

TEXAS BOARD OF EXAMINERS IN THE FITTING AND  
DISPENSING OF HEARING AIDS

Staff Report  
to the  
Sunset Advisory Commission

Legislative Budget Office  
Program Evaluation  
P. O. Box 13066, Capitol Station  
Austin, Texas 78711

April 17, 1980

## TABLE OF CONTENTS

	<u>Page</u>
FOREWORD . . . . .	1
I. SUMMARY AND CONCLUSIONS . . . . .	2
II. BACKGROUND . . . . .	9
III. REVIEW OF OPERATIONS . . . . .	12
IV. ALTERNATIVES AND CONSTRAINTS . . . . .	29
V. COMPLIANCE . . . . .	34
VI. PUBLIC PARTICIPATION . . . . .	37
VII. STATUTORY CHANGES . . . . .	39

## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

By the late 1940's, technological advancements in the manufacture of hearing aids led to increased sales to consumers. Early regulatory efforts by the Federal Trade Commission (FTC) centered on manufacturing trade practices and on the sale of hearing aids. Recognizing the need for regulation of the sale of hearing aids to the public in 1966, the FTC and the Council of State Governments proposed model state legislation for the licensure of hearing aid fitters and dispensers.

In 1969, Texas enacted legislation creating the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids to protect the public against unscrupulous and incompetent dealers by requiring licensure of anyone measuring human hearing for the purpose of selling hearing aids.

The board, composed of six hearing aid dispensers, an otolaryngologist, an audiologist, and a public member, presently regulates 397 licensees and 68 temporary training permittees through its licensing and enforcement functions. These responsibilities include evaluating the qualifications of applicants for licensure, administering examinations, and enforcing provisions of the law. Operations of the board are supported entirely through appropriations out of the General Revenue Fund in the State Treasury. All fees collected by the board are deposited in the General Revenue Fund.

Review of board operations reveals that the regulatory activities of the board generally serve to ensure an adequate level of public protection. In the area of administration, the review found that office procedures, record-keeping and accounting processes were handled efficiently. However, several funding problems have hampered agency operations. The agency's fees are not adequate to fund expenses. In addition, no late renewal penalty is provided for and most of the agency's fee amounts are set in the statute with no flexibility to make increases as

needed. Finally, the board has a policy of prorating license fees without specific authority.

In the area of licensing, the review found that the licensing and renewal processes function smoothly and that, while generally ensuring a minimum level of licensee competency, there are several aspects of the licensing process which could be improved. First, the examination is not administered in a manner which assures a consistent and objective examination of each applicant. The possibility of inconsistency and subjectivity is evidenced in that: 1) board members review files of applicants prior to the exam; 2) individual board members administer a standard exam in an inconsistent manner; 3) the major portion of the exam is graded on oral responses of applicants; 4) the oral parts of the examination are administered in inappropriate settings; and 5) only one board member examines and grades an applicant's responses to subjective questions. In other areas of the examination process, no mechanism now exists to counsel applicants who have failed. Finally, present policy requires that an applicant who fails the exam must retake all parts prior to licensure.

The statutory prerequisites for licensure also could be improved. Present requirements permit rejection of applicants for gross immorality, incompetence by reason of negligence and insanity. These and other prerequisites to licensure which do not provide the board with a clear, objective standard are difficult to interpret and should be removed from the statute.

Exemptions to the licensing requirement presently include employees of physicians, educational institutions, and non-profit organizations, who do not sell hearing aids, and physicians whether or not they sell hearing aids. While it is expected that physicians and people employed in educational institutions are qualified to test hearing, it is not clear that employees of physicians and non-profit

organizations would be qualified. Therefore, these exemptions do not act in the interest of public protection and should be removed from the statute.

An additional aspect of the licensing activity involves the temporary training permit. Under present policies, an applicant, under the direct supervision of a licensee, can fit and dispense hearing aids for up to a year without exhibiting his competence to the board. No guidelines have been promulgated to define the functions of a permittee and his sponsor, nor to detail the types of training or supervision which should be given. This lack of control does not protect the public and should be remedied by the board.

In regard to enforcement, the review showed that the complaint process serves to protect the public in most areas. The agency files are well maintained and complete. Improvements could be made in the agency's ability to properly dispose of some complaints, however, if statutory requirements for disciplinary action were modified to provide for sanctions on the basis of incompetence, instead of the higher present standard of incompetence by reason of negligence. Additionally, the statute provides grounds for revocation or suspension of a license which are ambiguous and difficult to verify.

Two final aspects of the enforcement activity which could be improved include requirements that audiometric testing equipment be calibrated on a prescribed minimum basis and requirements that consumers be afforded a trial period with a cancellation privilege, subject to previously specified terms. In regard to the calibration of testing equipment, the Department of Health presently issues regulations governing the frequency and types of calibration necessary. However, enforcement of these requirements should be reinforced by regulations developed by the board. In the area of trial periods, proposed FTC regulations and regulations in other states require that consumers be given an adequate opportunity

to return an aid which does not benefit the user and obtain a refund for the aid.

In the review of the agency's compliance with general statutes, it was noted that provisions under the Open Records Act and filing requirements under the conflict of interest statutes had been met. However, requirements of the Open Meetings Act have not been met. Steps have been taken to assure future compliance.

### **Need to Regulate**

As in the case of other regulated activities, regulation of hearing aid fitters and dispensers should be undertaken by the state only when there is a continuing need to protect the public health, safety or welfare. Conditions that existed prior to 1969 indicated that public harm could result from incompetent hearing aid fitters and unscrupulous sales tactics. The licensure law was enacted to address both of these aspects.

Conditions which exist today indicate that there is still a need to protect the public from incompetent fitters and unscrupulous salesmen. Without state regulation, there could be no determination of minimum levels of competency in testing hearing, and in fitting hearing aids. In addition, there would be no mechanism through which consumer complaints could be handled outside the court system. It can be concluded, therefore, that regulation to ensure a minimum level of competency for hearing aid fitters and dispensers is necessary to protect the public. If no state regulation existed, hearing aid fitters and dispensers would be subject to the regulations of the FDA and the FTC. In this case, no effective mechanism for resolving consumer complaints would exist and no minimum level of competency would be required. Some states impose additional requirements on fitters of hearing aids by requiring a recommendation from a physician or

audiologist prior to fitting a hearing aid. This form of regulation would not require a minimum level of competence nor provide an effective enforcement process for the resolution of consumer complaints.

The need for state regulation of fitting and dispensing hearing aids can be met through means other than the current licensure process. Regulation could be provided not only through the current independent board arrangement but also through a consolidated organizational approach. Although several other states besides Texas have created agencies with the exclusive purpose of regulating the fitting and dispensing of hearing aids, most states have placed such regulatory responsibility in agencies with other responsibilities, such as an "umbrella" department of occupational licensing or a department of health.

### **Alternatives**

If the legislature determines that the state's current regulatory method and/or the board should be continued, the following alternatives could be considered:

**1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.**

This approach would maintain an independent board to perform licensing and enforcement activities funded out of the General Revenue Fund, with expenditures limited to the amount of fees collected. The review indicated that the following modifications would result in more effective regulation of the occupation of fitting and dispensing of hearing aids:

- a) increase examination fee and provide the board with flexibility in setting other fees, subject to a statutory limit (page 15);
- b) provide for the imposition of late renewal penalties (page 16);



- c) provide for a 30-day grace period on renewals (page 16);
- d) modify the examination to provide greater standardization and objectivity (page 19);
- e) provide counseling on request for applicants who fail the exam (page 20);
- f) permit applicants who fail to retake only the parts which they previously failed (page 20);
- g) modify licensure prerequisites and grounds for disciplinary action to include only those to which the board can apply a clear objective standard (page 21);
- h) modify exemptions to include only employees of colleges and universities who do not sell hearing aids and physicians (page 22);
- i) establish guidelines for training and practice of temporary training permit holders and their sponsors (page 22);
- j) establish regulations regarding the calibration of testing equipment (page 25); and
- k) require a 30-day trial period, the terms of which must be explained to the buyer at the time of any hearing aid sale (page 25).

**2. ABOLISH THE BOARD AND TRANSFER ITS FUNCTIONS TO THE DEPARTMENT OF HEALTH (page 30).**

This approach would consolidate the regulation of hearing aid fitters and dispensers with the Health Department as is done in 36 other states. The department is involved in areas substantively related to the fitting and dispensing of hearing aids through its regulation of audiometric equipment and its ongoing program of dispensing aids to individuals through the Speech, Hearing and Vision Program. Benefits derived through this alternative include: 1) utilization of personnel expertise in administering examinations and enforcing audiometric test machinery standards; 2) utilization of complaint response and enforcement mechanisms already in place; and 3) utilization of support service mechanisms already in place. Effective implementation of this alternative would require certain modifications which include the following:

- a) retain the board in an advisory capacity; and
- b) the structural and substantive changes contained in the preceding alternative should also be made.

Regardless of organizational arrangement, the following method of regulation could be considered as an alternative to the present system:

**3. REPLACE THE PRESENT LICENSING METHOD WITH AN APPROACH WHICH REGULATES THE SALE OF HEARING AID DEVICES THROUGH THE REQUIREMENT OF A RECOMMENDATION FROM A PHYSICIAN OR AUDIOLOGIST (page 31).**

This form of regulation is currently used in four states. The benefits to be derived from this approach include increased certainty of identifying persons who need hearing aids and of identifying pathological problems which can be corrected medically or surgically. However, increased costs to many consumers could result from this approach. Further, this approach would not include a mechanism to assure competence of hearing aid fitters.

## II. BACKGROUND

Although hearing aid devices had been marketed prior to 1930, widespread use of the devices did not occur until the late 1940's and early 1950's when technological developments in the electrical circuitry of hearing aids made possible the production of devices which had a smaller, more practical design.

Regulation of the hearing aid industry parallels the technological advances in the device itself. Beginning in 1944, the Federal Trade Commission (FTC) promulgated rules related to hearing aid manufacturers. Consumer protection became a greater aspect of the FTC's regulation in 1965. At that time, the FTC and the Council of State Governments proposed a model state statute for the purpose of regulating hearing aid fitting and dispensing.

Regulation of the industry by states began in 1959 and in Texas in 1969. Prior to the licensing act, control of the industry rested with the manufacturers, the FTC and the Federal Drug Administration. The state, in 1969, recognized a need to protect the public against unscrupulous dealers by enacting legislation which in general, required licensure of anyone measuring human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids and established the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids for the purpose of enforcing the statute.

Initially licensees were primarily persons established in business at the time the licensing act was created and who were qualified in the field through practical experience. With the growth of audiology as a formal field of study, more persons with this background have become licensed. Of the 418 persons currently licensed to fit and dispense hearing aids, 64 are trained audiologists.

The regulation of the fitting and dispensing of hearing aids is accomplished through a nine-member board appointed by the governor. Six members must be

licensees. The three remaining members must include a member of the public with no financial interest in the hearing aid industry, a practicing otolaryngologist licensed by the State Board of Medical Examiners, and a practicing audiologist. Primary board functions include the administration and enforcement of the Act, and licensure of hearing aid fitters and dispensers through examination and license renewal.

Board operations were originally funded from fees held in a special fund. In fiscal year 1979, the special fund was abolished and the funding source was changed to general revenue in order to resolve funding difficulties. In fiscal year 1979, the board collected \$49,690 in revenues and expended \$51,669.

### **Comparative Analysis**

To determine the pattern of regulation of the fitting and dispensing of hearing aids within the United States, a survey of the fifty states was conducted to determine how this has been addressed in other states.

The need to regulate hearing aid fitters and dispensers is currently expressed through licensing requirements imposed by forty-four of the fifty states surveyed. An additional four states regulate the sale of hearing aids but not the occupation. From the standpoint of organizational patterns, eight states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. Seventeen states possess boards with only advisory duties. In nineteen states, the function is carried out through a governmental department charged with other administrative and regulatory functions.

In those states which utilize independent boards and commissions, two require that appointees be confirmed by the legislature; and no state limits membership to

persons who are licensed members of the occupation. In Texas, members are appointed by the governor and membership includes one public member, one audiologist, one physician, and six licensees. Eighteen percent (18%) of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, was totally supported by appropriations from general revenues. Eighteen states indicated that these bodies were solely supported by fees and charges of the agency.

Forty-two of the state boards which regulate the fitting and dispensing of hearing aids issue temporary permits prior to licensure. In thirty-seven states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in forty-four states involve investigation of complaints from consumers and licensees. Hearings are conducted by the regulatory agency in all states. In Texas, hearings are conducted by the agency.

States which regulate the fitting and dispensing of hearing aids indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

### III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

#### Organization and Objectives

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids was created to regulate the fitting and dispensing of hearing aids in Texas. Persons measuring hearing in an academic or non-profit setting, and physician's employees are exempt from statutory requirements provided they do not sell hearing aids. Physicians are exempt from all statutory requirements including the prohibition against the sale of hearing aids. Regulation is accomplished through a board-administered examination, licensing of dispensers, and enforcement.

The nine-member board is appointed by the governor and is composed of six hearing aid dispensers, no more than two of whom shall be exclusively associated, franchised, or employed by the same hearing aid manufacturer; one public member; one practicing physician or surgeon specializing in otolaryngology; and one practicing audiologist. To be qualified for appointment to the board, members representing the profession must be Texas residents and have been engaged as fitters and dispensers for at least five years prior to appointment. All other board members must be citizens of the United States, Texas residents, and may not have financial interests in a hearing aid manufacturing or wholesale hearing aid company.

The board is required by statute to hold meetings at least twice a year, to aid in the enforcement of the Act, to maintain records, to issue licenses and temporary training permits, and to hold hearings. Powers vested in the board include the right to promulgate rules, appoint committees, employ staff, issue subpoenas, and to institute an action in its own name.

Staff for the board consists of one full-time administrative assistant, and a half-time executive secretary. Staff members perform routine administrative duties and assist the board in giving the examinations. Additionally, the executive secretary conducts all complaint investigations under the general guidance of a designated board member.

Amendments to the statute in 1979 provided for the deposit of all revenues collected under the Act to the General Revenue Fund and that agency operations be funded from general revenue. Funds necessary for enforcement of the Act and administration of its provisions are appropriated by the legislature. All fees are fixed by statute as to both the amount and type.

### **Evaluation of Agency Activities**

As with most other licensing agencies, the operations of the Board of Examiners in the Fitting and Dispensing of Hearing Aids can be broken down into three basic activities: administration, licensing and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions, whether these provisions facilitate accomplishment of the objectives, whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task, and whether procedures provide for fair and unbiased decision-making.

## Administration

The general objective of any administrative activity is to provide for the efficient operation of all agency functions. Review of audit reports and the agency's record-keeping, office procedures and accounting processes indicated that these generally function smoothly and contribute to efficient management. However, two problem areas were noted relating to the administrative efficiency of the agency. First, efficient administration has been hampered by funding difficulties and by cash flow problems associated with the annual renewal process. Second, board policies regarding the collection of fees do not appear to be consistent with statutory requirements.

In the area of funding difficulties, Exhibit III-1 shows that board expenditures have exceeded revenues, for fiscal years 1977-1979 and are projected to do so again after fiscal year 1981.

Exhibit III-1  
**REVENUE AND EXPENDITURES**  
**Fiscal Years 1977-1985**

	Fiscal Year	Revenues from Fees	Expenditures		
			Employee Matching	Expenditures (Operating)	Total
Actual	1977	\$ 36,958	Included	\$ 40,676	\$ 40,676
Actual	1978	48,873	Included	72,099	72,099(A)
Actual	1979	49,690	Included	51,669	51,669
Projected	1980	48,385	\$ 6,330 (B)	41,206	47,536
Projected	1981	49,000	5,184 (B)	42,449	47,633
Projected	1982	49,500	4,782	45,633	50,415
Projected	1983	50,000	5,161	49,055	54,216
Projected	1984	51,000	5,558	52,734	58,292
Projected	1985	52,020	6,120	54,316	60,436

(A) Includes \$27,993 (Employee Retirement Matching), most of which was back amounts for board members.

(B) Board members will be dropping out of Retirement System.



Major areas of expenditures as shown in Exhibit III-2 include personnel, travel, board member per diem and retirement, and administrative operating costs. Analysis of these operating costs did not indicate any areas of expenditure that could be significantly reduced without a serious impact on current operations of the board.

Exhibit III-2  
**EXPENDITURE ANALYSIS - FY 1979**

	<u>1979</u>	<u>Percent of Total</u>
Personnel Costs*	\$ 32,326	62%
Employee Travel	377	1%
Board Travel	5,356	10%
Board Per Diem	1,800	3%
Board Retirement Insurance	6,156	12%
Operating Costs	<u>6,186</u>	<u>12%</u>
	<u>\$ 52,201</u>	<u>100%</u>

\*Includes all matching costs.

If the board cannot reduce expenditures and if the policy of matching revenues to expenditures for licensing agencies is to be maintained, fees will have to be increased. Analysis of the fee structure set out in Exhibit III-3 indicates that the primary revenues are generated by the renewal fees which, at \$125, are the highest in the United States for this occupation. Growth in licensees is not expected to raise additional revenues from this source. Analysis of other fees indicated that temporary permit fees and initial license fees are in line with fees charged by other boards of similar nature in Texas and other states and increases in these fees would not be justified. Analysis of the board's examination costs reveals a unit cost of between \$100 and \$125 per exam as compared to the \$35 examination

fee. Based on this analysis, it appears that an increase in the examination fee is justified and could produce sufficient revenue to cover expenditures.

Exhibit III-3

**FEE SCHEDULE AND REVENUES**

	<u>Statutory Fee</u>	<u>1979 Revenue</u>
Temporary Training Permit	\$ 25	\$ 1,800
Examination Fee	35	2,275
Initial License	50	2,800
License Renewal	125	42,775
Duplicate License	5	30

Analysis of the fee structure also showed that the board has no flexibility in setting fees. Modification of the agency's statute to provide a range of fees would allow the board to make adjustments in fees so that revenues could cover necessary increases in expenditures.

Funding difficulties have been further complicated by statutory provisions requiring license renewal on January 1, with an extended grace period and no late renewal penalty. The statute should be amended to provide for a late renewal penalty and a shorter grace period and thus encourage the timely remittal of annual license renewals. Similar policies are in place in most other licensing agencies and are consistent with the Sunset Commission's recommendations made on an across-the-board basis.

Finally, it is board policy to prorate new license fees. Since the board does not have express authority to prorate fees, this practice is not consistent with statutory requirements and the statute should be amended to allow for this practice.

## Licensing

The objective of the licensing function is to ensure that a minimum standard of competency has been achieved by persons authorized to fit and dispense hearing aids in the state. The board has two means through which it can authorize practice: a temporary permit, which allows the holder to fit and dispense hearing aids for a period of up to a year under the supervision of a licensee; and a license to fit and dispense hearing aids.

The number of persons licensed by the board is reflected in Exhibit III-4.

### Exhibit III-4

#### **PERMITS AND LICENSES ISSUED 1976-1979**

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
<u>Temporary</u> <u>Permits Issued</u>	110	96	76	68
<u>Licenses</u>				
Examination	31	36	39	55
Reciprocity	2	-0-	-0-	1
Renewals	<u>375</u>	<u>397</u>	<u>340</u>	<u>341</u>
Total Licenses	408	433	379	397
Percent Change in Total Licenses	+6%	-12%	+5%	

According to a survey of licensees, 86 percent of the licensees practice full-time with 88 percent working either individually or in a corporate setting and 19 percent of the licensees are dealers for a single hearing aid manufacturer. Forty percent of the respondents reported that the highest level of education received was high-school; another 53 percent have had some college. A review of licensee files, shows that approximately 15 percent of the licensed population are audiologists. Approximately 40 percent of the current licensees were licensed under a grandfather provision.

In reviewing the licensing process, an assessment was made of the effectiveness of statutory requirements and board action in ensuring a minimum level of competency and in providing adequate public protection for hearing aid users. Included in the review were examination of applicants, other prerequisites for licensure, reciprocity, and exemptions from licensing requirements.

**Examination**

The examination is formulated and administered by the board and consists of two written portions and four practical portions requiring oral responses as detailed in Exhibit III-5. The same examination is used for one year before it is changed. In order to pass the examination, an applicant must achieve an overall score of 75 percent and a score of 75 percent on four out of the six sections.

Exhibit III-5

**BOARD EXAMINATION STRUCTURE**

<u>Section</u>	<u>Type</u>	<u>Possible Points</u>	<u>Percent of Total Points</u>
Written	Multiple Choice/ Written	80	25%
Trouble Shooting	Practical/Written	15	5
Earmold and Tube Replacement	Practical/Oral	84	26
Speech Audiometry	Practical/Oral	58	18
Sound Field	Practical/Oral	36	11
Audiometric Interpretation	Practical/Oral	<u>50</u>	<u>15</u>
TOTAL		323	100%

The examination process designed by the board appears well-structured and systematic, resulting in a comprehensive examination. Questions for the exam are drawn from a question bank maintained by the board and subject to review and evaluation. The written examination format is standardized and objective in

nature. Notification procedures, including study material and notice of grades, appear to operate efficiently and in a timely fashion. Although the examination process is well designed, there are indications that the manner in which it is conducted introduces elements which could bias the results of the examination and which could lead to inconsistent application of testing procedures. A review of the test results over the last four years showed that on two exam settings in the last three years, no one failed. In four other instances, the failure rate was greater than twenty percent. While a variation of this nature could result from a number of factors other than the application of testing procedures, it was significant enough to require a review of the actual testing procedures. Observation of the examination process indicated several areas that could reduce the effectiveness of the examination. All the practices detailed below can be eliminated by the board with a minimum of effort.

The first concern relates to the board's review of examination applications (which include applicant photographs) prior to the examination. This practice could serve to introduce bias into the process; therefore review should be limited to an examination committee or staff review.

Second, observation of the practical examination revealed a lack of consistency between board members in their use of the standardized examination format set by the board prior to the exam. Individual board members deviated from the standard in terms of subjects examined, questions asked, interaction with some applicants in eliciting responses, and in recording of question responses. While observing the examination, it was noted that, during the trouble-shooting portion of the exam, opportunities occurred for modifying the examination material, and that all segments of the practical/oral examination were given in individual board member's hotel rooms. In order to preclude subjectivity and ensure a standardized,

consistent examination for each applicant, efforts should be undertaken to use a written examination whenever possible and to institute guidelines for the practical portions of the examination which clearly delineate acceptable methods of examination. In order to ensure fairness to applicants and to have overall consistency in the various portions of the examination, a more appropriate examination location should be provided which would allow greater control and thus ensure consistency. In addition, blind grading of practical parts and grading by two or more board members, as is done by other boards, would increase the consistency and standardization of the exam process.

In regard to other aspects of the examination process, consideration should be given to providing counseling on request for those applicants failing the examination. Presently, board members administering oral examination sections do not follow a standard pattern of recording responses of applicants or providing a document which could be readily utilized in counseling applicants. In order to initiate a process for counseling applicants, board procedures related to oral portions of the exam would have to be modified. Implementation of these modifications would strengthen the board's exam processes, as well as provide a method through which individuals could assess and correct deficiencies prior to reexamination.

Currently, there is no provision relating to allowing candidates to retake only those parts of the examination receiving a failing grade. Therefore, individuals sitting for reexamination must retake the complete examination. The examination is constructed so that this is possible and it would appear to be fairer to these individuals to require them to sit only for those portions of the exam that they have not passed.

### **Other Licensure Prerequisites and Grounds for Removal of License**

The statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination and the grounds for removal of a license once issued contains the same confusion of thought and vagueness of terminology found in the statutes of many other licensing agencies. The statute erroneously requires the licensing board in many cases to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no legal basis. To correct this situation and to place the licensing board in an appropriate setting, the statute dealing with the grounds for disqualification should be structured in such a manner that each of the grounds meet a two-part test. First, the grounds for disqualification should be clear and related to the practice of the profession. As a second part of the test, the grounds for disqualification should be stated in terms of a currently existing condition rather than an absolute conditions which exists throughout the lifetime of the individual.

### **Reciprocity**

Under current statutory provisions, individuals may obtain licensure without examination through reciprocity. The board has a reciprocal agreement with Arkansas, under which three individuals obtained licenses during the period under review. An assessment was made of the standards for licensure in other states in order to determine the feasibility of using endorsement as an alternative to reciprocity.

Review of other states indicated a lack of consistency and standardization in licensing and examination requirements. In addition, substantial percentages of other states' licensee populations were licensed under a grandfather clause.

Consequently, a viable standard upon which to base endorsement is not available to the board, and the potential for reciprocity appears to be limited but more appropriate for this occupation.

### **Exemptions**

Exempted individuals under the statute include persons engaged in the measurement of hearing in an academic setting so long as the sale of hearing aids is not involved. Other provisions exempt physicians and surgeons (who may sell aids if they choose), and persons who are employed and directly supervised by a physician or surgeon, but do not sell aids. While it may be reasonable to assume that physicians and individuals in academic institutions have the necessary expertise and competence to test hearing loss and fit aids, other statutory exemptions do not appear consistent with the public protection aspect of the statute. Removal of the exemptions for non-profit organizations and physician employees would ensure the quality of service provided the public in these areas.

Currently, applicants are not required to have any formal education above high-school prior to licensure, but, may by obtaining a temporary permit, participate in an apprenticeship program working under the supervision of a licensed dispenser. Temporary permittees are allowed to fit and dispense hearing aids under "direct" supervision for up to one year before taking an examination. To date, the board has not issued any guidelines for the apprenticeship period in terms of defining the type and nature of the education or supervision received, and does not monitor the quality of supervision received by temporary permit holders. Six states have specific requirements for the training and testing of temporary permit holders.

In some of these states, trainees are required to complete specified hours of textbook study and actual training in the use of audiometric testing equipment. In



other states, trainees are restricted from contact with the public until completion of certain phases of training. In other instances, the trainee is allowed to do everything a licensed dealer may do after 90 days of structured training, but must work under strict supervision for another 90 days before he is allowed to take the exam for his own license. These restrictions over training to fit and dispense hearing aids provide for adequate supervision and training and contribute to greater protection of the hard-of-hearing public. Promulgation of guidelines by the board would serve to indicate clearly to temporary permittees and their sponsors the nature and level of required supervision and training and assure that the public would be served only by licensees or their trainees in a controlled setting.

### **Enforcement**

The basic objective of the enforcement activity is to protect the public by identifying and, where necessary, taking appropriate action against persons not complying with the provisions of the Act or board rules. Evaluation of the enforcement activities of the board included an analysis of the complaint process from receipt to disposition and an assessment of adequacy of enforcement efforts. Analysis of the complaint process indicates that the agency, given staffing constraints, is responsive to complainants, maintains a complaint log, and provides easily accessible complaint information. Exhibit III-6 presents the number, source, and disposition of complaints filed since 1976. The review showed that the process functions well, but also indicated areas where enforcement activities do not adequately protect the public.

Exhibit III-6  
**SOURCE AND DISPOSITION OF COMPLAINTS**  
**1976-1979**

<u>Disposition</u>	<u>Source</u>			<u>Total</u>
	<u>Consumer</u>	<u>Licensee</u>	<u>Referral</u>	
License Revoked	2	-0-	-0-	2
License Suspended	2	1	-0-	3
Legal Action	-0-	-0-	-0-	-0-
Warning Issued	1	11	1	13
Reconciliation Reached	19	-0-	-0-	19
No Action Required	20	5	1	26
Number Pending (1979)	<u>2</u>	<u>-0-</u>	<u>-0-</u>	<u>2</u>
TOTAL	46	17	2	65

An evaluation of the types of complaints received by the board shows that 45 percent of the total were from elderly consumers dissatisfied with the hearing aids they had purchased. While the agency has helped in obtaining refunds or replacement aids in some instances, underlying causes of the dissatisfaction, such as possible incompetence or inappropriate sales, are rarely addressed.

The statute cites incompetence by reason of negligence as grounds for license revocation. The burden of proof for negligence may be an unnecessarily high standard in this instance which has forced the board to resort to more informal methods of complaint resolution. Allowing sanctions for incompetent practice would give the board greater flexibility in determining and dealing with the underlying cause of the consumer dissatisfaction.

Another area of concern is the lack of effective regulation of the calibration of testing equipment. Improperly calibrated instruments can provide inaccurate measurement of hearing loss. Although the Department of Health has issued regulations covering the calibration of testing equipment, to date, funding con-

straints have prevented the department from monitoring calibration of the instruments used by hearing aid dealers. The department recommends a complete electronic calibration annually with less extensive calibrations more often. Board regulation could serve to reinforce and further delineate acceptable procedures for calibration and for use of testing equipment in the field to help ensure the accuracy of hearing evaluation.

Contractual requirements for the sale of hearing aids currently found in the statute do not appear to afford consumers adequate protection in the area of trial-period provisions. During a trial period, a hearing aid is worn in numerous settings in which it may or may not be effective. A user may not be immediately able to judge the effectiveness of a hearing aid. "Right to cancel" provisions in seven other states offer the hearing aid user from 20 to 45 days to cancel the purchase of a hearing aid. Such provisions provide for compensation to the dealer for his time and services, which the customer should be advised of before he signs the contract. Implementation of this type of measure would have the two-fold effect of alleviating consumer dissatisfaction arising from misunderstanding as to exactly what they have purchased and of ensuring that the hearing aids sold are appropriate to the individual consumer.

### Summary

The Board of Examiners in the Fitting and Dispensing of Hearing Aids is a nine-member board appointed by the governor with the advice and consent of the senate for six-year terms. The board is directed by statute to regulate the practice of hearing aid fitting and dispensing.

Board operations can be categorized in three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the

objective of efficient management in many respects. However, the board has been unable to accomplish fully its objective due to several funding problems. The agency's expenditures have exceeded revenues for the past three fiscal years and are projected to do so again after fiscal year 1981. Funding difficulties could be minimized by increasing statutory limits for fees in order to give the board greater flexibility, and by increasing the examination fee to a level which would cover exam costs. Cash flow problems have resulted from statutory provisions which require license renewal on January 1, an extended grace period and no late renewal penalty. A penalty for late renewal and a shorter grace period consistent with other agencies would encourage more timely remittal of annual renewals. Finally, the board has made a practice of prorating fees without the statutory authority to do so. The authority to prorate fees should be added to the board's statute if such practices are to be continued.

The review identified four areas of concern regarding the licensing activity. The first concern relates to the administration of the examination. Further, statutory limits on the agency's fee schedule prevent the board from making adjustments in fees which would enable revenues to cover expenditures. The statutory fee provisions should be modified to allow the board flexibility in setting fees which would cover expenditures. Although many aspects of the examination are well designed, the review showed that some practices within the exam administration process could bias results and lead to inconsistent application of testing procedures. Among these practices, which should be discontinued, are full board review of applications and inconsistent use of the standardized format. In addition, the board should utilize a written format whenever possible and conduct the examination in a more appropriate location. Use of blind grading and multiple

grading of subjective parts of the exam could add to the objectivity and standardization of application of the exam process. The board presently has no mechanism for counseling applicants who fail the exam as to the reasons for their failure and requires those who fail to retake all parts of the exam for licensure. As part of its modification of the exam process, the board should institute a mechanism for counseling applicants and review its policy which requires the entire exam to be retaken. The second concern involves prerequisites for licensure. While desirable in general, gross immorality, incompetence by reason of negligence, insanity and habitual drunkenness or drug addiction are ambiguous and may place an unfair burden on applicants. These prerequisites, which do not provide the board with an objective standard, should be eliminated from the Act. The third concern involves statutory exemptions. Some of the exemptions in the Act do not appear consistent with the public protection aspect of the statute. While it is reasonable to assume that physicians and persons involved in academic institutions are qualified to fit and dispense hearing aids, other exemptions do not serve the purpose of protecting the public. Exemptions for non-profit organizations and physician employees should be removed to ensure greater public protection. Finally, the board has no guidelines regarding the type or nature of education or supervision received by temporary training permittees. Since there are no prerequisites for permittees and no guidelines for their supervisors, it is possible for a trainee to fit and dispense hearing aids for up to a year without proof of competence. Establishing guidelines for governing trainee programs and responsibilities of their sponsors could provide a more substantial framework by which to assure better service and protection to the public.

Four concerns were identified with regard to the agency's enforcement activities. First, the underlying causes of complaints are rarely addressed. While

consumers have received monetary satisfaction in some cases, the overriding concerns of incompetence or inappropriate sales are overlooked. Allowing sanctions for incompetent practice would give the board greater flexibility in determining and dealing with the underlying causes of consumer dissatisfaction. Second, some of the other statutory grounds for revocation or suspension of a license, such as gross immorality, insanity and drunkenness, are ambiguous and difficult to verify objectively and, therefore, not acceptable grounds for disciplinary action. Greater clarity and relevance regarding grounds for revocation and suspension would give the board practiceable directives. Other statutory grounds for disciplinary actions related to advertising should be eliminated and a general prohibition against false and misleading advertising should be instituted. Third, there is a lack of regulation in the area of test equipment calibration. While the Department of Health regulates this area to a limited degree, board regulation could reinforce and further delineate procedures for calibration and in turn help ensure the accuracy of hearing evaluations. Finally, contractual requirements for the sale of hearing aids are not adequate for consumer protection. A hearing aid user typically requires an adjustment period where the performance of his hearing aid can clearly be judged as beneficial or useless. Mandatory trial periods and "right to cancel" provisions could provide greater protection for the hard-of-hearing public.

#### **IV. ALTERNATIVES AND CONSTRAINTS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

##### **Consolidation Alternatives**

Organizational structures in other states were reviewed in order to identify consolidation alternatives with potential for use in Texas. The review indicated that there are a total of 48 states that provide regulation of hearing aid fitting and dispensing. Of these states, 8 place regulation under an independent board. The remaining 40 states have consolidated regulation with agencies having other regulatory responsibilities such as a Department of Occupational Licensing or the state Health Department.

Of the states which have consolidated the function, 18 carry out the regulation within a department of health; 10 of these states have advisory boards within the department; 5 of them have boards with full powers attached to the department. Finally, 3 states, Vermont, Indiana and Connecticut, have no board, placing all regulatory authority with the Health Department.

Of the consolidation alternatives identified in other states, a Department of Occupational Licensing is not a feasible option for Texas since this organizational form does not currently exist in this state. The state does, however, have a Department of Health.

To determine the feasibility of this option, the Department of Health was reviewed to determine whether its goals and functions were reasonably compatible with those of the Board of Examiners in the Fitting and Dispensing of Hearing Aids. Additionally, alternatives were considered from the perspective of whether consolidation of functions would result in identifiable benefits.

From a review of the organization of the Department of Health, it would appear that consolidation would result in identifiable benefits. The Department of Health is involved in the registration and regulation of persons who use or are involved in the use of audiometers, audiometric testing devices or audiometric calibration devices. Benefits to be derived from combining hearing aid fitting and dispensing regulation with the Department of Health can be seen through a review of the functions performed by the agency. First, the department's Division of Vision, Hearing and Speech Services has the expertise necessary: 1) to determine whether audiometric testing machinery used by fitters and dispensers is calibrated; and 2) to administer an examination in the area of fitting and dispensing hearing aids. Second, there is an established mechanism for investigating complaints and enforcement through the department's regional offices.

### **Regulatory Alternatives**

In addition to the various types of organizational structures used to regulate hearing aid dispensers, alternative regulatory methods can be used to protect the public from incompetent dispensers. Of these regulatory alternatives, the two utilized by other states are: 1) no state regulation; and 2) regulation of the sale of hearing aids.

With regard to the first alternative, two states, Alaska and Illinois, provide no regulation in fitting and dispensing of hearing aids, leaving all regulatory



responsibility to the Federal Trade Commission (FTC) and/or the Food and Drug Administration (FDA). FTC regulations generally cover deceptive trade practices. Sanctions under FTC law include full consumer redress or fines of up to \$10,000 per violation. Proposed FTC regulations would apply specifically to the hearing aid industry and would attempt to remedy the occurrence of false and misleading sales tactics within the hearing aid industry, as well as to provide the buyer with a "right to cancel" hearing aid purchases. The FDA has jurisdiction over the production and use of "medical devices" and has developed regulations which address the safe and effective use of hearing aids and the importance of medical evaluations before the purchase of a hearing aid. Violation of FDA regulations carries a maximum penalty of three years in prison and/or a \$10,000 fine.

The second alternative, used by Massachusetts, Minnesota, New York and Vermont, regulates only the sale of hearing aid devices. A written recommendation from either a physician or a certified audiologist is required before the sale of a hearing aid in these states. The requirement of a medical or audiological evaluation serves two purposes. First, the certainty that pathological conditions which could cause irreparable harm to the patient can be correctly diagnosed and treated surgically or medically would be increased. Second, proper identification of persons who can benefit from the use of hearing aids could be assured. However, this requirement could result in increased costs to those consumers who need hearing aids, but would result in cost savings to those who do not need a hearing aid. Texas uses this method in certain state programs and both the Department of Human Resources and the Department of Health require medical clearance prior to dispensing hearing aids to their clients.

While not currently used to regulate hearing aid fitting and dispensing in any state, certification or registration are methods commonly used with respect to

other occupational groups and are possible alternatives for the regulation of hearing aid fitting and dispensing. Under certification, the ability to practice fitting and dispensing would be contingent on an applicant taking and passing a one-time "certifying" examination. This method would guarantee a minimum level of competency for those certified through the examination process but would assume no responsibility for enforcement. Individuals who were not satisfied with services or merchandise would have the normal recourse open to any other purchase of goods or services. Certification would result in reduced costs to the state since annual renewal would not be required.

Registration as a method of regulation requires any person wishing to work as a fitter and dispenser of hearing aids to be "registered" with a designated state agency, without regard to the qualifications of the person registering. Registration could be conducted by the Department of Health or by the current board at reduced cost to the state. Fitters and dispensers would be allowed to diagnose and test for human hearing problems as well as make ear-mold impressions and sell hearing aids. This method provides no guarantee of competency.

Before any of the regulatory alternatives reviewed should be considered as a reasonable alternative to current regulation in Texas, the option should offer the same or a greater degree of public protection than the current method. With respect to the regulatory alternatives identified above, analysis indicated that the alternatives of no licensing, certification or registration are less restrictive than current regulation, but offer less public protection than is currently provided. The alternative of regulation of the sale with the requirement of a medical examination before fitting and dispensing of a hearing aid would not be more restrictive but could provide more public protection in the area of judgment of need for a hearing aid. This alternative does not, however, provide a mechanism to assure the competence of fitters.

### Summary

A review of consolidation alternatives indicated that 48 states, including Texas, provide regulation in fitting and dispensing hearing aids, with 40 operating through agencies with multiple functions. Eighteen of these states use some variation of consolidation within a department of health.

The Department of Health appears to be the most feasible alternative for consolidation in Texas. The department is responsible for the registration and regulation of all persons involved in the operation of human hearing testing devices. Department personnel have expertise in audiometric testing, calibration, audiology and the fitting of hearing aids. Benefits could be derived from the use of the department's regional offices for complaint investigation as well as other support personnel and services.

The review of regulatory alternatives showed that two states have chosen to provide no regulation in the fitting and dispensing of hearing aids, deferring all regulatory responsibility to the FTC and/or FDA. Other alternatives from the review of other states included regulation of the sales of hearing aids, with the additional requirement of a medical examination before the purchase of an aid. Certification and registration were also reviewed for feasibility and benefit. Of these alternatives, all are less restrictive, but only the regulation of the sale of hearing aids provides a means by which the need for a hearing aid could be determined. However, this alternative would not assure competence of fitters and would increase the cost to consumers.

## V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

### Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b, V.A.C.S.). A review of the documents filed with the Office of the Secretary of State indicates that both the board members and the executive director of the agency have complied with the filing requirements set out in the state's general statute dealing with conflict of interest.

The board's statute places no restrictions on the involvement of board members with private hearing aid dealers' associations. One board member presently serves on the board of directors of the Texas Hearing Aid Association. While no problems resulting from this overlapping membership were identified in the review, the possibility of conflicts between the goals of persons involved in

regulating an industry and the goals of promoting and preserving an industry exist within such a relationship.

### **Open Meetings - Open Records**

As evidenced by publications in the Texas Register, board meetings have been preceded by adequate and timely notice to the public. However, the board technically has not followed procedures for closed meetings outlined in Article 6252-17, V.A.C.S. The Act requires that the presiding officer must announce that a closed meeting will be held and must identify the section of the Act authorizing such a meeting. The Act also states that any final action on subjects discussed in a closed meeting be made in an open meeting.

The review indicated that the board has met in a closed meeting on at least five occasions for complaint disposition decisions and on a routine basis for examination grading purposes. The requirements regarding Open Meetings were brought to the agency's attention during the review and the executive director indicated that these requirements will be observed in the future.

Only two types of records, examination questions and personnel records, are considered confidential by the board. Because both classes of information are exempt from public disclosure under Section 3 of the Open Records Act, the agency action in asserting the confidential nature is statutorily authorized.

There have been no formal requests to the board for information under the Open Records Act.

### **Employment Policies**

As is the case for most small agencies, an Affirmative Action Plan has not been required of this agency. The agency has, however, prominently posted in the office an equal employment opportunity policy statement.

### Summary

The board has complied with the filing requirements related to conflict of interest provisions. One board member holds office in a state hearing aid association which provides the possibility of conflicts between goals of the regulating body and the persons regulated. While the board has complied with the Open Records Act, it has held executive sessions for purposes not allowed in the Open Meetings Act. Steps have been taken to ensure future compliance.

## **VI. PUBLIC PARTICIPATION**

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provision on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

### **Agency Activities**

The review of agency efforts to involve the public in rule changes and board meetings indicated that two changes of a procedural nature have been considered by the board since the implementation of the Administrative Procedures and Texas Register Act in 1975. Notification requirements concerning rule changes and board meetings required by the APA have been properly addressed by the board. A special requirement found in the enabling legislation of the agency requiring that 30 days notice of meetings be given in three newspapers of general circulation has not been observed; however, in view of the APA notification requirements, this type of notice requirement is no longer required. As is typical of small agencies, no material has been prepared to provide an overview of the purposes and procedures of the board to the general public, and no special notification efforts have been made to public-oriented groups regarding board meetings or rule changes.

### **Board Membership**

One method of attempting to ensure that the viewpoint of the general public is represented in activities of a board or commission is to require that one or more members of the general public be included within the statutory membership of the board or commission. Review of the statutory composition of the board indicates that public participation has been achieved through inclusion of one public member on the board. Representation of two other professions, audiology and medicine, on the board provides additional expertise.

### **Summary**

The board has observed general statutes related to notice of rule changes, and board meetings. A requirement to give additional notice of meetings in newspapers has not been observed and is no longer needed. The board presently has one general public member, providing some assurance that the public's viewpoint is represented in decisions and actions of the board.



## **VII. STATUTORY CHANGES**

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

### **Past Legislative Action**

Since passage of enabling legislation in 1969, four major changes have occurred to the statute governing the fitting and dispensing of hearing aids. Legislation passed in 1971 (H.B. 1482, Sixty-second Legislature) added additional categories of conduct by a licensee which could result in the revocation of a license. Provisions were added to the statute which prohibited: 1) the use of a list of names of potential customers which had been compiled by anyone other than the licensee, his authorized agent or another licensee; 2) failure to identify clearly both the licensee and his purpose in any telephone solicitation of potential customers; and, 3) the commission of any act requiring an optometric or medical license.

In 1973, the board was given the authority to stagger the renewal of licenses (S.B. 831, Sixty-third Legislature), and in 1977 the board was made subject to the provisions of the Sunset Act (S.B. 54, Sixty-fifth Legislature).

An amendment to the Act in 1979 (H.B. 2062, Sixty-sixth Legislature) abolished the board's special fund status and provided that funding for the activities of the agency be through the general revenue fund. This amendment was needed because of cash flow problems experienced by the board due to the timing of renewals and the lack of a renewal penalty.

### **Proposed Legislative Action**

Four bills affecting the board's operation were unsuccessfully proposed during the last four legislative sessions. Two of the bills (H.B. 510, Sixty-fifth Legislative, and H.B. 1415, Sixty-sixth Legislature) would have placed the board within the administrative structure of the Department of Health. Both of these bills were opposed by the board as not being in the best interest of the public and not contributing to more efficient regulation.

Senate Bill 821, Sixty-fourth Legislature, would have prohibited the dispensing of hearing aids without a written prescription from a licensed audiologist or physician. Finally, S.B. 1033, Sixty-sixth Legislature, would have made continuing education mandatory for license renewal purposes. Although the board did not take a formal position on these two bills, the board presently supports mandatory continuing education for licensees.

Both the agency's self-evaluation report and a review of proposed legislation indicate that no statutory changes have been recommended by the board during the last four legislative sessions. However, a review of board minutes suggests that the issue of continuing education for which legislation was proposed, while an on-going concern of the board, remains an unresolved issue.

### **Summary**

In conclusion, major changes to the act, since enactment, include more stringent provisions for licensee conduct, authorization for a staggered renewal process and inclusion of the board under the Sunset Act. Proposed, but unsuccessful legislation would have made major regulatory changes by: 1) placing the board under the Department of Health; and, 2) requiring a prescription for the dispensing of new hearing aids.