

EXECUTIVE SUMMARY

Texas State Board of Examiners of Psychologists

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Overall, the Sunset review found the psychology board is a generally well-run agency. However, unlike 35 other states, Texas continues to regulate psychology through an independent board, inefficiently paying for all the administrative trappings required of an independent agency. The small size of the psychology board has also placed a number of administrative millstones on it. Most notably, the board's unnecessary oral examination places an extraordinary strain on agency staff and resources and creates a bottleneck to entry into the profession. As in the previous Sunset review in 2004, Sunset staff found the oral examination is an outdated practice that introduces subjectivity into the licensing process and offers little value in assessing candidates' minimum competency to practice psychology. Additionally, requiring candidates for licensure to complete a year of supervised work experience after receiving a Ph.D. adds another unnecessary hurdle to licensure, one that is no longer universally accepted. Together, these practices add minimal extra protection to the public and could affect the mental health provider shortage in Texas.

The board unnecessarily limits entry into the profession.

Scope of practice is typically well-outside the purview of a Sunset review, unless a scope issue prevents the agency from carrying out its statutory responsibilities. In this case, a significant court ruling has effectively prevented the psychology board from taking legitimate actions for any unlicensed practice of psychology. In January 2016, the U.S. Court of Appeals for the 5th Circuit found Texas' definition of "psychological services" to be unconstitutionally overbroad and a violation of free speech. In essence, the court found that under the current definition, many individuals who provide advice or counseling as part of day-to-day life — from yoga instructors to advice columnists — could be considered to be practicing psychology without a license and subject to enforcement by the board. While focused on preventing such obvious overreach, the court's opinion creates both obstacles and an opportunity to establish a new definition of psychology to appropriately protect the practice of psychology for Texans who receive services.

Finally, in common with many of the other small licensing agencies currently under review, Sunset staff considered whether an independent agency is the most appropriate structure to regulate the practice of psychology. However, the decision to recommend an alternative organizational structure for the agency must be made in conjunction with the Sunset reviews of other health licensing

agencies, due for completion in mid-November. Together, these reviews will consider the potential benefits of consolidation and determine if they are significant enough to justify a major organizational change. Regardless of the organizational structure, the agency should implement the best practices outlined in this report to gain efficiencies and better ensure fair and effective regulation of psychological services.

The following material summarizes the Sunset staff recommendations on the Texas State Board of Examiners of Psychologists.

Issues and Recommendations

Issue 1

The Board's Oral Examination Is an Unnecessary Requirement for Licensure.

The oral examination is an outdated licensing requirement that offers little value in assessing candidates' minimum competency to practice psychology. Licensure as a psychologist already requires a doctoral degree, passage of a national written examination and jurisprudence examination, and completion of 3,500 hours of supervised experience. In addition to concerns about the fairness and consistency of the exam administration, conducting an oral exam twice a year puts an undeniable strain on agency staff and resources, while creating a bottleneck to entry into the profession. Nationally, the psychology profession has moved away from using oral examinations. With only eight states continuing to use an oral exam to assess competency, this exam prevents psychologists from easily moving their practice to Texas to help meet the state's mental health provider shortage.

Key Recommendation

- Eliminate the statutory authority for the psychology board to administer an oral exam.

Issue 2

Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas.

Psychologist candidates must complete two years of supervised work experience before becoming fully licensed. Statute requires half of this experience to be completed after candidates receive their Ph.D. Current doctoral degree programs include substantially more practical experience than at the time Texas enacted this post-doctoral supervision requirement. Recognizing the change in doctoral education and training, the national trend has begun shifting away from requiring a set number of hours be completed in a post-doctoral setting. Today, 15 states and the American Psychological Association have adopted policies that do not distinguish between pre-doctoral and post-doctoral work experience. Requiring candidates to often repeat hours of experience earned during their degree program adds minimal protection and delays licensure of psychologists at a time when Texas faces a shortage of mental health care providers.

Key Recommendation

- Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their doctoral degree.

Issue 3

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

Sunset staff found some of the board's licensing and enforcement processes do not match model standards or common practices observed in other regulatory agencies. Specifically, requirements to apply for a provisional license and to submit letters of recommendation make the process for becoming a licensed psychologist overly burdensome. The board also lacks certain tools, such as issuing remedial non-disciplinary sanctions and ordering show-cause hearings regarding competency, necessary to effectively enforce the psychology statute and board rules.

Key Recommendations

- Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.
- Authorize the board to issue remedial plans to resolve minor complaints.
- Clarify the agency's authority to require physical or mental evaluations for those suspected of impairments and hold related hearings for noncompliance.
- Direct the board to remove the requirement for letters of reference.
- Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint.

Issue 4

Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.

Texas has a continuing need to regulate the practice of psychology. Licensed psychologists provide a wide range of psychological services such as individual and group therapy to vulnerable populations. Treatment often occurs without supervision in otherwise unregulated settings, and psychologists apply a considerable amount of judgment in treatments and therapies. However, as a small, independent agency with limited resources and high staff turnover, the board faces hurdles to providing effective regulation and consistent service to the public.

These hurdles raise the question whether the agency's functions should continue in a stand-alone or consolidated organization. Several health licensing agencies are under Sunset review at this time. Through these reviews, Sunset is considering the benefits of consolidation, such as enhanced administrative efficiencies and increased available time to perform critical licensing and regulatory functions. Sunset staff will complete the analysis of these benefits in mid-November 2016.

Key Recommendation

- Continue the regulation of psychologists, but postpone the decision on continuation of the Texas State Board of Examiners of Psychologists until completion of the Sunset reviews of other health licensing agencies.

Issue 5

A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.

A recent decision by the U.S. Court of Appeals for the 5th Circuit held the definition of psychological services in Texas statute unconstitutionally infringes on free speech. The court found the Psychologists' Licensing Act as written could require occupations such as life coaches, fitness instructors, or advice columnists be licensed as psychologists. By ruling that provision of the act unconstitutional, however, the court's decision seemingly prevents the psychology board from taking enforcement action against someone practicing psychology in Texas without a license. In addition, the impact of the court's decision could also affect the practice and regulation of marriage and family therapy, professional counseling, and social work.

Key Recommendations

- Direct the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology.
- Request the Senate Health and Human Services Committee and the House Public Health Committee to take action to define the practice of psychology and consider clarifying the scope of practice of other mental health professionals.

Fiscal Implication Summary

Overall, the recommendations in this report would result in a small negative fiscal impact to the state over the next five years resulting from the elimination of the board's oral exam.

Issue 1 — The board collects about \$77,000 in oral examination fees each year. The agency estimates administering the oral exam costs about \$46,000 annually, which would offset some of the lost revenue.

Texas State Board of Examiners of Psychologists

Fiscal Year	Loss to the General Revenue Fund
2018	\$31,000
2019	\$31,000
2020	\$31,000
2021	\$31,000
2022	\$31,000