

TEXAS STATE BOARD OF EXAMINERS IN SOCIAL PSYCHOTHERAPY

Staff Report
to the
Sunset Advisory Commission

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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 State Board of Examiners in Social Psychotherapy, 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, Other 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 Other 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

Forms of psychotherapeutic practices have been used throughout history. Certain credibility was lent to the activities of persons engaged in treating mental problems through the growth of psychoanalytic theories and practices developed by Sigmund Freud and others during the latter part of the 19th century. Freud's status as a medical doctor helped impart a "scientific" respectability to the pursuit of understanding and treating mental or emotional problems. The proliferation of persons and occupations interested in psychotherapy has increased as study and research efforts have helped establish certain schools of thought regarding the genesis of mental problems. That is, certain groups may claim that mental or emotional disorders are due solely to organic or bodily troubles while other groups may claim that environmental or social pressures are more critical in causing mental distress or disorders. The varying attempts to outline the reasons for mental problems has lead to the inclusion of many different occupations, in the number of groups attempting to improve the well-being of mentally or emotionally distressed individuals. This proliferation increased after World War II as many returning veterans exhibited severe emotional problems. The limited number of available psychiatrists necessitated the use of other mental health practitioners such as psychologists, clergy, and social workers.

The regulation of these vocations through traditional licensure programs has been slow to develop. In Texas, psychologist licensure was implemented in 1969 and the licensure of social psychotherapists occurred in 1975. The implied cause for the imposition of licensure requirements for the social psychotherapist was to meet a need for protection of the public health and welfare.

The Board of Examiners in Social Psychotherapy, composed of six licensed social psychotherapists, presently regulates approximately 800 licensees through its licensing and enforcement functions. Responsibilities include determination of qualifications of applicants for licensure and enforcement of provisions against the unauthorized practice of "social psychotherapy." This practice is defined as a service "directed at helping people achieve more adequate, satisfying and productive emotional adjustments." The background of a social psychotherapist is primarily social work oriented but can include psychology, theology, and general counseling. The board is administratively attached to the Department of Health and is supported by the fees imposed upon its actual and potential licensees.

Review of board operations showed that the regulatory activities of the board, while established to accomplish general regulatory objectives, are not conducted in an efficient and effective manner. Areas of concern due to statutory and operational problems are found within each of the three general activities of the board: administration, licensing, and enforcement. Generally, procedures in place to maintain annual workload data (number of applications processed, number of renewals, etc.) are not adequate. The current fee structure utilized by the board, although practical, is not statutorily authorized. Further, common sense approaches to resolution of conflicts between the Health Department and the board regarding such issues as appropriate letterhead development have not been utilized. Finally, a reasonable management scheme relating to the board's ability to employ and terminate staff is not statutorily authorized.

The licensing activities of the board are also deficient due to operational and statutory problems. Statutory requirements and rules for post-graduate supervisors

need to be made consistent for all areas of the state. The development of an inventory of acceptable equivalent courses for persons coming from educational backgrounds other than social work should be pursued to reduce board application review time and discretion. General procedures to notify examinees of examination results should be modified to avoid past delays of up to four months, renewal procedures should be staggered to avoid work backlogs at the end of each fiscal year and the statutory delinquency period of six months should be shortened.

Within the area of enforcement, written procedures should be developed regarding the handling of complaints and increased assistance from the legal division of the Health Department or Attorney General's Office should be pursued to aid in complaint hearing processes and in routine compliance with the Administrative Procedures, Open Records and Open Meetings Acts. Finally, efforts should be made to encourage the board's licensees to utilize the "S.P." designation to notify the public of their licensure status.

The board has requested that public members be added to its membership and increased public education efforts on its activities and functions appear warranted.

Need to Regulate

As in the case of other regulated activities, regulation of social psychotherapists should be undertaken by the state only when there is a need to protect the public health, safety or welfare. This protection should only occur if demonstrable harm can be foreseen through the incompetent practice of social psychotherapy. The determination of the existence of the harm resulting from social psychotherapeutic practice has been difficult.

In general, potential for harm resulting from the practice of social psychotherapy arises when the therapist acquires unusual influence over a person or client. The potential for harm resulting from such a situation is easily discernable in other settings such as incorrect medical diagnosis resulting in unnecessary surgery. It can be demonstrated through incompetent administration of psychological testing procedures resulting in an incorrect labeling of mental retardation. The harm arising from poor advice given by a social psychotherapist in attempting to help a person or client to "achieve more adequate, satisfying and productive emotional adjustments", however, appears to be no more harmful than such advice given by a best friend, retail merchant, or pastor.

A recent review of litigation within the United States since 1887 involving psychotherapeutic practices reveals few actions against psychologists and no actions against social workers. Further, no state except Texas has chosen to regulate social psychotherapists and only ten states explicitly regulate the activities of clinical social workers. This lack of litigation and minimal regulation of the occupation most closely akin to social psychotherapy provide indications that the general public has not identified sufficient harmful results from the practice of this vocation to warrant court or significant state regulatory action. Using these review elements, it can be concluded that there is no need to continue regulation of social psychotherapy.

Should the legislature decide to continue the regulation of social psychotherapy, the current regulatory approach can be changed to a less restrictive but equally effective process. The modification of the current system to a registration rather than licensure approach can provide equal public notice that certain persons have completed specified educational and practice requirements. This process can

be implemented without examination requirements through utilization of an advisory board or committee to the Board of Health. One time registration would be required with presentation of credentials relating to acceptable educational (social work or related field) and practice accomplishments. The Board of Health could revoke the registration of practitioners should the need arise.

Alternatives

The following legislative alternatives can be considered based upon the review conducted by the Board of Examiners in Social Psychotherapy:

1. ABOLISH THE BOARD AND DISCONTINUE REGULATION OF SOCIAL PSYCHOTHERAPY (page 30).

This approach would eliminate the regulation of a vocation which is uniquely confined to the state of Texas. Although the practice of social psychotherapy is similar to certain regulated vocations (e.g. clinical social work is currently regulated in ten states), the potential harm arising from its incompetent practice does not appear to be sufficient to warrant the state imposition of vocational regulation.

2. CONTINUE REGULATION OF SOCIAL PSYCHOTHERAPY BUT THROUGH A MODIFIED REGULATORY METHOD KNOWN AS REGISTRATION (page 29).

This approach would provide public notice that persons calling themselves "social psychotherapists" have accomplished specified educational and practice goals. This is in keeping with the ultimate effect of the current regulatory approach but offers a less restrictive alternative. The Board of Health could act with assistance from an advisory board or committee made up of social psychotherapists. Costs associated with this approach would represent a significant reduction from current expenditures as no examination or renewal action would be required. Should the need arise, a person's registration could be revoked by the Board of Health.

3. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain the board within the Health Department to perform licensing and enforcement activities. The review indicated that the following modifications would result in more effective regulation of social psychotherapy:

- a) clarify the relationships between the board and the Department of Health (page 16);
- b) develop procedures to maintain adequate workload data (page 16);
- c) amend statute to give board ability to employ and terminate staff (page 16);
- d) amend statute to authorize current fee structure (page 17);
- e) develop inventory of acceptable equivalent courses for persons coming from educational fields other than social work (page 18);
- f) amend statute and rules to make consistent across the state the qualifications of post-graduate supervisors (page 18);
- g) provide exam results in a timely manner (within thirty days of exam) (page 19);
- h) stagger renewal procedures (page 19);
- i) amend statute to reduce renewal delinquency period from six months to ninety days (page 19);
- j) develop written procedures for processing complaints (page 21);
- k) increase efforts to improve current utilization rate of "S.P." designation by the board's licensees (page 21);
- l) eliminate confidential treatment of college transcripts held in applicant files (page 40);
- m) obtain legal assistance from the Legal Division of the Department of Health or the Attorney General's Office for enforcement actions and to determine routine compliance with Administrative Procedure, Open Records and Open Meetings Act (page 40);

- n) amend statute to comply with general public notice requirements of the Administrative Procedure and Texas Register Act (page 42);
- o) develop descriptive material to inform public of board functions and activities (page 42); and
- p) add three public members to the board (page 43).

II. BACKGROUND

Historical Perspective

The term social psychotherapy in statutory law is unique to Texas. Social psychotherapists, along with other groups, utilize the technique of psychotherapy to treat mental or emotional disorders by a variety of psychological means such as counseling or group therapy. The objective of psychotherapy is to allow a client to alleviate mental stress or to develop coping strategies.

Although general areas of psychotherapy are discernable, distinct boundaries for its practitioners are difficult to establish. Services, including psychotherapy, may be provided by doctors, psychologists, psychiatrists, social workers, lawyers, nurses, social psychotherapists, and other groups.

Psychiatrists, particularly Sigmund Freud and his followers, were the first practitioners to attempt scientifically to treat mental disorders. They utilized medical models, and provided treatment of mental disorders that could be traced to physical or hereditary problems.

The field of psychotherapy was greatly expanded by the development of behavioral psychology in the early 1900's. This group emphasized the importance of environmental and learning experiences, thereby opening the mental health field to practitioners other than medical doctors. This expansion was speeded by World War II when many veterans returned with severe emotional problems. The limited numbers of available psychiatrists necessitated the use of psychologists, nurses, clergy, social workers and others. Each of these groups has continued to provide psychotherapy, with slight differences in emphasized techniques evident from group to group.

The increase in use of psychotherapy and the number of groups, both licensed and unlicensed, providing such service compounds the difficulty in determining

"danger" to the public from incompetent delivery of psychotherapeutic services. The first specific attempts in Texas at licensing psychotherapeutic practitioners was in 1959, when legislation was introduced to regulate psychologists. The first attempt, in 1973, to regulate social psychotherapists was directed at clinical social workers, (House Bill No. 1536, Sixty-third Legislature) and was unsuccessful.

In 1975, social psychotherapists were regulated by H.B. 247, Sixty-fourth Legislature as a compromise in attempts to regulate clinical social workers. The Act attempted to identify and license those persons who have completed a specific sequence of training, demonstrated competence (through testing) in practical application of those methods, and wish to practice as social psychotherapists.

Approximately 825 persons initially were licensed as social psychotherapists through a grandfather clause. Fifty-nine persons have been licensed through examinations since the agency was created. As of February 1980, there were 742 licensed psychotherapists.

Comparative Analysis

A review of licensing activities of the fifty states showed that Texas is alone in regulating social psychotherapists. While several states do regulate psychotherapists, the activities of these occupations did not represent the same kind of activity regulated by Texas.

Those states regulating clinical social workers were found to be much closer to the type of activity regulated by Texas. Although the practice of social psychotherapy and clinical social work are not precisely equivalent, it is felt that the statutory definitions of the two occupations are sufficiently similar to warrant further review of the organizational patterns established for their regulation.

The need to regulate clinical social workers (or social psychotherapy in Texas) is currently expressed through statewide licensing requirements imposed by eleven of the fifty states surveyed. From the standpoint of organizational patterns, seven states meet this expressed need through governmental departments charged with the regulation of multiple occupations. In another three states, including Texas, the occupation is regulated by a board which operates as part of a larger substantive agency such as the Department of Health. In only one state is the regulation of clinical social work carried out by an independent board.

In those states which utilize boards and commissions, the chief executive appoints board members in ten states and five of these states require that appointees be confirmed by the legislature. Membership in all but three states includes both persons who are licensed members of the occupation and persons who are not. In Texas, board members are appointed by the governor, confirmed by the legislature, and membership is limited to licensees. Nine of the eleven states, including Texas, utilize governing bodies with the responsibility of policy-making as distinguished from a strictly advisory role.

A majority of the states, including Texas, indicate that the regulatory body is totally supported by fees collected. Three states indicate that these bodies are not solely supported by fees and charges of the agency.

In six states, licenses are renewed every two years. One state renews every three years and four states, including Texas, renew annually. Enforcement activities in all states involve investigation of complaints from consumers and those engaged in the occupation of clinical social work or social psychotherapy. Disciplinary hearings are conducted by the regulatory agency in nine states. In Texas, the agency is authorized to conduct disciplinary hearings. All but one state requires passage of a board examination prior to licensure.

States which regulate clinical social work generally indicate 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 Board of Examiners in Social Psychotherapy is a six-member body appointed by the governor with the advice and consent of the senate for six-year terms. To qualify for appointment to the board, a person must be a citizen of the United States, a resident of this state, licensed under the Social Psychotherapy Act, and have been actively engaged in the practice of social psychotherapy for five years prior to appointment. To assure adequate representation of the diverse field of social psychotherapy, the board consists of three members who are social psychotherapists in private practice; one member who is engaged primarily in the administration of social psychotherapeutic services; one who is a member of the faculty of an accredited university training program whose graduates may be eligible for licensure as a social psychotherapist; and one member who is employed in a private or public agency as a social psychotherapist. Board members are actively involved in determining qualifications for licensure, developing and giving the examination for licensure, enforcing provisions of the Act and holding necessary hearings on complaints.

The Act defines the practice of social psychotherapy as "a service in which a special knowledge of social resources, human capabilities, and the part conscious and unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive emotional adjustments." The Act further defines that the application of social psychotherapy is to include, but not be restricted to, "counseling and using applied psychotherapy of a nonmedical nature with individuals, families, and groups, and doing related research." Implementation of the statutory duty to regulate persons claiming to provide such services is accomplished through the licensing of qualified, competent social psychotherapists and through the enforcement of the Act.

Under the Act, basic personnel and facilities for the board are to be provided by the Texas Department of Health (TDH). Current staff assistance to the board is provided by two full-time employees: an executive secretary and a secretary. Although TDH determines the amount of assistance provided to the board, the Act specifies certain services and responsibilities which are to be furnished by TDH. Specifically designated activities include approval of board recommendations for legal proceedings, approval of board proposed rules or regulations, administering examinations to qualified applicants, approval of board proposed examinations, instituting injunctions, authorizing board enforcement activities relating to civil suits, receiving and accounting for all money, paying money weekly to the state treasurer, making expenditures, imposing fees, and fixing fees. The board is solely fee-funded, with funds being deposited in a special social psychotherapist licensure fund in the state treasury. Appropriations for the board are made to the Texas Department of Health through the Social Psychotherapists Licensure Fund.

Evaluation of Agency Activities

As with most other licensing agencies, the operations of the Board of Social Psychotherapist Examiners 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 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. The review of the board indicated that procedures in the areas of accounting, mail processing, and personnel records are well structured, thus contributing to efficient management. There are, however, four aspects of the board's operation which should be corrected.

The first aspect relates to the Texas Department of Health regarding the board in an advisory capacity. This review is exemplified in the Texas Department of Health's submission of the Advisory Committee Report on the State Board of Examiners in Social Psychotherapy. The department's treatment of the board in this manner has created problems for the board. One example relates to board difficulty in obtaining "approval" from the department to have stationery printed with Social Psychotherapy on the department's letterhead. To date, such approval has not been granted and the board's public visibility and accessibility has been hampered due to the use of TDH stationery. A simple solution would be to permit

the board to use stationery that identifies the Board of Examiners in Social Psychotherapy and the Texas Department of Health.

Legislative intent was clearly not to form an advisory board. This is apparent in a review of the legislative history of the creation of the agency. Problems arising between the board and the department over whether or not the board is advisory have been minor in nature and could be resolved through a better understanding of legislative history of the board and improved communication between the board and department.

The second area of concern in the general area of administration relates to the source, accuracy, and retrieval of quantitative data concerning activities of the board. Current practices of the board and its staff do not produce this information, nor does the Health Department support services collect useful data concerning the board. For example, a great amount of time and effort was spent during the review simply trying to determine the number of applications processed. This type of information was routinely available from other licensing agencies.

The development of an accurate data source would be enhanced if TDH were to maintain separate information on the Social Psychotherapists and the Athletic Trainers. The Texas Department of Health has indicated it will modify its procedures.

The third area of concern deals with the authority to employ staff. All board staff are employees of the Texas Department of Health. The board has only consultation privileges in the employment of the executive secretary. In comparison, the Advisory Board of Athletic Trainers has authority to employ its own staff. Since the authority to employ staff is so vital in ensuring proper accountability and good management, the statute should be modified to give employment authority to the board.

The final concern in the general area of administration relates to fees. The board collects the following fees with the amounts approved by the Texas Department of Health.

Exhibit III-1

FEES

Statutory			Non-Statutory		
Examination	-	\$ 85	Application	-	\$ 75
License	-	\$ 85	Roster	-	\$ 5
Renewal	-	\$ 50	Remailing	-	\$ 10
Delinquent	-	\$ 75	Replacement	-	\$ 15

As illustrated in the exhibit above, half of the fees are not specifically authorized by the Act. The statute should be amended to authorize these fees.

Licensing

The general objective of the licensing activity of the Social Psychotherapy Examining Board is to ensure that a minimum standard of competency has been achieved by persons licensed to practice as a Social Psychotherapist in the state. To accomplish this purpose, the board is directed by statute to give an examination to prospective licensees. In addition, the board is authorized to set qualifications for applicants.

Review of the licensing activity indicates that the board has screened applicants on the basis of required graduate academic training, post-graduate experience, and examination performance in an effort to address the general objective of ensuring a minimum level of competency. Five areas of concern were noted in the licensing activities of the board.

The first area of concern deals with the process through which the board approves an applicant's academic training. The present process used by the board to screen academic training is subjective in nature and creates a hindrance to the decision-making capacity of new board members inexperienced in this area. The process consists of a review of transcripts of each application for appropriateness of course work, usually by course titles. The applicant may be requested to submit additional information on course content whenever the board is unfamiliar with certain course titles or academic programs. The board finds this method of review necessary due to the diverse educational backgrounds resulting in applicants of various academic degrees with dissimilar titles that in themselves do not convey professional competency in psychotherapy.

The development of an inventory of course titles containing appropriate subject matter, listed by school, would aid and substantiate board decisions. This process could substantially reduce the current training time required of new board members in order to properly perform this function.

The second area of concern relates to the statutory qualifications of the post-graduate supervisor. An applicant's post-graduate experience must by statute be supervised by a person licensed by the Act or qualified to become licensed, unless located in a geographic area where no supervisors are available. In such cases, the applicant may be supervised by a licensed psychologist or board certified psychiatrist. This shift in supervisor requirements limits an applicant's choice for a supervisor. A less restrictive requirement would be to allow a supervisor, regardless of geographic location, to be a licensed social psychotherapist, or licensed psychologist, board certified psychiatrist whose experience in the field of psychotherapy is acceptable to the board.

The third area of concern deals with the timely notification of examination results. There are two factors that have contributed to the lack of timely notification of examination results to applicants. They are the grading of the exam and board approval of exam scores.

For example, the results of the examination administered on May 26, 1979 were reflected in the board minutes as being approved on September 22, 1979, a delay of almost four months. Timely notification is important to those persons whose future plans are contingent on their examination scores. Recently, the board has addressed the need to grade exams immediately following the examination. Additionally, the board should develop procedures to notify examinees of their performance pending board approval of scores. These procedures would contribute to the notification of exam results within a reasonable time frame.

The fourth area of concern deals with license renewal. Annual renewal of licensure is required by the Act by August 31 upon payment of the renewal fee. The total number of licensed Social Psychotherapists is relatively small and has decreased moderately since 1978. However, approximately 94 percent renew by the August deadline in 1979 to avoid paying a delinquent fee. Consequently, the majority of the board's workload is occurring in a one-month period, creating a reoccurring need for employee assistance from other Health Department divisions. A periodic renewal of licenses would improve efficient utilization of agency personnel by establishing a uniform workload throughout the year. This periodic renewal could help to eliminate: 1) backlogs in licensing efforts; and 2) the need for employee assistance.

The final area of concern in licensing activity relates to the time frame allowed for delinquent renewal of licenses. In accordance with the Act, social psychotherapists have a delinquency period of six months, half of the licensing

period. Licensees pending renewal are permitted to practice during this delinquency period. Variations among other licensing agencies range between 30 days to one year, with the majority of agencies allowing a 90-day period for delinquency. The social psychotherapist delinquency period is excessive in comparison with other licensing agencies and should be reduced to ensure comparable treatment for all licensees, regardless of their regulated profession.

Enforcement

The basic objective of the enforcement activity is to protect the public by identifying and, where necessary, taking appropriate action against persons who do not comply with the Act or board rules. Basic enforcement responsibility is vested in the Board of Examiners in Social Psychotherapy. The board's level of funding is not sufficient to provide for investigative staff and as a result, enforcement activities are primarily restricted to complaint processing.

The board's self-evaluation report identified a total of eight complaints filed since 1976. A review of complaint files disclosed an additional eight complaints not included in the eight reported in the self-evaluation report. All of the unreported complaints were brought forth by the board requesting that licensees remove their license numbers from the National Registry of Health Care Providers in Clinical Social Work, because it implied they were licensed clinical social workers. The board did not consider these to be complaints since they were initiated by the board.

The total volume of complaints is low and if efficiently processed, would not constitute a serious problem. The review of the enforcement activity identified two areas of concern.

The first area centers around the lack of written rules and procedures for the handling of complaints. As a result, individual complaint files contained incomplete and inadequate information. Some of the missing data from two folders was filed in a folder labeled "complaints" along with the additional eight unreported complaints mentioned previously and a variety of dissimilar data.

Additionally, the board spent unwarranted time on matters clearly out of their purview. In one case, the conduct in question occurred before the licensure of the practitioner as a social psychotherapist. This conclusion was not reached by the board until three and a half months later after a full investigation and hearing.

The development of written procedures for the processing of complaints would assist in the maintenance of complete and adequate files; thereby, decreasing the time involved in resolving complaints and increasing the agency's ability to protect the consuming public. It would also help ensure that action on complaints is taken in a proper fashion.

The final concern relates to the protection provided to the consumer by the statute. The statute provides protection only to those consumers seeking care from persons licensed to use the title "social psychotherapist" or the letters "S.P." as part of their professional identification. The majority (69 percent) of the licensees sampled in private practice do not use the above-mentioned identification in the telephone directory listings as illustrated in Exhibit III-2.

Exhibit III-2

YELLOW PAGE LISTINGS OF PSYCHOTHERAPISTS

1979

City	Total Listed	Other Practitioners		Social Psychotherapists	
		Not Licensed S. P.	Licensed* S. P.	Licensed S. P. Listed With Title or Letters	
Austin	15	5	10	3	
Houston	86	38	48	8	
San Antonio	20	11	9	7	
Dallas	24	8	16	4	
Fort Worth	14	1	13	8	
Amarillo	4	1	3	2	
Carrollton	<u>4</u>	<u>0</u>	<u>4</u>	<u>0</u>	
	167	64	103	32	

(1) *Identified through roster.

Yellow page listings further camouflage identification of licensees to potential consumers by listing licensees under the heading "Psychotherapists" along with psychologists, psychiatrists, a variety of other persons practicing psychotherapy. The multitude of professions practicing psychotherapy is exemplified by the statutory exemptions which include: licensed physicians, licensed psychologists, licensed attorneys, social workers, lecturers, duly ordained priests, rabbis, ministers of the gospel, Christian Science practitioners and other licensed professionals or ordained religious practitioners. The lack of licensees use of the title and the broad use of the term psychotherapy by other professions diminishes the authority and effectiveness of the board's enforcement powers.

Summary

The Board of Examiners for Social Psychotherapists is composed of six licensed social psychotherapists appointed by the governor with the advice and consent of the Senate for six-year terms. The board is directed by statute to regulate all persons claiming to be a "social psychotherapist" or using the letters "S. P." as a means of professional identification.

The operation of the board can be broken down into three activities; administration, licensing, and enforcement. With regard to administration, several concerns were identified in the review. First, the Texas Department of Health's treatment of the board in an advisory capacity does not comply with legislative intent. Second, the lack of accurate operating data is a hindrance to proper management and to a determination of effectiveness. Third, the board lacks the authority to employ staff. The statute should be modified to give the board this privilege to help ensure good management and proper accountability. The last area of concern in the general area of administration deals with the modification of the statute to authorize the present non-statutory fee schedule of the board.

Review of the licensing activity indicated that the board has established a screening process to ensure minimum competency based on a review of graduate academic training, post graduate experience, and examination. There were five concerns identified in licensing activities. First, the board's screening process for the appropriateness of course content equivalent to those of accredited social work programs hinders new board member's decision-making capacity, and lends itself to subjectivity. This situation would be eliminated with the development of an inventory of appropriate course titles listed by school. Second, the statutory qualification for post graduate supervisors poses limitations to an applicant's

choice of supervisor. The Act and rules should be modified to allow for a less restrictive approach. Third, two factors have delayed the notification of examination results to examinees: the grading of the exam and the requirement of board approval on exam scores. The board has acted recently to implement procedures that should eliminate the delay due to grading, but sufficient time has not passed to verify improvement. The board should develop procedures to notify examinees of exam results pending their approval by the board. Fourth, 94 percent of licensees renew by the August 31 deadline creating a heavy workload during this period. Periodic renewals should be initiated to improve efficient utilization of board personnel by establishing a uniform workload year round. Fifth, the delinquency period of six months is excessive in comparison with regulatory boards of similar size and should be shortened.

Two concerns were identified with regard to enforcement activities of the board. The first concern relates to the need for the development of written rules and procedures for the handling of complaints to increase board efficiency and protection to the public. The final area of concern dealt with the difficulty the potential consumers have in identifying licensees and the resulting hindrance this creates to the board's enforcement powers.

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 no other state approaches the regulation of psychotherapists as does Texas. Many states regulate occupations which claim psychotherapy as part of their general activity and it is estimated there are more than 150 laws in effect nationwide which in some way can impinge upon the person who practices psychotherapy. Two approaches have been considered in the comparison of the regulation of social psychotherapists in Texas to the regulation of similar occupations in other states. One relates to psychotherapists and the other relates to clinical social workers.

The primary thrust of the Texas approach is to regulate the title "social psychotherapist". No other state regulates the title "social psychotherapist". However, some states do regulate the key word "psychotherapist" and initial comparative attempts were made on the basis of the regulation of the word or title "psychotherapist". Upon close inspection of the state processes setting out this title regulation, three were found in the licensing statutes of psychologists and one

was found in licensure statute regarding limited practitioners of medicine. Although indicative of the confusion regarding the appropriate regulatory approach for psychotherapy in general, it was not felt that these occupations, psychology and medicine, were related closely enough to Texas' "social psychotherapy" to allow true comparisons to be made for consolidation alternatives.

The regulation of clinical social workers does offer a basis for comparison. Generally, the definition of clinical social work and the educational requirements for licensure as a clinical social worker best parallel those of the "social psychotherapist". Further, the original legislation introduced in the Sixty-third legislative session (H.B. 1536) did propose to regulate clinical social workers, not social psychotherapists as was finally adopted in amended legislation (H.B. 247) in the Sixty-fourth legislative session. Organizational structures in states which regulate social workers have been reviewed to identify consolidation alternatives with potential for use in Texas.

The review indicated that twenty-two states regulate social work in general. Of those twenty-two, ten specifically regulate either the use of the title or the practice of clinical social work. Of these states, nine have consolidated such regulation with agencies having other regulatory responsibilities. Seven of the nine use an "umbrella" department of occupational licensing. Two states have chosen to consolidate the regulation of clinical social workers within an agency with other substantive responsibilities such as a Health Department or Department of Social and Rehabilitative Services. One state has chosen to regulate clinical social work through an independent board.

Of the options identified, a Department of Occupational Licensing is not a feasible option for Texas since this organizational form does not currently exist in

the state. Texas has already chosen the approach of consolidating the regulation of "social psychotherapy" within a larger agency, the Texas Department of Health. The independent board approach is an alternative currently in place for many regulatory agencies in the state. It is felt, however, that the regulation of social psychotherapy can best occur through the board's current placement within the Health Department. Benefits such as shared personnel, standardized accounting and cash receipt procedures, and potential for data processing assistance, would be endangered through a shift to an independent board structure.

Regulatory Alternatives

In addition to the various types of organizational structures used to regulate "social psychotherapy" or "clinical social work" there are a number of alternatives which need to be considered in the review of Texas' regulation of the field of social psychotherapy. These alternatives range from no regulation at all to a more comprehensive regulatory alternative regulating the practice of the numerous occupations claiming psychotherapy as part of their vocational province. Before any of the regulatory alternatives can be considered as a reasonable alternative to current regulation in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system.

The alternative of increasing the number of occupations regulated to include social workers, marriage and family counselors, psychologists as well as social psychotherapists, has been considered. These occupations are generally those thought of as providing services similar to those of the social psychotherapist. This alternative is problematic for a number of reasons. It is clearly a more restrictive alternative through its requirement of regulation of two presently unregulated

occupations in Texas, social workers and marriage and family counselors. Only three states have chosen to regulate all of these occupations and only one of these, California, explicitly regulates the clinical social worker through a practice definition similar to that of the social psychotherapist. Finally, such a drastic increase of state regulatory power should only be made if clear and compelling dangers to the public can be foreseen due to the lack of such extensive regulation. In this regard, it is difficult to determine if the degree of public danger is sufficient to warrant the continuation of the regulation of social psychotherapy, much less the addition of two new regulatory efforts which the state has not seen fit to pursue.

Another alternative is to merge the functions of the board regulating social psychotherapists and the existing board regulating psychologists. To determine the feasibility of this option, the goals and functions of the Board of Examiners of Psychologists were reviewed to determine their compatibility with those of the Board of Examiners in Social Psychotherapy. In addition, this alternative has been considered from the standpoint of whether consolidation of functions would result in identifiable benefits.

The primary function of the psychology board is to regulate persons representing themselves to be psychologists and those rendering "psychological services". Although psychotherapy is not explicitly defined in the psychology board statutes the definition of "psychological services" includes:

"the application of psychological principles to the evaluation and remediation of learning, emotional, interpersonal, and behavioral disorders."

Certain statutory modifications would be needed to explicitly delineate the specific area of activity of social psychotherapists as opposed to the broader

activities of psychologists which can include educational testing, evaluation and labeling of learning or emotional disorders as well as individual or group counseling. The general organization of the administrative aspects of psychologist regulation is similar to that of the social psychotherapists' and the smaller number of social psychotherapists could be handled by the current psychology board administration without significant modification.

Benefits derived from this consolidation, however, are difficult to identify. The current administrative posture of the social psychotherapists within the Department of Health can provide numerous efficiencies. Although problems have been identified throughout the report regarding the board's relationship with the Health Department, common sense approaches to these areas can improve the situation. Further, attempts to fit social psychotherapists' activities into the already complex regulatory scheme of the psychologists might jeopardize the minimal public notice and protection provided through the restricted use of the title "social psychotherapist".

Generally, the regulation of social psychotherapists is accomplished through a consolidated administrative effort within the Health Department. Removal from this structure and merger with the psychology licensing effort can diminish administrative benefits already enjoyed and increase general confusion relating to the distinctions between social psychotherapists and psychologists.

Other alternatives relating to the regulation of only social psychotherapy do exist through such common regulatory approaches known as registration and certification. One state currently utilizes a modified "registration" approach in its regulation of clinical social work. Persons desiring to call themselves "registered clinical social workers" must register with the state board. No exam is required

but evidence of doctoral or masters level education from a school accredited by the Council on Social Work Education and evidence of two years supervised social work experience must be presented. Registrations can be revoked for cause by the board and annual renewals are required. This approach is generally similar to "certification" procedures except that certification usually requires the passage of an examination.

The registration approach could easily be adopted for the regulation of social psychotherapy in Texas. Should the legislature determine that regulation should continue for social psychotherapists, the establishment of an advisory board or committee reporting to the Board of Health can accomplish less restrictive regulation and provide public notice and protection that is equal to the current approach. Persons desiring to call themselves social psychotherapists could present credentials which evidence at least masters level training in social work or a related field and two years of supervised work experience in the field of psychotherapy. No exam or renewal of registrations would be required but registrations could be revoked for cause by the Board of Health. This approach would provide the public with notice that certain practitioners have completed theoretical and experiential training in the practice of social psychotherapy. This assurance of appropriate training and experience would supplant the need for examination as usually required in a certification regulatory method.

The alternative of no regulation of social psychotherapists has been considered. In general, the exercise of the state's police regulatory power is justified only when its effect on individuals is not out of proportion to the benefit gained by the public. Thus, the regulation of individuals desiring to pursue a vocation is appropriate when it can be demonstrated that harm can be inflicted through the

improper execution of practices associated with the vocation. The determination of harm arising from the practice of any of the mental health occupations is difficult but particularly so for the social psychotherapist.

Harm inflicted through the mis-administration of drugs by a psychiatrist is easily seen. Harm resulting from an inaccurate diagnosis of mental retardation by a psychologist is also easily seen. The harm however, resulting from the misuse of psychotherapeutic methods in helping "...people to achieve more adequate, satisfying, and productive emotional adjustments" is less easily perceived.

The existence of harm resulting from the practice of social psychotherapy, regulated or not, can be determined through at least three approaches: 1) theoretical or intellectual examination of the field and its practices; 2) examination of consumer complaints or lawsuits regarding social psychotherapy; and 3) the extent to which the nation as a whole has recognized "harm" resulting from the practice of social psychotherapy and has implemented regulatory procedures to screen and identify practitioners judged to be competent.

Theoretically, harm can occur to a client or patient through inappropriate actions a social psychotherapist. For example, this harm is generally seen in over-dependence on the therapist by the client. Despite the many therapeutic approaches which can be followed, the potential for harm seems to arise when one person (the therapist) is placed in a position of unusual influence over another person (the client). This process can occur within any human relationship including interactions which occur between a troubled person and a friend who offers assistance, retail merchants or ministers. Documentation of this potential harm, however is extremely difficult.

One method to determine if harm can result from incompetent social psychotherapeutic practice is to review lawsuits involving practitioners of psychotherapy. One recent comprehensive study of this issue, showed that in 300 cases originating since 1887, suits have been brought primarily against medical doctors, psychiatrists, state governments (generally resulting from inappropriate institutional care) or hospitals. No cases against social workers were found and only seven cases against psychologists were identified. While the approach of reviewing malpractice cases involving psychotherapy will not yield conclusive evidence regarding its potential for harm, the small number of cases involving psychologists and the fact that none of the cases involved social workers gives an indication of the lack of demonstrated harm to the public.

One last measure of the harm that might arise from the practice of an occupation is the number of states which have chosen to regulate the occupation "to protect the public health and welfare." As discussed previously, only twenty-two states have enacted statutes regulating social workers and only ten of these have chosen to explicitly regulate clinical social workers whose activities are most similar to social psychotherapists. Since the vocation of social work in general has been identified since the early 1900s, it would appear that at least a majority of states would have seen fit to regulate social work activities if demonstrable harm from their action could be identified.

The Act's general purpose is to identify through state title regulation, those practitioners of social psychotherapy who have met certain standards of experience and education. Those who do not meet these standards cannot call themselves "Social Psychotherapists." It is doubtful that the general public is protected from incompetence through this means. Even if restrictions on use of the term were

effective, the public does not appear to be notified of competent social psychotherapists through the title regulations approach. Less than thirty-five percent of current licensees use the designation in common advertising approaches such as yellow page directories.

During legislative deliberations concerning the licensing of social psychotherapists, testimony was presented relative to the "social psychotherapist" being able to provide a less costly alternative for persons in need of mental health services. This less costly alternative approach can be justified as a protection of the public welfare. However, it appears that the fees currently charged by social psychotherapists are not significantly less than those charged by psychologists. A telephone survey of social psychotherapists in the Austin area indicated that at the time of the survey, fees charged ranged from \$40 to \$50 per client per hour with a sliding fee schedule for those with lower incomes. Psychology licensee questionnaire responses indicate that fees charged by psychologists in private practice are roughly the same.

Finally, the educational requirements for social psychotherapy licensure are significant. The requirement for a masters degree in social work or a related area is seen as appropriate in providing the public assurance that certain psychotherapeutic concepts and practices have been mastered through academic work. This is a legitimate requirement if its attainment can be correlated with demonstration of increased effectiveness in the delivery of psychotherapeutic services. The needed characteristics of an effective psychotherapist are difficult to isolate. It is useful to quote from a recent work on the The Regulation of Psychotherapists: A Study in the Philosophy and Practice of Professional Regulation (Daniel Hogan, 1979).

"Although the empirical research on traditional training is scanty, in virtually all studies that bear upon it the findings have been uniformly negative. Simply put, traditional academic training programs seldom increase the therapeutic effectiveness of the average student. When the criteria for measuring competence are the interpersonal qualities and skills that research has most often linked with effectiveness, the results are especially depressing...

This is not to say that traditional programs do not teach anything. It is most likely true that they do give students an excellent knowledge of psychotherapeutic and psychological theory, as well as other relevant conceptual knowledge. But it does not appear that traditional programs do much to increase a student's skills in interpersonal relationships, nor do they develop skills such as the ability to empathize... "page 157

Summary

A review of other state approaches to the regulation of social psychotherapy has been conducted to determine the potential for combining its regulation with the functions of another agency. Since, no state regulates "social psychotherapy" except Texas, the approach taken centered on a review of states regulating "clinical social workers" because the activities of this occupation most closely parallel those of social psychotherapists.

The review indicated that one state regulates clinical social work through an independent board and that seven of the ten states regulating clinical social work do so through a department of occupational licensing or umbrella licensing agency. Two of the states regulate the occupation within a larger agency with additional substantive responsibilities. This latter approach is that taken already in Texas, as the social psychotherapy board is currently administratively attached to the Texas Department of Health. The other option of consolidation with a department of occupational regulation is not viable as such an agency does not exist in Texas. The independent board approach would not provide the benefits currently experienced by the board within the Health Department structure.

One other administrative alternative has been considered which would merge the agency with an existing board licensing psychologists. In general, merger with the Board of Psychology Examiners does not appear to offer demonstrable benefit to the public. The merger would remove the Social Psychotherapy Board from the Health Department, thereby reducing benefits gained through its general support system (accounting, personnel sharing, etc.). The merger would also increase general confusion relating to distinctions between psychologists and social psychotherapists. Although minimal public notice is achieved through the regulatory title of "social psychotherapy", at least public notice of dissimilarity between the two occupations is provided. This dissimilarity is primarily related to the differing educational and experiential backgrounds required for licensure.

A number of regulatory alternatives have been considered. These alternatives range from no regulation to expansion of regulation to include all persons practicing "psychotherapy".

This last alternative would generally include at least those persons known as social workers, marriage and family counselors, psychologists as well as social psychotherapists. The pursuit of this alternative does not appear warranted due to the following reasons. It is clearly a more restrictive alternative through its requirement to regulate two presently unregulated occupations in Texas, social workers and marriage and family counselors. Only three states have chosen to regulate all of these occupations and only one of these regulates clinical social work in a fashion similar to the regulation of social psychotherapy in Texas. Finally, such a drastic increase of state regulatory power should only be made if clear and compelling public dangers can be foreseen due to the lack of such extensive regulation. The assessment of general public danger raises questions of

the need to continue the current regulation of social psychotherapists without providing justification for the addition of two occupations currently unregulated by the state.

One regulatory alternative, registration, is found in place in one state regulating clinical social work. This alternative would provide public notice of training and experience but would not provide for renewal of licensure as currently required. An advisory board or committee could be established to advise the Board of Health on Social Psychotherapy issues and to assist in revocation or suspension of registrations should the need arise. This approach can provide public protection in consonance with current regulatory activities in a less restrictive manner by eliminating costly renewals and examination requirements.

The alternative of no regulation of social psychotherapists has also been considered. The regulation of any occupation or vocation is justifiable only when it can be demonstrated that harm can be inflicted through the improper execution of practices associated with the vocation. The state then has an interest in protecting the public "health and welfare" from this harm. The establishment of certain standards to screen and identify practitioners judged to be competent is the generally accepted approach to minimizing the potential for harm.

The determination of harm arising from the practice of any of the mental health occupations is difficult but particularly so for the practices of social psychotherapists. A review of theoretical causes of harm arising out of a therapist to client relationship leads one to common problems arising out of relationships in which one person has a position of unusual influence over another.

One recent study of 300 malpractice suits dating from 1887 and referring or relating to psychotherapy revealed that no suits have been filed against social

workers and only seven have involved psychologists. This would lead one to conclude that the regulated practice of psychotherapy is justifiably the province of another occupation or that the harm resulting from its practice by social workers has not been sufficiently great to warrant legal review and remedy.

One other complicating factor is the few number of states which have chosen to regulate any occupation closely related to social psychotherapy. Although twenty-two states currently regulate social work, only ten specifically regulate the activities of clinical social work and no state except Texas has chosen to regulate "social psychotherapy". This lack of regulation of a vocation that has been identifiable since the early 1900's leads one to conclude that harm leading to its regulation is difficult, if not impossible to identify.

Further concerns relate to the efficacy of the current regulatory approach. The public does not appear to be notified of competent social psychotherapists through the title regulations approach since less than thirty-five percent (35%) of the current licensees use the designation in common advertising approaches such as yellow page directories. The field of social psychotherapy does not appear to offer a less costly mental health service as it was claimed to offer in legislative proceedings regarding the passage of the regulatory act. Finally, it can be argued that the most important interpersonal qualities and skills of an effective and helpful psychotherapist cannot be gained through masters level educational programs as currently required by the social psychotherapy regulatory act. Experience appears to be an equally key factor in developing psychotherapeutic practice skills.

The general potential for harm resulting from the incompetent practice of social psychotherapy is difficult to isolate and identify. This lack of clarity provides grounds for questioning the need for regulation of the field of social psychotherapy.

V. COMPLIANCE

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 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 interest, open meetings, and open records.

Conflict of Interest

Article 6252-9b, V.A.C.S., relating to the conduct of certain state officers who have private interests that may conflict with those of their office, applies to the Board of Examiners in Social Psychotherapy and requires that certain disclosure statements be filed with the Office of the Secretary of State if a state officer has substantial business interests which are regulated by a state agency. Documents filed with the Office of the Secretary of State indicate that three of the six board members have filed the affidavits. (One of these has recently resigned due to illness. No appointment filling this position has been made.) Of those who have not filed, one is employed by an educational institution and has no

interests in a business entity regulated by the state. The other two members who did not file appear to have interests in business entities subject to regulation. In review of board minutes and discussion with board personnel, it was learned that all board members have recently received copies of H.R. 167 (Sixty-sixth Legislature, Regular Session) containing copies of a number of state statutes relating to the conduct of business by appointed boards and commissions. Additionally, the legal division of the Health Department is reviewing the situations of individual board members to determine needed action to comply with the provisions of the various statutes. These actions should assure future compliance with the filing requirements of Article 6252-9b, V.A.C.S. as well as other acts relating to the conduct of business by state boards.

The executive secretary has not filed a full financial disclosure statement with the secretary of state which normally would be required under Section 3(a), Article 6252-9b, V.A.C.S. However, in discussion with personnel of the Office of the Secretary of State, it was determined that the disclosure statement has never been requested of the executive secretary since he is an employee of the Health Department and operates what is considered to be a division or program within the larger agency. It does not appear that the executive secretary has incurred any financial obligation which is in conflict with the proper discharge of his duties. In general, board compliance with conflict-of-interest statutes appears satisfactory.

Open Meetings - Open Records

It is clear that both the Open Meetings Act and the Open Records Act apply to the Board of Examiners in Social Psychotherapy in that the board meets the definition of a "governmental body" subject to these Act's provisions. In general, the review indicates that the board does comply with the requirements of both

Acts. An examination of the Texas Register and board minutes of meetings discloses a history of adequate and timely publication of notice for board meetings. Records are maintained of board actions and the board appropriately considers examination packets confidential to protect the utility of the exam as a screening tool. The board's treatment of college transcripts as confidential is not appropriate. Under the federal Family Educational Rights and Privacy Act, and Texas' Administrative Procedures Act college transcripts in the possession of an educational institution are confidential. The attorney general has ruled that a college transcript "held by the Board of Registration of Professional Engineers at the behest of the engineer is not excepted by present law from public disclosure under Section 3(a)(1) of the Open Records Act." (Open Record Decision #157, April 1977). It appears that this decision would also apply to a college transcript obtained by the Board of Examiners in Social Psychotherapy with the consent of the student, and that board policy should be modified to remove the transcript's confidential status.

Another concern has been encountered in the board's conduct of complaint hearings regarding licensees. Two such hearings have been held since the board's inception and both have been held in executive session. Although votes relating to the disposition of the complaints discussed have been taken in open meeting, it is questionable whether an executive session to discuss complaints concerning board licensees is allowable under the Open Meetings Act. Further, there has been no legal representation for the board from the Health Department's Legal Division or the Office of the Attorney General at the hearings. After discussion with board personnel and personnel of the Health Department's Legal Division, the original basis for holding the hearings in executive session is being reviewed and assistance from the Legal Division will be made available for future hearings.

Employment Policies

Procedures regarding equal employment opportunities, employee grievance procedures and rights to privacy developed by the Department of Health pertain to the staff of the Board of Examiners in Social Psychotherapy. Although the Health Department's operations and procedures in these areas have been and are undergoing extensive state and federal review, none of the problem areas causing these reviews resulted from activities of the personnel of the Social Psychotherapy Board. In general, performance regarding the areas of equal employment, grievance procedures and rights to privacy as they relate to the Health Department personnel working with Board of Examiners in Social Psychotherapy is satisfactory.

Summary

The board generally complies with required employment practices and policies and with the requirements set forth in the conflict-of-interest statute, the Open Meetings Act and the Open Records Act. Two areas of operation, however, should be corrected. The board should discontinue the use of executive sessions to hear complaints filed against its licensees unless, in the opinion of the Health Department's Legal Division, such use is appropriate. Additionally, the board should take steps to remove the confidential status of college transcripts held in applicant and licensee files.

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 extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding 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 commission.

Agency Activities

Review of pertinent records indicates that the board has adopted two of three proposed sets of rules since its creation in 1975. The procedures followed regarding these rules have been in compliance with general public notification requirements found in the board's own statutes and those found in the Administrative Procedure and Texas Register Act. Rules adopted by the board must be ultimately approved by the Board of Health. The board's statutes requires publications of a notice concerning rule adoption or change hearings in at least three newspapers 10 to 20 days prior to such hearings. The requirement is an unnecessary and costly duplication of notification requirements of the Administrative Procedures Act and should be deleted.

In general, the board's efforts to notify the public of its activity through its own publications are minimal. No general information material regarding the

board has been developed, and printing and distribution of a licensee roster has only recently been discussed. A copy of the board's statute, rules and regulations are available to interested parties but generally are only sent in response to inquiries regarding licensure.

The board has discussed the possibility of establishing a "Public Education" subcommittee to increase its activity in the area of informing the general public of its purpose, proceedings, etc. However, this subcommittee of the board is still in the planning stages.

Public Membership

The board currently has no general public members and is composed solely of licensee members. The board appears to be receptive to the addition of public members and this would be an appropriate and direct method of reflecting the view of the general public in the activities of the agency.

Summary

The board has complied with public participation requirements, however, public participation in the policy processes of the board has been minimal. It would appear that deletion of outdated statutory requirements for newspaper publication of meeting notices is justified and that increased efforts to develop general information materials should be pursued. Further, to help ensure that the public's point of view is properly represented, public members should be placed on the board which is currently composed entirely of licensed social psychotherapists.

VII. STATUTORY CHANGES

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 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

The Social Psychotherapist Examiners' Act was adopted in 1975. After this enactment, the Act has been amended only once. In 1977, the board was made subject to the provisions of the Sunset Act (Senate Bill No. 54, Sixty-fifth Legislature).

Proposed Legislative Action

No other piece of legislation has been introduced. However, in its self-evaluation report to the Sunset Commission, the board has made several suggestions for modifications to enable legislation.

First, the board suggests limiting the authority of Department of Health over programmatic affairs of the board involving rule-making and examination. Second, the board would like to participate directly in the budgetary process with the legislature and the governor. Third, the board recommends the removal of the "social" from the Act in reference to the title and term. Fourth, the board recommends that continuing education be statutorily mandated for relicensure. Fifth, the board requests the inclusion of public members on the board. Finally, the board requests that the regulatory authority be expanded to include all persons

practicing psychotherapy on a professional basis.

Summary

In conclusion, in the history of the board the only amendment to the Act was the Sunset Act (Senate Bill No. 54, Sixty-fifth session). In the self evaluation report, the board has recommended six amendments that range from rule-making authority to the expansion of its regulatory control.