generated total revenue of more than \$394,000 through various fees and assessments. As a licensing agency, the Board covers its administrative costs through licensing, renewal, and examination fees; and through appropriated receipts from charges for services, such as providing written verification of a license. Revenue generated through these licensing fees and service charges totaled approximately \$380,000 during fiscal year 2003. The agency also assesses administrative penalties which totaled \$11,100 in 2003, about three percent of the total revenue generated. In addition, the Board collects a \$5 fee from all podiatrists for the Texas Online system. The revenue from these fees, which totaled \$3,825 in fiscal year 2003, is not used to cover the agency’s operating costs, but goes to the General Revenue Fund. Additionally, the Board received a \$16,500 emergency deficiency grant in fiscal year 2003 to cover a shortage in the agency’s revenues at the end of the fiscal year. The shortage was caused by unemployment insurance claims and attorneys fees for ongoing litigation.

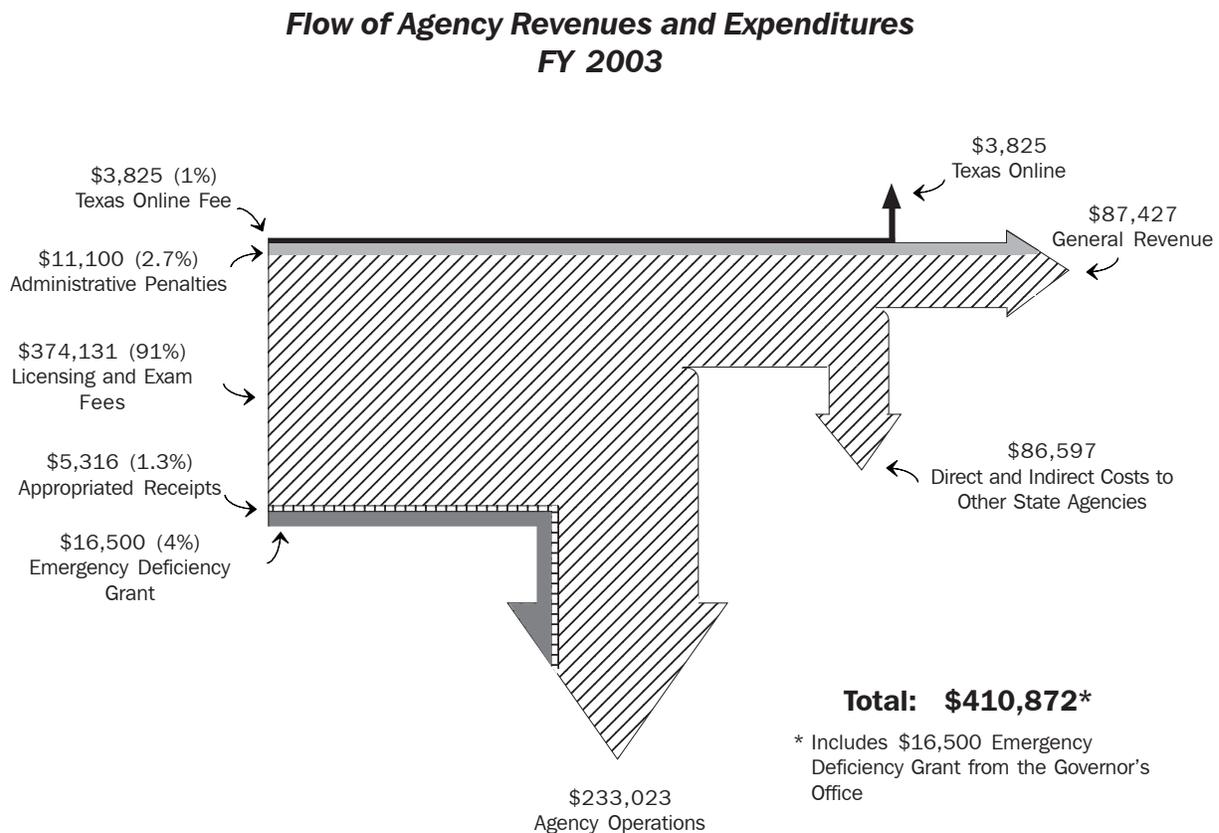
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In 2003, the Board received a \$16,500 emergency deficiency grant to pay for unemployment insurance and attorneys fees.

Expenditures

In fiscal year 2003, the Board spent \$233,023 on licensing and enforcement. The agency does not break down its expenditures by strategy. In addition to the Board's operating expenditures, the Legislature has directed it and other licensing agencies that are funded by fees to also cover direct and indirect costs appropriated to other agencies that provide support services to the Board. Examples of these costs include employee benefits paid by the Employees Retirement System and accounting services provided by the Comptroller of Public Accounts. In fiscal year 2003, these indirect costs totaled approximately \$87,000. The chart, *Flow of Agency Revenues and Expenditures*, shows the overall impact of these revenues and expenditures on the General Revenue Fund. Subtracting the agency's operating expenditures and the direct and indirect costs from the total revenue generated, about \$87,000 went to the General Revenue Fund in fiscal year 2003 to be used for other state purposes.

★
*The Board spent
 \$233,023 on
 licensing and
 enforcement in 2003.*



Appendix A describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2000 to 2003. The Board uses HUBs in the categories of professional services, other services, and commodities. While the Board has generally exceeded the goal for commodities, it has largely fallen behind the goals for professional and other services though it spends little in either category.

Agency Operations


*None of the seven
podiatry schools,
nationwide, is located
in Texas.*

The Texas State Board of Podiatric Medical Examiners seeks to protect the public by ensuring that only qualified individuals provide podiatric services in Texas, and by sanctioning individuals who violate law and Board rules. To achieve this goal, the agency examines and licenses podiatrists, registers podiatric medical radiologic technicians, and enforces the Podiatric Medical Act and Board rules. The textbox, *Practice of Podiatry*, describes podiatric care.

Licensing and Examination

The Board issues licenses to podiatrists and issues certificates to podiatric medical radiologic technicians, who perform x-rays and work under the supervision of podiatrists. The textbox, *License Requirements*, describes the qualifications to become a podiatrist or a technician. To become a podiatrist, the applicant must have graduated from one of seven accredited podiatry schools nationwide, none of which is located in Texas.²

After finishing podiatry school, applicants must also complete at least one year of podiatric medical residency for additional training. Texas has 11 podiatric residency programs.

Practice of Podiatry

Texas law defines podiatry as the treatment, or offer to treat, any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method.³ The definition of podiatry may vary greatly from state to state, with Florida's definition including treatment of the leg below the knee.⁴

The practice of podiatry has evolved rapidly in Texas and across the country in the past 50 years. In the early 1950s in Texas, both the Legislature and the Attorney General modified definitions affecting podiatrists, in effect making podiatry much like the practice of medicine, only limited to the foot. Today, podiatrists can prescribe and administer dangerous drugs, perform complex surgeries, and conduct a wide range of diagnostic tests.⁵

License Requirements

To become a licensed podiatrist, a person must:

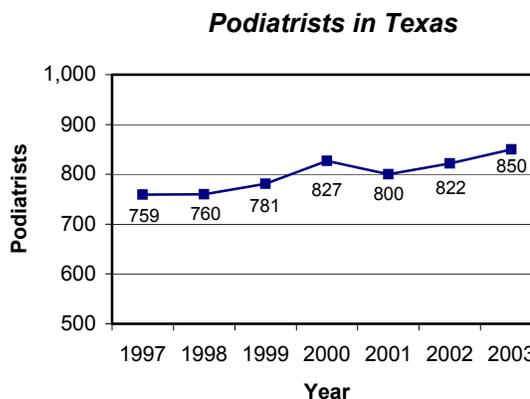
- ▶ be at least 21 years old;
- ▶ be of good moral character;
- ▶ have 90 semester hours of college courses;
- ▶ have graduated from a podiatry school accredited by the Council on Podiatric Medical Education;
- ▶ complete at least one year of podiatric medical residency;
- ▶ pass national board exam parts I-III;
- ▶ pass the Board's jurisprudence exam; and
- ▶ complete a course in cardiopulmonary resuscitation.

To become a registered podiatric medical radiologic technician, a person must:

- ▶ be at least 18 years old; and
- ▶ complete at least 20 hours of training approved by the Texas Department of Health.

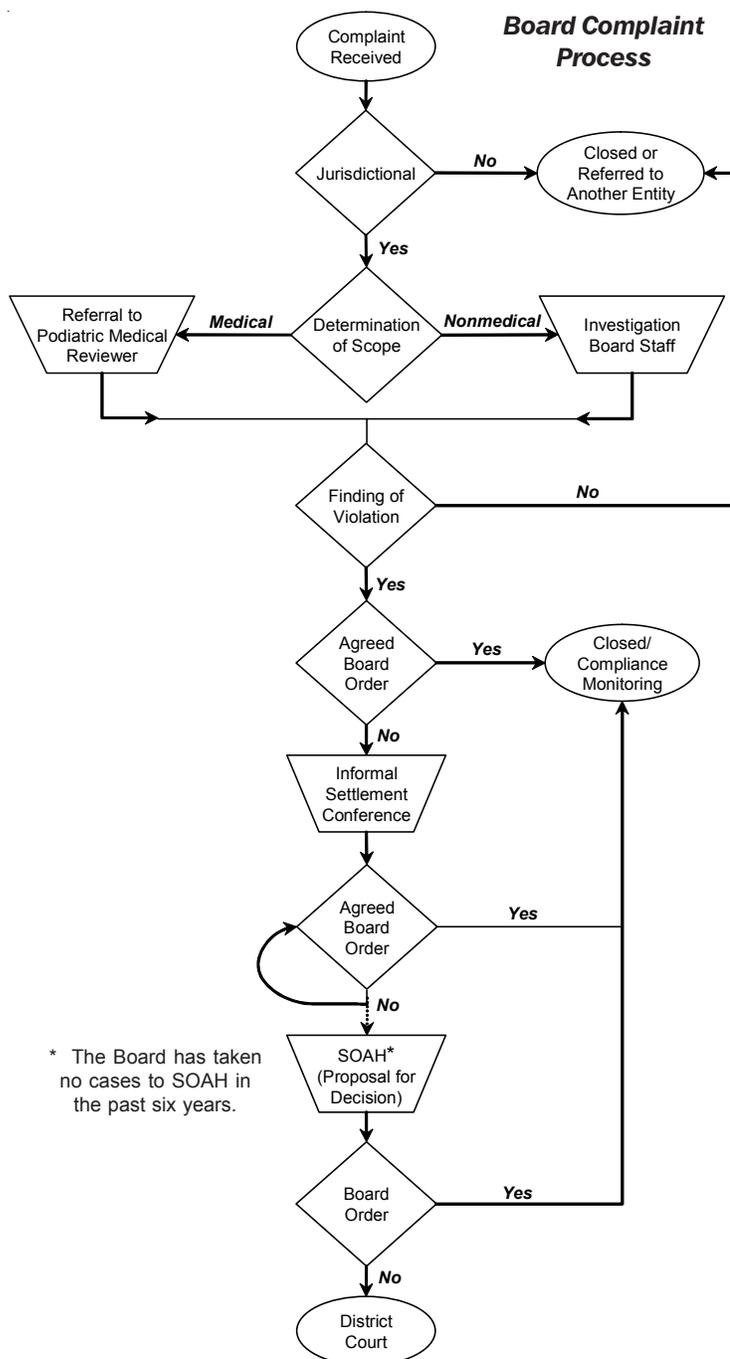
The applicant must also take all three parts of a national exam, which costs \$900 per part. The final part of the exam is usually administered upon completion of a residency program. For applicants wishing to practice in Texas, the Board begins processing an application for licensure with applications to take the final part of the national licensure examination and the Texas jurisprudence exam. Applicants may take the national exam at a testing center two times a year, while the agency administers the jurisprudence exam at its headquarters in Austin four times a year. The multiple-choice jurisprudence exam covers state law and rules regulating podiatry, and is validated by a testing consultant. Forty-nine applicants took the Board's exam in fiscal year 2003, with only one applicant failing.

In fiscal year 2003, the Board licensed 850 podiatrists and registered 276 technicians. Once licensed, podiatrists must renew their licenses annually – at a cost of \$425 – and every two years they must take 30 hours of continuing medical education. The chart, *Podiatrists in Texas*, shows the slow growth in the profession over the last seven years. Each year, technicians must renew their certificates, pay a \$25 fee, and take four hours of continuing education.



Enforcement

The agency administratively enforces the Board's rules by investigating complaints and taking enforcement action against violators as necessary. The Board accepts complaints by mail, e-mail, or fax, or for serious allegations affecting public safety, by telephone. The Board also initiates complaints for violations including failure to maintain continuing medical education requirements, improper advertising, and student loans defaults. The chart, *Board Complaint Process*, shows how the Board handles complaints.



Once the Board receives a complaint, staff review it to assess whether the agency has jurisdiction. Staff have authority to dismiss all non-jurisdictional complaints, such as complaints about podiatry that do not reference a specific podiatrist. If staff determine that the complaint is medical in nature, they forward the case to one of the agency's contracted Podiatric Medical Reviewers (PMRs) who are licensed podiatrists in good standing with the Board. The reviewer evaluates the case and makes a recommendation to the Board. The agency's investigator reviews all other cases, including complaints involving inappropriate physician behavior, impaired physicians, and substance abuse.

If staff determine that a violation occurred, they prepare a proposed agreed Board order which the licensee may either accept or reject. If the licensee does not agree to the order, the

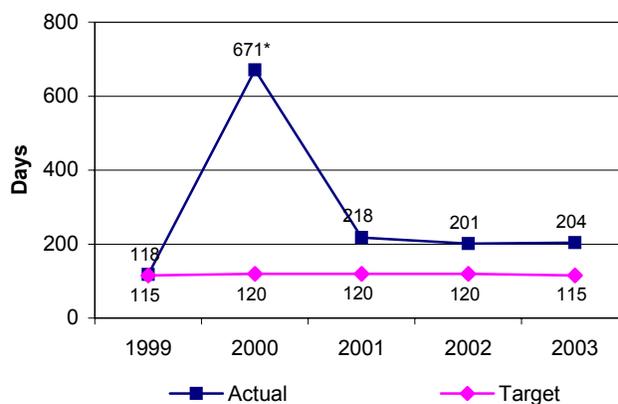
matter goes to an informal settlement conference before the Board's director or investigator, the Board member serving as PMR liaison, and the Assistant Attorney General representing the Board. At the conference, the Board and licensee try to settle the matter informally. If the licensee refuses to agree with the initial order, Board staff may rewrite the order in an effort to gain the licensee's compliance. The Board reviews all agreed orders that licensees have accepted, and votes to affirm, modify, or deny. If the Board does not affirm an order but instead modifies it, the amended order is sent back to the licensee for review and acceptance or another conference. If an agreement cannot be reached, the Board forwards the complaint to SOAH to be heard as a contested case.

★
The Board has generally not met its targets for timely resolution of complaints.

Sanctions available to the agency include reprimand, administrative penalties, suspension with probation, suspension, and revocation. In cases of substance abuse, the Board works with local peer assistance programs through hospitals or local professional associations to monitor the licensee's recovery. For individuals practicing without a license, the Board may refer the complaint to the office of the Attorney General, or to a district or county attorney to file an injunction.

The chart, *Average Complaint Resolution Time*, shows that the Board has generally not met its targets for resolving complaints.

**Average Complaint Resolution Time
 FYs 99-03**



* The Board reports resolving several older, more complex cases this year.

The table, *Disciplinary Actions*, details the disposition of all complaints in fiscal years 1999 through 2003. To date in fiscal year 2004, the Board has issued three agreed orders – two orders suspend licenses for fraud and negligence, and one places a licensee on probation for numerous violations including death, substance abuse, and negligence.

**Disciplinary Actions
FYs 99-03**

Type of Allegation/ Violation	Total Complaints Resolved	Type of Action									
		Dismissed				Sanctions					
		No Violation Found	Out of Board's Jurisdiction	Warning Letter	Referral	Administrative Fine*	Revocation	Suspension	Probation	Administrative Penalty	
Major Cases**	2	0	0	0	0	0	0	1	1	0	
Death	5	3	0	1	1	0	0	0	0	0	
Substance Abuse	21	10	1	1	8	0	0	0	1	0	
Fraud	90	59	6	15	8	2	0	0	0	0	
Negligence	227	185	15	14	4	5	0	0	0	4	
Impaired Physician	4	2	0	1	0	0	0	0	1	0	
Inappropriate Physician Behavior	8	4	1	2	1	0	0	0	0	0	
Advertising	78	48	3	7	1	19	0	0	0	0	
Fees	28	25	0	2	1	0	0	0	0	0	
Records	54	49	0	3	0	0	0	0	0	2	
Office Inspection	3	2	0	1	0	0	0	0	0	0	
TOTAL	520	387	26	47	24	26	0	1	3	6	

* Administrative fines, used by the Board until 2001, were issued by staff without Board action for activities such as poor record keeping and failure to post required notices. All other sanctions were included in agreed Board orders. Some orders contained multiple penalties; only the most severe penalty is listed.

** Major cases include multiple violations, including death, fraud, negligence, and substance abuse.

¹ Chiropody means the treatment of both hands and feet.

² Barry University School of Graduate Medical Sciences, Florida; California School of Podiatric Medicine at Samuel Merritt College, California; Des Moines University - College of Podiatric Medicine, Iowa; New York College of Podiatric Medicine, New York; Ohio College of Podiatric Medicine, Ohio; Dr. William M. Scholl College of Podiatric Medicine at Finch University, Illinois; Temple University School of Podiatric Medicine, Pennsylvania.

³ Texas Occupations Code, sec. 202.001(a)(4).

⁴ Florida Regulation of Professions and Occupations, sec. 461.003(5).

⁵ "Podiatry." The Handbook of Texas Online. Available: <http://www.tsha.utexas.edu/handbook/online/articles/view/PP/sdp1.html>. Accessed: February 13, 2004.

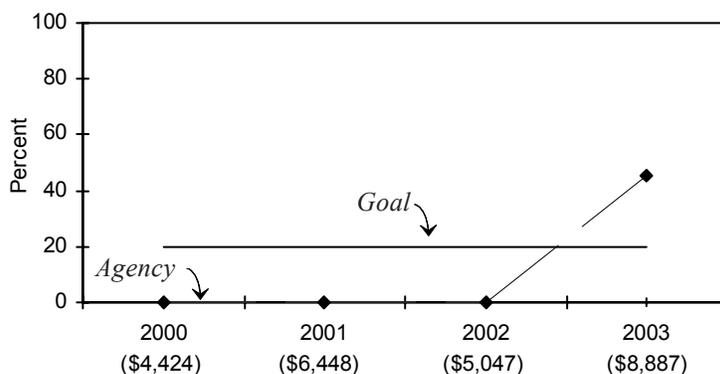
APPENDICES

Historically Underutilized Businesses Statistics 2000 to 2003

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.¹ The Texas State Board of Podiatric Medical Examiners is not fully complying with state requirements concerning the HUB purchases. Specifically, the agency has not adopted HUB rules.

The following material shows trend information for the Texas State Board of Podiatric Medical Examiners' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond-dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 2000 to 2003. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The Board has generally fallen short of state goals for professional and other services, but has largely surpassed goals for commodities.

Professional Services

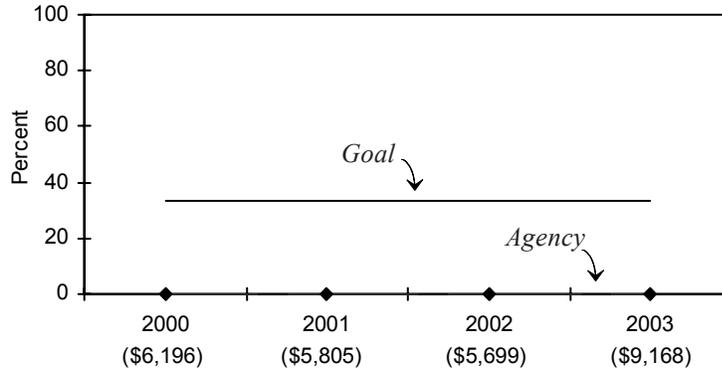


The Board has generally fallen short of the state goal for HUB spending on professional services, but exceeded the goal in 2003.

Appendix A

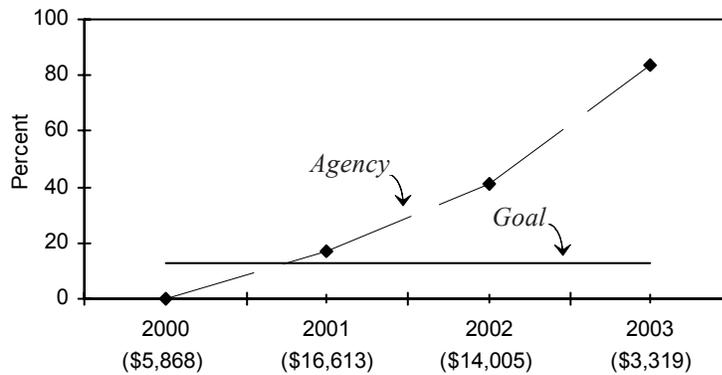
Historically Underutilized Businesses Statistics

Other Services



The Board has fallen far below the state goal for HUB spending on other services.

Commodities



The Board has exceeded the state goal for HUB spending in this category for every year except 2000.

¹ Texas Government Code, sec. 325.011(9)(B).

² Texas Government Code, ch. 2161.

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas State Board of Podiatric Medical Examiners.

- Worked extensively with Board staff.
- Attended Board meetings, interviewed Board members, and reviewed audiotapes of a Board meeting.
- Reviewed agency documents and reports, complaint files, state statutes, legislative reports, previous legislation, and literature on podiatric issues.
- Met with in person, or interviewed over the phone, staff from the Texas Department of Insurance, Texas Department of Health, State Office of Administrative Hearings, Texas State Board of Medical Examiners, Office of the Attorney General, Department of Information Resources, and Health Professions Council.
- Met with staff from the Governor's office, Speaker's Office, legislative committees, Legislative Budget Board, and the State Auditor's Office.
- Conducted interviews and solicited written comments from state and national interest groups.
- Met with podiatric medical and orthopaedic residency program faculty and residents at the University of Texas Health Science Center - San Antonio, and observed a surgical procedure. Toured the Texas Diabetes Institute, San Antonio.
- Reviewed Attorney General Opinions and court cases.
- Observed administration of the Board's jurisprudence exam.
- Researched the functions of podiatric regulatory agencies in other states.
- Performed background and comparative research.

**SUNSET REVIEW OF THE
TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**

Report Prepared By:

AMY TROST
PROJECT MANAGER

KATRINA DANIEL
CEE HARTLEY

JOE WALRAVEN
PROJECT SUPERVISOR

JOEY LONGLEY
DIRECTOR