

Decision Meeting Material

May 24, 2018

Texas Veterans Commission

Texas State Board of Examiners of Professional Counselors

Texas State Board of Examiners of Marriage and Family Therapists

Texas State Board of Social Worker Examiners

Texas State Board of Examiners Psychologists

Texas Medical Board

Texas Historical Commission

TEXAS VETERANS COMMISSION

Issue 1

The Texas Veterans Commission (TVC) Lacks the Proactive Planning and Necessary Information to Regularly Evaluate and Improve Services to Veterans. (Page 9)

Change in Statute

- Rec. 1.1** (Page 12) Require TVC to annually evaluate and set priorities for all programs.
- Rec. 1.2** (Page 12) Require TVC to create and track meaningful outcome measures for all programs.

Management Action

- Rec. 1.3** (Page 13) Direct TVC to survey Texas veterans on a regular basis about their experience with agency programs and overall needs.
- Rec. 1.4** (Page 13) Direct TVC to create a complaint process, make the complaint process accessible to the public, and track complaint data.

Issue 2

TVC's Status Quo Approach to Claims Counseling Does Not Maximize State Resources to Best Serve Veterans. (Page 15)

Change in Statute

- Rec. 2.1** (Page 20) Require TVC to track, evaluate, and strategically adjust claims staffing and special teams.
- Rec. 2.2** (Page 20) Require TVC to better track and analyze claims outcome data to guide program success.
- Rec. 2.3** (Page 21) Remove military service requirements for veteran county service officers to expand the pool of potential accredited claims counselors for Texas veterans.

Chairman Birdwell and Mr. Steinhart Proposed Modification

Keep the staff recommendation to remove specific statutory military service requirements for veteran county service officers (VCSOs), but add a statutory requirement for a veterans preference for VCSOs based on the veterans

preference in state law that state agencies follow (Section 657.002, Texas Government Code). Also require counties to adopt their own veterans preference policies for VCSOs.

Management Action

- Rec. 2.4** (Page 21) Direct TVC to temporarily report on claims staffing and outcome data analyses.
- Rec. 2.5** (Page 21) Direct TVC to strengthen support for claims staff and preserve institutional knowledge.
- Rec. 2.6** (Page 22) Direct TVC to add information to its website about the claims process, including forms, checklists, basic claims information, and embedded VA resources.
- Rec. 2.7** (Page 22) Direct TVC to allow veterans to schedule appointments for claims counseling, while maintaining the option for walk-in services.

Senator Buckingham Proposed Modification

In addition to allowing veterans to schedule appointments with TVC, direct the agency to use teleconference or other alternative technologies to assist Texas veterans when the veteran does not need to be physically present in the office for assistance.

Issue 3

TVC's Grant Program Needs Improvements to Promote Overall Effectiveness and Transparency. (Page 25)

Management Action

- Rec. 3.1** (Page 29) Direct TVC to extend the length of its grant cycle from one to two years.
- Rec. 3.2** (Page 30) Direct the agency to formalize the roles and training of the commission and the grants advisory committee to improve quality and transparency in the evaluation process.
- Rec. 3.3** (Page 30) Direct TVC to develop and track enhanced grantee performance measures to better evaluate the benefit of its grant funding to veterans.

Issue 4

TVC Prioritizes a Costly Annual Conference Over Training Targeted to Better Meet Veterans' Needs. (Page 33)

Management Action

- Rec. 4.1** (Page 36) Direct TVC to restructure and streamline the scope and expense of its annual conference.
- Rec. 4.2** (Page 36) Direct TVC to track and analyze detailed training costs to identify potential savings and improvements.
- Rec. 4.3** (Page 37) Direct TVC to prioritize online training and other cost-effective tools to facilitate regular collaboration among staff and partners.

Issue 5

Texas Has a Continuing Need for the Texas Veterans Commission. (Page 39)

Change in Statute

- Rec. 5.1** (Page 44) Continue the Texas Veterans Commission for 12 years.
- Rec. 5.2** (Page 44) Update the standard across-the-board requirement related to commission member training.

Management Action

- Rec. 5.3** (Page 44) The commission should implement requirements for encouraging purchasing from historically underutilized businesses.

Proposed New Recommendation

Senator Buckingham Proposed New Recommendation 1

Direct the agency to create and provide grant-writing training for veterans county service officers (VCSOs) either through online or in person training. (Management action – non-statutory)

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

TEXAS STATE BOARD OF EXAMINER OF PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Issue 1

The Structure of the State's Behavioral Health Licensing Agencies Is Antiquated and Inefficient. (Page 23)

Change in Statute

Rec. 1.1 *(Page 29)*

Consolidate the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.

Senator Buckingham and Senator Nichols Proposed Modification

Modify Recommendation 1.1 to keep the executive council makeup of five public members and four professional members, but give the professional members voting privileges instead of being ex officio non-voting members.

Senator Nichols Proposed Modification

Modify Recommendation 1.1 to remove the Texas State Board of Examiners of Psychologists from the Texas Behavioral Health Executive Council; the psychology board would continue as an independent agency.

Representative Thompson Proposed Modification

Direct the Texas Behavioral Health Executive Council to develop policies and procedures to ensure its rule-making function focuses solely on creating rules governing administration of licensure, investigation and sanction procedures for the agency,

and reviewing rules proposed by each licensing board for anti-competitive impacts, administrative consistency, and good governance concerns — not infringing on matters related to professional standards of practice. (Management action – nonstatutory)

Rec. 1.2 (Page 31) Update the standard across-the-board requirement related to board member training.

Issue 2

Key Elements of the Behavioral Health Boards’ Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards. (Page 33)

Change in Statute

Rec. 2.1 (Page 35) Require the boards to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.

Rec. 2.2 (Page 35) Authorize the boards to check for disciplinary actions in other states or from other licensing boards as part of the license application and renewal process and to pursue any necessary enforcement actions based on the results.

Rec. 2.3 (Page 36) Remove the “good moral character” standard as a criterion for marriage and family therapist applicants.

Rec. 2.4 (Page 36) Remove the statutory limitation currently restricting the boards’ authority to lower fees.

Rec. 2.5 (Page 36) Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and authorize the marriage and family therapy board to establish the required hours by rule.

Issue 3

The Psychology Board’s Oral Exam Is an Unnecessary Requirement for Licensure. (Page 37)

Change in Statute

Rec. 3.1 (Page 38) Eliminate the authority for the psychology board to administer an oral exam.

Issue 4

Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas. (Page 39)

Change in Statute

Rec. 4.1 (Page 40) Remove the requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

Senator Buckingham Proposed Modification

Modify Recommendation 4.1 to continue to require applicants for a psychologist license to complete a one-year doctoral internship AND have one year of post-doctoral supervision, but authorize the psychology board to count pre-doctoral internship hours toward the post-doctoral supervision year if those hours are received as part of a degree program accredited by the American Psychological Association (APA), Canadian Psychological Association (CPA), or a substantially equivalent program as determined by the psychology board.

Issue 5

Key Elements of the Psychology Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards. (Page 41)

Change in Statute

Rec. 5.1 (Page 44) Remove the statutory limitation restricting the board's authority to lower fees.

Rec. 5.2 (Page 44) Remove subjective licensure qualifications.

Rec. 5.3 (Page 44) Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.

Rec. 5.4 (Page 44) Authorize the board to provide biennial license renewal.

Rec. 5.5 (Page 44) Authorize the board to issue remedial plans to resolve minor complaints.

Rec. 5.6 (Page 45) Clarify the agency's authority to require physical or mental evaluations and hold related hearings for noncompliance.

Rec. 5.7 (Page 45) Extend confidentiality of complaint and investigative information to applicants and non-licensees.

Issue 6

Texas Should Adopt the Psychology Interjurisdictional Compact. (Page 47)

Change in Statute

Rec. 6.1 (Page 48) Adopt the Psychology Interjurisdictional Compact.

Senator Hall Proposed Modification

Modify Recommendation 6.1 to not adopt the Psychology Interjurisdictional Compact and, instead, authorize the Behavioral Health Executive Council to adopt rules for an expedited licensing process for practitioners who are licensed in good standing in other states and who are seeking a Texas license to practice in Texas. As part of the expedited process, the executive council would be authorized to adopt rules waiving any licensing requirements it finds substantially met by an applicant's experience for applicants licensed in good standing and practicing in another state for over five years.

Proposed New Recommendations

Senator Buckingham Proposed New Recommendation 1

Allow qualified psychologists licensed in good standing in other states, who have practiced independently for five years or more, to be exempted from the requirement of two-years supervised experience when applying for a Texas license before the psychology board.

Senator Watson Proposed New Recommendation 2

Direct Sunset staff to evaluate each board under review during the 2018–2019 review cycle to determine whether each board is potentially “controlled” by active market participants, using FTC guidance and opinions, and make any recommendations based on FTC guidance to mitigate the potential liability of boards “controlled” by active market participants. Direct Sunset staff to submit a report with recommendations based on their analysis to the Sunset Commission by November 8, 2018, for consideration by the Commission at its January 9, 2019, hearing. Any motions to adopt or modify the Sunset staff recommendations resulting from this special project will be strictly limited to the issue of board composition. (Management action – nonstatutory)

TEXAS MEDICAL BOARD

Issue 2

Key Elements of the Texas Medical Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards. (Page 23)

Change in Statute

- Rec. 2.1** (Page 27) Remove unnecessary provisions requiring surgical assistant applicants to be of good moral character.
- Rec. 2.7** (Page 28) Amend statute to clearly authorize the board's current practice to conduct fingerprint-based criminal background checks of acupuncture and surgical assistant applicants.
- Rec. 2.9** (Page 28) 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.
- Rec. 2.10** (Page 28) Remove the requirement that the Medical Board's formal complaints filed with the State Office of Administrative Hearings (SOAH) be sworn to.

Issue 4

The Current Process for Authorizing Qualified Physicians to Practice in Texas Does Not Maximize Mobility Within the Profession. (Page 35)

Change in Statute

- Rec. 4.1** (Page 38) Adopt the Interstate Medical Licensure Compact.

Senator Buckingham Proposed Modification

Revise Recommendation 4.1 to require the Texas Medical Board to adopt an expedited licensing process for qualified out-of-state physicians in lieu of joining the Interstate Medical Licensure Compact. As part of this modification and as a management action, the Texas Medical Board is directed to review its current licensing practices for out-of-state physicians and identify any necessary changes to statute or rules that are required to implement a new expedited process. The Board should report on the results of this review to the Sunset Commission by no later than December 10, 2018.

Senator Hall Proposed Modification

Replace Recommendation 4.1, to adopt the Interstate Medical Licensure Compact, with a recommendation to authorize the Texas Medical Board to adopt rules for an expedited licensing process for physicians who are licensed in another state with comparable requirements to those of Texas and who are seeking a Texas medical license.

Issue 5

An Undefined Structure and Few Funding Sources Limit the Texas Physician Health Program’s Success. (Page 41)

Change in Statute

- Rec. 5.1 (Page 43)** Require the Texas Medical Board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.

- Rec. 5.2 (Page 43)** Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

Issue 6

The State Has a Continuing Need to Regulate the Practice of Medicine and the Other Allied Health Professions at the Texas Medical Board. (Page 45)

Change in Statute

- Rec. 6.1 (Page 49)** Continue the Texas Medical Board for 12 years.

- Rec. 6.2 (Page 49)** Apply the 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.

New Issues Previously Adopted by Sunset Commission

New Issue 1 – 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.

New Issue 2 – 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.

New Issue 3 – 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.

New Issue 4 – 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.

Proposed New Recommendations

Senator Buckingham Proposed New Recommendation 1

Allow the Texas Medical Board to remove certain actions that resulted in a remedial plan from a physician’s public profile after a period of five years, provided these actions were not related to the delivery of care or in cases where two or more remedial plans have been issued for the same violations, including those not related to the delivery of healthcare. (Management action – nonstatutory)

Senator Hall Proposed New Recommendation 2

Require the Medical Board, in its annual update of a physician’s profile on the board’s website, to remove from the profile any record of a formal complaint if the complaint was dismissed as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or no action was taken against the physician’s license. Also require the board, in the annual update of a physician’s profile, to remove any record of the investigation of medical malpractice claims or complaints if no action was taken against the physician’s license.

Senator Hall Proposed New Recommendation 3

For a site visit the Texas Medical Board makes as part of an investigation or inspection, require the Medical Board to establish practices that preclude the use of DEA personnel, or any peace officer whose primary assignment is drug enforcement, as security personnel. (Management action – nonstatutory)

Senator Hall Proposed New Recommendation 4

Allow for physician appeals to district court to be by trial de novo rather than substantial evidence review.

Senator Watson Proposed New Recommendation 5

Direct Sunset staff to evaluate each board under review during the 2018–2019 review cycle to determine whether each board is potentially “controlled” by active market participants, using FTC guidance and opinions, and make any recommendations based on FTC guidance to mitigate the potential liability of boards “controlled” by active market participants. Direct Sunset staff to submit a report with recommendations based on their analysis to the Sunset Commission by November 8, 2018, for consideration by the Commission at its January 9, 2019, hearing. Any motions to adopt or modify the Sunset staff recommendations resulting from this special project will be strictly limited to the issue of board composition. (Management action – nonstatutory)

Representative Flynn Proposed New Recommendation 6

Establish an office of the ombudsman to investigate complaints made about the Texas Medical Board. This recommendation would require the ombudsman to ensure Medical Board members and staff follow due process and protections as provided in the Texas and U.S. constitutions, including ensuring the Medical Board provides all information the board is required to provide a licensee who is under investigation or under a board disciplinary order. Under this recommendation, the office of the ombudsman would be required to investigate all complaints about Medical Board members and staff and periodically report to the board and the public on the status and outcomes of these complaint investigations.

Representative Nevárez Proposed New Recommendation 7

Establish an Office of the Ombudsman to investigate complaints concerning improper conduct by Texas Medical Board (TMB) staff or board members, including but not limited to improper conduct during board investigations. Also, require the governor to appoint the ombudsman for a term of four years on a recommendation from the lieutenant governor. The ombudsman would not be authorized to overturn board rulings, only make recommendations on how to improve the process for future investigations and highlight improper behavior. A report from the ombudsman would make recommendations about changes needed through rule making or staff behavior, and this report would be public. The ombudsman would have the authority to censure a board member for up to one year and make recommendations to the executive director about specific board staff, but would not have authority to terminate board staff.

As a management recommendation, the appropriation for the overall budget of the Office of the Ombudsman should be a line item in TMB's appropriation pattern of \$600,000 per year. Under this proposal, the ombudsman would receive an annual salary of \$160,000 and a staff of four — an attorney, two full-time administrative support staff, and a physician. The physician could be a part-time or contract position. The office of the ombudsman would be administratively attached to TMB who would provide services such as accounting, payroll, information technology and other needed ancillary services.

Representative Nevárez Proposed New Recommendation 8

Require notice of a SOAH hearing and all notifications by the Medical Board to physicians to be sent by certified mail.

TEXAS HISTORICAL COMMISSION

Issue 1

The State's Disjointed Approach to Managing Historic Sites Limits Best Use of State Resources. (Page 9)

Management Action

Rec. 1.1 (Page 13) Direct THC to establish a working group with representation from necessary stakeholders to begin to develop a statewide historic sites master plan.

Chairman Birdwell Proposed Modification

Specify that the working group would be composed of the Executive Director or his or her designee from Texas Historical Commission (THC), Texas Parks and Wildlife Department (TPWD), State Preservation Board (SPB), and General Land Office (GLO). Specify the working group needs to meet at least twice before presenting the proposal to the Sunset Commission on December 10, 2018.

Issue 2

The State's Approach to Managing Historic Sites and Associated Collections Is Inefficient and Wasteful. (Page 15)

Change in Statute

Rec. 2.1 (Page 18) Align statutory requirements for the sale of surplus state goods with curatorial collection best practices.

Change in Appropriation

Rec. 2.2 (Page 19) The House Appropriations and Senate Finance Committees should consider adding a rider to the bill pattern of any agency with an officially adopted deaccession policy to retain proceeds from the sale of deaccessioned items.

Management Action

Rec. 2.3 (Page 19) Direct agencies with a curatorial collection and deaccession policy to work with Texas Facilities Commission (TFC) to sell unneeded collections items.

Rec. 2.4 (Page 19) Direct THC and TPWD to work with TFC to explore options for a joint curatorial facility to serve the needs of the state’s historic site collections.

Chairman Birdwell Proposed Modification

Direct THC and TPWD to consult with the SPB, GLO, and TSLAC to identify and consider each agency’s additional storage needs when exploring long-term solutions for a joint curatorial facility to serve the state's needs.

Rec. 2.5 (Page 20) Direct THC and TPWD to develop an MOU to limit duplication in management of historic sites related to curatorial storage facilities, procurement and contracting, and preservation and interpretation.

Issue 3

The Texas Historical Commission Lacks Sufficient Oversight of Its Heritage Trails Nonprofits to Ensure Effective Use of State Funds. (Page 21)

Change in Statute

Rec. 3.1 (Page 24) Clearly establish the Heritage Trails program in statute and require THC to adopt rules regarding the program.

Management Action

Rec 3.2 (Page 24) Direct THC to work with the attorney general’s office on a single, performance based contract and to provide stronger contract oversight.

Rec. 3.3 (Page 24) Direct THC to include the use of the Heritage Trails program and nonprofits in its long-term planning.

Issue 4

The State Has a Continuing Need for the Texas Historical Commission. (Page 27)

Change in Statute

Rec. 4.1 (Page 31) Continue the Texas Historical Commission for 12 years.

Rec 4.2 (Page 31) Update the standard across-the-board requirement related to commission member training.

Proposed New Recommendations

Vice Chairman Paddie Proposed New Recommendation 1

Transfer the remaining historical sites from Texas Parks and Wildlife Department to Texas Historical Commission.

Mrs. Pataki Proposed New Recommendation 2

Direct the Historical Commission to adopt rules providing for a process for stakeholders to challenge the accuracy of existing THC historical markers. The process should include a role for the county historical commission in the county where the marker is located. In addition to using in-house expertise, the Historical Commission should seek input from professional historians to provide additional perspectives. (Management action – nonstatutory)