

# SUNSET ADVISORY COMMISSION

## STAFF REPORT

### AGENCY RESPONSE

*Texas Board of Chiropractic Examiners*

October 21, 2016



# ISSUE 1

## *SLOW COMPLAINT RESOLUTION AND MISPLACED FOCUS ON LOW-RISK ENFORCEMENT ACTIVITIES COULD PRESENT RISKS TO PATIENT SAFETY.*

*The agency agrees with the recommendations 1.1.through 1.6.*

1.1: Effective October 10, 2016, the board directed the TBCE investigators to use a case management activity report to track high level activities, timeframes and outcomes. The report will help to determine best practices, procedure updates and will identify training opportunities for the investigators.

1.2, 1.3, and 1.4: The agency convened a stakeholder meeting on October 19, 2016 to discuss several Sunset Staff Report recommendations. Two topics discussed were board rules, "Grossly Unprofessional Conduct" and the Maximum Sanctions Matrix. Based on the meeting, two rules which address the Sunset recommendations will be presented to the Rules Committee and full board, followed by posting for formal comments. These recommendations and final rule proposals will ensure that investigators focus on high priority cases involving patient safety and will better categorize the violations by their severity and risk level to the public.

1.5: Effective October 1, 2016, the agency does not submit a copy of the complaint to the licensee or facility respondent being complained against. The name of the complainant but may be disclosed in the event billing or treatment records are requested; however, the opened complaint is a confidential investigation file and is not subject to open records.

1.6: Effective October 10, 2016, the agency updated its complaint form to a fillable PDF format that can be completed online and submitted by email directly from the TBCE website. The interactive form can also be printed and faxed or mailed. The online Complain Guide Instructions further encourage complainants to email their complaint forms.

# ISSUE 2

## *CHIROPRACTIC FACILITY REGISTRATION IS UNNECESSARY TO PROTECT THE PUBLIC.*

*The agency agrees with the recommendation to discontinue the registration of chiropractic facilities.*

2.1: The agency has begun analysis of the current facility registrants who are non-Doctors of Chiropractic.

This legislation will effect non-DC facility owners and their current business model of hiring chiropractors as employees. Certain important responsibilities will be shifted to the DC, such as ensuring sound and ethical billing practices and maintaining safe sanitary equipment and conditions of the facility. There is uncertainty of how inspection of non-DC owned chiropractic facilities will be handled to ensure these standards are maintained.

To assist in the transition of this change, the board will need to develop an outreach program to educate the DC's regarding these responsibilities, which had largely been handled by the facility owner. A chiropractic business seminar could be made available as CE credit.

The agency will convene a stakeholder meeting in December 2016, to further discuss this recommendation.

# Issue 3

## *THE BOARD LACKS FORMAL MECHANISMS TO ENSURE CHIROPRACTIC EXPERTISE IN ITS ENFORCEMENT PROCESS.*

*The Board agrees with the recommendations to repeal local and executive peer review requirements from statute and to develop an expert review process to ensure chiropractic expertise in its enforcement process.*

3.1: The Board agrees with this statutory requirement.

3.2: In February 2016, the agency began to identify individuals who could serve as experts for quality of care, scope of practice and fraud complaints. As a result, four DC's and two Billing/Coding specialists were contracted to assist the staff in the investigations of these and other cases.

The agency will model the peer review process after the TMB and DWC, which entities utilize a formal process to identify and perform quality peer reviews of cases for possible enforcement actions. This rule proposal, planned for November 2016, will enable the board staff to clearly identify cases that would require peer review. The board staff will seek stakeholder input on the expert review process with an implementation date of March 1, 2017.

# Issue 4

## *KEY ELEMENTS OF THE BOARD'S LICENSING AND REGULATORY FUNCTIONS DO NOT CONFORM TO COMMON LICENSING STANDARDS.*

*The Board agrees with the recommendations to fingerprint all licensee's, to remove unnecessary provisions and to run a CIN-BAD check on all new applicants and licensees at the time of renewal.*

4.1: The Board has the authority to require fingerprints from all licensees. The agency staff will propose an implementation plan to present to the board for approval at the November 2016 board meeting.

4.2: The Board agrees to this statutory requirement.

4.3: Effective November 1, 2016, the agency will check CIN-BAD (Chiropractic Information Network/Board Action Database) for all new applicants and licensees at the time of renewal to run a cross-jurisdictional database of Board actions and Medicare sanctions.

4.4: The Board agrees to this statutory requirement.

4.5: The Board agrees to this statutory requirement.

4.6: The Board agrees to this statutory requirement.

4.7: Effective October 18, 2016, the Board has removed the requirement for a new licensee to provide three letters of character recommendation.

4.8: Effective January of 2017, continuing education credits will be audited by random selection. The Board will seek stakeholder guidance on how best to implement this recommendation.

# ISSUE 5

*TEXAS SHOULD CONTINUE REGULATING CHIROPRACTORS, BUT DECISIONS ON THE STRUCTURE OF THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS AWAIT FURTHER REVIEW.*

*The Board agrees with the recommendations to continue the regulation of chiropractors and to update the board member training.*

5.1: The Board agrees to this statutory requirement.

5.2: The Board agrees to this statutory requirement.