The Texas State Board of Examiners of Psychologists is due to undergo Sunset Review by the Texas Sunset Commission in May 2016.

TPA’s Sunset Review Task Force has identified the following issues for consideration for the Sunset Commission, which are divided in two sections – three requested changes to statute and three requests to maintain the current statute:

**CHANGES to statute:**

1. **Change the definition of the practice of psychology to address overbreadth issues**
   a. Include “diagnosis” in the definition of the practice of psychology
2. **Adopt PSYPACT (The Psychology Interjurisdictional Compact)**
3. **Clarify the role of SOAH as final ruling for dismissal of board complaints**

**MAINTAIN statutes:**

4. **Maintain the doctoral standard for psychologists**
5. **Maintain the Texas State Board of Examiners of Psychologists (TSBEP) as an independent board**
6. **Maintain the oral exam for licensure for psychologists**

Those in **BOLD print** are priorities for Texas psychologists.

Sunset Commission members are as follows (currently three vacancies):

**Chair**
Rep. Larry Gonzales (Round Rock)

**Vice Chair**
Sen. Van Taylor (Plano)

**Members:**
Rep. Cindy Burkett (Sunnyvale)
Rep. Dan Flynn (Tyler)
Sen. Juan “Chuy” Hinojosa (McAllen)
Sen. Robert Nichols (Jacksonville)
Rep. Richard Peña Raymond (Laredo)
Sen. Charles Schwertner (Georgetown)
Rep. Senfronia Thompson (Houston)
Sen. Kirk Watson (Austin)

LTC (Ret.) Allen B. West – Public Member
William Meadows – Public Member

Sunset website: [https://www.sunset.texas.gov/](https://www.sunset.texas.gov/)

Specific descriptions and rationales for each of the listed initiatives are enclosed for your review.
**PROPOSAL 1:**

*Change the definition of the practice of psychology to address overbreadth issues; include “diagnosis” in the definition of the practice of psychology (*PRIORITY*).

**BACKGROUND:**

A recent decision by the Fifth Circuit Court (*Serafine v. Texas State Board of Examiners of Psychologists*) declared the current definition of the practice of psychology (Sec. 501.003 in the Psychology Licensing Act) overly broad and therefore unconstitutional. TPA gathered individuals from Texas Association of School Psychologists (TASP) and Texas Association of Psychological Associates (TAPA) to discuss appropriate wording for what defines psychological practice and what it would not include.

**APPLICABLE CURRENT STATE/FEDERAL LAW**

Texas Occupations Code, Chapter 501.003

**HOW ISSUE IS ADDRESSED IN OTHER STATES**

The definition of the practice of psychology varies among states; however, most states have adopted a version based on the Model Practice Act of the American Psychological Association (APA). The proposed statute is based on the APA Model Practice Act in conjunction with an entirely new section regarding exclusions.

**BENEFIT TO COMMUNITY**

It is vital to the community that the practice of psychology continues to be well-defined and controlled by a regulatory agency that ensures competency in training and competency in delivery of psychological services. It is also important that other entities can continue to provide advice-based services that are differentiated from psychological services and the public can be protected from abuse of untrained and unregulated service providers.

**FINANCIAL COST TO THE STATE**

None.

**SUGGESTED STATUTE LANGUAGE**

Delete all language in Sec. 501.003 and replace with:

a. The practice of psychology consists of and is defined as:
   The observation, description, evaluation, diagnosis, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, for the purpose of
   (1) Preventing, eliminating, evaluating, diagnosing, assessing, or predicting symptomatic, maladaptive, or undesired thoughts, feelings, and behaviors, related to social, academic, and/or vocational functioning;
   (2) Evaluating, assessing, and/or facilitating the enhancement of individual, family, group, and/or organizational effectiveness—including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, or organizational performance, OR
b. The practice of psychology does NOT include:
   (1) The offering of advice, counsel, or guidance addressing or affecting the emotional or behavioral health of another individual, whether solicited or unsolicited, so long as:
      a. No demand for or expectation of compensation from the recipient is made in connection with the advice, counsel, or guidance;
      b. The primary focus of the provider’s occupation is something other than the delivery of mental health care services and he/she is only offering the advice, counsel, education, or guidance ancillary to his or her occupation; OR
      c. The advice, counsel, or guidance is offered within the context of an organized or structured program that is designed to support or assist individuals with a self-identified goal of changing or improving certain aspects of their mental, emotional, or behavioral health; AND
   (2) The individual offering the advice, counsel, or guidance does not represent:
      a. Himself or herself to be a psychologist or otherwise engaged in the delivery of psychological services; and
      b. The advice, counsel, or guidance as being psychological in nature.
**PROPOSAL 2:**
**Allow PSYPACT (The Psychology Interjurisdictional Compact)**

**BACKGROUND:**
This is a new movement on the national level to address the demand to provide and receive psychological services via electronic means (telepsychology) and would authorize both telepsychology and temporary in-person, face-to-face practice of psychology across state lines in PSYPACT states. Only those states who agree to cooperate will be involved. It must be enacted into law at the state level to be viable and it will become operational when seven states have enacted PSYPACT into law. Once this happens, psychologists who wish to practice under PSYPACT must obtain (1) an E Passport Certificate for telepsychology and (2) an Interjurisdictional Practice Certificate (IPC) for temporary in-person, face-to-face practice. These certificates allow for states to communicate and exchange information regarding licensure and disciplinary actions.

**APPLICABLE CURRENT STATE/FEDERAL LAW**
Sec. 501.262 Reciprocal License
New Telemedicine/Telehealth regulations in Texas Occupations Code

**HOW ISSUE IS ADDRESSED IN OTHER STATES**
All states have been given the opportunity to bring this initiative to their state legislature. Since this is a new initiative, the number of current states that are considering such legislation is not known. Arizona was recently the first state to adopt PSYPACT legislation (May 2016).

**BENEFIT TO COMMUNITY**
By far, the clearest benefit to the community is increased access to care. For patients/clients who relocate or travel often, they will now be able to maintain access to care from their treating psychologist. It is a benefit for Texas psychologists who engage in forensic practices that may involve cases in other states and this will allow them to practice on a time-limited basis with more ease than is currently available. Telehealth/telemedicine/telepsychology is the future trend and this cooperative program allows for expansion of services with this technology while ensuring a high degree of consumer protection across state lines.

**FINANCIAL COST TO THE STATE**
None. Participating psychologists must pay for E Passport and regulating costs incurred.

**SUGGESTED STATUTE LANGUAGE**
Add to Sec 501.262 or include as separate section under Subchapter F: General License Requirements Sec. 501.262 RECIPROCAL LICENSE. The board may enter into and implement agreements with other jurisdictions for the issuance of a license by reciprocity if the other jurisdiction’s requirements for licensing, certification, or registration are substantially equal to the requirements of this chapter. This includes allowing the board to enter into interjurisdictional compacts for the purpose of temporary practice across state lines and telepsychology.
PROPOSAL 3:
Clarify the role of SOAH as final ruling for dismissal of board complaints

BACKGROUND:
A recent suit involving TSBEP and a licensee uncovered a procedural issue that could be adequately addressed with a minor legislative clarification. The current statute (501.455) states that a licensee may request a hearing and the administrative judge at the State Office of Administrative Hearings (SOAH) shall hold the hearing and the administrative judge shall make findings of fact and conclusions of law and issue a proposal for a decision regarding the violation and proposed administrative penalty. The law is lacking in wording regarding the finding of no violation, so the board is then still given leeway to administer penalties despite the SOAH judgment. When this occurred, legal costs for both the board and the licensee increased. The Medical Act addresses this issue more clearly and specifies that a proposal for penalty is referred back to the Medical Board, but a dismissal from SOAH serves as the final disposition.

APPLICABLE CURRENT STATE/FEDERAL LAW
Sec. 501.455. HEARING.
Sec. 164.007 Texas Occupations Code/Texas Medical Act. ADMINISTRATIVE HEARINGS; CONFIDENTIALITY ISSUES.

HOW ISSUE IS ADDRESSED IN OTHER STATES
Although it is not known how other states handle disciplinary action, this suggested change aligns disciplinary procedures for TSBEP with the Texas Medical Board.

BENEFIT TO COMMUNITY
This is a fair and beneficial clarification to administrative rules for the practice. This clarification will minimize costly legal suits and will improve the procedures of complaints and dispositions made by the Board.

FINANCIAL COST TO THE STATE
None.

SUGGESTED STATUTE LANGUAGE
Sec. 501.455. HEARING.
(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.
(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.
(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty. After receiving the administrative law judge’s findings of facts and conclusions of law, the board shall dispose of the contested case by issuing a final order based on the administrative judge’s findings of fact and conclusions of law, unless seeking a judicial review provided by Section 2001.058 (f)(5), Government Code.
PROPOSAL 4:
Maintain the doctoral standard for psychologists
(*PRIORITY*)

BACKGROUND:
Since the development of the TSBEP and the establishment of the practice of psychology, the term “psychologist” means a doctoral level provider and the minimum training standard for the independent practice of psychology. Licensed psychologists can be clinical, counseling, school, or industrial/organizational psychologists and there are currently 4,176 licensed psychologists. Additionally, TSBEP licenses master’s level (and those with specialty training exceeding master’s training) as Licensed Specialists in School Psychology (LSSP) and Licensed Psychological Associates (LPAs). There are approximately 3,000 LSSPs and 1,000 LPAs in Texas. These individuals have limited practices. LPAs are allowed to practice in the community under the direct supervision of a psychologist. LSSPs were the newest addition developed in the 1990s to address the shortage of psychological providers in public schools. To address this need, the TSBEP agreed to establish a new license, the LSSP, to allow for subdoctoral specialists in school psychology to work independently as long as they are employed in public school. This was a clearly reasoned compromise as psychological services provided in the public school system maintained an inherent system of checks and balances and would appropriately limit services for their specific training.

The activities of LSSPs in public schools are broadly guided by the federal law -- Individuals with Disabilities Education Act (IDEA) which governs how states and public agencies provide early intervention, special education and related services. The primary role of LSSPs is to help determine and address various educational needs of students in public schools. Professional activities of LSSPs may include assessment, intervention, and consultation, as they relate to the needs of students served by the public schools, along with programmatic activities such as research, program development, and program evaluation focused on improving educational outcomes for students. LSSPs use a nomenclature and must participate in a team process for identifying student educational needs as defined by federal and Texas law through IDEA, not the common clinical taxonomies from DSM-5 and ICD-10 employed by licensed psychologists. Special education categories have no direct correlate in clinical diagnostic systems used outside of public schools, and the team-based process, required by federal law, by which student needs and appropriate interventions must be identified, as governed by IDEA and regulated by the Texas Education Agency, is unique to public schools and provides an important level of oversight for the work of LSSPs. LSSPs are proficient in this school-based taxonomy and methodology by which student needs and interventions are identified and monitored that is unique to public schools and has no equal in other settings. Thus, the work of LSSPs in the public schools is critical to ensure all students have the right to a free and appropriate education, but the direct services provided by all LSSPs is supervised by school staff (e.g. school principals, special education directors, ARD team) and they undergo annual evaluations, like all other school personnel.

Given that there is no analogous system for team-based identification of educational needs and interventions under IDEA outside of a public school setting, and given that LSSPs proficiency is in IDEA-based identification and intervention of student educational needs, there is no appropriate scope of independent practice for LSSPs outside of a public school setting. Furthermore, by federal law, private school students retain access to LSSP services through their home public school district, so if relevant needs arise for a private school student there already exists a process by which to access appropriate LSSP services through the public schools. Indeed, every student has the right to access to public school
special educational services, and public schools have procedures in place for home- or private-schooled students to access LSSP services within their home district. While students are students in or out of public schools, the services that LSSPs are trained to provide are specific to public schools, rooted in federal educational law, subject to state educational regulations, and supervised by their district. Further, there is a level of public protection and oversight inherent to mandatory multidisciplinary team requirements for educational decision-making and monitoring.

Allowing LSSPs to practice outside of public schools poses a significant risk to the public. It would result in unsupervised LSSPs practicing far outside their scope of competence and training. Allowing LSSPs to practice outside of public schools also removes the safeguards inherent to the multidisciplinary team process dictated by federal education law. Texas already provides a mechanism by which a master's-prepared practitioner can practice under supervision outside of public schools through the LPA credential. LSSPs are requesting statutory changes to be allowed to be called “school psychologists” because it is a simpler title and easier to explain to parents, and believe they should be called psychologists despite their sub doctoral training. In addition to this clear creep in title, they are also seeking to move into independent practice, arguing for providing services in private schools and private clinics. An LSSP outside of a public school will essentially be working as a Licensed Psychologist and they are simply NOT licensed to provide this service. By maintaining the doctoral standard for independent practice, you protect the community and continue to send the clear message that Texas demands high standards of psychological care. We have increased access to care through multiple levels of licensure, but choose not to sacrifice the high standards required of independent practice.

**APPLICABLE CURRENT STATE/FEDERAL LAW**
Texas Occupations Code, Chapter 501.260
Texas Administrative Code Title 22, Part 21, Chapter 465

**HOW ISSUE IS ADDRESSED IN OTHER STATES**
Texas is fairly unique in that school psychology providers are under the Texas State Board of Examiners of Psychologists (TSBEP) instead of the education board; a change that was precipitated in 1995 by the change in the Texas Education Code. While the National Association of School Psychologists and other states allow for masters-level trained individuals to be called school psychologists, the Texas Legislature adopted a specialty title as a compromise to recognizing this group as providers of the full range of school psychological services within the public schools. We strongly support these services and the limitations are consistent with other states (that independent psychological services is restricted to provision of services within a public school).

**BENEFIT TO COMMUNITY**
The creation of the LSSP was critical in addressing the needs of psychological services and federally mandated assistance to children in Texas public schools. Maintaining the difference between an LSSP and School Psychologist is important and should not be assumed to be “essentially the same thing” because there is overlap in services. If we change the standard for school psychologists to be only a master’s level profession, there will be no reason for a doctoral standard in this area to exist, which will eventually erode standards and be a disservice to schools and Texas children. Additionally, changing the limits of their practice from within public schools to private schools and clinics essentially elevates them to independent psychological practice, a level which the Legislature has clearly designated only for doctoral trained individuals who have satisfied the rigid licensure requirements of this state.
FINANCIAL COST TO THE STATE
None.

SUGGESTED ACTION
Vote against the TASP recommendations for renaming the LSSP to School Psychologist and vote against allowing LSSPs to practice anywhere outside of the public schools. The current standards of practice should be maintained to protect the public.
PROPOSAL 5:
Maintain the Texas State Board of Examiners of Psychologists (TSBEP) as an independent board (*PRIORITY*)

BACKGROUND: The Texas State Board of Examiners of Psychologists (TSBEP) has been an independent board regulating the practice of licensed psychologists, licensed psychological associates (LPA), and licensed specialists in school psychology (LSSP). The nine-member board currently consists of four psychologists, two LPA members, and three public members. One of the members must practice as an LSSP. Diversity of board membership is also required to represent practice providers, researchers, and university training centers. The Board has consistently managed more than 8000 licensees, including applications, licensing, renewals, complaints, and updating practice rules affecting a broad range of psychological services. Additional specific benefits associated with TSBEP include:

- Consistently operating within its allotted budget based solely on dues and other revenue generated by licensees.
- Engaging in stakeholder education and outreach through newsletters, public presentations, and information dissemination to licensee professional groups for the purpose of keeping licensees up-to-date. TSBEP takes much time for thoughtful development of rules revisions and proposals.
- Deep familiarity with the rules and nature of the profession are critically necessary for the depth of perspective necessary for investigating and addressing complaints. The specialized nature of activities within psychology (e.g., forensic, neuropsychological, and school practice settings) calls for expertise in rule making and application so that there are minimal unintended consequences that result from changes. It is unlikely that a consolidated board would have the expertise nor time to develop this level of learning required to become proficient in the deeper issues of these multiple professions.
- Expert staff who are also invested and proficient in managing the regulatory demands of a multi-level licensing applications, including organizing oral exams twice yearly. There is longevity in staff that allows for increased efficiency and effective administration in this agency.

Although the Board may need some sort of external review process to assure there are no antitrust issues being ignored in the rule making process, currently there is no licensure group that has a majority membership on TSBEP. Additionally, one-third of the Board is comprised of public members who have no affiliation with the profession of psychology. Moreover, the Board is required to conduct a “mini-fiscal note” on any proposed rule changes to determine effects on stakeholders, small businesses, and the public.

Oversight by a consolidated board would be diffused with psychology’s issues having to compete for resources (staff time and attention) based on crisis management with a board having more broad responsibilities. The results would likely be neglect of planning and preventive actions and education of licensees.

APPLICABLE CURRENT STATE/FEDERAL LAW
Subchapter B. Texas State Board of Examiners of Psychologists (Sec. 501.051-501.207)
HOW ISSUE IS ADDRESSED IN OTHER STATES
The clear majority of other states continue to have separate and independent boards regulating the practice of psychology.

BENEFIT TO COMMUNITY
The TSBEP is a strong regulatory board and consistently works to enforce training and competency standards to ensure quality psychological services are provided to Texas citizens. An independent board allows for improved efficiency of all board activities. These ensure adequate protection of the public and addresses access to care issues by working to streamline the application process while maintaining high training standards and thorough regulatory oversight.

FINANCIAL COST TO THE STATE
None.

SUGGESTED STATUTE LANGUAGE
No change needed. The current statute should be maintained.
**PROPOSAL 6:**
*Maintain the oral exam for licensure for psychologists*

**BACKGROUND:**
During the last Sunset Review, the relevance of maintaining an oral exam requirement for licensure was raised as some states had discontinued this requirement and the time and costs of implementing this measure was considered. At that time, testimony revealed that the oral exam was critical in identifying individuals who were clearly inappropriate for licensure for the independent practice of psychology. This single measure allows Texas to maintain the highest standard for the independent practice of psychology.

**APPLICABLE CURRENT STATE/FEDERAL LAW**
Texas Occupations Code, Sec. 510.256. EXAMINATIONS.

**HOW ISSUE IS ADDRESSED IN OTHER STATES**
Although some states have never had this licensure requirement, a few states that removed the requirement have since reinstated it. There is inconsistency regarding this requirement and each state is encouraged by the American Psychological Association to set its own requirements, and the oral exam requirement is encouraged as there is no other way to identify a crucial element in competency for practice. At each exam, there are several individuals identified who clearly should not be given authority for independent practice.

**BENEFIT TO COMMUNITY**
Strong licensure requirements are implemented for the sole purpose of protecting the public by requiring evidence of competency prior to being allowed to practice independently.

**FINANCIAL COST TO THE STATE**
None. The costs of the oral exam are covered by fees charged to applicants.

**SUGGESTED STATUTE LANGUAGE**
None needed.