Executive Summary

Texas Medical Board

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This limited scope review of the Texas Medical Board follows up on the full Sunset review of the board conducted in 2016–2017. At that time, the Sunset Commission adopted several recommendations to enhance the Medical Board's enforcement of proper treatment of pain by monitoring prescribing activity of physicians and physician assistants and by regulating clinics designed specifically for treating patients for pain. The Sunset Commission also adopted recommendations to better position the state's peer assistance program for physicians and other licensees with physical or mental health conditions to achieve its mission; streamline the Medical Board's medical radiologic technology program; and update board statutes and practices to increase efficiency and better protect the public. These recommendations were drafted into a bill, House Bill 3040, but the bill failed to pass during the regular session. The Legislature instead passed Senate Bill 20 during the First Called Session that continued the Medical Board for an additional two years.

Sunset staff evaluated the ongoing appropriateness of the original Sunset Commission recommendations.

While many provisions from H.B. 3040 passed in other legislation during the regular session, several did not. Having just completed its work on the Medical Board in 2017, Sunset staff focused the current review on evaluating the ongoing appropriateness of the original recommendations adopted by the Sunset Commission in January 2017. Sunset staff found that the Texas Physician Health Program, the state's peer assistance program, continues to be inhibited by its unclear arrangement with the Medical Board and limited funding sources. Requiring the Medical Board and the program to develop a memorandum of understanding covering services and operations; and authorizing the program to accept gifts, grants, and donations would better set up the program to achieve its mission to help licensees return safely to practice. Sunset staff also found that the Medical Board's process for inspecting providers of office-based anesthesia continues to run the risk of unnecessarily disrupting a physician's practice and wasting the board's limited time and resources. For these reasons, staff still recommends authorizing the board to establish a risk-based approach to these inspections. In addition, as in 2016, Sunset staff maintains that Texas joining the Interstate Medical Licensure Compact would ease and improve the licensure of physicians wishing to practice in multiple states and could better facilitate future developments in telemedicine.

Since the 85th Legislature adopted in other legislation 25 Sunset recommendations related to enhancing patient protection through prescription monitoring, providing additional transparency and fairness to the informal settlement process, and removing administrative barriers to entry, no further action is necessary for these recommendations. The Sunset Commission also adopted five management actions that the Medical Board has implemented or is in the process of implementing. The current status of each of the Medical Board recommendations is shown in the chart, *Status of 2016 Sunset Commission Recommendations Texas Medical Board*, on page 7 of this report.

Below are recommendations the Sunset Commission adopted during the 85th legislative cycle but that did not pass into law. These recommendations, as a result, require consideration by the current Sunset Commission. For consistency, the recommendation numbers reflect those used in the 2017 report.

Recommendations Still Needing Action by the Sunset Commission

Recommendation 2.1

Remove unnecessary provisions requiring surgical assistant applicants to be of good moral character.

This recommendation would remove the requirement that applicants for surgical assistant licensure be of "good moral character," a standard that is unclear, subjective, and difficult to enforce. The Medical Board would continue to receive and review criminal history information to determine an applicant's eligibility for licensure according to requirements in Occupations Code Chapter 53 and the Medical Board's current rules. (Note: The Legislature passed this provision for physician assistants in S.B. 1625, but the identical provision for surgical assistants did not pass.)

Recommendation 2.7

Amend statute to clearly authorize the board's current practice to conduct fingerprint-based criminal background checks of acupuncture and surgical assistant applicants.

This recommendation would clarify the current statute to ensure all applicants undergo fingerprint-based background checks. This practice ensures the board can effectively monitor all licensees for criminal conduct and take disciplinary action to protect the public when warranted. (Note: The Legislature passed this provision for physician assistants through S.B. 1625, but the identical provision for acupuncturists and surgical assistants did not pass.)

Recommendation 2.9

Authorize the board to establish a risk-based approach to its office-based anesthesia inspection, focusing on the length of time since equipment and procedures were last inspected.

This recommendation would authorize the board to establish a risk-based approach to the office-based anesthesia inspection process. The board should focus its efforts on the inspection of equipment and

office procedures instead of the registered physician to ensure that inspectors do not waste time re-inspecting approved equipment and procedures. The board should consider the length of time since the equipment and facility were last inspected as well as the length of time since the physician submitted to an inspection. This recommendation would require the board to better track the office location of physicians who offer office-based anesthesia and to require physicians to inform the board of any other physicians who might share anesthesia equipment.

Recommendation 2.10

Remove the requirement that the Medical Board's formal complaints filed with the State Office of Administrative Hearings be sworn to.

This recommendation would remove the statutory requirement that board staff file an affidavit attesting to the truthfulness of each formal complaint sent to SOAH for a hearing. Existing provisions of law that make falsifying a government record a crime would still apply to filed complaints.

Recommendation 4.1

Adopt the Interstate Medical Licensure Compact.

This recommendation would add the Interstate Medical Licensure Compact language to Texas statute. As a tool to simplify the administrative processes related to out-of-state licenses, the compact would not affect the scope of practice for Texas physicians. The Legislature would retain full authority over the Medical Board and the practice of medicine in the state through the Texas Medical Practice Act and other applicable state laws.

Adopting the compact would allow qualified physicians from other member states to obtain a Texas license without having to go through the Medical Board's standard administrative licensing process. Physicians licensed in Texas who establish Texas as their state of principal license may apply for a license elsewhere through the compact. The following key compact provisions would be added to statute:

- Require all physicians practicing in Texas to comply with the Texas Medical Practice Act and Texas Medical Board rules.
- Authorize the Medical Board to take disciplinary actions against an out-of-state physician, including revoking the physician's Texas license, for violating Texas statutes or Medical Board rules. Suspensions or revocations of the license issued by the physician's state of principal license would be the responsibility of that state.
- Require the Medical Board to participate in a coordinated database and reporting system that includes licensure, adverse actions, and investigative information on each licensee in compact states. As a condition of joining the compact, every state must require its licensees to undergo fingerprint or other biometric background checks, which is already required in Texas.
- Provide for either two members of the Medical Board or one board member and the board's executive director to serve as voting representatives to the interstate commission.
- Authorize the Medical Board to develop rules as necessary to implement the compact.

Recommendation 5.1

Require the Medical Board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.

This recommendation would require the Medical Board and the program to establish a memorandum of understanding (MOU) in rules to include performance measures, such as the number of participants that successfully complete the program and the number that relapse, and a clear list of services the board will provide for the program. The MOU should also provide for an internal audit at least once every three years to ensure the program is properly documenting and referring all noncompliance to the board. The board and the program should adopt the MOU in rules by January 1, 2020. Because the program is already administratively attached to the Medical Board, an MOU works better to formalize the arrangement than would a contract. Clearly establishing the relationship between the program and board would help ensure consistency even as staff at each entity change over time. While the program's affiliation with the Medical Board may always dissuade some licensees from seeking services, clarifying the relationship in an MOU in rules would provide additional transparency.

Recommendation 5.2

Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

By authorizing the program to accept gifts, grants, and donations, this recommendation would increase the likelihood that malpractice insurance companies, hospitals, and other entities may donate to the program. Further, the program could seek grants from sources such as the federal government and private foundations.

Recommendation 6.1

Continue the Texas Medical Board for 12 years.

This recommendation would continue the Medical Board and its various components until 2031. As part of this recommendation, the Medical Board's three reporting requirements would also continue as they serve a useful purpose to promote transparency into the board's operations.

Recommendation 6.2

Apply standard Sunset across-the-board recommendations relating to board member training and alternative rulemaking and dispute resolution to the medical, acupuncture, respiratory care, and medical radiologic technology boards.

This recommendation would require Medical Board staff to create a training manual for all board members that must include a discussion of the scope of, and limitations on, the boards' rulemaking authority. This recommendation would also expand the Medical Board's statutory requirement to develop a policy to encourage the use of negotiated rulemaking procedures for the adoption of their rules to all licensing

programs under the Medical Board's jurisdiction with the authority to propose rules, including those for respiratory care and medical radiologic technology. Just as it does for members of the Medical Board, Medical Board staff would be required to coordinate the implementation of this policy and provide training to advisory board members to implement the procedures for negotiated rulemaking. (Note: The Legislature passed the board member training provision for the physician assistant board through S.B. 1625, but the equivalent provision for the rest of the boards did not pass. The provision requiring the Medical Board develop a policy to encourage the use of negotiated rulemaking for all licensees also did not pass.)

New Issues

Expand time frames for remedial plans.

Authorize the Medical Board to offer a remedial plan — which is a nondisciplinary action for less serious violations — for a physician at most once every five years, instead of once per lifetime.

Create a medical radiologic technology radiologist assistant certificate.

Establish in statute an advanced-level medical radiologic technologist (MRT) certificate and define the term "radiologist assistant" as an individual who holds an advanced-level MRT certificate. Require that radiologist assistants only practice under the supervision of a radiologist, and require the Board of Medical Radiologic Technology, with approval of the Medical Board, to adopt rules for education and training, practice restrictions, and supervision levels required for radiologist assistants.

Expand access to expert reviewer reports for informal settlement conferences.

As part of an informal settlement conference for a case involving an allegation of a standard of care violation, require the Medical Board to share with the license holder who is the subject of the allegation a complete copy of each preliminary written report produced by each expert physician reviewer for the license holder's case, not just the final report currently required by law. As part of this provision, require the Medical Board to redact all identifying information of each expert physician reviewer, except the reviewer's specialty.

Expand consideration of complementary and alternative medicine in informal settlement conferences.

As part of their evaluation of whether a physician has committed a violation of the standard of care, require members of the informal settlement conference disciplinary panel to consider whether the physician was practicing complementary and alternative medicine.

Fiscal Implication Summary

Overall, these recommendations would result in a positive impact to the state of about $300,000 in fiscal year 2020 and additional savings in each fiscal year thereafter based on Recommendation 4.1 to adopt the Interstate Medical Licensure Compact and the New Issue to create a medical radiologic technology radiologist assistant certificate. Both of these recommendations were adopted by the Sunset Commission

and included in House Bill 3040 in the 85th Legislative Session. The fiscal note for the bill includes the detailed methodology used to estimate these savings resulting from additional licensure fees.

Texas Medical Board

Fiscal Year	Gain to the General Revenue Fund	Gain to the General Revenue-Dedicated Fund*
2020	$267,640	$30,400
2021	$105,525	$22,000
2022	$165,525	$22,000
2023	$165,525	$22,000
2024	$165,525	$22,000

* Fees from out-of-state applications for interstate licensure would be remitted to General Revenue-Dedicated Public Assurance Account 5105.