

TEXAS STATE BOARD OF PODIATRY EXAMINERS

**Staff Report
to the
Sunset Advisory Commission**

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FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas State Board of Podiatry Examiners, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

Official recognition of podiatry as a profession occurred in the late nineteenth century with the enactment of the first state regulation by New York in 1895. Texas became involved in the licensure of podiatrists in 1923 with the creation of a regulatory board under the jurisdiction of the State Board of Medical Examiners. The state's interest in regulation of the profession centered on protection of the public health, safety, and welfare. Legislation passed in 1939 established an independent board made up of licensed podiatrists.

The board, composed of six podiatrists, presently regulates 471 licensees through its licensing and enforcement functions. Additional responsibilities include administration of provisions of the Act and prevention of the unauthorized practice of podiatry. Operations of the board are supported entirely from fees collected by the board and from interest earned on time deposits.

Review of the board operations shows that the regulatory activities of the board generally function in an efficient manner. However, the board does not maintain an identifiable state office or staff and board funds are held outside the State Treasury. Increasing board effectiveness and accountability through establishing an agency structure similar to other state agencies would require increases in fees. Increased fees and the addition of an initial license fee would be appropriate and would bring the fees in line with other states and other Texas agencies.

In the area of licensing, the processes related to license and renewal issuance are handled efficiently and effectively and notices of examinations and grades are supplied in a timely manner. As presently structured, the board's examination

process functions efficiently. However the examination, which consists of both oral and written portions, could be administered in a manner which would eliminate any question concerning the consistency and fairness of the exam. One possible solution to the problems encountered with the board's exam would be to use the exam given by the National Board of Podiatry Examiners.

Present statutes do not provide for reciprocity or endorsement as a means for licensing individuals who are licensed in other states. Review indicated that national board exam scores, education record, and a licensee's performance in other states provide an adequate base upon which to establish an endorsement system. The board's statute should be changed to allow for this process.

A final problem in the area of licensing is that licensure prerequisites contained in the statute are ambiguous and difficult to verify. Modification of these to include only those which would require the board to apply a clear, objective standard would increase the board's ability to screen applicants effectively and appropriately.

In the area of enforcement, funding limitations have hampered effective regulation and complaint documentation and investigations have been limited. The board's enforcement capability could also be strengthened by removing from the statute any grounds for revocation or suspension which are not clearly related to the practice of podiatry or which are ambiguous and difficult to verify.

Other aspects of the review found that the agency had complied with general statutes relating to conflict of interest and open records. The board has, however, failed to comply with the Open Meetings Act, but steps have been taken to assure future compliance. There has been little effort to involve the general public in the affairs of the board and public viewpoint is not reflected in the board composition which is made up of licensees.

Need to Regulate

As in the case of other regulated activities, regulation of podiatrists should be undertaken by the state only when there is a continuing need to protect the public health, safety or welfare. All fifty states recognize and regulate the practice of podiatry. Initial licensure of podiatrists in Texas implicitly recognized the potential for harm to the public which exists in the practice of podiatry. In response to the need to protect the public, a licensure law was enacted to ensure that only competent individuals are allowed to treat problems of the feet.

Conditions which exist today indicate a continued need to protect the public, primarily as a result of the more comprehensive nature of podiatric practice. As presently constituted, podiatry practice includes the ability to perform surgery, administer anesthesia, prescribe drugs (including narcotics), take medical histories, perform laboratory tests and take X-rays. While medical doctors could assume a part of the foot care now provided by podiatrists, an unmet need for such services would still exist. It can, therefore, be concluded that there is a continuing need to license and regulate the profession from the standpoint of health care delivery.

This need for regulation can be most effectively met through an agency which performs licensing and enforcement functions. Licensure as a method of regulation for podiatrists is currently imposed by all states, including Texas. However, as demonstrated by the agency structures in these states, several different organizational schemes are used to carry out this regulatory function. While some states regulate podiatry through an independent agency, most states have consolidated this function in agencies with other functions such as "umbrella" licensing agencies, departments of health and boards of medical examiners.

Alternatives

If the legislature determines that the regulatory function and/or board should be continued, the following alternatives could be considered:

1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent board to perform licensing and enforcement activities at no expense to the General Revenue Fund. The review indicated that the following modifications would result in more effective regulation of podiatrists:

- a) provide for the appointment of public members to the board (page 31);
- b) amend the statute to require the deposit of board funds in the State Treasury (page 13);
- c) provide statutory authorization for fee increases and include authorization for an initial license fee (page 14);
- d) discontinue the use of the oral examination and establish a written examination process which would be consistent, objective and fair in application, and review National Board of Podiatry Examiners exam as an alternative to the board's written examination (page 17);
- e) include a provision in the Act allowing endorsement as a method of licensure (page 19);
- f) establish an identifiable state office in Austin (page 20);
- g) establish a mechanism to track and document complaints received by the board and notify parties to complaints of actions taken (page 21); and
- h) modify statutory grounds for disciplinary action to include only those which are clear and relevant to the practice of podiatry (page 18).

2. ABOLISH THE BOARD AND TRANSFER ITS CURRENT REGULATORY FUNCTIONS TO THE STATE BOARD OF MEDICAL EXAMINERS (page 25).

This approach would consolidate the regulation of podiatrists with other medical practitioners under one board as is done in thirteen other states. Consolidation would contribute to minimizing fiscal and management concerns associated with agencies similar in size to the State Board of Podiatry Examiners. The benefits which would result from this approach involve use of the Board of Medical Examiners existing administrative and enforcement staff. The small number of podiatry licensees should not significantly increase the administrative load of the Board of Medical Examiners. The enforcement staff is already skilled in investigating complaints which are similar in nature and scope to those related to podiatrists.

Effective implementation of this alternative would require certain modifications which include, in part, the following:

- a) provide for an advisory board consisting of podiatrists to assist the State Board of Medical Examiners in examination of applicants for licensure as podiatrists and in enforcement matters; or
- b) modify the composition of the State Board of Medical Examiners to include at least one licensed podiatrist.

II. BACKGROUND

Historical Perspective

In Texas, regulation of podiatry (originally called chiropody) as a profession began in 1923 with the enactment of legislation establishing a regulatory board under the jurisdiction of the State Board of Medical Examiners. This placement was consistent with the State Board of Medical Examiners' mandate to regulate all branches of the practice of medicine, and implicitly recognized the medical nature of podiatry. The most often expressed rationale for requiring licensure of podiatrists was the need for protection of the public's health, safety, and welfare. Legislation passed in 1939 transferred responsibility for regulation of podiatrists to an independent Board of Chiropody Examiners.

The practice of podiatry was initially limited to the diagnosis, medical and surgical treatment of ailments of the human foot and practitioners were prohibited from amputating the human foot or toes, and were limited to the use of local anesthetics. All applicants for podiatric licensure were required to have at least one year of instruction in, and be graduates of, a reputable school of chiropody.

Over time, the scope of podiatry practice has expanded with a corresponding development in both educational preparation and licensing requirements. By the early fifties, entrance into a podiatry college required two years of college and entailed a four-year course of study. During the same period, the statutory definition of podiatric practice became more permissive by a removal of the stricture against amputation of the toes and by allowing the administration and prescription of drugs, including narcotics.

Extensive nationwide evaluation of podiatric education in the late sixties led to efforts to improve and upgrade the quality of podiatric education in the five

colleges of podiatry (New York, California, Pennsylvania, Illinois, and Ohio). As a result, all five colleges developed and occupied new or remodeled facilities, increased the number of full-time faculty and broadened the clinical curricula in general medicine. Additionally, the number of residency programs were increased significantly. By 1978, entrance requirements had been raised to include completion of 90 semester hours of acceptable undergraduate work and minimum acceptable score on the Medical College Admission Test (MCAT) (the same test used by medical and osteopathic colleges). A student in one of the five schools currently receives two years of training devoted to the basic sciences and two additional years of training concentrated on the surgical and clinical treatment of foot deformities, injuries, and diseases. Additional experience in patient care is obtained by approximately 50 percent of podiatric graduates through residency programs.

These developments in podiatric education led to recognition of the expanded role of podiatry in medicine by the Federal Government, private and public insurance companies, and by other professional organizations. Podiatrists may now receive reimbursement for patient care from Medicaid-Medicare programs, private health-insurance groups and workman's compensation. Federal support has also been extended to podiatric students under the Health Professions Educational Assistance Act of 1963. Finally, the American Medical Association, the American College of Surgeons, and the Joint Commission on the Accreditation of Hospitals have recognized the right of podiatrists to be granted hospital practice privileges within the scope of their competencies, and have formulated criteria for hospital practice by podiatrists. According to a study by the Department of Health, Education, and Welfare published in August 1978, about three-fourths of all foot-related care in the United States is provided by podiatrists. Data show that

podiatrists handle about nine times as many soft tissue complaints, and about three times as many static foot deformities as do medical physicians.

Regulation of podiatry in Texas is carried out through an independent board composed of six licensee members appointed by the governor. The board's essential functions consist of the administration and enforcement of the Act, and of the licensing of podiatrists through examination and license renewal. Currently 471 podiatrists are licensed to practice in Texas and 176 of these reside out-of-state.

Operations of the board are supported entirely from fees collected and interest received from time deposits. All board funds are maintained outside the state treasury. In fiscal year 1979, the board collected an estimated \$22,400 in revenues and budgeted \$20,535 for its operations. The board does not employ any full-time staff.

Comparative Analysis

To determine the pattern of regulation of the occupation of podiatry within the United States a survey of the 50 states was conducted.

The need to regulate the occupation of podiatry is currently recognized through licensing requirements imposed by all 50 states. From the standpoint of organizational patterns, 13 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 13 states the practice of podiatry is regulated by a Board of Medical Examiners. In 24 states the regulation of podiatrists is carried out through a board associated with a state agency charged with multiple regulatory functions.

Licensing boards or advisory committees composed entirely of podiatrists administer podiatry laws in 24 states including Texas. In 26 states, the regulation of podiatry is achieved through a board composed of podiatrists as well as practitioners of other healing arts. Fourteen states boards possess public members.

Responsibility for accrediting educational programs is assigned to 26 of the state agencies regulating podiatry including Texas. In nine other states the accreditation function is performed by the American Podiatry Association. Licensees are required to renew their licenses annually in 36 states including Texas. Twenty-six states, not including Texas, require some form of continuing education prior to annual license renewal. In 24 states the regulatory agency is granted the authority to set the scope of the professional examination, with 42 states accepting the examination of the National Board of Podiatry Examiners. In the remaining states requiring examination, the scope of the examination is established by law.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

Organization and Objectives

The Texas State Board of Podiatry Examiners is composed of six members appointed by the governor for six-year overlapping terms. Board members must be Texas residents, and actively engaged in the practice of podiatry for five years immediately preceding appointment. Members of the board may not be members of the faculty of any podiatry college, or podiatry department of any medical college, or have a financial interest in such colleges. Statutorily required duties of the board include the promulgation of rules and regulations, preparing and grading examinations, reviewing the qualifications of applicants, issuing licenses, holding at least semiannual meetings and enforcing the law and regulations relating to the practice of podiatry through hearings and court action. In addition, the statute requires the secretary-treasurer of the board to keep a record of all board proceedings, including licensee information, and of all revenues and expenditures and to file a bond.

The objectives of the Texas State Board of Podiatry Examiners are to ensure that persons seeking licensure to practice podiatry are qualified to provide services to the public; and to ensure that persons practicing podiatry do not violate the Act.

Board objectives are currently addressed through three processes: administration, examination and licensure, and enforcement. Board activities generally include promulgating rules and regulations, preparing and administering examinations, and conducting enforcement hearings.

The board's activities are funded through fees collected under provisions of the Act and from interest earned on time deposits. Fees are fixed by statute as to amount and basis for imposition and include charges for examination, license renewal, and late renewal. All board funds are deposited in a local bank account and are not subject to legislative appropriations.

Evaluation of Board Activities

As with most other licensing agencies, the operations of the Board of Podiatry Examiners can be broken down into three basic activities: administration, licensing and enforcement. Each of these activities was reviewed to determine the degree to which agency objectives have been met. To make this determination, the review focused on whether the board has complied with statutory provisions, whether these provisions facilitate accomplishment of the objectives, whether agency organization, rules, and procedures accomplish the agency's task in an efficient and effective manner, and whether procedures provide for fair and unbiased decision-making.

Administration

The general objective of any administrative activity is to provide for the efficient operation of all agency functions. Included in administration are record-keeping and processing, budgeting, personnel oversight, and the provision of information to the public. In the case of the board, all administrative procedures

except for license renewals, are performed by the secretary-treasurer. All license renewals are processed and mailed for the board by the Department of Health. The secretary-treasurer serves as board administrator on a part-time basis and performs all administrative operations of the board from his private office. The secretary-treasurer receives a fee of \$2,040 per year as compensation for his administrative duties and \$360 per year for the board's use of his office facilities. All records of the board are maintained by the secretary-treasurer and stored primarily in two closets in his office in Waco, Texas.

Management letters from the State Auditor's Office in 1977 and 1979 offered suggestions concerning the agency's accounting and budgeting system. The board has begun to institute improvements in these areas. In general, procedures concerning license issuance, renewals and receipts function smoothly and without unnecessary delays. While agency management is generally efficient, some concerns were noted related to the agency's funds being held outside the State Treasury and the legislative appropriations process.

Since the agency's funds are not subject to the legislative appropriations process, compliance with general rider provisions of the appropriations bill is not required. One general rider provides for personal car mileage reimbursement at a rate of 20¢ per mile, based on the shortest route between two points. The board has established a policy of a 25¢ per mile reimbursement rate. Another rider provision prohibits the payment of appropriated funds to a paid lobbyist. The board's general counsel is a paid lobbyist for nine trade associations and organizations. Further, other state agencies are prohibited from obtaining outside legal counsel without first requesting the Attorney General to perform such services.

If the agency's funds were maintained in the State Treasury, and subject to legislative appropriations, the legislature would be able to exert fiscal control and

accountability. Such an action could require additional expenditure of funds for accounting and report generation, but could achieve better accounting and budgeting procedures in response to concerns expressed by the State Auditor. Therefore, to ensure that the management of this agency adheres to general standards established for efficient and accountable state operations, agency funds should be placed in the State Treasury, and made subject to legislative appropriations. This approach is consistent with the Sunset Commission's position that provisions requiring agency inclusion in the appropriations process be recommended on an across-the-board basis.

If board funds are placed in the State Treasury, additional record-keeping and reporting requirements would necessitate additional personnel and increased operating funds. The agency's operations are supported entirely from fees collected, and the board's current balances and fees would not be sufficient to support the required expenditures. Therefore, a fee increase would be required. A review of the fee structures in other states indicated that the board's fees for examination and license renewals are in line with those charged by other states. However, more than half of the states charge fees for initial licensure for persons licensed through board examination and through reciprocity or endorsement. As shown in Exhibit III-1, the board's current fee structure does not include these categories. Additionally, when compared to other licensing boards of similar size and type in Texas, the board's fees are generally below the average. Most other boards in Texas also have initial license fees.

Exhibit III-1
CURRENT FEE STRUCTURE

<u>Type of Fee</u>	<u>Statutory Limit</u>	<u>Current Fee</u>
Examination	\$ 75	\$ 75
License Renewal	NTE \$ 50	\$ 40
Late Renewal Penalty	\$ 20	\$ 20
Duplicate or Amended License	Set by Board	\$ 10

If fees remain at current levels, revenues can be expected to fall below expenditures. Whether the board is placed in the State Treasury or not, an increase in license renewal fees and the addition of a fee for initial licensure would be appropriate. Overall increases in agency operating funds which would result from such a modified fee structure would result in increased revenue of approximately \$26,500 each year.

Licensing

The objective of the licensing function is to ensure that a minimum standard of competency has been achieved by persons authorized to practice podiatry. To accomplish this purpose, the board is directed by statute to administer an examination to applicants for licensure and issue renewal licenses.

The number of persons, licensed by the board since 1976 is reflected in Exhibit III-2.

Exhibit III-2
LICENSES ISSUED SINCE 1976

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
By Examination	36	34	47	38
By Reciprocity	-0-	-0-	-0-	-0-
By Renewal	<u>391</u>	<u>422</u>	<u>463</u>	<u>490</u>
Total	427	456	510	528
Precent Increase		6%	12%	4%

According to a survey of licensees conducted by the Department of Health, fifty-four percent were in active practice in Texas. Thirty-seven percent of the licensees were residing out-of-state. Of the licensees actually in practice in Texas, sixty-six percent were in general practice and twenty-five percent specialized in surgery. Seventy-three percent of the active podiatrists in Texas had clinical privileges in hospitals and seventy percent had both clinical and surgical hospital privileges. Of the active podiatrists, twenty-nine percent have participated in a residency or internship program.

In reviewing the licensing process, an assessment was made of the effectiveness of statutory requirements and board action in ensuring a minimum level of competency. Included in the review were the processes related to license and renewal issuance, the examination of applicants, other prerequisites for licensure, reciprocity, and exemptions from licensing requirements.

The review of the licensing process indicates that licenses and renewals are issued in an efficient and timely manner and that processes related to notice of examinations and renewal requirements function smoothly. The exemptions to the Podiatry Act appear to be appropriate and reasonable and do not cause administra-

tive nor enforcement difficulties. In addition, the examination appears to be neither too restrictive or not restrictive enough based on the pass/fail rates. Although the licensing process generally functions adequately, improvements could be made in three areas.

The first area relates to the examination process utilized by the board. The examination is formulated by the board and consists of ten written examination sections on subjects specified in the law (anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, micro-biology, orthopedics and podiatry). In addition, the board administers an oral examination, consisting of groups of board members interviewing individual applicants concerning assigned subject matter. Throughout the process, all applicants are clearly identified as to name and background. Although applicants are not given a grade on the oral examination, the final determination of grades on the written portions of the examination is not completed and compiled until after the oral examination. Since applicant identities are not screened from the examiners, the potential exists for the oral examinations to be used in making judgments on the written examination. Therefore, the subjectivity of the examination process is increased through the use of an oral exam. In order to provide applicants with a standardized, objective exam to the extent possible, the board should discontinue the oral portion of the exam.

With regard to the formulation of the written exam, a concern was noted in that board members are assigned certain subjects prior to each exam. The board has no policy concerning maintaining question banks or analysis of individual questions. In order to ensure that applicants are examined in a consistent and fair manner, the board should institute a procedure for maintaining a question bank and reviewing questions for their relevance, fairness and clarity. In cases where essay

questions are asked, grading should be performed by more than one examiner, without identifying the applicant. This would further assure consistency and fairness in the testing process.

Analysis indicates that the exam given by the National Board of Podiatry Examiners offers solutions to the concerns related to the state exam. The state board should review the national board exam to determine whether all or some portion of it could serve as an adequate and appropriate screening mechanism for applicants.

In regard to other aspects of the examination process, consideration should be given to providing counseling on request for those applicants failing the examination. Implementation of this process would provide a method through which an individual could assess and correct deficiencies prior to reexamination.

As a second general area of concern, the statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination and the grounds for removal of license once issued contains the same confusion of thought and vagueness of terminology found in the statutes of many other licensing agencies. The statute erroneously requires the licensing board in many cases to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no legal basis. To correct this situation and to place the licensing board in an appropriate setting, the statute dealing with the grounds for disqualification should be structured in such a manner that each of the grounds meet a two-part test. First, the grounds for disqualification should be stated in such a way that they have been initially determined by a competent authority other than the licensing agency. Thus, for example, the licensing agency would not be required to

determine the sanity of an individual, but would be authorized to use this disqualifier only after a determination had been made by a court of competent jurisdiction. As a second part of the test, the grounds for disqualification should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of the individual.

Review of the grounds for disqualification to sit for examination set out in the board's statute shows that several fail to meet the test stated above. For example, the applicant is required to be of "good moral character" to be licensed. In addition, the board may refuse to issue a license or may cancel, revoke, or suspend a license for grossly unprofessional or dishonorable conduct, crime which involves moral turpitude; or habitual drunkenness, addiction to drugs, or becoming insane. The statute should be restructured so that such provisions comply with the two criteria.

The final concern, related to the licensing activity, regards the lack of reciprocity or endorsement provisions. Until 1951, the board was statutorily authorized to allow reciprocity. However, the provision was repealed and all applicants are now required to pass the state board examination. The U.S. Department of Health Education and Welfare has designated Texas as a manpower shortage area for foot-care practitioners. Reciprocity or endorsement would offer an effective means of increasing the number of podiatrists practicing in Texas. Standards, such as national board scores, education records, and performance as a licensee in another state, provide the board with objective criteria upon which to base licensure by endorsement. Therefore, an endorsement system should be implemented. This approach has been adopted by the Sunset Commission previously, on an across-the-board basis.

Enforcement

The basic objective of the enforcement activity is to protect the public by identifying and, where necessary, taking appropriate action against persons who do not comply with the Act or board rules. The review indicated that limitations of funding and available personnel have resulted in restricted enforcement activities. Furthermore, the relative lack of visibility of the board to the public serves to hinder the filing of complaints.

As Exhibit III-3 illustrates, the total volume of complaints received by the board is low. It further illustrates that complaints have originated from only two sources: licensees of the board, and other government agencies. No complaints were initiated by the board or by the general public. In addition to those complaints presented in the exhibit, approximately five complaints against podiatrists are pending in the Attorney General's Medicaid Fraud Division. These complaints have not yet been referred to the board.

Exhibit III-3

SOURCE AND DISPOSITION OF COMPLAINTS 1976 - 1979

<u>Disposition</u>	<u>Source</u>				<u>Total</u>
	<u>Consumer</u>	<u>Licensee</u>	<u>Agency</u>	<u>Other Agencies</u>	
Revocation	-0-	1	-0-	-0-	1
Suspension	-0-	2	-0-	2	4
No Action	<u>-0-</u>	<u>1</u>	<u>-0-</u>	<u>-0-</u>	<u>1</u>
Total	-0-	4	-0-	2	6

Review of the available complaint files revealed that the files contain incomplete data with little supporting documentaton as to steps taken during investigation. Moreover, since no log is kept on complaints received, it was impossible to determine whether all complaints had been processed. The review of agency records gave no indication that the board has attempted to keep parties to a complaint informed as to the status of their complaint. Further, the agency currently has no policy regarding such complaint follow-ups. The agency should follow the practice of most other licensing agencies and the across-the-board recommendations of the Sunset Commission with regard to: 1) maintaining a file, on each complaint, which contains adequate documentation for any actions the board may determine necessary; and 2) keeping parties to a complaint informed on the status of the complaint.

Summary

The Board of Podiatry Examiners is a six-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is directed by statute to regulate the practice of podiatry.

Board operations can be categorized in three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objective of efficient management in several respects. However, the review identified three concerns. The first area of concern relates to the agency's records management. Management letters from the State Auditor's Office cited the agency's accounting and budgeting systems as problem areas. The board has instituted procedures in an effort to correct these conditions. Agency difficulties in the area of accounting and budgeting systems are largely a result of a second

concern noted in the review. Board funds are being held outside the State Treasury and are not subject to the appropriations process. Consequently, the board is not held accountable for compliance with provisions which contribute to efficient and effective management procedures. If board funds were placed in the State Treasury the legislature would have better fiscal control over the agency. Such a change in control of the board's funds would require additional personnel and increased operating funds. However, better accounting and budgeting systems could be achieved. The third area of concern relates to the agency's fee structure. Fees charged by the board are the only source of operating funds for the agency. If fees remain at current levels, revenues cannot be expected to match board expenditures. A review of fee structures of podiatry boards in other states indicated that the Texas board is below average in the categories they are authorized to collect. In addition, other states are authorized to collect fees in categories which are not included in the board's fee structure. Furthermore, licensing boards of similar size and type in Texas charge fees that are generally higher than those of the Board of Podiatry Examiners. If the board's fee structure were increased to a level comparable to that of other states as well as other Texas licensing boards, increased revenue would approximate \$26,500 per fiscal year.

With regard to the agency's licensing activity, three problem areas were identified. The first concern relates to the examination process. The examination is made up of both oral and written portions. All applicants are identified clearly as to name and background throughout the exam. In addition, the board practice of giving the oral portion of the examination before the grades on the written portion are determined, introduces the possibility of bias entering into the final decision. The oral portion of the examination should be discontinued in order to avoid the

possibility of using it inappropriately as a screening mechanism. With regard to the written portion of the exam, it should be noted that the board does not utilize a question bank or analysis of individual questions for clarity and validity. Instead, each board member is assigned the composition, administration and grading of a portion of the written exam. Additionally, where essay type questions are utilized, grading by more than one examiner without identifying the applicant could provide a more objective approach. Further, review indicated that use of the national board examination represents an alternative to the current process, which could alleviate the problems discussed above. The board should review the national exam to determine whether all or part of the examination can be used adequately and appropriately as a qualifier for applicants. With regard to another aspect of the examination, no procedure exists for providing counseling on request for those applicants failing the examination. Such a practice would provide a method through which individuals could assess and correct deficiencies prior to reexamination.

The second area of concern relates to licensure prerequisites specified by statute. Several of the statutory licensure prerequisites are ambiguous, difficult to verify and require the board to apply its subjective judgment, rather than a clear, objective standard. The final concern regarding the licensing activity, relates to the lack of reciprocity or endorsement provisions. As a manpower shortage area for foot-care practitioners, Texas could benefit from the use of reciprocity or endorsement as a method of licensing podiatrists. Standards on which to base endorsement are available to the board through national board exam scores, education records, and performance as a licensee in other states. Therefore, an endorsement system should be instituted.

Review of the agency's enforcement activity, indicates that enforcement activities are very limited. This is due primarily to the agency's small budget. The location and size of the agency have created a relative lack of visibility of the board and have hindered the filing of complaints by the general public. In addition, many of the grounds for revocation or suspension are based on criteria which are ambiguous and difficult to verify. In general, these should be replaced with more objective standards for disciplinary action.

IV. ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Consolidation Alternatives

Organizational structures in other states were reviewed in order to identify consolidation alternatives with potential for use in Texas. The review indicated that all states regulate the profession of podiatry. In 16 states, this regulation is accomplished through an occupational licensing agency and in eight states through a department of health. Regulation of podiatrists in 13 other states is assigned to a board of medical examiners.

Of the consolidation alternatives identified in other states, neither an occupational licensing agency nor health licensing agency is a feasible option for Texas since these organizational forms do not currently exist in this state. The state does, however, have a State Board of Medical Examiners which could be considered as a possible alternative.

In addition, the state has a Department of Health which can be considered as a possible alternative for consolidation. The Texas Department of Health presently mails license renewal notices and maintains a computerized listing of licensee names and addresses for the Board of Podiatry Examiners and staff for other small licensing agencies.

To determine the feasibility of these options, each agency was reviewed to determine whether its goals and functions are reasonably compatible with those of the Board of Podiatry Examiners. In addition, possible alternatives were considered from the standpoint of whether consolidation of functions would result in identifiable benefits.

Analysis of the organizational alternatives available in Texas indicates that the Board of Medical Examiners best satisfies the requirement of closely related operations with identifiable benefits resulting from consolidation. The Board of Medical Examiners regulates medical doctors, whose practice can encompass every aspect of the practice of podiatry and, the board has an enforcement staff with the capability of investigating complaints in the areas of practice violations as well as unlicensed practice. The State Board of Medical Examiners has the established mechanisms to deal with license and renewal issuance and complaint investigation.

Regulatory Alternatives

Regardless of the various types of organizational structures used for the regulation of podiatrists in other states, a single regulatory method is used in all states to protect the public from incompetent podiatrists. This type of regulation involves licensure upon successful completion of an examination and other licensure prerequisites, annual renewal of licenses, and enforcement of the statutory provisions.

While not currently used to regulate the practice of podiatry in any state, two additional regulatory methods are commonly used with respect to other occupational groups. These methods should therefore be considered as possible alternatives for the regulation of podiatrists. The first of these general methods is certification. Under this option, the ability to practice podiatry would be contingent on an applicant taking and passing a one-time "certifying" examination.

The second general method is registration. Under this option, any person wishing to practice podiatry would be required to be "registered" with the state, without regard to qualifications. Under either of these alternative regulatory methods, continued public protection would be reduced because of the lack of any enforcement activity.

Before any of the regulatory alternatives reviewed can be considered as a reasonable alternative to current regulation in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system. With respect to the regulatory alternatives identified above, both certification and registration are less restrictive than the current regulation, but each of these options offers less public protection than currently provided.

Summary

A review of consolidation alternatives in other states was conducted to determine the potential for combining podiatry regulation with the function of another agency. All states regulate the practice of podiatry, with 37 having consolidated podiatry regulation within other agencies. Of these, 16 states use a department of occupational licensing. While Texas has no "umbrella" licensing agency, other agencies exist in Texas that are used in other states for podiatry regulation. These are the State Board of Medical Examiners and the Department of Health.

Of these alternatives, the State Board of Medical Examiners appears to be the most reasonable alternative for consolidation. The Board of Medical Examiners is charged with regulation of medical doctors through licensing and enforcement processes. This agency has a full staff, experienced in licensing administration and

in enforcement procedures.

With regard to regulatory alternatives, all states presently license podiatrists. While not currently in use in other states, alternative methods of regulation of podiatrists, which can be considered due to their common use by other occupational groups, include certification and registration. Certification would continue the requirement that applicants exhibit a minimum level of competence prior to examination. Registration would only require that a person desiring to practice podiatry register with a designated state agency. Neither certification nor registration involve an enforcement mechanism to assure continued competence. While both certification and registration are less restrictive forms of regulation than licensure, neither provides as much public protection as the present licensing system. Therefore, neither is a desirable alternative to continuation of the present method of regulation.

V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b., V.A.C.S.). Prior to the review, the board was unaware of the requirements of these provisions. They have been advised of their obligations and have responded accordingly. Affidavits recently filed with the Secretary of State indicate that the board has complied with the statutory requirements.

Open Meetings-Open Records

The board has filed notices of meetings with the Secretary of State as required by law, with one exception. A board meeting and examination were held on June 16-20, 1977, for which notice was filed on June 13, 1977. In this case the

board did not file notice at least seven days prior to the meeting nor did they file this notice under the "emergency or urgent public necessity" provision as required by law. Subsequent postings have met all legal requirements.

Review of the minutes raised a concern regarding executive sessions in board meetings. On two occasions portions of the board's meetings were closed to the public. In these sessions the board went into executive session after presentation of all evidence and testimony on complaints. In one instance the minutes read "the board went into executive session to make a decision." It appears that final actions were taken in executive sessions rather than in open meetings as required by the Open Meetings Act. Additionally, in each of the violations the presiding officer failed to identify statutory authority to hold a closed meeting, as required by law. The board has been notified of the proper procedures for closed meetings and has responded with the assurance that such irregularities will not continue.

All categories of documents specifically considered by the board to be confidential, and therefore not subject to public dissemination, are exempted from disclosure under Section 3 of the Open Records Act. No records indicate that requests for access to any information have been received and acted upon.

Summary

The review indicated that the board is in compliance with all conflict-of-interest disclosure requirements. Problems with the board's compliance with open meeting requirements include a board meeting which was not posted in a timely fashion and closed meetings in which decisions were made concerning complaints. These violations have been pointed out to the agency and future compliance has been assured. Finally, the board is in compliance with the Open Records Act.

VI. PUBLIC PARTICIPATION

The review under this section covers the Sunset criteria which call for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degrees to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

Agency Activities

Since fiscal year 1976, five rule changes or additions have been considered by the board, with all five modifications finally being adopted. In considering these changes the board has complied with publication requirements mandated by state laws. In addition, all proposed changes have been published in the newsletter of the Texas Podiatry Association. However, review of the board minutes indicates that there has been no public testimony presented regarding rule changes.

Board rules regarding advertising have been assumed to be invalid because of recent Supreme Court decisions. Although these portions remain in the text of the rules, the board has discontinued all enforcement in the area of advertising, and is in the process of updating rules regarding advertising.

Public Membership

Review of the statutory composition of the board also indicates the absence of any members from the general public. The lack of such members impedes the

ability of any board to fairly and effectively represent the point of view of the general public in the development of rules and the deliberation of other matters. This drawback is even more significant for a small agency such as the Podiatry Examiners whose regulatory activities are not readily visible to the public.

Summary

With regard to meetings to discuss possible rule changes, the agency has adhered to notification requirements set out in general state law. However, involvement of the public in the proposed modifications has been absent. To help insure that the public's point of view is properly represented, public members could be placed on the board, which is currently composed entirely of experienced licensees.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Past Legislative Action

The enabling legislation of the Texas State Board of Podiatry Examiners has been amended eight times since its enactment in 1923. The first major amendment came in 1939 (H.B. 195) when the board composition and selection process were modified by providing that the six chiropodist members of the board be appointed by the governor. Other changes enacted in House Bill No. 195 included additional administrative authority (including rulemaking authority) and enforcement powers, an increase in licensure prerequisites, modification of the fee structure, and additional documentation concerning applicants for licensure by reciprocity.

The second major amendment occurred in 1951 (S. B. 80) and included broadening the definition of the profession, increased fees, requiring additional education requirements and the repeal of the licensure by reciprocity provisions. This amendment to the licensing act also changed the definition of the practice of podiatry by removing the prohibitions against amputation of the human toe and the use of general anesthetics.

Statutory changes in 1963 and 1967 included the acceptable designations for identifying podiatrists under the Healing Arts Identification Act and modifying statutory terminology to construe "chiropody" to mean "podiatry". Board member per diem was also increased from \$10 to \$25 in 1967.

In 1971, major modifications were made to the board's authority to refuse to license and to its enforcement procedures. The grounds for refusal to license and for revocation were expanded to include age, illness, drug abuse, drunkenness, willful misrepresentation on a license application, employing a person whose license had been suspended, fraud on documents submitted for licensure or on examinations, impersonation of a licensee, unprofessional conduct, misleading advertising, and any violation of the Act.

An amendment in 1973 granted authority to the board to approve names under which podiatrists could practice and provided civil penalties for violation. Amendments in 1977 made the agency subject to the Sunset Act, raised board per diem from \$25 to \$50 and the renewal fee maximum to \$50 from \$20 and provided for staggered renewal of licenses.

In 1979, Senate Bill No. 599 raised the education requirement to 90 hours, exempted podiatry faculty members whose practice is limited to the educational institution and deleted several licensure requirements. Enforcement was strengthened by adding as grounds for revocation: 1) the failure to practice podiatry in an acceptable manner; 2) removal or suspension by a hospital or association if the board finds the action justified; and 3) repeated meritorious health care claims.

Summary

The enabling legislation of the Texas State Board of Podiatry Examiners has been amended eight times since its creation in 1923. In 1939, a major revision made

the State Board of Podiatry Examiners an independent agency with board membership composed totally of licensees. Amendments to the Act also increased licensure prerequisites and expanded the board's enforcement powers. In addition to the successful amendments to the board's enabling statute, five amendments have been unsuccessfully proposed in the last four legislative sessions. Proposed amendments supported by the board have dealt primarily with fee and board member per diem increases and increased regulatory authority for the board. One proposal, opposed by the board, would have required deposit of board funds in the State Treasury.