



APR 11 2018

## Texas Physician Health Program

Executive Medical Director: David H. Karney, M.D., M.P.H

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April 9, 2018

Ken Levine, Director  
Sunset Advisory Commission  
Robert E. Johnson Bldg.  
1501 N. Congress, 6th Floor  
Austin, Texas 78701

Dear Mr. Levine:

We are writing to you in response to the comments and recommendations contained in the Sunset Staff Report on the Texas Medical Board. This letter specifically addresses Issue 5, related to the Texas Physician Health Program ("TXPHP"). This response is presented under the same section headings as those used in the Commission's report.

### Background

#### Participant Population; Headcount; and Budget Matters

Performance data included in the Commission's Report is current only through September 2016, over eighteen months ago. This is particularly important for context because it ignores the dramatic impact on the operations of the TXPHP by the passage of SB 202. This legislation transferred six new professions to the TXPHP, with the effect that even more severe strains have been placed on its current financial resources, its current staffing limits, and its present organizational structure.

At roughly the same time SB202 became effective, the then-Executive Medical Director of the TXPHP resigned to accept a higher-paying job within the State administration. The position remained open for over three months due to the delay resulting from the State hiring freeze and having to obtain a Governor's waiver to replace the Executive Medical Director<sup>1</sup>. Despite three members of the Governing Board of the TXPHP (including its Presiding Officer) acting together as an interim Medical Director on a voluntary (and necessarily part-time basis due to their own clinical duties), it was impossible to effectively interview the then-normal referral load of participants. But in addition, at this time, total referral numbers increased by approximately 50% as a result of the *en masse* referrals from TMB of new SB 202 licensees<sup>2</sup>.

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<sup>1</sup> Hiring, retaining, and providing a useful transition period for an effective leader in this position is made difficult in part because of (a) the prescribed salary level for the position, (b) the inability to post the position until the incumbent actually departs, thus precluding any advantage resulting from a notice period, and (c) the essential qualifications necessary to address the job.

<sup>2</sup> Referrals from TMB are at times difficult to process due to a lack of contact information. If TMB were able to provide full and accurate contact information and complete criminal history, if any, for each potential participant, it would greatly obviate the necessity of returning the referral to TMB without evaluation. Currently, if staff are unable to contact a potential participant, the referral must be returned to TMB due to inability to communicate with the individual.

#### \*GOVERNING BOARD\*

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Although the program was then operating at or near capacity based upon a minimum effective staffing ratio (1 staff person for every 80-100 participants), it nevertheless received no additional funding or staffing increases to address these dramatically increased referral demands.

The following table illustrates the difficulty faced by the TXPHP and its staff as they have strived to keep current in the face of these increased demands on resources and available administrative support.

Updated Texas Physician Health Program Participants and Pending Referrals

| <u>Profession</u>                   | <u>Participants</u> | <u>Unprocessed Referrals</u> |
|-------------------------------------|---------------------|------------------------------|
| Physician                           | 275                 | 38                           |
| Physician-in-Training(Resident)     | 39                  | 2                            |
| Physician Assistant                 | 31                  | 8                            |
| Medical Radiologic Technologist     | 15                  | 78                           |
| Medical Student                     | 3                   | 0                            |
| Respiratory Care Practitioner       | 15                  | 44                           |
| Acupuncturist                       | 1                   | 0                            |
| Surgical Assistant                  | 2                   | 0                            |
| Non certified Radiologic Technician | 3                   | 16                           |
| Total                               | 384                 | 186                          |
|                                     | *current totals*    | *as of 02/09/18*             |
|                                     |                     | (122 from SB202)             |

Findings

TXPHP concurs in the Findings expressed in the Commission's Report and is committed to working with TMB to define a working relationship that satisfies the mission of TXPHP as expressed in its enabling legislation, provides the necessary assistance to TXPHP in the form of both administrative and financial support, and provides the necessary support to TMB of returning to practice potentially impaired physicians and other professionals for which TMB is responsible.

Productivity has been constrained by the demands created by SB202. The increased workload on each of TXPHP's investigators due to the rapid influx of referrals has contributed to four staff departures since March 2017. The part time general counsel is the most recent of these, effective March 31, 2018. Additionally, TMB has continued to keep one staff vacancy frozen at TXPHP,

which limits the number of participants that the program can serve. Moreover, we believe that the stresses of this workload have contributed to high turnover at the position of Executive Medical Director. In addition, this position is hampered by the low salary given a physician who is familiar with the mental and physical health of patients and possesses a strong knowledge of addiction treatment.

The program continues to be unable to generate sufficient revenue to cover its costs through the statutorily set fee of \$1,200 maximum per participant. That amount is much lower than comparable PHPs. Unfortunately, many SB 202 participants, being generally compensated at lower levels than TXPHP's physician participant population, have chosen to leave shortly after enrolling or not participate in the program at all. They return to TMB due to an inability to afford not only program fees but also charges incurred to meet their monitoring requirements (i.e., drug testing, treatment visits, etc.).

### **Recommendations**

#### **Recommendation 5.1 – Require development of Memorandum of Understanding between TXPHP and TMB.**

Shortly after receiving the Commission's recommendation in its 2016 Report that a Memorandum of Understanding ("MOU") be developed between the TXPHP and the TMB, the Governing Board of TXPHP directed its General Counsel to draft a proposed MOU for the Board's review. A proposed draft of the MOU was circulated for comment in January 20, 2017. Thereafter, the General Counsel prepared a second draft on an MOU, taking into account the comments made by the reviewers.

The proposed draft of the MOU was presented to the Governing Board for approval at its meeting of October 27, 2017, and submitted to TMB for comment in mid-December, 2017. As of this date, TXPHP has not received any comments from TMB on the proposed draft.

TXPHP agrees that an effective MOU clearly defining the roles and obligations of both TXPHP and TMB is essential to the effective and successful operation of the TXPHP. TXPHP is committed to working with TMB to finalize and implement a workable, functional MOU to meet the objectives of its enabling legislation.

#### **Recommendation 5.2 – Authorize TXPHP to accept gifts, grants, and donations.**

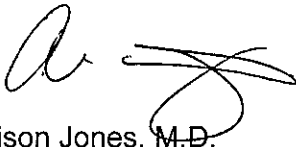
Additional funding in the form of gifts, grants, and donations would be welcome; and if received in sufficient volume would certainly enable TXPHP to decrease the budget gap presently being funded by TMB.

However, TXPHP does not presently have sufficient staff to meet the demands of its central mission. To truly be effective, a program aimed at soliciting gifts, grants, and donations, must be the product of a well thought out, well organized strategy. It must consist of the correct sort of appeal to an appropriate group of donors and agencies, and such an appeal may well be different from group to group. In short, to implement Recommendation 5.2 would also require an increase in headcount and related payroll expense to employ an experienced Development Officer to manage and pursue such a program.

**Conclusion**

TXPHP has a very dedicated board who are committed to both the people of Texas and the physicians who treat them. Whenever possible, the board, most of whom are working physicians, has stepped up repeatedly to assist TXPHP in meeting its objectives. TXPHP has been very successful in aiding the state of Texas with a recognized problem. The program is currently monitoring over 400 participants and, since inception, approximately 585 participants have successfully completed it, a large portion of which are practicing physicians in the state of Texas. Implementing the recommendations of the Sunset Commission, with the proper tools, will enable TXPHP to become even more effective in meeting its commitments.

Respectfully submitted,



Alison Jones, M.D.  
Presiding Officer



David H. Karney, M.D., M.P.H.  
Executive Medical Director