

The Texas Counseling Association (TCA) is a professional membership organization that includes more than 7,000 professional counselors who work in an array of settings across Texas. TCA is an active participant in monitoring the functions of the Texas State Board of Examiners of Professional Counselors and the Texas State Board of Examiners of Marriage and Family Therapists through liaisons to these Boards who attend every board meeting and hearing.

TCA appreciates the opportunity to provide comments and input to the Sunset Advisory Commission Staff Report on Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Work Examiners. We commend the staff for their diligence and accessibility throughout the review process.

We have attempted to organize our comments within each of the three Issues identified by staff.

TCA looks forward to working with the Sunset Commission to ensure that the regulation of mental health professionals in Texas is robust, efficient and protects the vulnerable citizens in Texas who receive treatment.

- Issue 1: *The Texas Department of Licensing and Regulation Should Regulate Marriage and Family Therapists, Professional Counselors and Social Workers.*

TCA agrees with the staff finding that “Texas has a continued interest in regulating the practice of marriage and family therapy, professional counseling and social work due to the potential for harm to clients.” TCA strongly disagrees with the recommendation to remove regulatory functions from these boards and assign them as advisory committees within the Texas Department of Licensing and Regulation (TDLR).

Licensed Professional Counselors and the other professionals regulated by these boards “treat vulnerable clients who suffer from mental health disorders or impairments. . . they apply a considerable amount of judgment in the services they provide, and the authority and trust given to them creates an opportunity for abuse, whether financial, emotional or sexual. . . As such, the boards’ public protection charge is critical.” (page 1)

Delegating all final regulatory decisions for mental health services and providers to a public board with no training or expertise in the mental and behavioral health fields is a dangerous recommendation. Transferring these three boards to TDLR’s yet to be established health professions division as advisory committees will not increase responsiveness to licensees and consumers. It will not improve regulation. It will not better protect the public.

Oversight of mental health professionals is beyond the scope of TDLR. None of the occupations regulated by TDLR are engaged in the delivery of mental health and behavioral treatment and services. Utilizing the expertise of professional members to establish licensure requirements, standards of practice, and enforcement protocols is standard across the health care industry to protect the public.

Staff reports that these boards generate more than \$3 million annually. These fees are designated in statute to support the operations of each regulatory board. Yet, each Board is directed to operate with an allocation that represents on average 1/3 of the fees paid by its licensees. If these Boards are appropriated a higher percentage of the fees they generate, most of the issues identified in this report would be moot.

We strongly urge the Sunset Commission to disregard this recommendation in Issue 1 and allow each of these boards to retain their regulatory authority.

- Issue 2: *The Behavioral Health Boards' Dysfunctional Enforcement Processes Fail to Adequately Regulate Licensees and Protect the Public.*

TCA recognizes that improvements to the enforcement processes utilized by these Boards will benefit both licensees and protect the public. Recommendations 2.2, 2.3 and 2.4 can be implemented quickly and efficiently without the inappropriate transfer of the regulatory functions of these Boards to TDLR.

Sunset staff acknowledges that many of the issues raised in their report are in large part the result of poor administration by the Department of State Health Services (DSHS) as well as a lack of funding and other resources. (page 11) Not only did DSHS not appropriate adequate resources to support the work of these boards and expedite enforcement, but it also failed to provide technical assistance, staff support and consistent legal counsel on appropriate enforcement protocols.

I am pleased to report that the Texas State Board of Examiners of Professional Counselors has already begun to develop policies to address the concerns identified under Issue 2. These include establishing protocols to train staff to prioritize complaints; developing policies for informal complaint resolution; and authorizing the executive director to dismiss baseless and non-jurisdictional complaints. Work is also underway to ensure that Board members are not involved in investigations. TCA supports these actions by the TSBEPC to proactively address the important issues raised in the staff report.

TCA does not agree with recommendation 2.1 that the complaints and ethics committees should be abolished. When unethical and unprofessional conduct is identified, the actions of each individual mental health professional should be evaluated by members of their profession so that consistent and standardized sanctions can be enforced. This practice is standard across the health care industry to protect the public.

- Issue 3: *Key Elements of the Behavioral Health Boards' Statutes, Rules and Policies Do Not Conform to Common Licensing Standards.*

TCA recognizes that more rigorous criminal background checks and use of the National Practitioner Data Bank will help protect the public. Several of the issues identified in the staff report are, once again, the result of poor administration by DSHS as well as lack of adequate funding. Each of the recommendations proposed under Issue 3 can be addressed without the inappropriate transfer of the regulatory boards to TDLR.

Recommendations 3.1 and 3.2 will ensure that each applicant to become an LPC, an LMFT or a social worker in Texas has been appropriately vetted. Lapses in this vetting are again the result of the failure to appropriately allocate resources to these Boards. A move to TDLR would not mitigate the cost for providing these services as is reflected in the staff recommendation that fees be increased if necessary to cover the cost of the queries.

TCA also supports recommendations 3.3, 3.5 and 3.6 as reasonable and appropriate practices.

The licensing fees paid by LPCs in Texas are substantially lower than those paid by professional counselors in any other state. While allowing the board to lower fees may be an appropriate statutory

change, Texas does not have reliable data to determine how much revenue is needed to effectively regulate these professions because the fees currently paid by licensees have not been allocated to their boards. Most of the issues raised in the staff report are a direct result of limited resources. TCA is therefore neutral on recommendation 3.4.

TCA agrees that accepting academic credentials from CACREP schools as proposed in recommendation 3.7 would help to expedite time to license. The “10-year” rule proposed for revocation by staff does provide an exemption for anyone who has been practicing as a counselor in an exempt setting. Effective modalities and protocols for the treatment of mental health disorders or impairments change quickly. It will not protect the public to issue a license to someone who earned their degree more than 10 years ago unless they have been receiving continuing education and training, or working as a counselor in an exempt setting.

Modifying the protocol for monitoring supervision hours as proposed in recommendation 3.8 would also help to expedite time to license. It is our understanding that steps to implement this recommendation are already underway at several of the boards.

Efforts to expedite credentialing for military applications as set forth in recommendation 3.9 and to implement more rigorous standards and monitoring of continuing education providers as set forth in recommendation 3.10 have been stymied by the lack of resources allocated by DSHS to support the functions of these Boards. TCA supports recommendation 3.9 and 3.10.

In summary, TCA supports the continuation of the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Examiners of Marriage and Family Therapists and the Texas State Board of Social Worker Examiners as independent, autonomous regulatory boards. We support the recommendations to improve efficiency in licensing procedures and to streamline enforcement protocols. We also recommend allocation of a greater percentage of the fees paid by licensees to support the independent regulatory functions of these boards.

Thank you for your consideration.

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