SUNSET COMMISSION DECISIONS

TEXAS STATE BOARD OF MEDICAL EXAMINERS

TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS

TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

December 2004

AGENCY INFORMATION

Agency at a Glance

To ensure that Texans receive safe and quality medical care, the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners regulate medical practitioners in Texas. The State first began regulating the practice of medicine in 1837, when the Legislature created the Board of Medical Censors. In 1907, the Legislature passed the Texas Medical Practice Act and established the Medical Board to regulate physicians. In 1993, the Legislature passed the Physician Assistant Licensing Act and established the Physician Assistant Board. Also in 1993, the Legislature created the Acupuncture Board and began regulating the practice of acupuncture in Texas. The boards' main functions include:

- licensing qualified physicians, physician assistants, acupuncturists, and surgical assistants;
- issuing permits to and certifying other providers of medical care, such as physicians-in-training, acudetox specialists, and nonprofit health-care entities;
- investigating and resolving complaints, and taking disciplinary action when necessary to enforce the boards' statutes and rules; and
- monitoring compliance with disciplinary orders.

Key Facts

- **Funding.** In fiscal year 2004, the agency operated with a budget of $8,324,346, about a 50 percent increase over the fiscal year 2003 budget. This increase is due to additional funding the agency received for its enforcement efforts. These additional funds come from an $80 surcharge paid by each licensed physician. All agency costs are covered by licensing fees collected from the professions.
- **Staffing.** The agency has a staff of 133 employees, with 105 based in Austin and 28 based in field offices throughout the state.
- **Licensing.** The boards regulated 55,993 physicians, 6,544 physicians-in-training, 3,453 physician assistants, 693 acupuncturists, and 259 surgical assistants in fiscal year 2004. These numbers include 2,338 new physician licenses, 2,492 new physician-in-training licenses, 380 new physician assistant licenses, 80 new acupuncturist licenses, and 96 new surgical assistant licenses issued that year.
- **Enforcement.** The boards received 6,090 complaints in fiscal year 2004. Of these, 1,900 were jurisdictional. That year, the boards resolved 1,755 complaints, with 287 resulting in sanctions against a licensee.

ISSUES / RECOMMENDATIONS

Issue 1 Limited Stakeholder Involvement Affects the Board's Rulemaking and Policymaking Processes.

Recommendations

Change in Statute

1.1 Require the Board to develop guidelines for the early involvement of stakeholders in its rulemaking process.

This recommendation would require the Board to develop a process for providing stakeholders with the opportunity for a stronger role in the development of rules, before formal proposal in the *Texas Register*. This process would apply to the Physician Assistant and Acupuncture boards as well. Allowing stakeholders who would be most affected by a proposed rule to provide advice and opinions earlier in the process would result in better rules that take the perspectives of all license groups into consideration. One option for early involvement would be to post topics for rule development on the Board's Web site to solicit input. Once the Board receives input, it would still publish the proposed rules according to the Administrative Procedure Act, and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period. In addition, the Board would accept comments regarding rules recommended by the Physician Assistant and Acupuncture boards when those rules are being considered by the Medical Board. The Board should use its judgment in determining which issues would benefit from early stakeholder involvement, as the Board would not need to seek input on every proposed rule.

Management Action

1.2 The Board should withdraw or repeal rules it does not intend to enforce.

Under this recommendation, the Board would withdraw proposed rules or repeal adopted rules that it does not intend to enforce while negotiating with stakeholders. The Board would withdraw or repeal these rules in a timely manner so that licensees and other stakeholders would have a clear understanding of the Board's regulatory requirements and so that the Board effectively enforces its statutes and Board rules.

1.3 The Board should ensure that the public has an opportunity to testify or appear before the Board.

This recommendation would provide the public with a reasonable opportunity to address the Board at a public Board meeting. The Board would set deadlines for interested parties to provide notification of their intent to address the Board *after* the meeting agenda has been made public. This change would allow individuals to make an informed decision about whether they want to appear before the Board, and would enable the Board to adequately plan for the amount of public testimony it will receive at its meetings. If, however, an individual does not notify the Board of a desire to appear before the Board by the deadline, the Board would still allow the individual to testify if good cause exists for why the individual did not previously notify the Board. This recommendation would apply to the Physician Assistant and Acupuncture boards, as well.

1.4 The Board should consider recording Board subcommittee and full Board meetings.

Although by publishing meeting minutes the Board complies with record-keeping provisions in the Administrative Procedure Act, the Board should consider recording meetings of full Board and subcommittee meetings for the Medical, Physician Assistant, and Acupuncture boards. Because of the complex nature of many issues discussed by the boards, audio recordings of the debates and activities at these meetings would provide each board with a more complete record of the board's decisions.

1.5 The Board should notify stakeholders of adopted rules.

Under this recommendation, the Board would develop a better process for notifying identified stakeholders or individuals who have expressed interest in certain issues addressed by any of the boards when rules that relate to their areas of interest have been adopted. While some onus is on stakeholders to stay abreast of the Board's policies and rules, taking steps to inform stakeholders about new rules would improve the likelihood that stakeholders are aware of new and updated rules.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Agency

The Board supports these recommendations. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Other Agency

Supports Recommendations 1.1, 1.2, and 1.3 (Charles Horton, Director – Office of Patient Protection)

For

Steve Bresnen – Texas Society of Psychiatric Physicians

C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative

Dan Lambe – Texas Watch

Michael L. White – Laser Hair Removal Stakeholder Group Steering Committee

Supports Recommendation 1.1: Linda Contreras, President – Texas Academy of Physician Assistants; Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative

Supports Recommendations 1.1, 1.3, and 1.5: Michael G. Clark, PA-C, President-elect – Texas Academy of Physician Assistants

Against

None received.

Modifications

1. Require informal rulemaking or negotiated rulemaking in all circumstances as allowed in the Texas Government Code. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

2. Require mandatory review of all current rules using informal rulemaking or negotiated rulemaking. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

3. Prohibit the Board from submitting a rule to the *Texas Register* until all attempts to reach stakeholder agreement have been made. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

Recommended Action: Adopt Recommendations 1.1 through 1.5.

Commission Decision: Adopted Recommendations 1.1 through 1.5.

Issue 2 Some of the Boards' Licensing Processes Lack Structure Needed to Ensure Consistent Decisions.

Recommendations

Change in Statute

2.1 Require the boards to develop guidelines, by rule, for evaluating applicants' mental and physical health disorders.

This recommendation would require the Medical, Physician Assistant, and Acupuncture boards to establish guidelines for evaluating mental health, physical conditions, and alcohol and substance abuse, as well as the circumstances under which independent psychiatric and medical evaluations would be required. The circumstances for evaluations should not be tied simply to a self-reported diagnosis and treatment of a disorder, but should be based on an indication of poor performance or incompetent practice that warrants further evaluation of an applicant. When developing the rules, the boards should avoid requiring applicants to meet with a specific type of physician to conduct an evaluation, unless medically indicated, or to undergo evaluations outside the city in which they work or live. The boards would consider applicants' needs on a case-by-case basis and would not, for example, automatically use a forensic psychiatrist to conduct mental health evaluations or require an applicant to travel for an evaluation if a competent psychiatric evaluator lives near the applicant. Exceptions could be established for applicants who live in an area with a limited number of physicians to ensure that an applicant would receive an evaluation from someone other than a treating physician. The boards should refer applicants with physical conditions to the most appropriate medical specialist for evaluation. Finally, the boards should develop guidelines to assist in making licensing determinations that are based on the results of the requested independent psychiatric or medical evaluation. The guidelines would help board members make more consistent licensing decisions, but would not remove their ability to make independent decisions.

2.2 Eliminate the medical licensing exam attempt exceptions from the Medical Practice Act and clarify the number of exam attempts for doctor of osteopathy applicants.

This recommendation would remove from the Medical Practice Act the current exceptions to the number of allowed licensing examination attempts. All applicants would be required to complete each of the three licensing exam sections within three attempts, within seven years of passing the first examination section. For doctor of osteopathy applicants, the number of exam attempts would not apply separately to the Comprehensive Osteopathic Medical Licensing Examination and the U.S. Medical Licensing Examination. The Board would establish by rule the combination of examination section attempts for both of the exams that would satisfy licensure eligibility requirements, thus ensuring that a doctor of osteopathy applicant has the same number of exam attempts as a doctor of medicine.

2.3 Authorize the Medical Board to award a limited license for the practice of administrative medicine.

This recommendation would allow the Board to award a medical license limited in scope to the practice of administrative medicine. The Board would not need to use a nondisciplinary order as part of the license. Physicians would still need to meet licensing requirements, such as education and examination qualifications, fee payment, and continuing medical education, to receive a limited practice license, as specified in Board rule. Any physician wishing to practice clinical medicine after being on a limited

license would need to prove clinical competence to practice, including the passage of any examinations the Board deems necessary to test fitness to practice.

Management Action

2.4 The Medical Board should work with residency programs and other stakeholders when developing guidelines for use of independent psychiatric evaluations.

When developing guidelines for the evaluation of candidates with a history of mental health disorders, the Board should consult with residency programs and other stakeholders to ensure that their concerns and needs are taken into consideration. The Physician Assistant and Acupuncture boards should also consult with stakeholders when developing guidelines for the use of independent psychiatric evaluations for their licensees.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. The Medical Board would realize a savings from eliminating the need to have staff compliance officers follow up on physicians practicing administrative medicine under a nondisciplinary Board order. The time saved would be redirected to other staff efforts.

Responses

Agency

The Board supports these recommendations with the following modification.

Agency Modification

1. Recommendation 2.1: Do not require evaluations to be based on a prior act of poor performance or incompetent practice. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

For

Supports Recommendation 2.1: Steve Bresnen, Texas Society of Psychiatric Physicians

Supports Recommendations 2.1 and 2.4: Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants; Linda Contreras, President – Texas Academy of Physician Assistants

Supports Recommendation 2.2: Daniel Saylak, D.O., Vice President – Texas Osteopathic Medical Association

Supports Recommendations 2.2 and 2.3: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Against

None received.

Modifications

2. Recommendation 2.1: Immediately eliminate the practice that diagnosis of a psychiatric or other medical disorder alone be a stimulus for an independent medical/psychiatric examination, and require the Board and its stakeholders to develop mutually agreed-upon criteria for identifying and communicating about problems in professional behavior. (James W. Lomax, M.D., Associate Chair and Director of Education Programs and Karl Menninger Chair in Psychiatric Education – Baylor College of Medicine)

3. Recommendations 2.1 and 2.4: Require negotiated rulemaking for evaluating applicants' and licensees' mental and physical health disorders. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

4. Recommendation 2.4: Establish a working group of the Board and representatives of Texas Graduate Medical Education programs charged to develop efficacious and evidence-based guidelines to evaluate applicants' risk for behaviors which are likely to result in poor medical practice and problems requiring action by the Board. (James W. Lomax, M.D., Associate Chair and Director of Education Programs and Karl Menninger Chair in Psychiatric Education – Baylor College of Medicine)

Recommended Action: Adopt Recommendations 2.1 through 2.4.

Commission Decision: Adopted Recommendation 2.1 with Modification 2; Recommendation 2.2; Recommendation 2.3; and Recommendation 2.4 with Modification 4, which, as a management action, establishes a working group comprising representatives from the Medical Board and Texas Graduate Medical Education programs to develop guidelines for evaluating applicants' risk for behaviors likely to result in poor medical practice and problems requiring action by the Board. The Physician Assistant and Acupuncture boards would consult with their stakeholders when developing guidelines.

Issue 3 The Medical Board's Investigations Process Needs Further Improvement to Better Protect the Public.

Recommendations

Change in Statute

3.1 Require the Board to use at least two expert panelists for each standard-of-care investigation.

Under this recommendation, the Board would be required to get a review from at least two expert panelists before recommending a case be dismissed, as it currently does for cases in which the first reviewer finds that a standard-of-care violation has occurred. Doing so would prevent cases from being dismissed on the basis of one expert panelist's opinion. Using two expert panelists would require cases currently reviewed by just one panelist be sent to a second, and possibly a third, panelist. If the first panelist believes that the standard of care was not violated, the case would go to a second panelist, who would conduct an abbreviated review of the case, primarily based on the first panelist's written report. If the second panelist agrees that no standard of care was violated, the second panelist would not write a report, but would simply indicate agreement with the first panelist. Cases in which the second panelist disagrees with the first panelist's recommendation to dismiss would go to a third panelist. Again, this third review would be abbreviated, requiring less time and resources than the initial expert's review. The majority opinion of the expert panel would be reflected in the final report written by the first panelist.

3.2 Direct the Board to develop additional qualifications and service restrictions for its experts.

Although the Board has recently adopted a rule to clarify that members of the expert physician panel must be actively practicing physicians, this recommendation would require the Board to adopt additional rules to address the length of time that a physician may serve as an expert panelist, develop grounds for removal from service, and establish how experts should handle conflicts of interest related to standard-of-care cases. Grounds for removal from service should include being repeatedly delinquent in reviewing complaints and submitting reports to the Board.

3.3 Clarify the legal protections of Board expert panelists and consultants.

Providing expert panelists and consultants immunity from suit and judgment would help ensure that the Board is able to secure physicians to assist it in the evaluation of medical competency case, as required by the Medical Practice Act. Protections should not apply in situations where services provided to the Board were fraudulent or with malice. Additionally, statute should clarify that expert panelists and consultants are represented by the Office of the Attorney General in the event of a lawsuit related to good-faith services provided to the Board.

3.4 Authorize the Board to use up to 30 days to evaluate incoming complaints.

Authorizing the Board to use up to 30 days to evaluate complaints, before complaints officially are filed, would allow the Board to dismiss nonjurisdictional and frivolous complaints. The Board could conduct this initial review in less than 30 days, but cannot go more than 30 days, or the clock starts running on the 180-day deadline. Dismissing nonsubstantive complaints would ensure that agency resources get directed to cases more likely to result in a violation of the Medical Practice Act.

3.5 Clarify the consequences of not meeting the 180-day investigation requirement.

Under this recommendation, the Board would be required to notify all parties to a complaint if, for any reason, an investigation extends beyond the 180-day deadline. The reasons for the extension should be noted in the notifications, whether the reasons are for good cause or not. Investigations going beyond 180 days should also be reported, along with reasons, in the Board's annual report to the Legislature, in addition to listing cases more than one year old. Additionally, statute should clarify that complaints may not be dismissed solely because they have not been set for a hearing within 180 days.

3.6 Require the Board to develop additional definitions of good cause for extending an investigation.

Requiring the Board to further define good cause in rule would lead to a better understanding among staff, licensees, and the public of the reasons a Board investigation may go beyond 180 days. The Board should include internal circumstances that may affect an investigation's time line, such as the extended illness of a staff investigator or an expert panelist's delinquency in reviewing and submitting a report to the Board.

Management Action

3.7 The Board should make an effort to use more expert panelists who reside outside the Austin area.

Under this recommendation, the Board would use its entire panel of experts, instead of relying on a subset of panelists to make all first determinations on medical competency. The Board would develop, by rule, the method for which it will rotate through its panelists, taking into account issues such as a lack of experts in a particular specialty or a high number of complaints. In all instances, the Board would still match the respondent's specialty to an expert panelist's.

Fiscal Implication

Requiring the Board to use at least two expert panelists for each standard-of-care investigation would cost $218,000 per year for the additional panelist's review as well as mailing and copying costs.

Responses

Agency

The Board supports these recommendations with the following modification. Also, the Board estimates that the fiscal impact for recommendation 3.1 will be $566,005 per year.

Agency Modification

1. Recommendation 3.2: Do not require service restrictions be instituted on the length of time a given expert may be allowed to serve on the expert physician panel. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Other Agency

Supports Recommendations 3.1 and 3.5 (Charles Horton, Director – Office of Patient Protection)

For

Steve Bresnen – Texas Society of Psychiatric Physicians

Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants

Supports Recommendations 3.2 and 3.7: Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative

Supports Recommendations 3.3, 3.4, and 3.5: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Supports Recommendations 3.3, 3.4, 3.5, and 3.6: Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative

Supports Recommendation 3.7: Ralph Anderson, M.D. – Texas Association of Obstetrics and Gynecology; Roland F. Chalifoux, Jr., D.O.; Daniel Saylak, D.O., Vice President – Texas Osteopathic Medical Association

Against

None received.

Modifications

General

2. Avoid repeated preferential selection of panel members. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

3. Require the Board to identify expert physician panel members and the level of expertise of the experts, and publish this information for anyone interested in it. (Ralph Anderson, M.D. – Texas Association of Obstetrics and Gynecology)

4. Prohibit the same reviewer from reviewing a physician more than once. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

Recommendation 3.1

5. Require that three physicians must meet contemporaneously in person or by voice telephone communication to evaluate whether an act by a physician falls below the standard of care in quality-of-care cases. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners; Susan Strate, M.D. – Texas Medical Association; Ralph Anderson, M.D. – Texas Association of Obstetrics and Gynecology; Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons; C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative; Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

6. Require the Board to use physicians in the same specialty as the accused physician in cases involving standard of care. (Susan Strate, M.D. – Texas Medical Association; Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons; Daniel Saylak, D.O., Vice President – Texas Osteopathic Medical Association; Ralph Anderson, M.D. – Texas Association of Obstetrics and Gynecology)

7. Require the Board to establish a database containing the written reports of the expert physician panel to serve as a statement of the standard of care for various disease entities dealt with under the individual circumstances described. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

Recommendation 3.2

8. Require the Board to randomly select panelists with necessary expertise and who clear a conflict-of-interest review to serve as expert panel members reviewing particular quality-of-care cases. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

9. The Board should hire only specialty-board-certified physicians in active practice in the same or very similar specialty who are experienced in doing similar procedures as the physician being investigated. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

10. Prohibit retired, semiretired, retiring physicians, and physicians who are primarily engaged in administrative practices from conducting reviews. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

Recommendation 3.5

11. Specify that if the Board cannot conclude an investigation within 180 days, then the investigation should be closed and the doctor cleared, and the case and contents in question should fit a statute of limitation and no longer be brought up by the Board. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

Recommended Action: Adopt Recommendations 3.1 through 3.7.

Commission Decision: Adopted Recommendation 3.1; Recommendation 3.2 with Modification 8; Recommendations 3.3 through 3.6; and Recommendation 3.7 with Modification 2, which, as a management action, requires the Medical Board to avoid repeated preferential selection of expert physician panel members.

Issue 4 The Boards Have Not Established Clear Guidelines to Govern the Informal Hearings Process.

Recommendations

Change in Statute

4.1 Require the boards to define the roles and responsibilities of participants in informal hearings.

Under this recommendation, the boards would adopt rules or procedures clarifying the roles and responsibilities of ISC participants, including board members, DRC members, and all appropriate staff. The boards would ensure that all participants are aware of their required tasks, as well as their limitations during informal hearings.

4.2 Clarify the District Review Committees' role in statute.

This recommendation would clarify that DRC members assist the Medical Board in the informal settlement conference process. The Medical Board would retain authority to adopt rules assigning additional duties to the District Review Committees, as long as the rules do not conflict with other statutory provisions.

4.3 Clarify eligibility requirements and establish training, conflict of interest, and grounds for removal requirements for DRC members.

Under this recommendation, statutory provisions that apply to Medical Board members would be reflected for DRC members as well. These provisions include conflict of interest, training, and grounds for removal.

4.4 Require at least two panelists in all informal hearings.

This recommendation would require that a minimum of two panelists serve on all informal settlement conference panels that deliberate on disciplinary cases to determine if a violation occurred. However, if a respondent waives this requirement, the boards may conduct the informal hearing with one panel member. This recommendation would not apply to informal hearings for showing compliance with a Board order or requesting a modification to an order or termination of an order.

4.5 Require the boards to include one public member in the informal settlement process.

This recommendation would ensure that the boards include at least one public member in their informal settlement conferences. These conferences help the boards determine whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process. For the Medical Board, the public member could be a Board member or a member of one of the District Review Committees.

4.6 Increase the number of public members on the District Review Committees.

This recommendation would add two additional public members to each District Review Committee, bringing each committee's composition to seven Governor-appointed members – four physicians and three public members. Because DRC members' primary role is to serve on ISC panels, increasing the number of public members on the DRCs would provide the Board with a larger to pool to draw from for ISC panels without increasing the size of the Board.

4.7 Authorize staff to settle nonmedical complaints.

This recommendation would authorize staff to resolve cases involving nonmedical and administrative violations, subject to delegation by the boards. Staff would have the ability to dismiss these complaints, subject to review by the boards at their public meeting, or to refer the matter directly to a settlement conference. A committee of staff would recommend enforcement action, which the licensee could accept or reject. The boards would retain final decisionmaking authority over the staff's recommendations, and the licensee would always retain the right to request that the case be heard at an informal settlement conference.

Management Action

4.8 The boards should not consider previously dismissed complaints when deliberating on disciplinary actions.

Although previously dismissed complaints are maintained in a licensee's record, the boards should not consider such dismissed complaints when deliberating on a current complaint. However, ISC panel members would continue to be able to consider a licensee's previous history of *violations* when determining sanctions for a current violation.

4.9 The Medical Board should improve its communication with District Review Committee members.

The Medical Board should develop a more formal, consistent process for communicating with District Review Committee members. Because DRC members play a significant role in the Medical Board's informal hearings process, they could benefit from receiving timely updates regarding the ISCs in which they participated. Providing information such as the Board's final decision on a case, the results of a SOAH hearing, and the reasons for any modifications to an ISC panel's recommendation would allow DRC members to have a better understanding of the Board's priorities, the level of evidence needed to indicate a violation of statute or Board rules occurred, and the appropriate sanction level for types of violations.

4.10 The Medical Board should require at least one member from each informal settlement conference panel to attend Board meetings.

The Medical Board should establish a policy requiring that at least one member from an ISC panel attend the full Board meeting when a case the panel heard is on the agenda. This would ensure that the Board members who did not serve on the ISC panel are able to get a complete picture, by asking questions and hearing comments, about the case, including how the panel arrived at its decision. In the event that only DRC members sat on the ISC panel, the Board should require the panelists to either attend the full Board meeting or be available via teleconference. This recommendation does not require that a Board member attend each ISC.

Fiscal Implication

Increasing the size of the District Review Committees and requiring committee members to receive training would have a minimal cost, depending on the type of training the Medical Board requires.

Responses

Agency

The Board supports Recommendations 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, and 4.9.

Agency Modifications

1. Recommendation 4.5: Adopt recommendation 4.5 only if recommendation 4.6 is adopted. Otherwise, require a public member only on cases that do not involve standard of care.
2. Recommendation 4.8: Allow informal settlement conference panels to receive a report of other complaints filed against the physician, even if no violation was found, if the current case may involve a pattern of care or similar allegations are present. Clarify that old complaints may be reinvestigated and included as evidence in the new case if they are relevant.
3. Recommendation 4.10: Authorize the Board to recommend – but not require – that a member of each informal settlement conference panel be present at full Board meetings.

(Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Other Agency

Supports Recommendations 4.5 and 4.6 (Charles Horton, Director – Office of Patient Protection)

For

Steve Bresnen – Texas Society of Psychiatric Physicians

C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative

Supports Recommendations 4.2, 4.7, 4.8, 4.9, and 4.10: Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative

Against

Opposes Recommendations 4.2, 4.3, and 4.7: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Modifications

Recommendation 4.1

4. Clarify the roles and responsibilities of Board staff in informal settlement conferences in the Medical Practice Act. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)
5. Specify that the role of the public members in informal settlement conferences should be in more specific terms than "to protect the public." (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)
6. Require that the full Board must specify reasons for not accepting recommendations of the informal settlement conferences. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

7. Specify that qualifications for District Review Committee members who are involved in standard-of-care issues are the same as those serving on the expert physician panel. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

Recommendation 4.4

8. Require at least two panelists at hearings to modify or terminate an existing order. (Richard Strax, M.D., member – District Review Committee 1)

9. Require that one panelist in all informal hearings be a physician and, in standard-of-care cases, has qualifications comparable to physicians on the expert physician panel. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

10. Require by statute at least two Board panelists and one public member in each informal settlement conference for a total of three, two of whom are physicians if it is a quality-of-care case. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

Recommendation 4.5

11. Require each two-person panel to consist of one public and one physician member. (Richard Strax, M.D., member – District Review Committee 1)

12. Require the Board to establish by rule the role of the public member in the informal settlement conference. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

Recommendation 4.6

13. Increase the size of the Medical Board instead of the size of the District Review Committees. (Richard Strax, M.D., member – District Review Committee 1)

Recommendation 4.8

14. Authorize panels to consider the nature of previous dismissals that involve a similar type of complaint to provide context in considering the current complaint. (Richard Strax, M.D., member – District Review Committee 1)

Recommended Action: Adopt Recommendations 4.1 through 4.10.

Commission Decision: Adopted Recommendation 4.1 with Modification 4 to clarify the roles and responsibilities of participants in informal hearings in statute; Recommendation 4.2; Recommendation 4.3 with Modification 7; Recommendation 4.4 with Modifications 8 and 9; Recommendations 4.5 through 4.7; Recommendation 4.8 with Modification 14, which as a management action allows the boards to consider previous dismissals involving similar complaints when deliberating on a current complaint; and Recommendations 4.9 and 4.10.

Issue 5 The Board Cannot Enforce Provisions of the Medical Practice Act Relating to Medical Peer Review.

Recommendations

Change in Statute

5.1 Clarify the Board's ability to disclose peer review documents in disciplinary hearings.

This recommendation would clarify that the Board's current authority to disclose peer review documents in disciplinary hearings extends to formal contested case hearings before the State Office of Administrative Hearings. Although the Board would be able to disclose peer review documents at SOAH, this recommendation would clarify that peer review documents are not available for discovery for other purposes, as outlined in existing statutory provisions regarding confidentiality of peer review records. Specifically, peer review documents produced by or for a medical peer review committee are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action.

5.2 Clarify that medical records otherwise available are not confidential.

This recommendation would clarify that records, such as a patients' medical records, that are available to the Board through means other than a peer review committee's records are not privileged and confidential, even if the medical records are used in peer review proceedings.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Agency

The Board supports these recommendations with the following clarification.

Agency Modification

1. Recommendation 5.2: Change language in the recommendation to indicate that medical records otherwise available to the Board should be – instead of are – available to the Board though means other than a peer review committee's records. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Affected Agency

The State Office of Administrative Hearings (SOAH) believes that the current hearings process does not preclude disciplinary action by the Board because, even in the absence of admissible peer review documents, evidence gathered by the Board through its own investigations could provide the basis for disciplinary action under the Medical Practice Act. However, SOAH concurs with the recommendations for statutory changes to clarify (1) the Board's ability to disclose peer review documents in disciplinary hearings and (2) that medical records otherwise available are not confidential. (Shelia Bailey Taylor, Chief Administrative Law Judge – State Office of Administrative Hearings)

For

None received.

Against

C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative

Modifications

2. Clarify whether the Board's ability to disclose peer review documents in disciplinary hearings does or does not require a waiver of confidentiality from the peer review committee. (Shelia Bailey Taylor, Chief Administrative Law Judge – State Office of Administrative Hearings)

3. For disciplinary proceedings in which the sole ground alleged for disciplinary action is that a peer review action occurred, clarify the scope of the hearing and the standard of review and burden of proof to be applied. (Shelia Bailey Taylor, Chief Administrative Law Judge – State Office of Administrative Hearings)

4. Clarify that the appropriate use of peer review information in contested case hearings at the State Office of Administrative Hearings would be the basis for the opinion of the expert witness called by the Board at the hearing (i.e., used to show what the testifying expert relied on to confirm the required findings). (Shelia Bailey Taylor, Chief Administrative Law Judge – State Office of Administrative Hearings)

5. Require the names of individuals participating in peer review to be redacted from any disclosure of peer review information and require the Board to disclose all exculpatory information subject to the same redaction requirements. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

6. Require the Board to provide an expert witness testifying as to the rationale for the Board's conclusion that the disciplinary actions taken by the peer review committee was appropriate and reasonably supported by evidence submitted to the Board. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

Recommended Action: Adopt Recommendations 5.1 through 5.2.

Commission Decision: Adopted Recommendation 5.1, as modified to specify that peer review documents shall remain confidential at the Board and at the State Office of Administrative Hearings. Adopted Recommendation 5.2 and Modifications 3 and 4.

Issue 6 The Medical Board's Private Rehabilitation Order Does Not Adequately Provide Public Protection.

Recommendations

Change in Statute

6.1 Restrict nondisciplinary rehabilitation orders to impaired physicians who have not also violated the standard of care.

This recommendation would clarify that applicants and licensees with a current condition or history of substance or alcohol abuse are eligible for a private, nondisciplinary order only if the licensee has not violated the standard of care as a result of the impairment. The Board would decide what standard-of-care violations are, just as it currently does in enforcing the Medical Practice Act and its rules. If the Board receives a valid complaint related to the physician's impairment before the physician signs an agreed private rehabilitation order, the physician is not eligible for the private order. In addition to physicians, this recommendation would apply to physicians-in-training, physician assistants, acupuncturists, and surgical assistants as well.

6.2 Require the Board to define the roles and responsibilities for professional associations in rehabilitation orders.

Under this recommendation, the Board would clarify its expectations of county medical societies and other professional associations in a physician's rehabilitation. Among other things, the Board should clearly state the type of information to be reported, the frequency of the reports, and the format the association should use to submit the reports to the Board, and any other relevant requests. This recommendation would also apply to surgical assistants licensed by the Medical Board, and licensees of the Physician Assistant and Acupuncture boards.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Agency

The Board supports these recommendations. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Other Agency

Supports Recommendation 6.1 (Charles Horton, Director – Office of Patient Protection)

For

Supports Recommendation 6.2: Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants

Against

Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Recommended Action: Adopt Recommendations 6.1 and 6.2.

Commission Decision: Adopted Recommendations 6.1 and 6.2.

Issue 7 Exemptions From Office-Based Anesthesia Regulation Potentially Place the Public at Risk.

Recommendation

Change in Statute

7.1 Remove the statutory exemption for physicians who use moderate sedation in outpatient settings.

Under this recommendation, physicians who use certain drugs for moderate sedation in an outpatient setting would no longer be exempt from the Medical Board's regulations and would be required to register with the Board and comply with Board rules regarding minimum standards for providing anesthesia services. The Board would have authority to discipline those physicians who violate office-based anesthesia rules. All other exemptions, such as outpatient settings where local anesthesia is used and licensed and accredited facilities, would not be affected by this recommendation and would remain in place.

Fiscal Implication

This recommendation would not result in a significant fiscal impact to the State. Physicians currently exempt from office-based anesthesia regulation would be required to pay the $600 biennial registration fee to cover the cost of regulation. Because the number of physicians who would be required to register with the Board is not known, the increase in physicians paying the registration fee cannot be estimated.

Responses

Agency

The Board supports this recommendation, but would like the intent and possible responsibilities that may result clarified. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Affected Agency

The Texas State Board of Nurse Examiners supports this recommendation. (James (Dusty) Johnston, General Counsel – Texas State Board of Nurse Examiners)

For

None received.

Against

Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Recommended Action: Adopt Recommendation 7.1.

Commission Decision: Adopted Recommendation 7.1.

Issue 8 The Diffusion of Authority for Regulating Acupuncture Causes Inefficiency and May Affect the State's Ability to Protect the Public.

Recommendations

Change in Statute

8.1 Authorize the Acupuncture Board to approve licensing and enforcement actions.

This recommendation would allow the Acupuncture Board to approve applications for licensure and finalize enforcement actions without needing the Medical Board's approval. The Medical Board would maintain oversight of the Acupuncture Board's rulemaking process.

8.2 Strengthen the Acupuncture Board's enforcement authority to include summary suspension and cease-and-desist orders.

This recommendation would grant the Acupuncture Board authority to temporarily suspend a license without holding an initial hearing or Medical Board approval. Doing so would allow the Acupuncture Board to immediately stop activity that could harm the public. This recommendation would also allow the Acupuncture Board, without Medical Board approval, to issue cease-and-desist orders. Cease-and-desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the health and safety of the public.

8.3 Streamline the Acupuncture Board's process for approving continuing education.

Under this recommendation, the Acupuncture Board would establish guidelines for preferred providers and course content using other state agencies and other acupuncture licensing boards' methods as a model. Once guidelines for approval are established, agency staff would approve course applications, and could refer any questionable applications to the Board for review and final approval.

8.4 Clarify that the Texas Higher Education Coordinating Board has the authority to approve degree programs for acupuncture schools in Texas.

This recommendation would clarify that the Texas Higher Education Coordinating Board has the authority to approve Texas acupuncture schools and their degree programs. The Acupuncture Board would maintain the authority to establish education requirements for licensure.

Fiscal Implication

These recommendations would not result in a fiscal impact to the State.

Responses

Agency

The Board supports Recommendations 8.1, 8.2, and 8.3. The Board takes no position on Recommendation 8.4. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

The Acupuncture Board supports Recommendation 8.1, which recommends that the Acupuncture Board make licensure and disciplinary decisions independently, regardless of where the Board is located organizationally. (Texas State Board of Acupuncture Examiners – Everett G. Heinze, Jr., M.D., Presiding Officer; Meng-Sheng Linda Lin, L.Ac., Assistant Presiding Officer; Dee Ann Newbold,

L.Ac., Secretary-Treasurer; Sheng Ting (Sam) Chen; Pedro (Pete) V. Garcia, Jr.; Hoang Xiong Ho, L.Ac.; Terry Glenn Rascoe, M.D.; and Claire H. Smith)

Affected Agency

Recommendation 8.4: The Texas Higher Education Coordinating Board is the appropriate agency to approve institutions, including acupuncture schools, in the state to grant degrees. (Raymund A. Paredes, Commissioner of Higher Education)

Other Agency

Supports Recommendation 8.2 (Charles Horton, Director – Office of Patient Protection)

For

Supports Recommendations 8.1, 8.2, and 8.3: Jim Coombes, President – Academy of Oriental Medicine; Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Lesley H. Hamilton, L.Ac.; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary

Supports Recommendation 8.2: Dennis Childers

Supports Recommendation 8.4: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Against

Opposes Recommendations 8.1 and 8.2: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Opposes Recommendation 8.4: Jim Coombes, President – Academy of Oriental Medicine; Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Amy Acuff; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Dennis Childers; Jessica Fritz; Lesley H. Hamilton, L.Ac.; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Jeanine Martin; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Kim Marie Vasek; Tony K. Ward; Billy Zachary

Modifications

1. Require the Acupuncture Board to streamline its approval of continuing education with the Medical Board's oversight. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

2. Give the Acupuncture Board independent rulemaking authority. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Lesley H. Hamilton, L.Ac.; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

3. Specify that accreditation for acupuncture schools in Texas be allowed to be done by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) instead of the Texas Higher Education Coordinating Board. (Robert Duhon – Texas Association of Acupuncturists; Robert Baptist – Thomas Pittman Consulting; Helen Ingram)

4. Specify that the Acupuncture Board may approve schools of acupuncture and educational programs that meet its requirements. (Jim Coombes, President – Academy of Oriental Medicine; Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Amy Acuff; Stuart Bailey; Robert Baptist; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Dennis Childers; Jessica Fritz; Lesley H. Hamilton, L.Ac.; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Jeanine Martin; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Kim Marie Vasek; Tony K. Ward; Billy Zachary)

5. Retain master's degree designation for graduates of the Academy of Oriental Medicine at Austin. (Gisele Munoz)

Recommended Action: Adopt Recommendations 8.1 through 8.4.

Commission Decision: Adopted Recommendations 8.1 through 8.4.

Issue 9 The Medical Board Needs Flexibility in How It Regulates the Delegation of Prescription Authority by Physicians.

Recommendations

Change in Statute

9.1 Continue the Board's authority to waive prescriptive delegation requirements.

This recommendation would remove the expiration date for Board waiver of delegation requirements. The Board would continue to be able to waive site and supervision requirements for physicians who delegate prescriptive authority to physician assistants and advanced nurse practitioners. However, the Prescriptive Delegation Waiver Committee would expire and the Medical Board would assume this responsibility through its committee structure.

9.2 Eliminate the prescriptive delegation registration requirement and authorize the Board to establish rules that require physicians to record delegation.

This recommendation would remove the requirement that physicians, physician assistants, and advanced nurse practitioners register their intent to practice or to supervise delegated prescriptive authority with the Board. Physicians who delegate prescriptive authority would be required to document in their own records when prescriptive authority is delegated, and the Board would have access to this information if needed for an investigation.

Fiscal Implication

Because the Prescriptive Delegation Waiver Committee reviews requests for waiver via e-mail, the committee does not incur any travel costs. Also, the Board does not collect a fee for registering prescriptive delegation authority. Thus, these recommendations would not have a fiscal impact to the State.

Responses

Agency

The Board supports Recommendation 9.1. The Board takes no position on Recommendation 9.2. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Affected Agency

The Texas State Board of Nurse Examiners supports Recommendation 9.1. The Nurse Board does not have an opinion on the usefulness of the registration information to the Medical Board. However, the Nurse Board has found the registration information useful in its enforcement investigation of Advanced Practice Nurses who have been reported for unauthorized nursing practice. (James (Dusty) Johnston, General Counsel – Texas State Board of Nurse Examiners)

For

Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants; Linda Contreras, President – Texas Academy of Physician Assistants

Supports Recommendation 9.2: Gordon K. Lee, MPAS, PA-C

Against

Opposes Recommendation 9.2: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Modifications

Recommendation 9.1

1. Continue the Board's authority to waive prescriptive delegation requirements and continue the Prescriptive Delegation Waiver Committee. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

2. Require, at a minimum, the presence of a physician assistant and a supervising physician on the Board committee that assumes responsibility for authorizing waivers of prescriptive delegation authority. (Richard Branson, PA-C; John Drobnica, MPAS, PA-C; Gordon K. Lee, MPAS, PA-C; Jack Runyan, PhD, PA-C; Scott A. Stegall, MPAS, PA-C; and Patrick J. Swint, PA-C, founders – Physician Assistants Caring for Texas)

3. Include supervising physicians and physician assistants in the policymaking and rulemaking body that makes the final decision on the granting of waivers. (Gordon K. Lee, MPAS, PA-C)

   Staff Comment – This modification requires adoption of new issue 17, which adds two physician assistants to the Medical Board.

Recommended Action: Adopt Recommendations 9.1 through 9.2.

Commission Decision: Adopted Recommendations 9.1 through 9.2.

Issue 10 Licensing Surgical Assistants Does Not Provide Added Public Protection That Warrants State Oversight.

Recommendation

Change in Statute

10.1 Abolish the surgical assistant license.

This recommendation would eliminate the requirement that the Medical Board license and regulate surgical assistants. The recommendation also would eliminate the Surgical Assistant Advisory Committee. The Medical Board would continue to protect the public by regulating the practice of medicine, including licensed physicians who delegate surgical assisting functions during surgical procedures.

Fiscal Implication

This recommendation would not result in a significant fiscal impact to the State. According to Board staff, regulating surgical assistants costs the agency more money and resources than revenue from license fees covers. As a result, eliminating the license would have a small positive fiscal impact. Members of the Surgical Assistant Advisory Committee do not receive a per diem or travel reimbursement, so abolishing the advisory committee would have no fiscal impact to the State.

Responses

Agency

The Board supports this recommendation. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

For

Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants; Linda Contreras, President – Texas Academy of Physician Assistants

Against

Luis F. Aragon, L.S.A.

Ken Campbell, L.S.A., President – Texas Society of Surgical Assistants

Lee R. Colosimo, M.D.

Sean T. Daly, L.S.A., Panhandle Sports Medicine

Zak W. Elgamal, L.S.A.

Phil Elizondo, M.D., P.A.

Patty Ferrie, L.S.A.

John A. Griswold, M.D., F.A.C.S., Professor and Chairman – Department of Surgery, Texas Tech University Health Sciences Center

Ari O. Halldorsson, M.D., Residency Program Director; Associate Professor and Chief – Division of Cardiothoracic Surgery, Department of Surgery, Texas Tech University Health Sciences Center

Brenda Hamilton, L.S.A.

Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Carlos Alberto Herrera, M.D.

Bruce Hertzenberg, C.S.T./C.F.A.

Michael Kleinman, M.D.

Donald Mackenzie, M.D., F.R.C.S.C.

Timothy A. Marvin, C.F.A., L.S.A., CEO – T.M. First Assisting Inc.

Eddie Matsu, M.D., Past President – Houston Orthopaedic Society

Sheri A. Moore

Terry L. Morris, L.S.A., Vice President – Texas Society of Surgical Assistants

Stephen Ozanne, M.D.

Kevin Rush

Mithilesh C. Verma, L.C.C.-S.T., A.S.T.

Modifications

1. Amend the Texas Insurance Code from "licensed surgical assistant" to "certified surgical assistant" if licensing of surgical assistants is eliminated. (Luis F. Aragon, L.S.A.)
2. Transfer regulation of surgical assistants to the Texas Department of State Health Services as an alternative to abolishing the regulation at the Medical Board. (Zak W. Elgamal, L.S.A.; Kevin Rush; Luis F. Aragon, L.S.A.)

Recommended Action: Adopt Recommendation 10.1.

Commission Decision: The Commission took no action on Issue 10.

Issue 11 Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Recommendations

Licensing

Change in Statute

11.1 Require physician assistant and acupuncture applicants to pass a jurisprudence exam as a condition for licensure.

This recommendation builds upon existing licensure requirements by requiring physician assistant and acupuncture applicants to pass a jurisprudence exam to be eligible for licensure. The Physician Assistant and Acupuncture boards would each 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 also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results. To the extent possible, the boards could use the Medical Board's jurisprudence examination process as a model, including the consideration of examination administration through a statewide testing service. Rules regarding jurisprudence exams would need to be approved by the Medical Board, which has rulemaking oversight for the Physician Assistant and Acupuncture boards. 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.

11.2 Clarify that the Medical, Physician Assistant, and Acupuncture boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Medical, Physician Assistant, and Acupuncture boards' authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code by specifically requiring the boards to develop rules, under the provisions in Chapter 53, defining which crimes affect licensees' ability to practice. This recommendation would not affect the changes made last session authorizing the Medical Board to refuse to license or to take disciplinary action against physicians placed on deferred adjudication for felonies or certain misdemeanors.

11.3 Authorize staff to issue licenses to qualified physician, physician assistant, and acupuncture applicants.

This recommendation would allow staff to issue physician, physician assistant, and acupuncture licenses to individuals who meet all licensing requirements and do not warrant further consideration by the appropriate board's licensing committee. Staff would still forward applications as needed to the appropriate board for review. The Medical, Physician Assistant, and Acupuncture boards would still formally approve the licenses at regularly scheduled meetings, and licensees would be able to work in their profession before formal board approval. Because surgical assistant licenses fall under the Medical Board's jurisdiction, staff would have authority to issue these licenses as well. The Board would adjust license fees to compensate for any lost revenue caused by eliminating temporary licenses.

11.4 Clarify the Physician Assistant Board's responsibility to establish a system of continuing medical education.

This recommendation would provide clear statutory authority for the Physician Assistant Board to adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. Specifically, the Board would adopt and administer rules that:

- establish the number of hours of continuing medical education the Board determines appropriate as a prerequisite to the renewal of a license;
- require at least one-half of the hours to be Board approved; and
- adopt a process to assess a license holder's participation in continuing medical education courses.

11.5 Change the basis for the Physician Assistant Board's late-renewal penalties.

This recommendation would require the Physician Assistant Board to use the standard renewal fee as the basis for late renewal penalties. For example, the Board would charge a person whose license has been expired for 90 days or less the standard renewal fee plus a penalty equal to 1-1/2 times the renewal fee. For those whose licenses have been expired for more than 90 days, but less than one year, the boards would charge the standard renewal fee plus a penalty of twice the renewal fee.

11.6 Authorize the Medical and Physician Assistant boards to adopt a system under which licenses expire on various dates during the year.

The Medical and Physician Assistant boards would establish, by rule, a license renewal system under which licenses expire on various dates during the year. This change would replace the requirement for the Medical Board to renew physicians' licenses at the end of their birth month, and it would provide new authority to the Physician Assistant Board to stagger its renewals. Because agency staff processes renewals for both boards – plus the Acupuncture Board – this recommendation would allow staff to determine the most efficient schedule for renewing licenses.

Management Action

11.7 The Medical Board should discontinue its practice of requiring applicants to appear before the Board for a personal interview.

The Medical Board should no longer require physician applicants to travel to Austin to prove their identity and the authenticity of their original medical school diploma, particularly if staff can verify the information through primary sources. The Board already receives primary source verification of applicants' medical school education from transcripts sent directly to the Board from medical schools. The Board would not be prohibited from requiring applicants to make a personal appearance, but should only do so when staff cannot verify vital information through an independent source.

Enforcement

Change in Statute

11.8 Authorize the Acupuncture Board to refuse to renew a license and allow the Physician Assistant and Acupuncture boards to accept the voluntary surrender of a license.

This recommendation would establish the full range of penalties for disciplinary actions against an acupuncturist licensed in the state. In developing its standard penalty matrix, the Acupuncture Board would incorporate refusal to renew a license into its disciplinary options. Doing so would allow the

Board to better apply the appropriate sanction for offenses, such as failure to pay an administrative fine. This recommendation also would clarify that the Physician Assistant and Acupuncture boards have authority to accept the voluntary surrender of a license. The boards would recommend rules to the Medical Board that outline how the boards determine whether a practitioner is competent to return to practice.

11.9 Authorize the Medical and Physician Assistant boards to require refunds as part of the agreed settlement process.

Under this recommendation, the Medical, Physician Assistant, and Acupuncture boards would be allowed to include refunds as part of an agreed order reached in an informal settlement conference on a complaint. This authority would be limited to ordering a refund not to exceed the amount the complainant paid for services. Any refund order would not include an estimation of other damages or harm and must be agreed to by the licensee. The refund may be in lieu of or in addition to other sanctions against a licensee.

11.10 Authorize the Medical and Physician Assistant boards to issue cease-and-desist orders.

Cease-and-desist authority would enable the boards to move more quickly to stop unlicensed activity that threatens the health and safety of the public. The recommendation would also authorize the boards to assess administrative penalties against individuals who violate cease-and-desist orders. The Acupuncture Board's ability to issue cease-and desist orders is addressed in Issue 8 of this report.

Policy Body & Administration

Change in Statute

11.11 Allow medical faculty members to be eligible to serve on the Medical Board.

This recommendation would remove the statutory prohibition against salaried faculty members at a college of medicine from serving on the Medical Board. To be eligible for appointment to the Board, a faculty member would have to satisfy the qualifications outlined in the Medical Practice Act, including conflict of interest provisions.

11.12 Clarify that the Senate must confirm appointments to the Physician Assistant and Acupuncture boards.

This recommendation would establish current practice in statute and ensure that future appoints to the Physician Assistant and Acupuncture boards are voted by the Senate in the same process as other Governor appointees.

11.13 Authorize the Physician Assistant Board to establish a fee for individuals who hold an inactive license.

Under this recommendation, the Physician Assistant Board would set a renewal fee for its inactive licensee. In addition, the Board would establish a time limit for physician assistants to hold an inactive license. Because the Medical Board oversees the Physician Assistant Board's rulemaking process, the Medical Board would have final approval of any fees and time limitations for the license.

11.14 Require the Acupuncture Board to recommend licensing and other fees to the Medical Board.

This recommendation would require the Acupuncture Board to propose rules establishing licensing and other fees to regulate acupuncturists. All rules regarding fee levels proposed by the Acupuncture Board would be approved by the Medical Board, which has rulemaking oversight for the Acupuncture Board. However, the Acupuncture Board would play a more significant role in determining what fees are appropriate to regulate acupuncturists in Texas.

Fiscal Implication

Creating a statutory basis for the Physician Assistant Board's late-renewal penalty would result in a positive fiscal impact of $3,745 annually. Establishing a renewal fee for the physician inactive license would result in a small, positive fiscal impact as well. Authorizing staff to issue licenses, and thus eliminating the need for temporary licenses, would result in a loss of revenue of about $165,000 each year. The Board would adjust license fees to compensate for this loss.

Responses

Agency

The Board supports Recommendations 11.1, 11.4, 11.6, 11.8, 11.10, 11.12, 11.13, and 11.14. The Board takes no position on Recommendations 11.5, 11.7, and 11.11.

Agency Modifications

1. Recommendation 11.2: Authorize the boards to use Texas Occupations Code, Chapter 53, only when nothing more specific is in its relevant statutes.
2. Recommendation 11.3: Clarify that permanent licenses issued by staff would not be required to undergo formal board approval at a regularly scheduled board meeting.
3. Recommendation 11.9: Provide clear statutory guidelines for any refunds to be provided through the Board, defining the scope of eligibility and method for calculating refunds. Also, address the legal effect of the refund on civil claims. Clarify that permanent licenses issued by staff would not be required to undergo formal board approval at a regularly scheduled board meeting.

(Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

Other Agency

Supports Recommendations 11.1, 11.2, 11.4, 11.9, and 11.10 (Charles Horton, Director – Office of Patient Protection)

For

Supports Recommendations 11.1 through 11.7: Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants)

Supports Recommendations 11.1, 11.2, 11.3, 11.8, 11.12, and 11.14: Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram;

Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary

Supports Recommendation 11.4: Linda Contreras, President – Texas Academy of Physician Assistants

Supports Recommendation 11.11: Thomas Blackwell, Dean of Graduate Medical Education – University of Texas Medical Branch; Jonathan MacClements, Director of Medical Education – University of Texas Health Center at Tyler

Supports Recommendation 11.12: Lesley H. Hamilton, L.Ac.

Against

Opposes Recommendation 11.9: Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners

Modification

4. Recommendation 11.3: Clarify that permanent licenses issued by staff would not be required to undergo formal board approval at a regularly scheduled board meeting and that any applications requiring further consideration would go to the appropriate board. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Helen Ingram; Lesley H. Hamilton, L.Ac.; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

Recommended Action: Adopt Recommendations 11.1 through 11.14 with Modification 4, which clarifies that staff issues licenses to applicants who meet licensing requirements, but forwards applications about which staff has questions to the appropriate board.

Commission Decision: Adopted Recommendations 11.1 through 11.14 and Modification 4.

Issue 12 Texas Has a Continuing Need to Regulate Physicians, Physician Assistants, and Acupuncturists.

Recommendation

Change in Statute

12.1 Continue regulating physicians, physician assistants, and acupuncturists in Texas.

Under this recommendation, the State would continue to regulate physicians, physician assistants, and acupuncturists. The recommendation for the structural organization of the agencies that perform this regulation is addressed in the Licensing Reorganization Project report.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

Responses

Agency

The Board supports this recommendation. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

For

Richard Branson, PA-C; John Drobnica, MPAS, PA-C; Gordon K. Lee, MPAS, PA-C; Jack Runyan, PhD, PA-C; Scott A. Stegall, MPAS, PA-C; and Patrick J. Swint, PA-C, founders – Physician Assistants Caring for Texas

Michael Schaefer

Against

None received.

Recommended Action: Adopt Recommendation 12.1.

Commission Decision: No action was taken on Issue 12, as the Commission adopted an alternative to the recommendations in the Licensing Reorganization Project, continuing the Medical Board as a stand-alone agency for 12 years and continuing the Physician Assistant and Acupuncture boards as advisory boards under the Medical Board for 12 years, but removing their separate Sunset dates.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas State Board of Medical Examiners		
Recommendations		**Across-the-Board Provisions**
Update	1.	Require public membership on the agency's policymaking body.
Modify	2.	Require provisions relating to conflicts of interest.
Already in Statute	3.	Require unbiased appointments to the agency's policymaking body.
Update	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.
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.

Texas State Board of Physician Assistant Examiners		
Recommendations		**Across-the-Board Provisions**
Update	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.
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.
Modify	7.	Require separation of policymaking and agency staff functions.
Apply	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.

Texas State Board of Acupuncture Examiners		
Recommendations		**Across-the-Board Provisions**
Update	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.
Already in Statute	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.

NEW ISSUES

New Issues

The following issues were raised in addition to the issues raised in the staff report. The issues are numbered sequentially to follow the staff's recommendations.

Consistency Among Statutes

13. Review the Medical Practice Act, Physician Assistant Licensing Act, Acupuncture Act, and Surgical Assistant Act and apply uniform provisions when appropriate. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners; Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Lesley H. Hamilton, L.Ac.; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

14. Amend the Physician Assistant Licensing Act, Acupuncture Act, and Surgical Assistant Act so that in future legislative sessions when the Medical Practice Act is amended, those amendments are applied to the other acts when appropriate. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners; Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Lesley H. Hamilton, L.Ac.; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

Organization

15. Change the name of the agency to better communicate with consumers regarding agency functions – options include the Texas Medical Board or the Texas Board of Medicine. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

16. Consider changing the name of the Board as a means to limit current potential liability and risk-management exposure. (David L. Hankins, D.O.)

17. Add two physician assistant positions to the Medical Board and require a minimum of two supervising physicians of physician assistants from the 12 physicians on the Board. (Richard Branson, PA-C; John Drobnica, MPAS, PA-C; Gordon K. Lee, MPAS, PA-C; Jack Runyan, PhD, PA-C; Steve Salyer, PA-C; Scott A. Stegall, MPAS, PA-C; and Patrick J. Swint, PA-C, founders – Physician Assistants Caring for Texas)

18. Require one physician and one physician assistant from the Physician Assistant Board to be assigned to the rulemaking committees of the Medical Board when deliberating on issues affecting the physician-physician assistant team. (Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants; Linda Contreras, President – Texas Academy of Physician Assistants)

19. Require at least two of the physician members of the Medical Board to be physicians who supervise physician assistants. (Michael G. Clark, PA-C, President-Elect – Texas Academy of Physician Assistants; Linda Contreras, President – Texas Academy of Physician Assistants)

20. Limit Board members' terms to four years. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

21. Include a greater percentage of practicing physicians on the Board, particularly independent specialists capable of making informed decisions about physicians practicing in certain fields. (Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

22. Announce all prospective Board members publicly before the Governor is allowed to appoint them; require all criticism to be published for 90 days in advance of their appointment; and allow any legislator to demand a vote by both chambers requiring a two-third majority if any legislator determines that the individual may not be an appropriate person to sit on the Board. (Cynthia Lee, M.D.)

23. Prohibit prospective Board members from receiving any commercial support from either pharmaceutical companies or insurance entities for a specific number of years before appointment, and require prospective Board members to agree to refuse such support for a specific number of years following such service. (Cynthia Lee, M.D.)

24. Add peer-elected Board members to the current number of Board members, increasing the size to between 28 and 34 members, which would increase balanced representation and improve function, timeliness, and accountability; authorize the Board to split its membership to meet monthly; and increase license fees for general funding of the Board. (David L. Hankins, D.O.)

25. Create a patient advocate position within the Medical Board staff. (Cindy Boling, President and Chief Executive Officer – AdvocateWeb)

26. Require the presiding officer of the Acupuncture Board to be a licensed acupuncturist. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Lesley H. Hamilton, L.Ac.; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

27. Require the Acupuncture Board to consist of at least five licensed acupuncturists with at least two of the licensed acupuncturists coming from schools that teach acupuncture. (Robert Duhon – Texas Association of Acupuncturists)

28. Require that the membership of the Acupuncture Board must include educators. (Kim Marie Vasek)

Licensing

29. Modify the Medical Practice Act to disallow appeals of established, statutory eligibility requirements to the Licensure Committee of the Board, the full Board or the State Office of Administrative Hearings, and add consistent language to the Physician Assistant Act, Acupuncture Act, and Surgical Assistant Act. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

30. Authorize the Board to delegate recommendations for licensure eligibility to a panel of the Board, and add consistent language to the Physician Assistant Act, Acupuncture Act, and Surgical Assistant Act. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

31. Remove language in the Physician Assistant Licensing Act that allows an applicant for a Texas physician assistant license whose license in another jurisdiction has been restricted to be eligible for licensure. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

32. Authorize a limited license for out-of-state expert medical witnesses who do not hold a current Texas medical license. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners; Susan Strate, M.D. – Texas Medical Association)

33. Develop a regular communication between the Medical Board and Texas Graduate Medical Education programs about the education backgrounds of individuals who become persons of concern on the part of the Board. (James W. Lomax, M.D., Associate Chair and Director of Education Programs and Karl Menninger Chair in Psychiatric Education – Baylor College of Medicine)

34. Authorize the Board to issue and reissue an institutional medical license to any applicant endorsed by the president of the Medical Board and/or by endorsement and upon the specific request of the president or dean of a Texas medical school for a foreign medical graduate with profound specific academic or clinical achievements as long as employment as a physician in a Texas medical school persists. (James T. Willerson, M.D. – Texas Heart Institute)

35. Require the Board to grant a license in a timely manner to off-shore physicians who are board-certified in their specialty and have completed a U.S. residency. (Robert Neal Mills, M.D.)

36. Require physicians to take continuing medical education (CME) on the prevalence of obstructive sleep apnea and periodic limb movement disorders. (Cynthia Lee, M.D.)

37. Require chiropractors to pass the same exam as acupuncturists if they want to practice acupuncture. (Kim Marie Vasek)

Professional Practice

38. Prevent the Board from enforcing Texas Administrative Code, Title 22, part 9, rule 193.11, relating to use of lasers. (Nancy Bennett, Laser Hair Removal Stakeholder Group Steering Committee and owner – Hair Removal of Houston; Wendy Cole, Laser Hair Removal Stakeholder Group Steering Committee and owner – Champions Electrolysis and Laser Clinic; Michael L. White, Laser Hair Removal Stakeholder Group Steering Committee)

39. Clarify the descriptive language of the physician assistant profession to the supervised practice of medicine delegated by a physician. (Richard Branson, PA-C; John Drobnica, MPAS, PA-C; Gordon K. Lee, MPAS, PA-C; Jack Runyan, PhD, PA-C; Scott A. Stegall, MPAS, PA-C; and Patrick J. Swint, PA-C, founders – Physician Assistants Caring for Texas)

40. Adopt and incorporate existing acupuncture rules into statutory language. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Lesley H. Hamilton, L.Ac.; Helen Ingram)

41. Remove the term "referral" from the Acupuncture Board's statute to clarify that no formal referral is required for a patient to go to a licensed acupuncturist. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Lesley H. Hamilton, L.Ac.; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

42. Restrict the practice of acupuncture to those licensed by the State to practice it. (Michael Schaefer)

43. Clarify the definition of acupuncture by including the term "Oriental medicine;" substituting the term "incisive" for "nonincisive;" and expanding the definition to include the administration and/or recommendation of herbal formulas and supplements, manual therapy (including, but not limited to, acupressure, tui na, shiatsu, and other forms of Asian bodywork), and energy flow exercises based on the theory of Oriental medicine; or expanding the definition to include the administration of these same elements, except herbal formulas and supplements. (Leslie Lynn Myers, J.D., L.Ac., Secretary – Texas Association of Acupuncture and Oriental Medicine; Stuart Bailey; Leslie Butterworth Ball; Diane Brew, L.Ac.; Shawn C. Calamari; Jessica Fritz; Jingyn Gu; Lesley H. Hamilton, L.Ac.; Kurt Hein; Shama Hussain; Helen Ingram; Hector Rene Kuhn; Sheri Moody; Melissa Nichols; Le T. Otto; Robert P. Baptist; Yvonne Perez; Alexandre Sollek; Audrey Stewart; Avani Tailor; Marcia Taylor; Tony K. Ward; Billy Zachary)

    Staff Comment: The Sunset Commission received 11 letters in opposition to New Issue 43.

Delegation Authority

44. Modify provisions in the Medical Practice Act relating to prescribing at certain sites by differentiating only between facility-based sites and nonfacility-based sites, and add minimum supervision requirements for nonfacility-based-site delegation. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

45. Clarify that a physician must supervise a nurse anesthetist when an anesthesiologist is not involved in the case. (Thomas A. Forbes – Kemp Smith, LLP; James P. McMichael, M.D. – Texas Association of Anesthesiologists; Scott E. Kercheville, M.D. – Texas Association of Anesthesiologists)

46. Authorize the physician delegating the medical act of anesthesia administration to determine the degree of supervision that is reasonable and appropriate for a particular clinical situation. (James P. McMichael, M.D. – Texas Association of Anesthesiologists)

Oversight of Board

47. Require a bipartisan committee of legislators to review any actions from the State of Texas or other legal entity asserting insurance fraud so that surveillance could occur of the motives behind such fraud assertions, and require the committee to be informed of all such allegations in order to prevent health insurers or individuals with illegal agendas from misusing the government access they have or have purchased. (Cynthia Lee, M.D.)

48. Develop policies and procedures to provide for full accountability of state regulatory boards with legislative review and corrective action. (David L. Hankins, D.O.)

49. Remove barriers by requiring and creating an educational and training forum for all associated regulatory agency and support staff function. (David L. Hankins, D.O.)

50. Institute a legislative referendum on the applicability of shielding any state regulatory body or agency using the rule of sovereign immunity to excuse gross violations of due process, negligence, or other associated violations of federally mandated civil/constitutional rights. (David L. Hankins, D.O.)

51. Create an independent Legislative Oversight Commission charged with both oversight and regulation of regulatory entities under state jurisdiction to function dually as a quality assurance initiative, to preempt regulatory abuses, and serve as grievance dispute for corrective action. (David L. Hankins, D.O.)

52. Annually review the Medical Board's leadership, administration, and attorney functions. (David L. Hankins, D.O.)

53. Specify that any employee, Board member, including officers of the Board, or executives of the Board who uses their position to shield a physician associated financially, or by legal association or referring physician for any gain, shall be dismissed and subject to criminal penalties and loss of medical license by a peer system outside of the Medical Board. (Harold Granek, M.D.)

54. Require that any employee who violates a court order shall be subject to dismissal and criminal penalties, and shall be unshielded from civil litigation. (Harold Granek, M.D.)

55. Require allegations that have been found to be buried to be researched by an independent agency. (Harold Granek, M.D.)

56. Specify that any employee, Board member, including officers of the Board, or executives of the Board who use their position of authority to coerce a patient to either testify or not testify, file an allegation against a physician or withdraw shall be subject to removal or criminal penalty. (Harold Granek, M.D.)

57. Specify that any physician on the Board who uses his position to lodge complaints against a fellow physician falsely for economic advantage shall be subject to dismissal, loss of license, and subject to review by an oversight committee outside the purvey of the Texas State Board of Medical Examiners. (Harold Granek, M.D.)

58. Specify that if there is indication that the Medical Board is targeting a physician or attorney of a physician then cases should be taken to another arena for future complaints, as determined by an oversight committee outside the purview of the Board. (Harold Granek, M.D.)

59. Prohibit physicians on the Board from using information acquired from their duties on the Board for advancement of his personal practice or for advancement or gain of any other physician or affiliate. (Harold Granek, M.D.)

60. Allow physicians to initiate a formal complaint against the Board or any of its members, staff, or experts at the State Office of Administrative Hearings or an independent third party regarding how the physician was treated, or if the information presented by the physician demonstrates that the Board used malice, false allegations, misleading testimony, and was arbitrary and capricious in its case. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

Disciplinary Authority

61. Develop a standard disciplinary code with specific guidelines, rules, and regulations for the Board. (David L. Hankins, D.O.)

62. Clarify that the Medical Board shall revoke a physician's license on final conviction of any felony or misdemeanor, regardless of conflicting provisions elsewhere in the Medical Practice Act. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

63. Clarify that the Board has jurisdiction to review and take disciplinary action on a licensed physician who provides false or unscientific medical testimony. (Paul Handel, M.D., Chair – Texas Medical Association Ad Hoc Committee on the Texas State Board of Medical Examiners)

64. Require that the Board and the Texas Medical Association and Texas Osteopathic Medical Association work together to develop appropriate disciplinary guidelines for doctors found to be in violation of the Medical Practice Act. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

65. Provide physicians who feel that they have been treated unreasonably by the Board with a means to file a complaint either through the State Office of Administrative Hearings or an independent third party, so that an investigation of Board members or staff can be initiated and the guilty parties disciplined. (Roland F. Chalifoux, Jr., D.O.)

66. Do not allow charges more than seven years old, similar to the record-storage requirement. (Harold Granek, M.D.)

67. Require parity in dispensation of penalties and justice. (Harold Granek, M.D.; Ralph Anderson, M.D. – Texas Association of Obstetrics and Gynecology)

68. Require the Board to notify the appropriate licensing board of any health professional who falsely testifies or misuses power in any form of medical review for review of appropriate punishment or suspension. (Harold Granek, M.D.)

69. Require the Acupuncture Board to regulate the practice of acupuncture to include physicians. (Kim Marie Vasek)

Investigations

70. Require the Board to prove that care provided by an accused physician was substandard by referencing current literature, studies, or research, and not based solely on the Board reviewer's professional opinion and experience. (Roland F. Chalifoux, Jr., D.O.)

71. Require specificity in complaints similar to the Rule 9(b) of the Federal Rules of Civil Procedure requiring particularity in federal complaints of fraud, and require that the details of alleged wrongdoing must be stated clearly and specifically. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

72. Require the Board to notify complainants of any active and open cases before taking any action. (Jackie L. Taylor)

73. Require that the standard of care must be the consensus of experts and not a single practitioner's opinion. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

74. Require the Board to publish the reports of expert physician panelists on the Board's Web site within 90 days of the resolution of the case. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

75. Do not provide blanket immunity for any expert who commits fraud, and require such an expert to face ethics or unprofessional conduct charges and sanctions from the Board. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

76. Require the Board to follow rules of evidence when proceeding with an investigation. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

77. Give licensees the right to a detailed description of the allegations against them and, at a minimum, as much information about the charges as is needed for the applicant to fairly address the issues in the allegations. (Steve Bresnen – Texas Society of Psychiatric Physicians)

78. Contract with field-specific experts and create expert panels to decide relevance of any nontherapeutic or overprescribing charges, and require experts' reports to be signed. (David L. Hankins, D.O.)

79. Require the Board to fully consider stakeholders' previous comments, which outlined a deliberative panel of experts with publicly disclosed members, an Internet database of expert physician panel reports, and fully transparent procedures that comply with the Public Information Act and Open Meetings Act to the maximum extent possible. (C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative)

80. Do not allow valid accusations by a deceased patient to be processed unless the allegation is that the physician was responsible for that death. (Harold Granek, M.D.)

81. Provide full chart disclosure to expert witnesses. (Harold Granek, M.D.)

82. Specify that use of subpoena power shall be reasonably employed. (Harold Granek, M.D.)

Hearings

83. Establish that procedural rules relating to contested cases adopted by the Medical Board govern formal disposition of a contested case. (Donald W. Patrick, M.D., J.D., Executive Director – Texas State Board of Medical Examiners)

84. Require a Board member of the same specialty as the accused physician to be present at the informal settlement conference as well as the Board-hired reviewer to defend the reviewer's decision as to why care was substandard. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

85. Make the State Office of Administrative Hearings or district court the final arbiter in any appeals it hears and prohibit the Board from overturning an administrative law judge's ruling to restore a physicians license. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

86. Hold the Board accountable when using the temporary suspensions by better defining when and how to use this disciplinary term and using it consistently, fairly, and appropriately. (Roland F. Chalifoux, Jr., D.O.)

87. Require the Board and the accused physician to appear in front of a State Office of Administrative Hearings panel consisting of two administrative law judges within 10-14 days of a suspension order. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

88. Limit by statute the number of repeat informal settlement conferences a licensee is subjected to for a single allegation before a charge is adjudicated. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative; C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative)

89. Scrap the current informal hearings process. (David L. Hankins, D.O.)

90. Develop financially viable dispute mediation panels. (David L. Hankins, D.O.)

91. Clarify that the Board's authority to dispose of complaints through informal settlements is not meant to duplicate the contested case hearings at the State Office of Administrative Hearings. (C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative)

92. Require members of the Board who serve on informal settlement conference panels or disciplinary subcommittees to recuse themselves from future deliberation. (C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative)

93. Require the Board to remove its rule relating to changes to recommendations of final decisions and orders (Texas Administrative Code, Title 22, part 9, rule 187.37(d). (C. Stratton Hill, Jr., M.D., Professor Emeritus of Medicine – University of Texas M.D. Anderson Cancer Center; Texas Pain Society; Texas Cancer Pain Initiative)

94. Require an informal settlement conference to be concluded within 180 days and, if the parties reach an agreement, be binding on the Board unless the Board can produce new evidence; and specify that any Board member in violation of this rule should be subject to sanctions or removal from the Board. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

95. Specify that failure to reach an agreement or any appeal from the informal settlement conference level will be taken directly to district court and bypass the State Office of Administrative Hearings. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative)

96. The Board should not attempt to add complaints to record if a doctor informs the Board that he or she does not accept their action and seeks remedy at the State Office of Administrative Hearings. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

97. Require data gathered and disseminated by the Board to the Governor, the Legislature, and the public to include outcomes of State Office of Administrative Hearings and district court proceedings. (Roland F. Chalifoux, Jr., D.O.)

98. Change the informal settlement conference to a formal settlement conference. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

99. Prohibit the Board from initiating a formal settlement conference until the accused physician has had at least two of three adverse reports from contemporaneous physicians of the same specialty. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

100. Require formal settlement conferences to be transcribed. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

101. Specify that at the end of the formal settlement conference, the following actions can occur:

- The Board can dismiss the charges;
- The accused doctor may accept the disciplinary consequences from the Board;
- The case will be heard at the District Court for final ruling by the Judge on the Board's merits of the case;
- The decision of the judge will be made within 90 days and the decision will be final and cannot be changed by the Board, and during that time, the doctor will be allowed to practice; and
- Prior to the trial, the Board will not be allowed to publish its allegations against the physician on its Web site.

(Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

102. Apply the rules for medical malpractice experts in disciplinary actions, observe the rules of evidence, and adhere to evidence-based medicine, not hearsay. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

103. Require the Board to give the accused physician the complaint at least 30 days before the formal settlement conference. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

104. Require the Board to accept any and all decisions by district court as final and specify that the Board cannot overturn these decisions, but must appeal them. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

105. Require the Board, before temporarily suspending a physician's license, to show proof of clear and convincing evidence that the physician is a continuing threat to the public welfare based on the Medical Practice Act and two physician members, rather than Board staff. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

106. Require a formal hearing in district court within 10 days after a physician's license is temporarily suspended, and at the district court hearing:

- If the District Court judge determines that the complaint and the evidence presented by the Board are valid, the doctor will remain suspended until a formal trial commences within 60 days.
- If not, the complaint may be dismissed altogether by the judge or a trial will be scheduled and heard by two district court judges within 60 days and the physician will be allowed to practice during that time.
- The final ruling will be presented by the judges within 60 days of the end of trial and cannot be changed by the Board. The Board may appeal the district court's decision but the adjudicated physician will still be allowed to practice while the Board appeals the decision.
- If the physician's license is recommended for revocation by the district court, an appellate review by three contemporaneous experts of the same specialty from the Texas Medical Association or Texas Osteopathic Medical Association will be allowed to review and give recommendations to the district court judges.

(Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

107. Allow physicians to know their accuser. (Harold Granek, M.D.)

108. Require that allegations, if requested, shall be examined by an arbitration board before the Medical Board can proceed. (Harold Granek, M.D.)

109. Establish a statute of limitations within which the Board must prosecute a case. (Harold Granek, M.D.)

110. Prohibit the Board from bringing up information not substantiated by evidence, and specify that doing so would result in dismissal of a case by an oversight committee. (Harold Granek, M.D.)

111. Limit the Medical Board to only one chance at a penalty instead of allowing the Board to repeatedly return for redecisions. (Harold Granek, M.D.)

112. Establish that a physician shall be presumed innocent until proven guilty, except in cases of imminent danger, and require the Board to assume all legal costs of the physician and duly compensate the physician for loss of income and legal fees determined by arbitration if the Board fails to prove its case in cases of claimed imminent danger to the public welfare. (Harold Granek, M.D.)

113. Prohibit Board members from using any information obtained as a part of Board proceedings to supply any outside entity until the Board proceedings have reached their conclusion. (Harold Granek, M.D.)

114. Require Board members to recuse themselves on any matter related to the accused or witness or patients with no ex parte discussions. (Harold Granek, M.D.)

115. Require the Board to use rules of evidence, and prohibit the Board from using hearsay testimony or refer to any cases that cannot be verified by actual evidence. (Harold Granek, M.D.)

116. Require the Board to clearly state charges and not change them at will. (Harold Granek, M.D.)

117. Require Board members to recuse themselves on any case involving an associate, affiliate, or competitor of the Board member. (Harold Granek, M.D.)

118. Require the Board to record and transcribe all meetings and disciplinary hearings, including informal settlement conferences. (Ralph Rashbaum, M.D., President – Texas Pain Society and Texas Cancer Pain Initiative; Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

Peer Review

119. Direct the Medical Board to review complaints regarding the misuse of the peer review process and take action to prevent the misuse of medical peer review. (Karin M. Zaner – Kane, Russell, Coleman & Logan, P.C.)

120. Require the Board to require hospitals to follow rules of evidence, or due process, at peer review hearings because the Board will be required to follow same procedures if the case is elevated to the State Office of Administrative Hearings. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

121. Authorize the Board to order a hospital to reinstate privilege of an accused doctor who has been adjudicated by the Board. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

122. In cases involving medical peer review, the Board should not simply rely on what has been provided by other sources, such as hospital boards and peer review committees, and should conduct its own investigation. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

123. Authorize the Board to order a hospital to remove negative reports it provided to the National Practitioner Data Bank (NPDB) if the doctor is adjudicated by the Board. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

124. Require the Board to discipline doctors who participate in "bad faith" peer review as unprofessional and unethical and as trying to defraud medicine and the public. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons; John Payne, D.O.; Larry Poliner, M.D., FACP, FACC)

125. Prohibit the Board from using only an expert's written report that was used at a peer review hearing, require the Board to follow rules of evidence and require that expect to provide live testimony defending the report. (Roland F. Chalifoux, Jr., D.O.)

Agency Web Site and Publications

126. Require the Board to post information on its Web site only about a licensee who has been disciplined by the Board, and not about a licensee who is being investigated or whose complaint is on appeal. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

127. Hold the Board responsible for errors and omissions posted on the site. (Roland F. Chalifoux, Jr., D.O.; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

128. Require the Board to post not only its disciplinary actions, but also decisions favorable to the physician in the case, even if at odds with the Board's actions, as handed down by the State Office of Administrative Hearings or District Court. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

129. Require the Board to publish on its Web site information about hospitals who have initiated peer review adverse actions in which the accused physician was cleared, as well as the results of the Board's investigation of the accused physician. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

130. The Board should only publish temporary suspensions that have been upheld by district court on its Web site. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons)

131. Require the Board to publish outcomes and more in-depth statistics, including hearings at district court and the State Office of Administrative Hearings, on its Web site. (Roland F. Chalifoux, Jr., D.O.; Andy Schlafly, General Counsel – Association of American Physicians and Surgeons; Karen B. Tripp, attorney – Association of American Physicians and Surgeons)

132. Require the Board's Web site to be accurate and require the Board to promptly correct false and misleading information or responsible parties shall not be protected by State law for malice and shall be subject to civil litigation. (Harold Granek, M.D.)

133. Require any errors or reversals by the Board to be published with equal presentation and prominence and alacrity as the original in a form approved by the physician and by the physician's lawyer or an arbitrator. (Harold Granek, M.D.)

134. Prohibit Board members from publishing allegations in any of the Board's news publications or on any broadcast or new media. (Harold Granek, M.D.)

Pain Medicine

135. Provide for added patient bill of rights initiative and protection by creating professional immunity in the treatment of legitimate uninsured or underinsured chronic pain patients duly uninvolved in illicit activity or diversion. (David L. Hankins, D.O.)

136. Modify the Medical Practice Act by deleting or revising the provision prohibiting the treatment of addicts, abusers, or should have known so by adding language "to maintain addiction or abuse" until such time as a statewide drug database and tracking system is in place and to allow for compassionate care of any legitimate medical condition. (David L. Hankins, D.O.)

137. Standardize and update the state and federal guidelines on chronic pain management and prescription medications by adopting model guidelines from current federal models and consensus statements. (David L. Hankins, D.O.)

Recommended Action: Staff makes no recommendations on any of the new issues.

Commission Decision: Adopted the following New Issues.

- New Issue 15, clarified to change the agency's name to Texas Medical Board.
- New Issue 26 as proposed.
- New Issue 34, as modified: Authorize the Board to issue and reissue an institutional medical license to any foreign medical graduate who has extensive and verifiable specific academic or clinical qualifications and achievements and who has been recommended and endorsed by the president or dean of an accredited Texas medical school or by the recommendation and endorsement and upon the specific request of the president or dean of any such Texas medical school, such licensure to remain in effect as long as employment as a physician in such a Texas medical school continues.
- New Issue 59, as modified: Prohibit physicians on the Board or acting as agents of the Board from using information acquired from their duties on the Board for advancement of their personal practice or for advancement or gain of any other physician or affiliate.
- New Issue 119, as modified: Clarify that the Board of Medical Examiners has the statutory authority to review complaints regarding misuse of the peer review process, including fraud and malicious conduct, and direct the board to investigate these complaints.
- New Issue 133 as proposed.
- New Issues 138 through 141 by Representative Truitt to read as follows.
  - New Issue 138: As a management action, require the Medical Board to adopt rules governing ex parte communication between staff and Board members regarding enforcement cases under consideration by Board members.
  - New issue 139: Amend the Medical Practice Act to require the Medical Board to adhere to Section 2001.058 of the Administrative Procedure Act, dealing with consideration of rulings by SOAH administrative law judges.
  - New issue 140: Amend the Medical Practice Act to require the Board to provide a respondent with information that is the basis of the complaint for which an informal settlement conference has been set. Require that the information shall be provided at least 30 days in advance of the hearing date, unless the Board can show cause for a delay. Allow the respondent to use any such delay as a possible ground for rescheduling of the conference.
  - New issue 141: As a management action, require the Medical Board to make a good faith effort to resolve enforcement cases informally before proceeding with a contested case for resolution.