

SUNSET COMMISSION DECISIONS



TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

**TEXAS STATE BOARD OF EXAMINERS OF
MARRIAGE AND FAMILY THERAPISTS**

TEXAS MIDWIFERY BOARD

TEXAS STATE BOARD OF EXAMINERS OF PERFUSIONISTS

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

December 2004

AGENCY INFORMATION

Agency at a Glance

The state boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers are housed within the Department of State Health Services (DSHS), which serves as an umbrella licensing agency for these and other health licensing programs. Each board, with the exception of the Midwifery Board, is an independent Governor-appointed board that creates rules to enforce the Acts and determine appropriate administrative penalties for licensees who violate laws or rules. DSHS provides all administrative services and staff to license applicants, and process complaints and administrative penalties. The Midwifery Board serves as an advisory board and is appointed by the Health and Human Services Commission Executive Commissioner. Proposed rules must be approved by the State Health Services Council (SHSC) and the Executive Commissioner before adoption by the Midwifery Board.

All the boards seek to protect the public by ensuring that these health service licensees are qualified, competent, and adhere to established professional standards. The table, *Persons Licensed by DSHS Health Licensing Boards*, lists the number of licensees under each board's jurisdiction.

Persons Licensed by DSHS Health Licensing Boards - FY 2003	
Board	Licensees
Dietitian	3,407
Marriage and Family Therapist	2,572
Midwifery	180
Perfusionist	296
Professional Counselor	16,200
Social Worker	22,068

Key Facts

- **DSHS Functions.** The Department of State Health Services has adopted a functional organization approach to servicing the six health licensing boards under Sunset review. Under this approach DSHS provides consolidated services for licensing, enforcement, and board support rather than dedicating specific staff that work only on a single licensing program. DSHS assigns 21 full-time employees to these boards with a total budget of \$1.4 million.
- **Dietitians.** The 3,500 dietitians licensed by the State Board of Examiners of Dietitians are experts in nutrition science who specialize in menu planning, supervision of food preparation, diet therapy, nutrition research, counseling, and nutrition education. The Licensed Dietitian Act is a title act that restricts providers of nutritional advice from referring to themselves as dietitians unless they are licensed by the Dietitian Board. The Dietitian Board received no complaints in FY 2003.
- **Marriage and Family Therapists.** The State Board of Examiners of Marriage and Family Therapists licenses about 2,500 marriage and family therapists who are mental health professionals trained in psychotherapy and family systems. The approach to this profession renders therapeutic services to individual clients or groups, and involves the application of family systems theories. About 90 percent of marriage and family therapists also hold a license as a professional counselor or social worker. Religious practitioners and other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by the Marriage and Family Therapist Board to perform counseling. The Marriage and Family Therapist Board received 46 complaints in FY 2003.
- **Midwives.** Midwives deliver babies at the mother's home or at licensed birthing centers using a non-medical model of care that de-emphasizes medical intervention. See the textbox, *Different Models of Care – Midwifery and Medicine*, for more explanation. The Midwifery Board licenses 180 direct entry, documented midwives while the Board of Nurse Examiners licenses certified nurse

midwives. The Midwifery Board also licenses the three midwifery education programs in Texas and received 16 complaints concerning midwives in FY 2003.

- **Perfusionists.** Perfusionists operate cardiopulmonary bypass equipment to maintain and monitor a patient's vital heart and lung functions during open-heart surgeries. The State Board of Examiners of Perfusionists licensed about 300 perfusionists and received one complaint in FY 2003. The Perfusionist Board requires all licensees to be certified by the American Board of Cardiopulmonary Perfusion.
- **Licensed Professional Counselors.** The 16,200 counselors licensed by the State Board of Examiners of Professional Counselors use their specialized training in psychotherapy, human development, and counseling, to diagnose and treat mental and emotional disorders, assist individual clients to overcome life challenges and promote wellness, personal growth, and career development. Religious practitioners and other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by this board to perform counseling. The Professional Counselor Board received 121 complaints in FY 2003.
- **Social Workers.** The State Board of Social Worker Examiners licenses about 22,000 social workers who apply the theory, knowledge, methods, and ethics of social work to restore or enhance the functioning of individuals, couples, families, groups, organizations, and communities. Social workers apply social work values, principles, and methods, that include assessment, evaluation, case management, counseling, marriage and family therapy, and psychotherapy. The Social Worker Board received 119 complaints in FY 2003.

Different Models of Care Midwifery and Medicine

Midwifery practice is limited to normal pregnancies and focuses on minimizing technological interventions. Midwives believe that childbirth is a natural process.

Medicine is the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease.

ISSUES / RECOMMENDATIONS

Issue 1 The Dietitian and Perfusionist Boards Are Not Needed to Protect the Public, Though Regulation of the Professions Should Continue.

Recommendations

Change in Statute

1.1 Replace the governor-appointed Dietitian Board with an advisory committee.

1.2 Replace the governor-appointed Perfusionist Board with an advisory committee.

These recommendations would abolish the current nine-member Dietitian and Perfusionist boards on their September 1, 2005 Sunset dates and create advisory committees in their place. The five-member Dietitian and Perfusionist advisory committees would give advice to the Department of State Health Services staff on rulemakings and enforcement actions, when needed.

The Dietitian Advisory Committee would be composed of three dietitians and two public members. The Perfusionist Advisory Committee would include two perfusionists, one cardiovascular surgeon, and two public members. Both committees would be appointed by the State Health Services Council, which would also designate the advisory committee chairs. The committees would be subject to statutory provisions regarding the appointment and governance of all agency advisory committees. Standard Sunset Across-the-Board provisions for state agency boards would also apply, including provisions on public membership, conflicts of interest, and unbiased appointments. The statute would direct the State Health Services Council, when making appointments to the Dietitian Advisory Committee, to attempt to ensure representation of component practice areas of dietitians. Boards' licensing and enforcement functions would be carried out by the Department of State Health Services' Professional Licensing and Certification Unit.

Fiscal Implication

The elimination of travel costs for 18 board members would result in an annual savings to general revenue of \$7,300. Reimbursing travel costs for 10 advisory committee members would cost the Department \$4,100 annually, resulting in an overall savings of \$3,200.

Responses

Agency

Texas Department of State Health Services is not in opposition to these recommendations, but believes that recommendations related to professional issues are best addressed by the licensing board in question. (Eduardo Sánchez, M.D., M.P.H., Commissioner – Texas Department of State Health Services)

Texas State Board of Examiners of Dietitians states that an advisory committee structure could be acceptable, but notes that the cost savings does not seem to justify a change in a smoothly operating system and that continuing with a governor-appointed board will more adequately represent the diversity of the profession on par with other equally educated professionals. (Ralph McGahagin, Chair and Janet Hall, Member – Texas State Board of Examiners of Dietitians)

Texas State Board of Examiners of Perfusionists believes that an advisory committee structure, while not optimal, could be acceptable, but notes that the cost savings of the recommendation is only \$3,200. (Thomas K. Wilkes, Chair – Texas State Board of Examiners of Perfusionists)

For

Recommendation 1.1:

Denis DeLuca, President – Biotics Research, Katy

Radhia Gleis, Med. CCN, President – Advanced Health Institute, Austin

Richard Jaffe, Esq. – International and American Association of Clinical Nutritionists, Houston

Dr. Michelle Martz, DC, DACBN, CCN – Trinity Wellness Center, Highland Village

William L. Swail, Pharmacist Owner – Peoples Pharmacy, Austin

Against

Recommendation 1.1:

Geani Beedle, RD, LD – Texas Dietetic Association

Jerry Caddenhead – Texas Dietetic Association

Louise Clement, MS, RD, CSR, LD, South Plains Kidney Disease Center – Lubbock

Carolyn Cochran, – Texas Dietetic Association

Linda Farr, RD, LD, President – Texas Dietetic Association, Dallas

B. J. Friedman, RD, LD, Chair and Professor, Nutrition and Foods – Texas State University, San Marcos

Cynthia Fulton, RD, LD – Texas Dietetic Association

Alfonso Garcia, Jr. – Texas Dietetic Association

Mindy Gentile – Texas Dietetic Association

Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin

Rosa I. Pena, RD, LD – Texas Dietetic Association

Anne Ishmael, RD, LD – Texas Dietetic Association

Matilde E. Ladnier, RD, LD – Texas Dietetic Association

Rita Littlefield – Texas Renal Coalition, Austin

Debbie Lindsey – Texas Dietetic Association

Jane Louis, RD, CSR, LD – Texas Dietetic Association, Pearland

Patricia Mayers, RD, LD, CDE

Angela K. Montagna – Renal Care Group, Corpus Christi

Cathy Eisenhauer Montgomery, TD, CSP, LD, Neonatal Dietitian – Texas Dietetic Association, Pearland

Hawley Poinsett, RD, LD – Texas Dietetic Association, Austin

Barbara Rylander, RD, LD, MS, CNSD, Renal Dietitian – Fresenius Medical Care, Friendswood

Felicia Ricks, RD, CSR, LD – Texas Dietetic Association, Bellville

Dr. Glen Stanbaugh, MD, Chairman – Texas Renal Coalition, Lubbock

Anil U. Sheth, MD – Nephrology Group, Houston

Alma Sudderth, Sr. VP – SureQuest Systems, Inc., Dallas

Jana Zimmer, RD, LD – Texas Dietetic Association, and Renal Care Group, Weslaco

Recommended Action: Adopt Recommendations 1.1 and 1.2.

Commission Decision: Adopted Recommendation 1.2.

Issue 2 The Licensed Professional Counselor Act Limits the Ability of Professional Counselors to Practice in Other States.

Recommendations

Change in Statute

2.1 Remove the Professional Counselor Board's authority to develop a separate state exam.

This recommendation would remove the Professional Counselor Board's authority to write its own exam and require the Board to contract with a nationally recognized organization to develop and administer the exam.

2.2 Remove the statutory provision that requires a licensed professional counselor to have 48 graduate hours to qualify for a license.

Under this recommendation the Professional Counselor Board would have authority to determine the number of graduate hours necessary for licensure. The current requirements for applicants to have a graduate degree with 48 hours from an accredited institution of higher education would be removed to grant the Board flexibility to change the number of required hours to track national trends. The law would still require applicants to have a graduate degree with a 3,000 clock hour supervised internship.

Management Action

2.3 Direct the Professional Counselor Board to replace the Texas exam with a national exam administered by the National Board of Certified Counselors.

This recommendation would instruct the Professional Counselor Board to consider using a national exam administered by the National Board of Certified Counselors (NBCC). NBCC has two exams, but Texas should consider using the exam that tests the core principles, as that exam most closely matches the content of the current state exam. Since most of the 47 other states that license professional counselors also use this exam, and it would allow for greater portability of the license.

2.4 Direct the Professional Counselor Board to simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.

This recommendation would direct the Professional Counseling Board to create rules increasing the portability of licensees into the State while ensuring that licensees possess sufficient qualifications to justify the license. The Board should consider accepting a graduate degree regardless of the number of graduate hours from out-of-state applicants currently licensed in their state of origin, if the Board determines the applicant possesses sufficient qualifications to justify a waiver. The number of graduate hours for licensure has increased in many states since the creation of the license, and this recommendation would allow out-of-state applicants to transfer their licenses easily without returning to school to earn additional graduate hours.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The Professional Counselor Board currently retains \$35 per exam beyond the cost of administering the exam, an average of \$28,000 to \$35,000 a year. As NBCC allows states to charge fees above the cost for administering the exam, the Board would be able to continue collecting these revenues from the NBCC exam.

Responses

Agency

Texas Department of State Health Services is not in opposition to these recommendations, but believes that recommendations related to professional issues are best addressed by the licensing board in question. (Eduardo Sánchez, M.D., M.P.H., Commissioner – Texas Department of State Health Services)

Texas State Board of Examiners of Professional Counselors agrees with the recommendations and intends to adopt a portability plan to better enable experienced, practicing counselors to move into and out of Texas. (Judy Powell, Chair – Texas State Board of Examiners of Professional Counselors)

For

Recommendation 2.1 and 2.3: Mary Lou Padilla, Ph.D., LPC, NCC, President – Texas Counseling Association, Austin

Against

None received.

Recommended Action: Adopt Recommendations 2.1 through 2.4.

Commission Decision: Adopted Recommendations 2.1 through 2.4.

Issue 3 Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Recommendation

Licensing

Change in Statute

3.1 Clarify that the six boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the six boards' authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring them to develop rules defining the specific crimes they believe affect a potential licensee's ability to practice.

3.2 Remove exemptions from temporary licensure requirements from the Licensed Professional Counselor Act.

This recommendation would remove two provisions permitting the issuance of temporary permits to applicants who have not completed the required number of graduate semester hours. The first provision allows a person to receive a temporary license to practice art therapy before completing the required number of graduate hours, while the second provision permits a person to complete the required hours while simultaneously completing the supervised internship. These changes would clarify that the Professional Counselor Board has the authority to issue a temporary license only if the applicant has met specified educational requirements. Issue 2 in this report clarifies how the Professional Counselor Board would apply these educational requirements to professional counselors from other states, and directs the Board to consider licensing any out-of-state professional counselor who has a degree but has not attained the 48 graduate hours specified in Texas law.

3.3 Remove subjective examination provisions from the Marriage and Family Therapist and Professional Counselor boards' statutes.

This recommendation would remove the authority for the Marriage and Family Therapist and the Professional Counselor boards to use a field exam and remove the Marriage and Family Therapist Board's authority to use an oral exam. To qualify for a license, the boards would require passage of a written exam.

3.4 Require applicants to the six boards to pass a jurisprudence exam as a condition of licensure.

This recommendation builds on existing licensure requirements by requiring all of the boards' applicants to pass a jurisprudence exam to be eligible for licensure. The boards would need to develop an examination based on their licensing act and rules, and other applicable state laws and regulations affecting professional practice. The boards would have the flexibility to design and administer the exams to minimize impact on the licensees. The boards would also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results. Each board would develop an exam and begin exam administration by September 1, 2006. The requirement to pass the jurisprudence exam would only apply to individuals who apply for licensure on or after September 1, 2006; individuals licensed before then would be exempt from passing the jurisprudence exam.

3.5 Require the Midwifery Board to provide timely notice of exam results.

The Midwifery Board would be required to provide timely notice of exam results and analysis to individuals failing the exam. The change would require notification of examinees of their results not later than 30 days after they took the exam. If the exam is graded by a testing service, the Midwifery Board must notify the examinee of results not later than 14 days after receiving the results from the service. If notice from the testing service of exam results will be delayed longer than 90 days after the exam date, the Midwifery Board must notify the examinee of the reason for the delay before the 90th day.

3.6 Remove exemptions from the Marriage and Family Therapist, Perfusionist, Licensed Professional Counselor, and Social Worker acts for non-Texas residents to practice without temporary licensure.

This recommendation would prevent unlicensed marriage and family therapists, perfusionists, licensed professional counselors, and social workers from practicing in the state without receiving a temporary license to ensure minimum competency to practice. Practitioners from other states would no longer be able to practice in Texas without qualifying under state law.

3.7 Require the boards to base delinquent license renewal fees on the normally required renewal fee, and require midwives and perfusionists whose licenses are delinquent more than one year to reapply for licensure.

The renewal fee for the six boards' licensees who are delinquent in renewing their licenses would be based on the normal renewal rate set by the boards, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would be equal to 1-1/4 times the renewal fee, which would account for the increased fee that will result from a pending change to biennial renewals. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal 1-1/2 times the renewal fee. Also, midwives and perfusionists who have allowed their licenses to be expired for one year or more may not renew but must obtain a new license by complying with all requirements for obtaining an original license. These recommendations would not be implemented until September 1, 2007, to allow full implementation of the current shift to biennial renewal. Further, because of fiscal considerations, the Social Worker Board statute would need to specify that the current late renewal fee would remain in effect until such time that the new renewal fee approach would result in an increased late fee.

Enforcement

Change in Statute

3.8 Limit the Midwifery Board from adopting rules restricting advertising or competitive bidding by a license holder.

Adding this former Sunset across-the-board recommendation to the Midwifery Act would prohibit the Board from passing rules that restrict licensees' advertising or competitive bidding except to prohibit false, misleading, or deceptive practices.

3.9 Require the boards to include a public member on complaint committees.

Under this recommendation, the boards would be required in statute to include a public member on board committees that review enforcement cases. While all of the boards currently meet this requirement, enacting the provision in statute would ensure its continuation.

3.10 Authorize the Dietitian, Marriage and Family Therapist, Midwifery, Perfusionist, and Social Worker boards to refuse to renew a license as an administrative sanction.

This recommendation would add an extra enforcement tool for these five boards, allowing the boards to better fit punishments to infractions. This recommendation would also provide for clear authority to deny license renewal for those who do not pay outstanding administrative fines.

3.11 Increase the maximum administrative penalty of the Marriage and Family Therapist, Midwifery, and Social Worker boards to \$5,000 per violation per day.

This recommendation would make all six boards' maximum administrative penalty amount uniform by increasing the three boards' amounts to \$5,000 per violation per day. As a cap, this maximum penalty would be applied only to the most serious offenses.

3.12 Require the Dietitian, Perfusionist, and Professional Counselor boards to adopt penalty matrices with dollar amounts associated with violations.

The Dietitian and Perfusionist boards would be required to adopt penalty matrices in rule, including dollar amounts tied to each violation; and the Professional Counselor and Social Worker boards would be required to modify their existing matrices to include the dollar amounts.

3.13 Authorize the boards to require refunds as part of the settlement conference process.

The boards would be allowed under this recommendation to include refunds as part of an informal settlement conference on a disciplinary case. Authority would be limited to ordering a refund not to exceed the amount the consumer paid the licensee. Any refund offer would not include an estimation of other damages or harm. The refund may be in lieu of, or in addition to, a separate board order assessing an administrative penalty.

3.14 Authorize the Dietitian Board to seek an injunction against persons holding themselves out as dietitians without a license.

Under this recommendation, the Dietitian Board would be able to seek an injunction, through the Attorney General in district court, against individuals who use the title of dietitian without being licensed by the Board.

3.15 Authorize the six boards to issue cease-and-desist orders against unlicensed activity.

The boards would issue cease-and-desist letters when they receive complaints or otherwise learn of an individual practicing or using a title without a license. This recommendation would also authorize the boards to assess administrative penalties against persons who violate cease-and-desist orders. The boards would still be authorized to refer these cases to local law enforcement agencies or the attorney general for prosecution.

Management Action

3.16 The boards should use complaint trend analysis to address recurring problems.

The boards would be required to use complaint trend analyses already compiled by DSHS to target their resources toward recurring problems. The boards should also include non-jurisdictional complaints in the trend analyses to get a complete picture of the public's problems with these general areas of regulation.

3.17 The Midwifery and Social Worker boards should establish, by rule, methods to notify consumers about the boards for complaint purposes.

The Midwifery and Social Worker boards should develop more specific rules, as currently required by statute, to notify consumers about their boards in case of complaints against licensees. The statutes specify that notification must include the name, mailing address, and telephone number of the boards, and may be placed on registration forms, signs in licensees' offices, or on bills for services.

Administration

Change in Statute

3.18 Remove provisions allowing board members to receive payments for attendance at meetings.

This recommendation would remove obsolete provisions permitting Dietitian, Marriage and Family Therapist, Midwifery, Perfusion, and Professional Counselor board members to receive payments for each board meeting attended.

3.19 Clarify the boards' authority to appoint board committees, but only comprised of board members, and remove statutory authority for the Professional Counselor Board to delegate its authority to a single member.

This recommendation would establish that while the boards may have committees, they may only consist of committee members. The recommendation also deletes a provision permitting the Professional Counselor Board to delegate authority to one member.

Management Action

3.20 The boards should improve the information they provide to the public.

This recommendation would require the boards to distribute information about their professions, produced by the boards, to consumers. In addition, the Marriage and Family Therapist, Professional Counselor, and Social Worker boards would produce a brochure, separate from those describing individual boards, explaining the differences between the three mental health fields, and which of the services from each field is most appropriate to particular needs. Finally, this recommendation would require the boards to assess their public information annually to ensure that it remains current and accurate enough to be of assistance to consumers and the general public.

Fiscal Implication

These recommendations would result in a net overall loss to the General Revenue Fund of about \$24,000 annually beginning in fiscal year 2008. Adjusting late renewal penalties would result in a loss of about \$25,600 annually. Eliminating the payments to Midwifery Board members for attending their

semi-annual meetings would save the state \$900 annually. Eliminating per diem payments to Professional Counselor Board members would result in \$800 in savings to the State.

Responses

Agency

Texas Department of State Health Services is not in opposition to these recommendations, but believes that recommendations related to professional issues are best addressed by the licensing board in question. (Eduardo Sánchez, M.D., M.P.H., Commissioner – Texas Department of State Health Services)

Texas State Board of Examiners of Dietitians agrees with the recommendation to empower the board to seek an injunction against persons holding themselves out as dietitians without a license (Rec. 3.14) and the recommendation to develop and administer a jurisprudence exam (Rec. 3.4). (Ralph McGahagin, Chair and Janet Hall, Member – Texas State Board of Examiners of Dietitians)

Texas State Board of Examiners of Marriage and Family Therapists supports developing a jurisprudence exam (Rec. 3.4) and the development of a consumer brochure differentiating the regulation of the mental health professions (Rec. 3.20), but believes that indicating which professional's services best fits the needs of a particular consumer would be inappropriate. (Marvarene Oliver, Ed.D., Chair, Joe Ann Clack, Member, Waymon Hinson, Ph.D., LMFT, Member, and Sandra DeSobe, Member – Texas State Board of Examiners of Marriage and Family Therapists)

Texas Midwifery Board generally supports the recommendations, but has concerns about granting refund authority (Rec. 3.13) as this duplicates legal recourses already available to the public, has the potential for diverting regulatory resources, and could create a motive for clients to file unfounded complaints. The Board also believes that services of non-board members on board committees (Rec. 3.19) is necessary because the three documented midwives serving on the Board might be absent from a committee meeting to attend to a client in labor. The Board requests the Sunset Commission to continue the appointment of non-Board members to committees or adopt an alternative to the staff recommendation.

Midwifery Board Modification

1. Add additional midwife members to the Board. (Brent Baylor, Chair; Gail Johnson, Vice Chair; and Susan Chick, Member – Texas Midwifery Board)

Texas State Board of Examiners of Perfusionists supports developing a jurisprudence exam (Rec. 3.4). (Thomas K. Wilkes, Chair – Texas State Board of Examiners of Perfusionists)

Texas State Board of Examiners of Professional Counselors is generally supportive of all the recommendations and agrees that the public may be unable to determine which mental health professional is best suited for their needs, but offers an alternative to the staff recommendation to develop a brochure explaining the differences between the mental health fields (Rec. 3.20).

Professional Counselor Board Modification

2. Instead of requiring the mental health boards to jointly develop a consumer brochure, the boards should direct members of the public to mental health professional associations or their own physicians for appropriate referrals. (Judy Powell, Chair – Texas State Board of Examiners of Professional Counselors)

Texas State Board of Social Worker Examiners supports developing a jurisprudence exam (Rec. 3.4) and the development of a consumer brochure differentiating the regulation of the mental health professions (Rec. 3.20), but believes that indicating which professional's services best fits the needs of a particular consumer would be inappropriate. (Jeannie McGuire, MS, LBSW, Chair, and Jamie Ward, LBSW, Member – Texas State Board of Social Worker Examiners)

Other Agency

Office of Patient Protection supports Sunset staff recommendations that increase public protection and board accountability including the requirement for the boards to address convictions in a standard manner (Rec. 3.1), applicants to pass a jurisprudence exam (Rec. 3.4), inclusion of public members on complaint committees (Rec. 3.9), additional administrative sanctions (Rec.s 3.10, 3.11, 3.13, 3.14, and 3.15), adoption of penalty matrices (Rec. 3.12), and analysis of complaint trend information (Rec. 3.16). The Office offers a modification to the recommendation to develop a brochure explaining the differences between the mental health fields (Rec. 3.20).

Office of Patient Protection Modification

3. The statutory language implementing this recommendation should explicitly define the actions the Boards shall take, including the type of information to be published, intervals of publication, and manner of publication. (Charles Horton, Director– Office of Patient Protection)

For

Sue Levin, Ph.D., President – Texas Association for Marriage & Family Therapy, Inc., Austin

Recommendations 3.14 and 3.15: Linda Farr, RD, LD, President – Texas Dietetic Association, Austin

Recommendations 3.1, 3.4, 3.7, 3.9, 3.10, 3.12, 3.13, 3.14, 3.15, 3.16, 3.18, and 3.20: Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin

Recommendation 3.4 – Waymon R. Hinson, Ph.D. Chair: Department of Marriage and Family Therapy, Abilene Christian University, Abilene

Recommendations 3.1, 3.5, 3.7, 3.8, 3.9, 3.10, 3.11, 3.15, 3.16, 3.18, and 3.20: Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler

Recommendations 3.3 and 3.15: Mary Lou Padilla, Ph.D., LPC, NCC, President – Texas Counseling Association, Austin

Recommendations 3.4, 3.6, and 3.20: Kathy T. Rider, LCSW, BCD, CGP – Texas Society for Clinical Social Work, Austin

Against

Recommendations 3.13 and 3.19: Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler

Recommendation 3.20: Carol Miller, Government Relations Coordinator – National Association of Social Workers Texas, Austin

Modifications

Recommendation 3.4

4. Require all midwifery applicants to pass the Texas Midwifery Basic Information Continuing Education Module, instead of requiring the Midwifery Board to develop a jurisprudence exam. (Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler)
5. Require a jurisprudence component as a part of continuing education requirements in addition to requiring a jurisprudence exam. (Kathy T. Rider, LCSW, BCD, CGP – Texas Society for Clinical Social Work, Austin)
6. Require a jurisprudence component as a part of continuing education requirements instead of requiring a jurisprudence exam. (Sue Levin, Ph.D., President – Texas Association for Marriage & Family Therapy, Inc., Austin; Leslye Mize, Professor – University of Houston Clear Lake, League City; Claire Hill, LPC, LMFT, Government Relations Chair – Texas Association for Marriage & Family Therapy, Inc., Austin; and Carol Miller, Government Relations Coordinator – National Association of Social Workers Texas, Austin)

Recommendation 3.20

7. Require the mental health boards' consumer brochure to be available online and to not specify which profession's services are most appropriate to a particular consumer's needs. (Sue Levin, Ph.D., President – Texas Association for Marriage & Family Therapy, Inc., Austin)
8. Do not require the mental health boards' consumer brochure to specify which profession's services are most appropriate to a particular consumer's needs. (Leslye Mize, Professor – University of Houston Clear Lake, League City)
9. Require the mental health boards' Web sites to provide links to each of the other mental health boards. (Carol Miller, Government Relations Coordinator – National Association of Social Workers Texas, Austin)

Recommended Action: Adopt Recommendations 3.1 through 3.20.

Commission Decision: Adopted Recommendations 3.1 through 3.19. Adopted Recommendation 3.20 to include Modification 7.

Issue 4 Texas Should Continue Regulating Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers.

Recommendation

Change in Statute

4.1 Continue regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.

This recommendation would continue the statutes that authorize the licensing of the six health-care professions. The Licensing Reorganization Project report contains the staff's recommendations on the organizational structure for the State Board of Examiners of Dietitians, State Board of Examiners of Marriage and Family Therapists, Texas Midwifery Board, State Board of Examiners of Perfusionists, State Board of Examiners of Professional Counselors, and State Board of Social Worker Examiners. Issue 1 of this report deals specifically with the structure of the Dietitian and Perfusionist boards.

Fiscal Implication

If the Legislature continues the regulation of the six health care professions using the existing organizational structure within the Department of State Health Services, the boards' annual appropriation of about \$1.4 million would continue to be required to maintain licensing functions. These appropriations would be offset by the boards continued collections of \$2 million in licensing fees and appropriated revenues.

Responses

Agency

Texas Department of State Health Services is not in opposition to this recommendation, but believes that recommendations related to professional issues are best addressed by the licensing board in question. (Eduardo Sánchez, M.D., M.P.H., Commissioner – Texas Department of State Health Services)

Texas State Board of Examiners of Dietitians agrees that licensure of dietitians must be preserved. (Ralph McGahagin, Chair; Carol Barnett Davis, Member; and Janet Hall, Member – Texas State Board of Examiners of Dietitians)

Texas State Board of Examiners of Marriage and Family Therapists supports the continued regulation of marriage and family therapy in Texas. (Marvarene Oliver, Ed.D., Chair, Joe Ann Clack, Member, and Sandra DeSobe, Member – Texas State Board of Examiners of Marriage and Family Therapists)

Texas Midwifery Board generally supports the recommendation. (Brent Baylor, Chair – Texas Midwifery Board)

Texas State Board of Examiners of Perfusionists agrees that licensure of perfusionists must be preserved. (Thomas K. Wilkes, Chair – Texas State Board of Examiners of Perfusionists)

Texas State Board of Examiners of Professional Counselors agrees with the recommendation. (Judy Powell, Chair – Texas State Board of Examiners of Professional Counselors)

Texas State Board of Social Worker Examiners supports the continued regulation of social work in Texas. (Jeannie McGuire, MS, LBSW, Chair, and Julia Ward, Member – Texas State Board of Social Worker Examiners)

For

Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin

Sue Levin, Ph.D., President – Texas Association for Marriage & Family Therapy, Inc., Austin

Zoie Mitchell, President – Texans for Midwifery

Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler

Against

None Received.

Recommended Action: Adopt Recommendation 4.1.

Commission Decision: No action was taken on Recommendation 4.1, as the Commission adopted an alternative to the recommendations in the Licensing Reorganization Project, continuing the six boards for 12 years under the Department of State Health Services.

ACROSS-THE-BOARD RECOMMENDATIONS

State Board of Examiners of Dietitians	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

State Board of Examiners of Marriage and Family Therapists	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

Texas Midwifery Board	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Modify	4. Provide that the Governor designate the presiding officer of the policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

State Board of Examiners of Perfusionists	
Recommendations	Across-the-Board Provisions
Apply	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Update	3. Require unbiased appointments to the agency’s policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

State Board of Examiners of Professional Counselors	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Apply	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Apply	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

State Board of Social Worker Examiners	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Apply	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Apply	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

NEW ISSUES

New Issues

The following issues were raised in addition to the four issues contained in the staff report. These issues are numbered sequentially to follow the staff recommendations.

Dietitian Issues

5. Clarify the statutory definition of dietetic practice and change the Dietitian Act from a title act to a practice act. (Ralph McGahagin, Chair, Austin; Carol Barnett Davis, Member, Dallas; and Janet Hall, Member – Texas State Board of Examiners of Dietitians, Georgetown)
6. Strengthen the licensure for Dietitians and Nutritionists from a title act to a practice act. (Geani Beedle, RD, LD – Texas Dietetic Association; Jerry Caddenhead – Texas Dietetic Association; Carolyn Cochran – Texas Dietetic Association; Linda Farr, President – Texas Dietetic Association, Dallas; Cynthia Fulton, RD, LD – Texas Dietetic Association; Alfonso Garcia, Jr. – Texas Dietetic Association; Mindy Gentile – Texas Dietetic Association; Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin; Anne Ishmael, RD, LD – Texas Dietetic Association; Yvonne Kirchner, RD, LD – Dallas; Matilde E. Ladnier, RD, LD – Texas Dietetic Association; Debbie Lindsey – Texas Dietetic Association; Rita Littlefield – Texas Renal Coalition, Austin; Angela K. Montagna, – Renal Care Group, Corpus Christi; Rosa I. Pena, RD, LD – Texas Dietetic Association; Barbara Rylander, RD, LD, MS, CNSD, Renal Dietitian – Fresenius Medical Care, Friendswood; Anil U. Sheth, MD – Nephrology Group, Houston; and Jana Zimmer, RD, LD – Texas Dietetic Association, and Renal Care Group, Weslaco); Sheryl R. Milford, Student – University of Texas at Pan American; Cynthia Rios – University of Texas at Pan American
7. Allow registered dietitians to receive, transcribe, and communicate physicians' verbal orders for nutrition prescriptions drug products, if guided by written protocols. (Mindy Gentile – Texas Dietetic Association; Dr. Glen Stanbaugh, MD, Chairman – Texas Renal Coalition, Lubbock; and Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin)
8. Change the title, 'Dietitian' to 'Dietitian/Nutritionist.' (Linda Farr, President – Texas Dietetic Association, Dallas; Mindy Gentile – Texas Dietetic Association; and Greg Hooser, Legislative Counsel – Texas Dietetic Association, Austin)
9. Change the statutory term, 'nutrition services' to 'medical nutrition therapy.' (Linda Farr, President – Texas Dietetic Association, Dallas; and Mindy Gentile – Texas Dietetic Association)

Marriage and Family Therapy Issues

10. Require jurisprudence education for new applicants and continuing education in jurisprudence for current licensees. (Sue Levin, Ph.D., President – Texas Association for Marriage & Family Therapy, Inc., Austin)

Midwifery Issues

11. Remove the statutory requirement that only one midwife member of the Midwifery Board may be a licensed health care professional. (Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler)

12. Change the title, Documented Midwife, to Licensed Midwife. (Gail Johnson, Vice Chair, and Susan Chick, Member – Texas Midwifery Board; and Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler)
13. Change the composition of the Midwifery Board to consist of five midwives, three public members, and one OB/GYN. (Beth Overton, C.P.M., President – Association of Texas Midwives, Tyler)
14. Add additional documented midwives to the Texas Midwifery Board so that midwives would make up a majority of Board members. (Gail Johnson, Vice Chair, and Susan Chick, Member – Texas Midwifery Board; and Amy Chamberlain, Advocacy Chair – Texans for Midwifery, Austin)
15. Create a single standard for the education and regulation of midwives by developing a university-based health sciences degree in midwifery and unifying midwives under one regulatory body. (Patricia Anne Salas, Board Member – Native American Community Board, Austin)

Licensed Professional Counselor Issues

16. Require licensed professional counselors applicants to have a degree in counseling, not a related field. (Jan Friese, Executive Director; and Mary Lou Padilla, Ph.D., LPC, NCC, President – Texas Counseling Association, Austin)
17. Remove the statutory exemption that allows persons working as counselors for state agencies to practice without a license. (Jan Friese, Executive Director – Texas Counseling Association, Austin)

Social Worker Issues

18. Remove exemptions allowing persons working within the Department of Family and Protective Services to practice social work without a license. (Kathy T. Rider, LCSW, BCD, CGP – Texas Society for Clinical Social Work, Austin)
19. Reestablish statutory minimum requirements for persons who perform Home Studies in adoption and custody cases. (Kathy T. Rider, LCSW, BCD, CGP – Texas Society for Clinical Social Work, Austin)
20. Eliminate the Alternative Means of Establishing Competency program for persons who do not pass the Social Work examination. (Jeannie McGuire, MS, LBSW, Chair, and Jamie Ward, LBSW, Member – Texas State Board of Social Worker Examiners; and Kathy T. Rider, LCSW, BCD, CGP – Texas Society for Clinical Social Work, Austin)
21. Create a joint board of social workers, counselors, marriage and family therapists, and chemical dependency counselors. (Charles N. Cook, Fort Worth)

Recommended Action: Staff makes no recommendation on any of the New Issues.

Commission Decision: Adopted New Issue 11 relating to appointments to the Midwifery Board, as modified to strike the following language in Occupations Code §203.052 (a) (1) regarding midwife members: “and not more than one of whom is a licensed health care professional”. Adopted New Issue 12. Adopted New Issue 13 as modified to change the composition of the Midwifery Board to consist of five Documented Midwives; one physician member who is a certified obstetrician/gynecologist; one physician member who is a certified family practitioner or pediatrician; and two public members, one of whom is a parent of a child born with the assistance of a midwife.

