



TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

Glynda Corley, LPC-S
Board Chair

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November 15, 2016

To The Honorable Sunset Commission

At lightning speed the LPC Board fate is being determined and we are just now having an opportunity to give our input, which at this point feels like a need to defend and educate the Sunset Committee about our license. And, we have not had an opportunity to inject information into this process until the ninth hour.

We are insulted, offended and deeply grieved by the lack of factual reporting of the Sunset Report to the Sunset Commission. We are delighted and thankful and relieved to expose the truth.

Issue 1***The boards have had no control over the enforcement process or number of outstanding cases. DSHS hires staff including attorneys; investigators and management that makes the decisions on how to investigate and regulate the complaint process. Because of DSHS mismanaging appropriations given by the legislature the appropriate number of staff needed to perform routine functions the complaint process could not be handled adequately. This is no fault of the boards but of DSHS. TDLR staff has no knowledge of the mental health field and is not the appropriate department to regulate the mental health boards. They should be grouped with the psychology board in a mental health agency.

Issue 2***The LPC board executive director had authority to close complaints that were non-jurisdictional or no clear rule violation 681.161(f). Shamefully and wrongly, making it public, the Sunset Report failed to read the LPC rules. 681.161(f) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director may dismiss the complaint and give written notice of dismissal to the licensee or person against who the complaint has been filed the complainant, and the complaints committee. The other boards have not had that authority due to not being able to keep an executive director for more than a few years at a time. The LPC board had an executive director with 16 years of experience working with the board. Since 2001 there has been no board member involved in the investigation of complaints. The board has the authority to request further investigation of a complaint by the investigator if more violations are found during the initial investigation.

Some of the staff at TDLR are past employees of DSHS and are the ones who caused the backlog of complaints due to their inability to manage properly. Abolishing the boards complaints or ethics

committees would only cause more harm to the public. Non-professional staff would be recommending actions on issues they have no knowledge of which would in turn harm the public.

DSHS has a method of prioritizing the complaints but it was put in place by DSHS and the board had no input. Many times the boards would inquire about the process of prioritizing complaints but DSHS would only report what they wanted the boards to know, not how it was actually carried out

Concerning the issue of the backlog of the 850 enforcement cases for all the boards, there is NO need to look further than the funding issue. Before we suggest a possible solution, please look at the structure. There were only a handful of investigators to investigate complaints for 23 boards. This caused a major backlog for the mental health boards. In short, this was created due to a lack of funding to DSHS to hire an adequate number of investigators. We believe a solution to this dilemma is to allow the mental health boards the same privileges as the psychology board. DSHS designed the mental health boards not to go to informals first. We were never informed that going to informals first was a option. Given that opportunity of being with HHSC and staying an independent regulatory board will allow the backlog to go away. Going to informals first would take away the need for investigators to be present. Therefore, no wasted resources.

Issue 3***News flash the BOARD does not change statutory authority. The legislature does. The writers of the Sunset report must have that confused. We have highly structured and stringent supervision guidelines because we prepare interns to enter into a career that deals with life and death decisions.

It makes sense to put the mental health boards together under one umbrella – HHSC- a professional licensing agency. The Licensed Professional Counselor License is not an occupational license it is a professional license, which is a major problem with LPC being grouped under an agency like TDLR that only has experience with the occupational license. FOR PUBLIC SAFETY it is extremely important the LPC Board remain structured as an Independent Board and not be reduced to an Advisory Committee.

The middle name of our license is “Licensed PROFESSIONAL Counselor”. Please do not take our profession and turn it into an occupation.

Glynda Corley, MA, LPC-S
Board Chair
Texas State Board of Examiners of
Professional Counselors

Steve Christopherson, MS, LPC, NCC
Vice Chair
Texas State Board of Examiners of
Professional Counselors

From: Glynda Corley gcorley@abcglobal.net
Subject: LPC Sunset
Date: October 10, 2016 at 4:13 PM
To: Glynda Corley gcorley3000@gmail.com
Cc: Glynda Corley gcorley3000@gmail.com

Sunset

Interesting: NOT one remark about a group of Gubernatorial appointed volunteers caring about the safety of the public in the State of Texas. Hundreds of hours of CARING about public safety by taking time away from family, work, using vacation time to attend Board meetings and not to mention the countless hours of reading, studying committee reports and attending functions for stakeholders and Universities Counseling Programs representing the Board at our expense.

The Texas Legislature has seen fit to obviously not fund DSHS well enough, so this only affords the mental health boards to have one staff person, an Executive Director to be over 22,000 LPC's and Interns. The community model of DSHS staff infrastructure to help carry out the boards' functions was created by DSHS and has NOT worked. The E.D. has no authority over staff, with this model, which has presented many major problems. Had the structure of the division been different and the E.D. had their own staff, I believe, these serious problems would not have occurred. Again, lack of adequate funding from the Legislature and poor management from DSHS.

The reason for a Board Attorney is to help guide and let the Rules Committee know the Statutes and laws when going through Rule Revisions. We need them doing their job. But, our Board get criticized. The two rules mentioned were corrected immediately and ARE NOT in our rules.

Rule 881.161 F did delegate authority to staff (E.D.) to dismiss baseless and non jurisdictional complaints.

As far as our Board protecting the public and enforcing the rules, we do care about the public being injured and IF Sunset review sees due process endangered or if the investigators expose confidentiality then we need our board attorney helping.

And, yes when appropriate we exercise using a "nondisciplinary advisory letter" (which is a help to the licensee) rather than a reprimand, which would stay on the LPC web site by the licensee's name for seven years. Occasionally the licensee with a master or doctorate degree will turn in a paper not equivalent to these degrees and they will not be accepted. Also, when plagiarizing occurs the paper will not be accepted and will need to be redone.

Most of the time Universities bring students from their Counseling Programs to a Complaints or Applications/Supervision Committee Meeting to have a better understanding of rules and supervision. This would be the only reason to explain a ruling whether from the board or our board attorney.

Our Board has never raised Licensee fees to my knowledge. Going to the State Web Sites, Oklahoma's yearly fees are \$80.00 annually, New Mexico's is \$150.00 annually and Louisiana's is \$170.00 for LPC and for their BA_LPC it is \$50.00. When attending NBCC's annual conference with other States Board Chairs and Executive Directors we are told our fees seem unprofessional. As far as I know we have the lowest fees of any State.

I am told we have mostly a small number of CACREP applications. Also, any out of State CACREP applications will have to be checked, due to the fact they may not meet Texas requirements.

I do agree and welcome some healthy and helpful changes. I DO NOT agree with a change to abolish the independent boards' into an advisory committees any more than I would think a medical or psychology board should be abolished into an advisory committee. I do understand there would be no reimbursement or authority given for a volunteer on an advisory committee. I fully support the mental health board NEED to continue to be an independent board with their own staff and with a different agency. It's horrifying, heart breaking and embarrassing to us as Board Members to get stacks of old complaints and applications, from DSHS, to have to handle in committee meetings. THIS has nothing to do with the good and hard work the Board Members are doing as volunteers.

I DO NOT AGREE WITH A MOVE TO TDLR. HHSC is a more logical home for the mental health boards.

Please know the dedicated work that has been served by the LPC Board in keeping the public safe in our great State. Please do not only consider the criticizing and condemning. Mental health boards should have the same opportunity as other independent boards who are appropriately funded and are with a well managed agency.

Thank you for your time and consideration.


Glynda Corley, MA, LPC-S
Texas State Board of Examiners of Professional Counselors Board Chair

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DeLuna,Cristina (DSHS)

From: Steve Christopherson <schristopherson123@me.com>
Sent: Thursday, November 10, 2016 12:25 PM
To: DeLuna,Cristina (DSHS)

11/10/2016

To Whom It May Concern;

The Sunset Review for the mental health boards is highly disturbing due to being full of half truths, skewed perspective and in even one case on page 10, encouraging the mental health boards to break the law. It is the very law we were instructed to place in our rules with restrictions about child custody evaluations. I'm concerned this report is more about their own agenda rather than protecting public safety. Even the 10 year rule is misrepresented in this review. People can still have a license but if they haven't practiced in 10 years, the Board would like to offer some suggestions to make sure they are ready and able to help the public. Once again, for PUBLIC SAFETY which is a recurring theme that this report fails to adequately address. It is obvious the Boards have more concern about public safety than those who wrote this report. I'm offended by its lack of proper reporting and investigation. I am also offended that there was no mention of just how much good comes from the VOLUNTEERS that serve on these Boards. We have performed how we were instructed to perform and never given the option of having informals in place of full open complaints meetings. We were told after the fact about certain statutes that would prevent a rules acceptance and upon learning of those statutes immediately withdrew rules from further attention. So yes, there is another side to this review. It's called the truth. I will be happy to address anyone in person so they can hear just how well our Boards work to protect public safety and follow directives given. We are always open to ideas that allow us better ways to do the job we were "appointed" to do. If you want to do away with the Boards to save a little money, in the long run, then say so. Attack the work we have done to do so is such a poor approach. Please understand, I am very proud of the work we have done to serve the people of Texas and our Governor.

Steve Christopherson, MS, LPC, NCC

Vice Chair

Texas State Board of Examiners of Professional Counselors

Sent from my iPad

November 9, 2016

Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Christopher S. Taylor, Ph.D. LPC-S
Professional Board Member, TSBEPC
11300 North Central Expressway
Suite 610
Dallas, Texas 75243

Re: Comments regarding Sunset Advisory Commission report for Marriage and Family Therapists, Professional Counselors, and Social Work Boards, November 2016.

Esteemed Commission Members:

First and foremost, I would like to thank the Sunset Advisory Commission on the development of this detailed and in depth report regarding the Marriage and Family Therapists, Professional Counselors, and Social Work Boards. As this report was divided into three core issues my comments will be divvied as such. However, I would be remiss if I did not begin my response by noting the dramatic and over the top language and tone of this report which clearly reads as a one-sided attack on licensing boards and an attack on professional and public oversight.

Issue 1: Transfer to TDLR and an Advisory Committee

The move to the Texas Department of Licensing and Regulation would be by far the worst possible restructuring of the behavioral health boards possible for the state. Advisory boards have absolutely no authority to assist in the development, advancement, and security of the mental health professions. Removing the boards authority to govern its own profession will only serve to increase harm to Texans. The administrators at TDLR have little to no advanced education into the inner workings of psychotherapy, professional counseling, or social work. They have no qualifications to judge clinicians on their ability to serve the population and the state. While it is true that the response times to complaints and licensure has grown to an unmanageable rate it is unfair to place the responsibility on the boards as they lack the authority to hire administrative staff and investigators. The same resources this report suggests be given to TDLR will allow the independent boards to function

efficiently and effectively when housed in HHSC. These boards do not prevent streamlining.

The delays discussed in Issue 1 do not stem from the boards but rather from the bureaucracy and financial restraints place on DSHS. I fully agree that the process of having the independent boards administratively attached to DSHS is not working. Again, this is not due to the board's inability to govern but rather the department's restraints in regards to funding and staffing. A prime example of the fundamental misunderstanding inherent in this report can be found in Issue 1:

"In two instances the board proposed exempting professional board members from continuing education based on their board service, which would have provided professional members with an economic benefit for service."

First, I would like to know to which instances the commission is referring and why that material was not provided with the report? Additionally, board members like my self, give up a great deal of economic stability by taking time out of our service to our clients and our communities by transporting ourselves to Austin, amongst other cities, for board meetings in service to the state. As a board member I have no interest in receiving any kind of compensation or credit for my service to the state even though I voluntarily give up eight to 12 working days a year in my private practice. The idea that I would develop such a rule or vote for one serves as an example as to how misinformed this report is in regard to these issues. Further, I have spent countless hours in the past year developing continuing education programs for free in my regional area to aid in the continued professional development of my community for the advancement of public safety. The fact that I would do this for economic advancement is a far cry from the truth.

One of the several accounts of contradiction mentioned in this report is the attempt of the professional counseling board to raise professional fees for the sole purpose of making our fees "comparable to other behavioral health occupations." Currently, the professional counseling license fee is set a modest fee of \$106 per every two years. A meager \$53 per year for a professional license is completely affordable, provides no barriers to entry, and would fully fund the board's along with the department's needs should the board be allowed to keep more than 41% of the collected fee. As this report well stated the professional counseling fees collected in fiscal year 2015 totaled \$1,492,076, just short of 1.5 million dollars. However, the board was only funded by \$612,801 while the remaining \$879,275 was deposited into general revenue for the state. The argument made within this report is that licensing fees will need to be increased to support the new staff and startup cost for TDLR. On one hand the board is reprimanded for attempting to raise licensing fees to cover additional costs for staff yet on the other hand this report states additional fees will be required to cover the cost of additional staff at TDLR. Which recommendation does this report intend to make clear? Should we raise fees or should we not raise fees? Additionally, one of the recommendations raised in Issue 3 of this report is to remove the statutory limitations restricting the board's authority

to lower fees. Again, I ask, does the report intend to recommend that the boards be disciplined for attempt to raise fees, or that TDLR be given authority to raise fees, or that the fees be lowered? Further, should we lower professional fees how will this affect the board's already limited budget?

Issue 2: The Boards' Dysfunction

To begin this response I must again return to my original argument which is that the board is not dysfunctional and that the "waste [of] investigative resources" stems from the departments best efforts to use the few investigators they have available to service all three boards. It is true that these investigators are highly taxed and often unable to keep up with the expanding demand placed on them. However, this is not an issue the boards are able to resolve, as we do not have the ability to determine our own funding or hire additional staff when necessary. The complaints and application processes could be streamlined to aid in efficiency that we hope will be a by-product of the transfer to HHSC, increased staff, along with increased funding.

Board members do not engage in the investigation process. Rather, our skill sets as clinicians and members of the professional community are enlisted to review complaints and the information gathered by investigators. Board members may request more information when necessary, however, the board is not an investigative body and does not attempt to act as one. Additionally, it should be made clear that the boards did not create the complaint committee hearing process. The complaints process was established by the department and DSHS attorneys have advised the board to follow these pre-developed procedures. The board has no attachment to the complaints process and remains open to developing a more efficient procedure. However, removing the boards for the complaints process will only serve to endanger the public.

Another major issue this report offers as a contradictory recommendation is in regards to sanctioning and informal settlement conferences. Part of the move to TDLR will require the complete removal of the board's participation in the complaints process. Instead of utilizing the expertise of experienced mental health professionals the report recommends the use of a sanction matrix. While at first glance the use of this sort of matrix may seem to streamline the complaints process the report contradicts itself when it states that sanctions are regularly reduced when taken to an informal settlement conference. The primary recommendation of this report is the adoption of an informal proceeding, much like the informal settlement conference. By this report's own admissions this process often results in "deals" which radically reduce the original response. If TDLR is to generate a response matrix it seems the informal conference proceeding will be developed to help reduce the response, which will result in an increased potential harm to the public. Again, in one breath this report repudiates the boards while in another breath saying TDLR will act in a similar way just without professional and public oversight. While a penalty matrix may be positive step forward professional and

public judgment must be apart of its development and implementation as these cases affect people, members of the public, and not numbers on a page.

Issue 3: Rules and Policies

What I find most egregious in this report can be found in Issue 3 in the *Time Limits* section. The idea that candidates with degrees older than 10 years of age should be allowed to enter the profession without being vetted demonstrates a clear lack of concern for public protection. The fact that an individual can pass the national counseling exam is simply not enough to demonstrate their ability to keep up with the rapidly changing field of mental health and fails to ensure public safety. Every day new studies are published and new research unearthed advancing the field of psychotherapy. This new knowledge is instrumental in the advancement of our field and our service to the public. The idea that this report does not view this to be a topic of concern, a topic the board should review before handing out a license, demonstrates a fundamental misunderstanding of how complex and intricate the field of mental health care truly is. If this is to be the position of TDLR, as well, the counseling field will quickly be filled with individuals who have a 15 year old Human Resources degree calling themselves professional counselors. The public will have no way of knowing and will be found subject to outdated techniques and misguided theory.

Again, this report's evaluation of supervision as "disproportionate" and "cumbersome" highlights the grave misperception and the depth of misunderstanding. Without the internship process and without the minimum requirements for supervision we will have thousands of counselors with little to no practical skills and a public that would be at an ever-expanding risk to harm. While it is true that these processes can be streamlined without endangering the public it seems this report has a fundamental misunderstanding of why these processes are so complex, which is to ensure public safety. Moving the board to TDLR with advisory status will only serve to fan the flames of public endearment in regards to academic requirements, practical skills, experience and supervision for the therapist.

Further, the idea that providing continuing education to individuals that attend board meetings primarily benefits licenses that must attend said meetings for "business" reasons is a sad misunderstanding of why these credits are made available. They are provided to only individuals that attend the board meetings voluntarily, not those that are required to attend. This is an incentive for those individuals that want to be more proactive in learning about the profession.

Conclusion

In summation, I find this report to be one sided and lacking in the necessary documents to support many of the conclusions reached. I, personally, spent well over an hour with Sunset staff and found none of my comments in the report. I am

disparaged by the lack of time I was given to craft a proper well thought-out response to this report and the unnecessary bourdon placed on me to attend an exit interview of which I knew very little about. Had I been given ample time I would have gladly prepared a point-by-point response for the exit interview. This report is more of an attack on licensing boards than it is an investigation into public safety. Should the boards be restructured to TDLR as advisory commissions the public will be left to suffer the most harm. The move to HHSC, along with increased funding, staff, and investigators will provide the boards with the necessary means to increase efficiency while ensure that public safety remains the highest regard. In short, the proposed move to the Health and Human Services Commission and for the continued use of the board as independent bodies remains the best option to ensure public safety and the board's ability to govern its own behavioral health profession.

Again, I thank the Sunset Advisory Commission for their time and consideration in this report and in accepting my comments. I only regret that I was not given more time to prepare a response more deserving of the public.

Respectfully,



Christopher S. Taylor, Ph.D. LPC-S
Professional Board Member
Texas State Board of Examiners of Professional Counselors

c: Christina DeLuna, Executive Director
Texas State Board of Examiners of Professional Counselors

To Whom It May Concern:

I have reviewed the Sunset Draft Report and have found that while many of the suggestions are beneficial, the overall recommendation to move the Texas State Board of Examiners of Professional Counselors to an advisory board is misguided and does not protect the public. I would like to touch on just a few points made in the report.

The Board is made up of nine Members, five of which are in the counseling field. The Professional Counselors that sit on the Complaints Committee use their professional expertise when examining each case to implement the appropriate sanctions against the licensee. Their input is immeasurable. The client's behavioral health disorder is often a serious underlying factor in the case, which the professional Board Members have intricate knowledge of and take into serious consideration. Alternatively, staff members from an advisory board would not have this knowledge, which would be detrimental to the outcome of the case. The objectivity that it is believed would come from an all-public membership advisory board is already in place with the public members that sit on the Complaints Committee.

The Complaints Committee always issues sanctions within the guidelines set forth in the Texas Statutes. While a "penalty matrix" may be a good idea, and something to consider in the future, to call the Complaints Committee's resolution process "widely variable" is not true. Each member of the Committee spends countless hours reviewing the investigatory reports, which are highly fact driven, and carefully consider the specific violation and appropriate sanction to best protect the public under those specific circumstances. The Complaints Committee does not knowingly issue disciplinary sanctions that are not within the realm of the law.

The Sunset Draft Report takes issue with the fact that the Complaints Committee requires a paper as a condition to the sanction rather than requiring continuing education. However, there is no rule that we must require continuing education rather than writing a paper. The paper that is requested is tailored specifically to the licensee's particular violation to better ensure that the licensee understands the violation and will not make the same mistake in the future. Additionally, it saves the licensee the money that would have been spent on a continuing education course. It is a sanction used quite consistently in the meetings, and from the Board's perspective best protects the public. It is also beneficial to the licensee who is educated rather than simply having a reprimand on their record, which remains there for seven years and can negatively impact their practice. If this type of sanction is an issue, the recommendation to establish more concrete guidelines to ensure consistency may be a good idea, but to abolish the complaints meetings all together and create an advisory committee will only be a disservice to the public.

It is disheartening to see the Complaints Meeting described as "public shaming." We sit on this Board to give back to the community and protect the citizens of Texas.

The meetings are always conducted with the upmost professionalism. Many of the cases are very serious and disturbing in nature. We address the gravity of the accusations and our concern for the parties involved and future clients that may walk through the respondent's door. The complainants that are in attendance are always given the opportunity to speak, but they do not have to and that is made very clear. Many complainants are very grateful to have the opportunity to address the Board, despite the personal details, while others just want to listen. Either decision is acceptable. Unfortunately, the subject matter is often stressful to discuss, but that doesn't mean it isn't necessary.

There have been many issues (most notably delayed complaint resolution time frames) with having our board attached to DSHS. However, abolishing our Board is not the answer and does not best serve the state of Texas. Although nothing was noted in the Sunset Draft Report, countless good things have been done by each member of the Texas State Board of Examiners of Professional Counselors, who voluntarily take time out of their lives to give back and protect the citizens of Texas.

Most sincerely,



Lauren Dreszer

From: Bradley, Loretta [mailto:LORETTA.BRADLEY@ttu.edu]

Sent: Thursday, November 10, 2016 3:25 PM

To: DeLuna, Cristina (DSHS) <Cristina.DeLuna@dshs.state.tx.us>; Sarah.Faszholz@dshs.tx.us

Cc: Bradley, Loretta <LORETTA.BRADLEY@ttu.edu>

Subject: Sunset Commission Report

I am a new member of the Texas Board of Examiners of Professional Counselors. Further, I have been a Counselor Educator in Texas for more than 20 years. Additionally, I hold the LPC and LPC-Supervisor credentials/licenses.

My statements below are based on my reading of the Sunset Advisory Commission Staff Report as well as my observations as an LPC-Supervisor and during Board meetings.

First let me say that I appreciate the Commission spending the time and effort to write a thorough report. While there are aspects of the report with which I agree, I do not agree with many of the recommendations.

My comments are listed as follow:

1. I believe that the Boards should remain as autonomous boards. These Boards serve a different group of clients with diverse professional needs.
2. I disagree with the recommendation that the Boards should be placed under TDLR for many reasons, the most salient being:

The Texas Board of Examiners of Professional Counselors works with some of our most fragile and disenfranchised citizens. In contrast, the Texas Department of Licensing and Regulation (TDLR) has no experience in working with these individuals. In addition, TDLR has no experience in regulating health or mental health professions. For me this is a vital issue, and following my review of the report, this issue appears to have been neglected.

3. In my reading of the report, it is my impression that the report failed to address an important issue (perhaps the most important issue), namely that of allocation of resources. My impression is that a very fundamental issue has been omitted. Specifically DSHS has not allocated sufficient resources for the Board to operate. The DSHS staff with whom I have worked are competent, caring workers, however, there are not enough staff for them to do their work. If DSHS had provided the needed financial resources, then I do not believe that the problems cited in the report would have existed.

Loretta J. Bradley, PhD, LPC, LPC-S, NCC

DeLuna,Cristina (DSHS)

From: Brenda Compagnone <compagbusiness@yahoo.com>
Sent: Thursday, November 10, 2016 12:29 PM
To: DeLuna,Cristina (DSHS)
Subject: Re: TSBEPc: Immediate - Review/Response to Sunset Staff Report pr Board Chair Corley

Cristina,

I am concerned with Sunsets recommendations. It makes us sound like the complaints and rules committee did a lousy job. It makes us sound like we are more dictators than board members. I am dumbfounded, upset and not sure what to say. That's all I have to say now.

Very respectfully ,
Brenda Compagnone, M.Ed.LPC-S
Consulenza Familiare, LLC.
President
401 Holland Avenue , apt 125
San Antonio, Texas 78212
(210) 790-0838

On Nov 10, 2016, at 9:08 AM, DeLuna,Cristina (DSHS) <Cristina.DeLuna@dshs.state.tx.us> wrote:

Esteemed Board Members,
This is a reminder that I need all responses by 10:00 a.m. this morning. Please let me know if you have any questions or concerns.

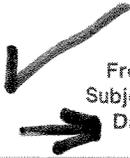
Thanks,
Cristina De Luna
Executive Director, Texas State Board of Examiners of Professional Counselors
Professional Licensing and Certification Unit (PLCU)
Texas Department of State Health Services
Email: cristina.deluna@dshs.state.tx.us
Phone: 512-834-6791
Fax: 512-834-6677

Mail Code 1982, P.O. Box 149347
Austin, Texas 78714-9347

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From: DeLuna,Cristina (DSHS)
Sent: Monday, November 07, 2016 12:39 PM
To: DeLuna,Cristina (DSHS) <Cristina.DeLuna@dshs.state.tx.us>
Subject: TSBEPc: Immediate - Review/Response to Sunset Staff Report pr Board Chair Corley
Importance: High

Esteemed Board Members,



From: Perkins, Kathy (DSHS) Kathy.Perkins@dshs.state.tx.us
Subject: FW: [TACES] Wait time for license when hours are completed
Date: May 16, 2016 at 2:49 PM
To: Jan Friese Jan@TXCA.ORG

Hello Jan,

I appreciated our recent phone call. As I indicated, please don't hesitate to contact me in the future if other issues arise. And, you indicated the same for me. As such, the following email was forwarded to me. A lot of the points you and I discussed are included, but I would like to provide a couple of clarifications/points.

- At no time was the Board without an Executive Director. When Bobbe Alexander retired, Sarah Faszholz was appointed as the interim. While she did have multiple duties, she did a great job and is now helping to orient the new ED.
 - I have approved my staff to continue to work overtime as they are available. Please note that this is not a magic bullet to the delays and creates other issues for us, such as for every hour they work, they earn 1½ hours of overtime to take in the future.
 - I have pulled staff from other parts of the Division to work basically permanently for the next few months; then we will re-evaluate.
 - We have implemented other strategies to address the backlog, but unfortunately, we are currently in the busy time for most of the occupations we regulate: college graduations.
 - In regards to writing notes about callers in their file; we do follow that practice, but only to keep track of communications in case questions come up in the future. It would be my expectation that any such notes would be professional and that my staff not, in any way, denigrate any licensee or applicant in a public meeting.
 - The new DSHS website is targeted to go up in early June. It can't come soon enough.
 - Finally, I would like to emphasize again:
 - DSHS provides the LPC Program with staff, facilities, and infrastructure to accomplish the Board's mission and functions; we do this within the appropriation provided to DSHS for all Health Care Professions.
 - DSHS is responsible for the processing and issuance of licenses, as well as investigating complaints and reporting results to the Board for consideration of action.
 - Any problems with these processes or their associated timelines is the responsibility of DSHS. The Board does not perform these functions and should not be held to account for them.
- 

Again, thanks for the recent call, Kathy

The difference between the Board and the LPC Program at DSHS

- The Board is administratively attached to the Professional Licensing and Certification Unit, Texas Department of State Health Services (DSHS).
- DSHS provides the LPC Program with staff, facilities, and infrastructure to accomplish the Board's mission and functions.
- DSHS is responsible for the processing of applications and the issuance of licenses.
- Any problems with this process or its associated timelines is the responsibility of DSHS. The Board does not perform this function and should not be held to account for it.
- In FY15, the LPC Program generated over \$900,000.00 more than was allocated to run the program.
- All revenue generated by license fees, etc. go directly to the state's General Revenue Fund. These revenues are not allocated back to DSHS to fund the operations of the LPC Program. ✓
- The Board has no control over how much money is allocated to the operation of the LPC Program.

A growing profession:

- Since 2010, the number of new applications for a LPC license in Texas has increased by 200%.
- During that same time, the staffing level of the LPC Program has remained largely static.
- Due to the increase in new applications, the volume of phone calls has increased to the point that staff spend more time answering phone calls than processing applications.

Actions taken by DSHS to address the concerns:

- Staff is coming in on Saturdays when schedules permit to process applications without phone duty.
- Four experienced staff members that were previously employed by the PLCU that have moved on to other positions within the division (due to promotions) have been indefinitely reassigned back to the Unit to assist in processing LPC Intern applications and applications for upgrade to full license.
- The phone availability time has been shortened from 8-5 to 9-4 to give staff two hours per day when they can concentrate solely on processing applications.

Current Challenges:

- The DSHS website was corrupted by a virus in mid-April. Licensee information was not compromised, but the website had to be disabled to avoid spreading the virus. The damage to the site was so severe that it could not be salvaged. A temporary website is in place while a new site is being built. This has been a tremendous inconvenience for the public, licensees, and staff.
- DSHS is in the middle of a legislatively mandated transition of 6 programs to TDLR. TDLR is hiring away staff from DSHS to support the transfer programs.
- The three Boards supported by the Unit are undergoing Sunset Review. This process requires considerable research and presentation time from management staff.

Responsibilities of the Board's Staff

1. DSHS shall provide suitable office space to carry out the provisions of the Act and maintain permanent records.
2. DSHS shall provide administrative, human resources, communications and technology, investigative, clerical, financial, examination, and legal services, structure, and support necessary to operate an effective professional counselor regulatory program.
3. The Executive Director shall carry out all duties assigned in the Act and the board's rules, and coordinate and execute the operations of the regulatory program.
4. The Executive Director shall exercise general supervision over individuals employed in the administration of the Act.
5. The Executive Director may delegate duties, but shall not relinquish responsibility for outcomes.
6. Board staff shall act fairly, nonpartisan, nondiscriminatory, and unbiased in their role operating the regulatory program.
7. Board staff shall conduct themselves in a manner that respects the integrity of the board, its processes, and all participants, including board members, staff, licensees, and the public.
8. Board staff shall be responsible to the board, DSHS, and the public for the overall conduct of the regulatory program's activities and shall exercise its responsibility to explain the board's programs and policies to the public.
9. Board staff shall enforce or carry out the board's rules necessary to administer the Licensed Professional Counselor Act (the Act; Occupations Code, Chapter 503), including rules that establish standards of ethical practice, guidelines for complaint investigations, and procedures for imposing disciplinary action.
10. Board staff shall be knowledgeable of federal and state constitutional provisions, statutes, and regulations directly affecting the program's operation. The staff shall seek advice and recommendations from the board's general counsel as appropriate.
11. Board staff shall provide services without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.
12. Board staff shall not speak or act for the board without proper authorization from the board.
13. Board staff shall handle all correspondence for the board and obtain, assemble, or prepare reports and information that the board may modify or authorize.
14. Board staff shall research, prepare, and recommend to the board rules, policies, plans, and procedures necessary to implement the purposes and objectives of the Act.
15. Board staff shall assemble, review, approve, and maintain materials submitted by applicants for licensure. In some cases, board staff shall request a review by a committee of the board and the committee will make the final decision regarding eligibility of those applicants.
16. The Executive Director shall attend all meetings of the board as a non-voting participant.
17. The Executive Director shall prepare and submit to each board member, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business which have been approved for discussion by the chair.

18. Board staff shall prepare and maintain minutes of the board's proceedings and distribute them to staff, board members, the Legislative Reference Library, the Legislative Budget Board, and the Office of the Governor.

19. The Executive Director shall be responsible for coordinating and implementing the complaint review and investigation process and for presenting verified complaints to the board for disciplinary action. Staff shall also establish and adhere to a schedule for conducting each phase of the complaint process.

20. Board staff shall prepare and provide information to the public regarding the professional counselor regulatory program.

21. The Executive Director shall be the custodian of the records and files of the board.

Approved June 9, 2001 Modified September 22, 2014
Texas State Board of Examiners of Professional Counselors
Austin, Texas

Sec. 503.153. PERSONNEL AND FACILITIES. (a) The department shall provide the basic personnel and facilities required to administer this chapter. The department personnel administering this chapter act as agents of the board.

(b) The department by agreement may secure services that it considers necessary to administer this chapter and may provide for compensation for those services.

(c) The department may employ on a full-time or part-time basis the professional consultants, technical assistants, and employees necessary to administer this chapter

Sec. 503.154. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy making responsibilities of the board and the management responsibilities of the executive director and staff of the department

Sec. 503.201. GENERAL POWERS AND DUTIES. (a) The board shall:

(1) determine the qualifications and fitness of an applicant for a license, license renewal, or provisional license;

(2) examine for, deny, approve, issue, revoke, suspend, suspend on an emergency basis, place on probation, and renew the license of an applicant or license holder under this chapter;

(3) adopt and publish a code of ethics;

(4) by rule adopt a list of authorized counseling methods or practices that a license holder may undertake or perform; and

(5) adopt an official seal.

(b) The board may request and shall receive the assistance of a state educational institution or other state agency.

Sec. 503.203. GENERAL RULEMAKING AUTHORITY. (a) The board shall adopt rules necessary to administer this chapter.

(b) The board shall conduct hearings on the rules adopted under this section.

Sec. 503.256. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

5/23/14

Responses to Questions from Representative Hunter Regarding Regulation of Licensed Professional Counselors (LPC)

The board's self-reported statistics say there are more complaints and they take much longer to resolve than they did 10 years ago. What's the reason for that?

While there is no data that identifies specific reasons for the increased time it takes to resolve complaints, there are many contributing factors that have impacted our ability to resolve complaints over the past 10 years. Most immediate is the fact that there has been an increase in the number of license holders across the 23 programs that are administered by the Professional Licensing & Certification Unit (PLCU); specifically, the professional counselor licensing program has increased by about 4,000 license holders and for fiscal year 2013, reported a total of 20,321 licensees. An increase in the licensed population typically results in greater numbers of complaints. In Fiscal Year 2003, the Texas State Board of Examiners of Professional Counselors received 121 complaints; in Fiscal Year 2013, 242 complaints were received.

✓ Across the 23 programs, PLCU currently receives over 1,000 complaints per year and employs 8 full time investigators to conduct investigations for all 23 of its regulatory programs. Other factors that impact the timeliness of the resolution of complaints is that more complex issues and allegations are being lodged against licensees, which require more thorough and time-consuming investigations. In addition, many respondents (persons against whom the complaint is alleged) may be exercising their right to legal representation and full due process, which postpones case resolution. To undergo all the steps of due process (informal and formal, which includes administrative hearings) in general takes more time than it did 10 years ago.

Are the board's budget and resources sufficient to handle the case load?

✓ The LPC board does not receive its own appropriation, which is the case for all the licensing boards that are administratively attached to DSHS. DSHS receives an appropriation for the health care professionals strategy to administer 24 regulatory programs (the 23 PLCU programs, including LPC, and the EMS program). Over the last ten years, the appropriation has not kept pace with the increase in license holders and workload. In FY 2013, the cost of the LPC program was \$498,774 and the total fees collected was \$1,456,038. The LPC program is assigned 4.34 positions (full time equivalents) that are involved in various aspects of complaint processing. The Professional Licensing & Certification Unit has 8 full-time investigators plus 1 part-time position that conduct complaint investigations for its 23 regulatory programs, including the LPC program.

If not, is this a situation affecting other licensing boards as well?

The other programs are similarly affected.

How is the situation likely to evolve given that Texas is growing, and there will likely be more licensed counselors and thus more complaints to process in the future?

The growth of the state means that numbers of LPCs and complaints will likely increase in the future. PLCU will continue to evaluate its need for resources as the populations of its programs and its workload increase, and request additional staff as appropriate.

2014

5/23/14

recently released a report that includes a recommendation involving the LPC Board (and other boards that are administratively attached to DSHS). The May 2014 Sunset Staff Report on DSHS and the Sunset Licensing/Regulation Model may be accessed at www.sunset.state.tx.us

✓ PLCU believes the complaint process to be effective. PLCU handles complaints for 23 programs as efficiently as possible and continually strives to evaluate its performance and initiate changes to its processes when indicated. PLCU prioritizes complaints and investigations based on the apparent risk to the public posed by the allegation. In FY 2013, the LPC program took 68 enforcement actions, ranging from warning letters to probated suspension to revocation.

In terms of changes that could be made to the statute and/or the board's processes, DSHS defers on those points to the Sunset review process and the Legislature. Any evaluation of the board, its statute, and its processes should necessarily include the board, the license holder population, and consumers of professional counseling services.

5/23/14

The board spokesman suggested that the board doesn't call for an emergency hearing in the case of abuse if the allegedly offending counselor no longer has access to the client. But what about a counselor with a history of similar complaints about multiple clients?

For each complaint received, all available information including the number, type, and disposition of all previous complaints, is considered collectively as it pertains to a threat to public health and safety.

Shouldn't there be a provision for an emergency hearing in situations where mounting complaints suggest a pattern of dangerous behavior by an LPC?

A temporary license suspension in this kind of case is authorized by Texas Occupations Code §503.403.

The Texas Occupations Code makes all materials related to an LPC investigation confidential, except in the case of bona fide research. In that case, records must be released, but the individual-identifying information has to be stripped. In the interest of informing the public about the processes and efficacy of the licensing board, wouldn't it be appropriate to rewrite the statute to eliminate the vague provision that a person must be engaged in "bona fide research?" That provision aside, is there any reason in the public interest for withholding records when the ability to identify a counselor or a client has been redacted?

These statutory provisions exist in a number of other licensing laws for various health professionals. PLCU follows the law as written, and does not make a judgment as to whether the law is appropriate. For additional information on this topic, attached is a recent request for an open records decision from the Office of the Attorney General.

If the board chooses to discipline a counselor, the burden of proof is on the board. A counselor can challenge the discipline in a potentially long and expensive administrative court case and subsequent litigation. Doesn't this make it difficult for the licensing board to act aggressively in instances where there may be an imminent threat to the public?

If a complaint case presents evidence of a continuing and imminent threat to public welfare, the Board has authority to temporarily suspend a license under Texas Occupations Code §503.403.

Is there anything about the process or the governing statutes that could be changed to help the board serve its disciplinary function without infringing on the rights of counselors to due process?

Is the LPC board complaint process effective? Is there anything about it, or the governing statutes, that you would change if you could?

One of the primary mechanisms for evaluating the overall effectiveness of an agency's statute, and the processes used to implement it, is the regular review by the Sunset Advisory Commission. The LPC Board was reviewed in 1993 and again in 2005, and there were numerous statutory changes made as a result of each review. The Board's next review is scheduled for 2017.

The Sunset Advisory Commission maintains a comprehensive list of standards, known as the Sunset Licensing/Regulation Model, that should be applied to all regulatory statutes and programs. Additionally, DSHS is under Sunset review in the current biennium. The Sunset Advisory Commission

Glynda, Below is a revised draft; I think it captures the essence of our discussion.

Audit letter

Effective management of our professional licensing programs includes an expectation that quality assurance activities will be implemented to secure the integrity of our processes and the professions. It is routine for licensing programs to audit license holders to ensure compliance with various regulatory requirements. Audits may be undertaken to address mistakes that may be made by staff, mistakes that may be made by applicants or license holders, to determine whether misrepresentation of credentials or supervised experience has occurred, and to ensure that regulatory processes are consistent, equitable, and fair.

- The most common audit is the continuing education (CE) audit. The LPC Board, and the other licensing boards/programs within the DSHS Professional Licensing and Certification Unit, audits license holder compliance with CE requirements. The audit is random and occurs at the time of license renewal for a percentage of license holders. The license is not renewed until the license holder successfully completes the audit.
- As needs arise, other audits may be performed, tailored to specific circumstances. For example, the social worker licensing board recently audited all license holders who are approved supervisors to ensure compliance with the requisite supervisor training.
- In reviewing supervised experience for licensure, the LPC board (and other boards) may request that the supervisor submit logs or other documentation to audit the information submitted by the LPC Intern.
- Complaint investigations may also result in an audit of a license holder's counseling and/or billing records.

The LPC Board's enabling statute authorizes the executive director to conduct or arrange for necessary inspections and investigations, and to obtain, assemble, or prepare reports and information as directed or authorized by the board. (Occupations Code § 503.152(a)(8)-(9)). Additionally, the LPC board rules require that a license holder shall cooperate with the board by furnishing documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative (25 TAC § 681.46(d)).

Regards, Kathy

Kathryn C. Perkins, RN, MBA
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Texas Department of State Health Services
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DSHS Vision: A Healthy Texas
Texas

DSHS Mission: To improve health & well-being in

Audit letter

April 15, 2015

To Whom it May Concern:

The Texas State Board of Examiners of Professional Licensed Counselors (LPC) is a Board that is appointed by the Texas Governor with the task of regulating licensees. The Department of State Health Services (DSHS) is ordered to provide support for this board.

We currently have a backlog of over 300 applicants who are unable to work until their application has been reviewed by the DSHS staff. Our Executive Director, Bobbe Alexander, one of the employees, and one supervisor have been dedicated to reduce this backlog. They have even worked some Saturdays. They can get more done on Saturdays because during the week the upper management insists they continue to answer the phones because the upper management is worried about customer service and how the representatives or senators might react if one of their constituents is unhappy if no one answered the phone. This department receives over 5000 phone calls per month. Ironically many of the phone calls are applicants who are wondering about their application and why it is taking so long because they cannot work until they have the intern license. The staff has to answer each call, find the file in the office, and explain to each applicant what the problem is with their application. The problem is that there are not enough staff! We are down to a skeleton crew. It is a dire situation. There are 300 people in limbo. These people cannot work in their chosen field until they receive their intern license.

Our statute requires an applicant to receive a response within 30 days. There are staff positions that have been vacant for over one year. The staff that is currently working in the office is unable to keep up with the workload because the upper management has not, will not, fill these positions.

If this were a business situation upper management would pitch in and assist until things were caught up. But in this case, the upper management is not even able to interview and hire and fill the positions that have been vacated, some over a year.

One of those positions was vacated by a young woman who was for some reason giving out licenses to people who had not met the requirements. In a meeting between the board and the DSHS upper management about this problem, it was brought to light that the DSHS upper management had not implemented a check and balance system. Ridiculously upper management had implemented a customer service policy. I am not sure what upper management really has done or even does to help us as a licensing regulatory board to protect the public. If our board could be responsible for itself, I am positive we could find some people to work in our office and fill position that had been vacated for over a year. And put 300 people to work in the State of Texas. Imagine how many of the 300 applicants have families that could benefit if these 300 people could be out in the workforce earning a living.

It just continues to get worse:

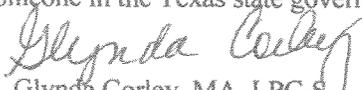
In March we had 160 new applicants;

At the end of the May semester we will have 200 additional new applicants;

And at the end of the August semester we will have 200 additional new applicants.

We are appalled with the DSHS agency and their inability to be a support agency for the State Board of Examiners of Professional Licensed Counselors.

Can't someone in the Texas state government make a logical reasonable decision and help us get people working!


Glynda Corley, MA, LPC-S
LPC Board Chair
Chair of the LPC Complaints Committee


Brandi Buckner, PhD, LPC-S
LPC Board Vice-Chair
Chair of the LPC Applications Committee