

EXECUTIVE SUMMARY

Texas Medical Board

Project Manager: Erick Fajardo

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In the world of healthcare professionals, the physician reigns supreme. No other healthcare practitioner has greater autonomy or authority over patient care than a physician. Consequently, no other healthcare discipline poses a greater risk to patient and public safety than the practice of medicine — the regulation of which is under the purview of the Texas Medical Board. Given the enormous potential risk posed by physicians, the Medical Board is not an ordinary occupational licensing agency. Adding to the challenge of its mission to protect the public by ensuring quality health care for the citizens of Texas, the board oversees seven other healthcare professions, for a total of almost 132,000 licensees. Given the importance and scope of the board's duties, Sunset staff focused its review on ensuring the board is adequately protecting the public and targeting its resources in a streamlined and efficient way.

The Medical Board has come a long way and generally is a solid model for licensure and enforcement.

Because of longstanding legislative interest in the Medical Board stemming from the board's past struggles with major deficiencies in licensing and enforcement, Sunset staff closely examined the board's performance in these areas. While the last seven years of complaint and disciplinary data reveal fluctuations among the types of violations that received disciplinary actions, the Medical Board provided a consistent level of enforcement over those years. In addition, after conducting a more detailed analysis of various Medical Board datasets and multiple years of case files, Sunset staff did not detect any obvious indications of bias in favor or against any type of practitioner. In other words, the Medical Board has come a long way and generally is a solid model for licensure and enforcement of occupations. That does not mean that people do not have complaints about or disagree with decisions and actions of the board. However, Sunset cannot and does not re-evaluate individual decisions of a board.

~~Nothing could be further from the truth. This sounds exactly like the conclusion "suggested" by the Federation of State Medical Boards and the TMA.~~

One especially high-risk activity that physicians perform is prescribing highly addictive and dangerous drugs, particularly drugs designed for patients with chronic pain, as some of these drugs have contributed to an epidemic of addiction and overdose throughout the country. State law tasks the Medical Board with enforcing proper treatment of pain by monitoring prescribing activity of physicians and physician assistants and by regulating clinics designed specifically for treating patients for pain. Sunset staff obtained and analyzed previously unavailable data from the state's Prescription Monitoring Program.

These data indicate that many pain management clinics, which are required to register with the board, pose a surprisingly low level of risk. The data also show that most physicians and physician assistants who prescribe controlled substances most frequently are not affiliated with pain management clinics. Accordingly, to better curb prescription drug abuse and misuse, the Medical Board's inspections of pain management clinics should be targeted toward the highest prescribers and the board should more effectively monitor prescribing patterns through the newly enhanced Prescription Monitoring Program.

Another key way Texas aims to protect the public is through the state's peer assistance program for physicians and other board licensees that have physical or mental health conditions — the Texas Physician Health Program. Sunset staff found that the program is inhibited by its unclear arrangement with the Medical Board and limited funding sources. Requiring the Medical Board and the program to develop a memorandum of understanding covering services and operations; eliminating a statutory cap on the program's fee; and authorizing the program to accept gifts, grants, and donations would better set up the program to achieve its mission to help licensees return safely to practice.

Working closely with the Medical Board, Sunset staff identified administrative inefficiencies and redundancies in the board's newly acquired medical radiologic technology program and recommends streamlining this program. Sunset staff also made several recommendations to update board statutes and practices to reflect current standards, thereby increasing efficiency and better protecting the public, including authorizing the board to establish a risk-based approach to its office-based anesthesia inspections. In addition, Sunset staff concluded that Texas' joining of the Interstate Medical Licensure Compact would ease and improve the licensure of physicians wishing to practice in multiple states and could better facilitate future developments in telemedicine.

The following material summarizes Sunset staff recommendations on the Texas Medical Board.

The compact would take control of Texas doctors outside of the TX legislature. Not a good idea.

Issues and Recommendations

Issue 1

Untargeted Inspections and Unclear Statutory Authority Limit the Effectiveness of Pain Management Clinic Regulation.

The Medical Board's pain management clinic inspection program does not follow best practices — such as effective use of Prescription Monitoring Program data, or consideration of past inspection reports or length of time since the last inspection — to maximize efficiency with limited investigatory resources. Inspecting all clinics every two years, even those that are high performing and have had no violations during previous inspections, takes focus away from other potentially harmful activities, while two years may be too long between inspections for problematic clinics. Data from the Prescription Monitoring Program suggest that prescribers practicing in PMCs pose a counterintuitively lower level of risk than prescribers not practicing in PMCs, making targeted inspections even more important. In addition, 10 of the board's more than 40 enforcement actions and lawsuits stemming from its pain management clinic inspections resulted in a judge questioning the board's statutory enforcement authority. Without certain tools clarified in statute, such as the ability to enforce its subpoenas and inspect unregistered clinics, the board is limited in its ability to regulate pain management clinics.

Key Recommendations

- Direct the Medical Board to use Prescription Monitoring Program data, along with other factors, to establish a risk-based approach to scheduling pain management clinic inspections.
- Authorize the Medical Board to seek court enforcement of its administrative subpoenas.
- Clarify statute to authorize the Medical Board to inspect an unregistered pain management clinic.

The Zedeh case proves that the TMB acted outside the Constitution. This is NOT what we want. Again. FSMB and TMA talking here.

Issue 2

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

Sunset staff found that various Medical Board licensing and enforcement statutes and processes do not match model standards or best practices observed through Sunset reviews of many regulatory agencies. Specifically, agencies whose licensees can prescribe controlled substances should have clear authority to monitor those licensees for inappropriate prescribing patterns. Clarifying the board's statutory authority to proactively monitor the state's Prescription Monitoring Program for improper prescribing of controlled substances by physicians or physician assistants would help Texas address the nationwide epidemic of prescription drug abuse. Agencies should also have processes in place to evaluate the risk level posed by entities and individuals subject to inspection. Authorizing the board to use a risk-based approach to its office-based anesthesia inspections would ensure the board avoids re-inspecting equipment and procedures already deemed safe and compliant, thereby targeting staff time and resources to the highest-risk areas.

Key Recommendations

- Clarify statute and provide direction for the Medical Board to monitor physician and physician assistant prescribing of controlled substances.
- Authorize the board to establish a risk-based approach to its office-based anesthesia inspection, focusing on the length of time since equipment and procedures were last inspected.
- Clarify statute to authorize the board to conduct fingerprint-based criminal background checks of all applicants.
- Remove the statutory limitations on the Medical Board's authority to set fees.

Absolutely not. Licensing fees are already among the highest in the nation.

Issue 3

Streamlining the Medical Radiologic Technology Program Would Increase Fairness to Licensees and Administrative Efficiency.

State law establishes three different types of certification for medical radiologic technology professionals: general medical radiologic technologist, limited medical radiologic technologist (LMRT), and noncertified technician (NCT). The LMRT certification is unduly complicated and adds a needless administrative burden to an already busy agency. The types of procedures an LMRT certificate holder can legally perform vary by individual, complicating regulators' ability to detect and take enforcement action on violations. In fact, Texas' 625 LMRTs have 2,269 specialty certificates.

Statute requires NCTs under the supervision of physicians, chiropractors, and podiatrists to register with their respective regulatory boards — in addition to the main registry now under the authority of the Medical Radiologic Technology board and administered by Medical Board staff. This requirement is redundant, costly to licensees, and does not increase public safety.

Key Recommendations

- Abolish the limited medical radiologic technologist certification.
- Eliminate duplication by removing dual registry requirements for noncertified technicians.

Issue 4

The Current Process for Authorizing Qualified Physicians to Practice in Texas Does Not Maximize Mobility Within the Profession.

Licensure compacts are formal agreements among states with similar standards for a profession to recognize each other's licensees without requiring an application for a separate license in each state. The Interstate Medical Licensure Compact became active in May 2015, and 17 states have joined as of October 2016. The Texas Medical Board's current process for licensing physicians from other states can take up to 42 days and is cumbersome. In fact, the complexity of applying for licenses in additional states often warrants physicians hiring third-party companies to assist in completing medical licensure applications. The medical licensure compact would help expedite and simplify licensing for physicians seeking to practice medicine in multiple states and would facilitate the exchange of investigative and disciplinary information among member states. Increasing the administrative ease with which a physician can be authorized to practice in Texas could improve access to care in the state's critically underserved areas while also relieving the Medical Board's increasing administrative workload. The medical licensure compact would not supersede the Texas Medical Practice Act or any other state law; the Legislature would retain full authority over the Medical Board and the practice of medicine in Texas.

Key Recommendation

- Adopt the Interstate Medical Licensure Compact.

Issue 5

An Undefined Structure and Few Funding Sources Limit the Texas Physician Health Program's Success.

The Legislature established the Texas Physician Health Program in 2009 to provide monitored recovery services to physicians and other Medical Board licensees that have physical or mental health conditions, including substance use disorder. Sunset staff found that while the program is administratively attached to the board, the details of that attachment are unclear, contributing to the program's organizational instability. Staff also found that limited funding sources reduce the program's ability to reach more licensees that have potentially impairing conditions. Requiring the Medical Board and program to establish a memorandum of understanding and authorizing the program to accept gifts, grants, and donations would better position the program to help licensees safely return to practice.

Key Recommendations

- Require the Texas Medical Board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.
- Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

Issue 6

The State Has a Continuing Need to Regulate the Practice of Medicine and the Other Allied Health Professions at the Texas Medical Board.

Texas began regulating the practice of medicine in 1837. Today, the Texas Medical Board's mission is to protect and enhance the public's health, safety, and welfare by ensuring quality health care for the citizens of Texas through licensure, enforcement, and education. The Medical Board licenses and regulates about 78,600 physicians as well as seven other health professions for a total of roughly 132,000 licensees.

The state has a continuing need to regulate the practice of medicine and the allied health professions housed at the Medical Board. No other healthcare discipline poses a greater risk to patient and public safety than the practice of medicine. Likewise, as allied health professions have developed and grown, the state has seen the need to ensure they practice safely as well. All states license and regulate physicians and most do so either through an independent board or through a semi-autonomous board housed within an umbrella agency. The review of the Medical Board found that no substantial benefits would result from transferring the board's functions to another agency at this time, as regulatory consolidation has already occurred under the Medical Board. In addition, observations of multiple disciplinary proceedings and board and committee meetings, analysis of comprehensive board data, and scrutiny of certain disciplinary case files did not uncover any obvious suggestions of bias in favor or against any type of practitioner and instead indicate the board is successfully fulfilling its mission.

~~The TMB must have carefully picked what they allowed the sunset committee to view. These abuses of integrative practitioners have been going on for over 20 years.~~

Key Recommendation

- Continue the Texas Medical Board for 12 years.

Fiscal Implication Summary

Overall, recommendations in this report would result in an annual loss to the General Revenue Fund of \$183,280 from eliminating the duplicative dual registration of noncertified technicians.

Issue 3 — Eliminating the requirement that the medical, chiropractic, and podiatry boards register noncertified technicians would result in an annual loss to general revenue of \$183,280 as the Texas Medical Board received \$179,177 in revenue from NCT permit fees in FY 2015, the Board of Chiropractic Examiners received \$3,963, and the Board of Podiatric Medical Examiners received just \$140. Because LMRTs would be likely to move towards MRT or NCT status, elimination of the LMRT license should not have a fiscal impact.

Texas Medical Board

Fiscal Year	Loss to the General Revenue Fund
2018	\$183,280
2019	\$183,280
2020	\$183,280
2021	\$183,280
2022	\$183,280

