

## Texas Department of State Health Services Sunset Review June 25, 2014

### **DSHS Administrative Attachment Issues of the Texas Board of Orthotics and Prosthetics**

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Established in 1999, the Texas Board of Orthotics and Prosthetics (TBOP) is a Governor appointed seven-member, independent board administratively attached to the Professional Licensing and Certification Unit (PLCU) of the Texas Department of State Health Services' Regulatory Division. PLCU provides the Board with administrative support services to carry out licensing, investigation, and other administrative duties on behalf of the Board and profession.

TBOP regulates over 200 licenses, including facilities, practitioners, students, assistants and technicians, which provide orthotic and prosthetic devices and services to Texas patients. Orthotic products and services are typically related to custom made bracing for stabilization and mobility assistance of the human body, whereas prosthetic products and services relate to artificial limbs of varying degrees of sophistication.

Currently, TBOP related administrative work processes have experienced actions and omissions, on the part of DSHS staff, which constitute an ongoing threat to public health and safety. Issues involve DSHS staff failing to perform mandated duties and responsibilities in fulfillment of the TBOP administrative attachment.

### **Texas Department of State Health Services OGC and PLCU Issues**

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#### **1.) The DSHS Office of General Counsel jeopardizes public health and safety by failing to take complaint cases of the Texas Board of Orthotics and Prosthetics to the State Office of Administrative Hearings.**

The DSHS Office of General Counsel (OGC) provides legal services to the board including legal counsel and case management of complaint cases. These services also include processing, preparing, and presenting cases before Administrative Law Judges at the State Office of Administrative Hearings (SOAH).

In 2009, Texas Board of Orthotics and Prosthetics proposed revocation for three licensees they deemed to be threats to the public health, safety, and general welfare. These cases involved a licensee who deprived a patient of a prosthesis for over two years, a licensee who operated an orthotic/prosthetic facility without licensure or Board knowledge, and a licensee who while licensed at an assistant level was found to be treating patients as a full practitioner.

PLCU staff forwarded these proposed actions to OGC staff for preparation and formal hearings at SOAH. OGC was aware of these cases regarding revocation but did not act on them for over five years. In 2014, OGC presented these cases to the Board and stated that they were compromised by the lapse of time. In addition, OGC stated that they would not move the cases to SOAH and urged the Board to close the cases with no further action. OGC offered no apology to the Board, case complainants, or case respondents for their failure to carry out their administrative duties.

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## Conclusion

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As the former Executive Director of the Texas Board of Orthotics and Prosthetics (TBOP) serving from December 3, 2007 to November 8, 2013, I attest that the above items are factual and accurate.

The issues are not limited to the Texas Board of Orthotics and Prosthetics. PLCU has likely replicated similar actions involving the other 22 health professional programs it administers.

My previous employers will attempt to attack my character in an attempt to discredit these claims. Behind closed doors they have labeled TBOP a "rogue" board without provocation. I do not believe they would hesitate to label me a "disgruntled former employee". However, I would urge the Legislature to note that I resigned my position, on November 8, 2013, of my own free will because I believe that DSHS, OGC, and PLCU are incapable of providing public service at a standard that Texans deserve. Any attack of my character is simply ad hominem and I urge the Legislature and its staff to pursue these items and potential solutions as they will quickly find that substantiation is sadly and readily available.

I remain willing and able to discuss these items in greater detail either through discussion with legislators, staff, or key stakeholders.

David D. Olvera