

**From:** [Sunset Advisory Commission](#)  
**To:** [Janet Wood](#)  
**Subject:** FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Monday, June 30, 2014 8:06:19 AM

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-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]  
Sent: Friday, June 27, 2014 6:52 PM  
To: Sunset Advisory Commission  
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Friday, June 27, 2014 - 18:52

Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

First Name: Rebecca

Last Name: Lutz

Title: Quality System Manager / Indoor Air Quality Technical Manager

Organization you are affiliated with: Moody Labs

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City: Farmers Branch

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

I am writing in regards to the Sunset Commission's recommendation to discontinue licensing for mold assessors, mold remediators, and mold laboratories.

I oppose this recommendation and believe that alternative solutions would be a more viable option for this agency.

In the Sunset Commission's report, the recommendation to discontinue licensing was based upon four criteria: 1) There is little impact on public health or safety, 2) Alternative regulation is provided by the private sector, state, or local programs, 3) The program generates little regulatory activity, and 4) Consumers have access to information to make informed choices. After further investigation into each of these criteria, mold licensing is much more complicated than first perceived.

1) Mold contamination in buildings has been documented to have impact on public health. As early as the 19th century, where the inhabitants sleeping in a room were found deceased. The mold *Scopulariopsis* was found growing on a damp wall. Later, it was determined that this mold released arsine gas from the green pigment found in the wallpaper. There are numerous citations where mold is one of the leading causes of asthma and allergies. According to the Asthma and Allergy foundation,

- Asthma accounts for one-quarter of all emergency room visits in the U.S. each year, with 1.75 million emergency room visits
- Each year, asthma accounts for more than 10 million outpatient visits and 479,000 hospitalizations.
- Each day 9 Americans die from asthma. There are more than 3,300 deaths

due to asthma each year.

- In addition, asthma is indicated as “contributing factor” for nearly 7,000 other deaths each year. The annual cost of asthma is estimated to be nearly \$18 billion.
  - Direct costs accounted for nearly \$10 billion (hospitalizations the single largest portion of direct cost) and indirect costs of \$8 billion (lost earnings due to illness or death).
  - For adults, asthma is the fourth leading cause of work absenteeism resulting in nearly 15 million missed or lost (“less productive”) workdays each year.
  - Among children ages 5 to 17, asthma is the leading cause of school absences from a chronic illness. It accounts for an annual loss of more than 14 million school days per year (approximately 8 days for each student with asthma) and more hospitalizations than any other childhood disease. It is estimated that children with asthma spend an nearly 8 million days per year restricted to bed.
- Clearly, mold does have impact on public health and safety.

2) Regulation is not provided by any other entity for mold. There are certifications and accreditations available through the private sector. Note the following differences in certification/accreditations and licensing:

- Licensing is a requirement. Accreditations and certifications are voluntary.
- Licensing may or may not require competency and records. Accreditations and certifications require demonstration of procedures and competency. Accreditation requires records. Certification does not require records.
- Accreditation examines a process and its records (available for laboratories only). Certification examines a body of knowledge. Licensing examines compliance with rules.
- Licensing adds in the component of liability coverage which is not addressed by either certification or accreditation.
- Certification/accreditation can provide assurance that the professional is competent and is trained in that field of expertise. Licensing provides assurance that this person is aware of the laws and rules required to perform within that expertise.

Licensing and accreditation/certification are symbiotic entities with which consumers protected.

Certified/accredited professionals without licensing may be without liability insurance; licensed professionals without accreditation may lack the body of knowledge which is needed to perform within a highly technical field.

3) The program generates little regulatory activity. This statement does not provide a thorough enough picture without further explanation. In order to get that explanation, we need to know “why” there is little regulatory activity. There are three possible reasons: there is no activity within the industry, thus there is no regulatory activity; most entities within the industry are following all of the rules, thus there is no regulatory activity; there are few checks on the industry by regulatory bodies, thus there is no reported regulatory activity. In order to get the full information, there needs to be a study to find out how many mold assessments were filed with the state, how many remediation protocols were followed, how many state inspections were performed, and how many citations were issued.

4) Consumers currently have access to information on the DSHS website for information and recommendations regarding mold. There is also information on the EPA website, the FDA website, and others. However, the DSHS information is unique and more pertinent on how/when to find a mold consultant and what to look for in that consultant. There is also a place for the consumer to lodge complaints regarding mold. If licensing goes away, much of the information as well as the ability to investigate complaints also goes away.

I was involved with analysis of mold samples prior to licensing. Many of the samples were taken by people who did not have the technical expertise to take these samples. Since licensing has been in place, it is rare to find a sample submission which is taken incorrectly. With required remediation protocols in place, less fraudulent and unnecessary remediation has occurred.

With the conflict of interest requirements, the same company cannot assess and remediate the same project. With licensing, all parties involved with mold must carry 1,000,000 liability insurance, covering any potential lawsuits or mistakes. All of this will go away without licensing, opening up the industry to people who are not adequately trained, who will either intentionally or unintentionally bias results to favor their business, cause financial harm through unnecessary remediation, cause physical harm to people and buildings through negligent practices, and

have “fly-by-night”

operations which pop up and then disappear whenever an opportunity (flood, hurricane, pipes breaking with a freeze, etc.) arises without adequate consumer protection. These are not projections based on “worst case scenarios”, rather they are reflections of what happened in 2001-2003 prior to legislation. Without licensing, the past chaos, lawlessness, lawsuits, fraud, and panic will return.

Sunsetting mold assessor, mold remediators, and mold laboratory licensing will have repercussions which are bad for the people and businesses in Texas.

Any Alternative or New Recommendations on This Agency: My recommendation is to move mold licensing, as well as the asbestos program, and the lead program to the Texas Commission on Environmental Quality (TECQ). Although mold, asbestos, and lead affect health, all of the activities involved with these programs, from assessment, to analysis, to remediation, are environmental in nature. TECQ already has programs involved with lead and asbestos waste; they have a licensing structure; and they are familiar with environmental sampling and protocols. Many of the personnel would require minimal training to be able to address the mold, lead, and asbestos programs. Many mold assessors also hold asbestos licenses, as do remediators for mold and asbestos. The state inspectors could be cross-trained to perform both types of inspections. Moving these programs to TECQ would help DSHS reduce its diversity, allow an environmental department to take over environmental programs, and maintain programs which prevent fraud and protect consumers and businesses in Texas.

My Comment Will Be Made Public: I agree