

You and the State Board – What Do You When They Call?

Tuesday, 13 Sep 16

Introduction

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Texas Appraiser Licensing and Certification Board

7 years – 2009-2016

Member of the Board

3 years – 2000-2003

General Sources

TEX. OCC. CODE CH. 1103 and 1104

22 TEX. ADMIN. CODE CH. 153, 155 and 157

TALCB Policies & Procedures

Topics

- Who are We and What Do We Do?
- Complaint Process
- Investigation Process
- SOAH Hearing Process
- Common Issues Uncovered from Complaints
- Common Ethics Issues
- AMC Related Issues
- Experience Audits
- Common Issues Uncovered from Experience Audits
- New Developments
- Q&A Session

Who are We

- Regulatory Agency
 - Usually composed of Industry & Public Members appointed by the Governor
- Professional Staff of 1-15 people (TX is largest?)
 - Education, Licensing, Policy staff (part-time)
 - HR, IT, Accounting staff (contract)
 - Ten Full-time Staff
 - 1 Enforcement Division Director (Atty)
 - 1 Staff Attorney
 - 5 Investigators (all appraisers)
 - 3 support staff (2 legal asst.; 1 admin. asst.)



dreamstime.com



dreamstime.com

Who are We

More like traffic cops

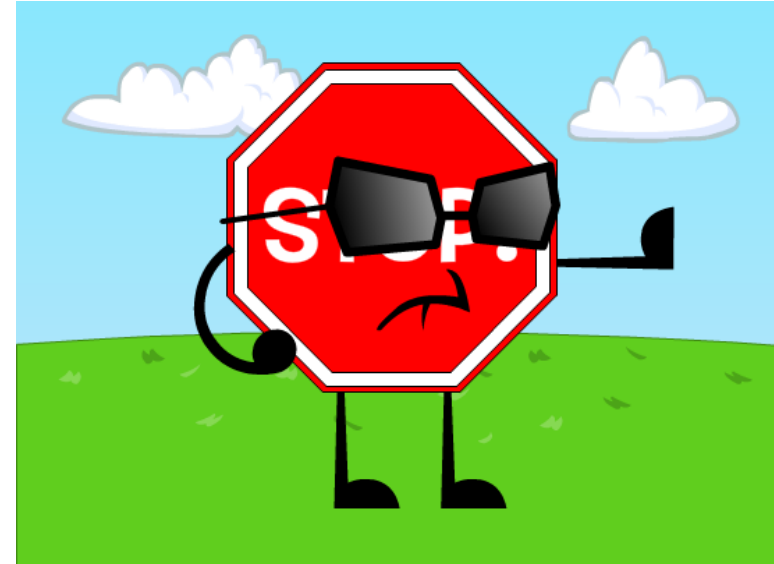
- which ways you can go
- which ways are off limits
- If you go the wrong way, you usually get a ticket



What We Do

- So, what is off limits?

- Violations of USPAP
- Violations of State law
- Violations of Board Regulations (Rules)



What We Do

- Regulate real estate appraisers
 - Complaints
 - Experience Audits
 - Voluntary Trainee Reviews
 - RFA's (request for assistance) from law enforcement
- Regulate Appraisal Management Companies
 - Complaints
 - Audits (in the future)

TALCB COMPLAINT PROCESS OVERVIEW

***WHAT HAPPENS WHEN A
COMPLAINT IS FILED AGAINST
ME?***

TALCB COMPLAINT PROCESS OVERVIEW

Don't
Panic!



Respond timely,
Be Straightforward
and Cooperate!

TALCB COMPLAINT PROCESS OVERVIEW

- Complaint is Initiated
 - May be filed by consumer, lending institution, government agency or review appraiser / industry professional
 - May be staff-initiated
 - Example – failure to comply with prior board order
 - Example – review of reports as part of upgrade request

TALCB COMPLAINT PROCESS OVERVIEW

- Complaint is screened for jurisdiction
- Complaint is processed by legal assistant
 - Notice of complaint packet sent
- Complaint [response](#) is received / processed by legal assistant

TALCB COMPLAINT PROCESS OVERVIEW

- Case is assigned to investigator
- Triage conducted by investigator
- Complaint is investigated

TALCB COMPLAINT PROCESS OVERVIEW



COMPLAINT INVESTIGATION

- Who will review the complaint?
 - Appraiser's peers:
 - Staff investigator, or
 - Peer review committee member

COMPLAINT INVESTIGATION

- Cases assigned by Case Manager based on:
 - Region
 - Nature of complaint
 - Prior dealings with the appraiser
 - Caseload
- Investigation tracking and triage procedures used
- Regular, weekly investigative status meetings

COMPLAINT INVESTIGATION

- Peer Committee Structure:
 - Four Peer Investigative Committees
 - Chaired by one of the four appraiser members of the Board
- All committee members are Certified USPAP Instructors
- PIC Coordinator
 - Coordinates all peer matters, assignments, questions and communications

COMPLAINT INVESTIGATION



COMPLAINT INVESTIGATION

- Investigator / PIC will: **READ**
 - ***Read*** the complaint
 - ***Read*** the response of the appraiser
 - ***Read*** the report
- Investigator / PIC will: **REVIEW**
 - ***Review*** the complaint
 - ***Review*** the response of the appraiser
 - ***Review*** the report

COMPLAINT INVESTIGATION

- Investigator / PIC will: **RESEARCH**
 - ***Research*** the facts
 - Talk to witnesses
 - Obtain documents from 3rd parties (with staff assistance)
 - ***Research*** the data (available at the time)
 - What data did the appraiser have (or have available) at the time?
 - Was that data disclosed, analyzed and reconciled in accordance with USPAP?
 - ***Research*** any harm
 - Harm is NOT a requirement for taking disciplinary action
 - Was there damage or harm caused by the appraiser?
 - How much? (i.e. losses) (with staff assistance)

COMPLAINT CASE RESOLUTION

What Happens after a Complaint Investigation is Complete?

COMPLAINT CASE RESOLUTION

- Investigative report delivered to Attorney
 - If from a peer review committee, investigator prepares investigative summary with recommended action based on peer findings
 - If dismissal is recommended, it is discussed at weekly staff meeting and then forwarded to commissioner for approval of dismissal
 - Some dismissals warrant “warning letter” that accompanies the dismissal, indicating a few items to pay closer attention to
- Attorney reviews report
- Investigative Conference scheduled with appraiser if necessary
 - Face-to-face meeting to discuss the complaint matter with investigator and attorney

COMPLAINT CASE RESOLUTION

- INVESTIGATIVE CONFERENCES

- Conference between TALCB Staff and appraiser to foster resolution:

- Statement of Investigative Conference Procedures and Rights provided to and signed
- Attending an investigative conference is **VOLUNTARY**
- The responding appraiser **may bring legal counsel or an advocate etc.** if they want to
- The conference **can be terminated at any time**
- The appraiser **can decline to answer questions** posed by Staff
- You may request a copy of the investigative report in advance of the conference
- Specific statements made during the informal conference **cannot later be introduced as evidence at a trial**

COMPLAINT CASE RESOLUTION

- When a complaint has been completely investigated three different outcomes are possible:
 - *Dismissal of the complaint case (with warning or none, or contingent)*
 - *Resolution of the complaint case by agreed discipline (education, fine, etc.)*
 - *Resolution of the complaint case through the disciplinary hearing process*

COMPLAINT CASE RESOLUTION

- CONTINGENT DISMISSAL: Dismissal of a complaint case may occur after successful completion of “contingent dismissal” requirements:
 - Prosecution of the complaint is deferred during a prescribed time period in which courses, mentorship or other requirements are completed.
 - If all conditions of the “contingent dismissal” agreement are met, the case is dismissed with a non-disciplinary warning letter.

COMPLAINT CASE RESOLUTION

- RESOLUTION BY AGREED DISCIPLINE:
 - Occurs after consultation between TALCB Attorney and appraiser or his/her attorney
 - Sometimes an agreed discipline will be offered after an informal conference is held
 - “Agreed Final Order” is a written document, signed and notarized by the appraiser and signed by the appraiser’s lawyer
 - Also signed by TALCB Attorney and Commissioner
 - Approved by the Board and signed by the Chair at one of their quarterly meetings

COMPLAINT CASE RESOLUTION

- PROBATION – all or a portion of a sanction can be probated with or without terms and conditions, including:
 - Requiring appraiser to not supervise trainees
 - Submission of quarterly experience logs and affidavits
 - Submission of written reports after attending remedial education
 - Mandatory mentorship on specific areas of weakness
 - Instituting office policies or procedures

COMPLAINT CASE RESOLUTION

- VOLUNTARY SURRENDER -- In cases involving serious violations that warrant revocation, an appraiser may be offered the opportunity to voluntarily surrender their license / certification in lieu of proceeding further with the complaint
 - Voluntary surrender affidavit is signed / notarized by the appraiser
 - Surrender can be permanent
 - Does not contain factual findings and legal conclusions related to the complaint allegations
 - Board accepts the surrender and enters a final order

COMPLAINT CASE RESOLUTION

- Disciplinary Sanctions Can Include (based upon Board's penalty matrix and statute):
 - **Public reprimand**
 - **Administrative penalties (i.e. monetary)**
 - **Remedial Education**
 - **Mandatory Mentorship** – with Board approved mentor
 - **Re-examination** – retake the exam
 - **Experience Logs** – submission of work product
 - **Suspension** – period of time during which license or certification is suspended and appraiser cannot practice
 - **Revocation** – license or certification is taken back by the Board and appraiser can no longer practice

CRITERIA FOR MENTORS

- Revised by the Board in August, 2015
- Requirements:
 - 10+ years as a certified residential or certified general appraiser
 - Certified USPAP Instructor, or hold a recognized appraiser designation and approved to teach courses to obtain that designation
 - In good standing, with no formal discipline

DISCIPLINARY HEARING PROCESS

***WHAT IF MY CASE HAS TO GO TO
TRIAL?***

DISCIPLINARY HEARING PROCESS

- ***Where do unresolved cases go?***

- State Office of Administrative Hearings (“SOAH”) – hears all complaint cases that are not resolved
 - Website -- www.soah.texas.gov
 - Composed of administrative law judges (“ALJ”) (lawyers)
 - Acts as judge to address legal issues
 - Acts as fact finder to resolve disputed issues
- Economics Group
 - Comprised of ALJ’s who hear cases involving licensed professions (real estate agents, accountants, etc.)

DISCIPLINARY HEARING PROCESS

- *How does the hearing process get started?*
 - Statement of Charges (“SOC”) filed and served
 - Outlines the legal and factual allegations TALCB is making against the appraiser (board rules, USPAP provisions, provisions of statute etc.)
 - Notice of Hearing (“NOH”) filed and served
 - Outlines the time, place and location of the hearing, the legal authority for it and incorporates the SOC into it

DISCIPLINARY HEARING PROCESS

- After getting notice of the disciplinary charges the appraiser files an Answer to charges
- Discovery Process: Exchange of information about the case between the lawyers / parties
 - Depositions – take a witness's testimony under oath before a court reporter who records everything
 - Written Discovery

DISCIPLINARY HEARING PROCESS

- *How does it work?*

- Rules of procedure and evidence apply:
- We make our case -- testimony and documents
- Record of testimony and evidence is kept
- Appraiser makes their case the same way
- Oral arguments (Opening / Closing Statements) are made
- ALJ has 60 days to make a written decision with:
 - Factual Findings – what are the facts
 - Legal Conclusions – what are the legal results

DISCIPLINARY HEARING PROCESS

- *What happens after the hearing?*
 - Judge's decision is sent to all parties
 - Opportunity to file responses to the judge's decision and request modifications
 - Exceptions / replies
 - Judge will rule on the exceptions
 - Judge's final decision is sent to Board for action

DISCIPLINARY HEARING PROCESS

- ***What does the Board do?***

- Board will enter a Final Order based on the judge's proposal for decision ("PFD").
 - Oral presentation made by both sides to Board.
 - Only the evidentiary record from SOAH
- Board has narrow discretion to modify judge's findings:
 - If ALJ failed to properly apply or interpret the law
 - If a prior administrative decision the ALJ relied on is incorrect or should be changed
 - If there is a technical error in a finding of fact
- Board then signs Final Order

DISCIPLINARY HEARING PROCESS

- *What happens after the Board signs a Final Order?*
- Final Order takes effect **UNLESS** Appraiser Appeals via proper process...

DISCIPLINARY HEARING PROCESS

- Appraiser must file motion for rehearing within 20/25 days of receiving the final order
 - Board rules on whether a new hearing is needed so that justice is served
 - Very narrow grounds for giving a new trial
- After exhaustion of Board remedies, appraiser must file lawsuit within 30 days in Travis County District Court
 - Heightened standard of review

Common USPAP Violations

What are some frequent USPAP violations Board Staff sees?

Common USPAP Violations

- **Failing to maintain an adequate work file**
- **Failure to summarize supporting reasoning**
- **Failure to report and address zoning, easements, deed restrictions, flood plain or other issues that may impact highest and best use**

Common USPAP Violations

- WOULD A PROSPECTIVE BUYER WANT TO KNOW?



Common USPAP Violations

- **Failure to disclose prior sales and listing history of the subject**
- **Failure to accurately report “economic supply and demand” and “market area trends”**
- **Misrepresentations about the inspection**
- **Failure to address seller concessions**
- **Misrepresentations about the scope of work**

Common USPAP Violations

- **How about a big one that sparked much of the federal law changes?**
- **Selecting inappropriate comparables**
 - **Superior quality of construction**
 - **Superior gross living area**
 - **Superior site characteristics**

Common USPAP Violations

SUBJECT



COMPARABLE USED



Common USPAP Violations

SUBJECT



COMPARABLE USED



Common USPAP Violations

Quality of Construction

- THE SUBJECT



- THE “COMPARABLE”



Common USPAP Violations

THE PROPERTY



***\$796,300 AVG. AND \$765,000 MEDIAN
NEIGHBORHOOD SALES PRICE***

THE “COMPARABLE” #1



***\$1,430,916 AVG. AND \$1,519,000 MEDIAN
NEIGHBORHOOD SALES PRICE***

Common USPAP Violations

Site Characteristics

**SUBURBAN, CORNER LOT IN
RESIDENTIAL SUBDIVISION**



THE BEACH ON GALVESTON BAY



Common USPAP Violations

“COMPARABLE”?



**THE ACTUAL “COMPARABLE”
PROPERTY**

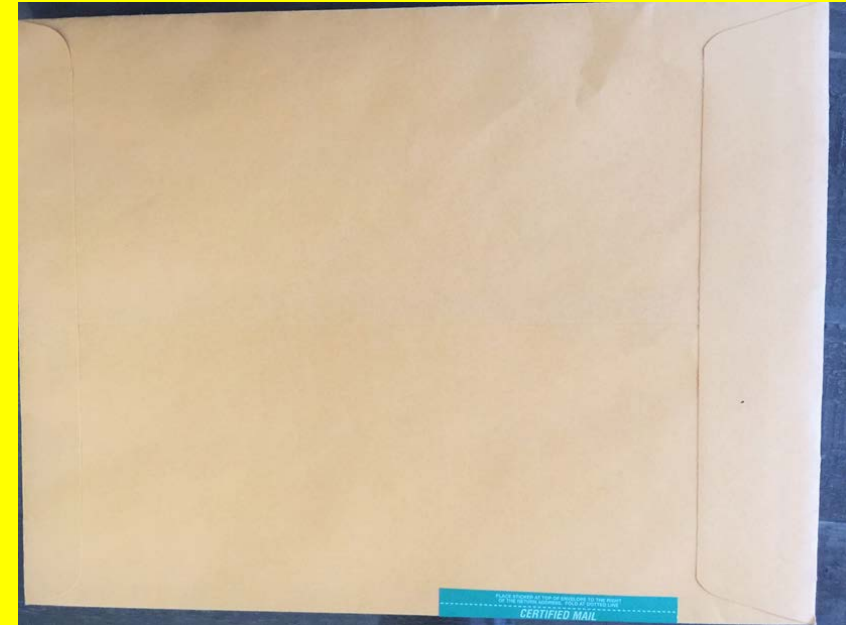


OTHER COMMON COMPLAINT ISSUES

- Don't ignore us!
 - Pick up mail we send you. Ignoring it won't make it go away
 - Make timely responses, or ask for an extension if you have good reason
 - Bad things happen (to you) when we have an incomplete picture

OTHER COMMON COMPLAINT ISSUES

- Don't ignore us!
 - Open your mail – Actual case



OTHER COMMON COMPLAINT ISSUES

- Don't lie to us!

- Recognizing (and admitting) errors or oversights is important
- Let's us know you're still willing to learn, and willing to change incorrect or insufficient processes
- Gives us a comfort level that we're dealing with a [solvable problem](#)
- When you lie to us, all bets are off

OTHER COMMON COMPLAINT ISSUES

DOING AN FHA ASSIGNMENT?

FALSE STATEMENT TO HUD

18 U.S.C. § 1012

Whoever, with intent to defraud, makes any false entry in any book of the Department of Housing and Urban Development or makes any false report or statement to or for such Department....shall be fined under this title or imprisoned not more than one year, or both.



OTHER COMMON COMPLAINT ISSUES

- Don't create new docs or pictures!
 - We look at dates and check listings
 - If your workfile is deficient, we'll let you know, but that alone rarely results in significant disciplinary action
 - Padding the file DOES create more questions and suspicions
 - You can supplement to help explain your reasoning if you properly disclose the fact that it wasn't originally in your work file

OTHER COMMON COMPLAINT ISSUES

- Don't try to baffle us with industry jargon
 - Unlike some states, our investigators are all well seasoned, state certified appraisers with varied commercial and residential backgrounds, each with 20+ years in the industry
 - FHA / VA experience
 - Condemnation background
 - All are full-time employees who only do state investigations (or teach)
 - They know when things don't look right or make sense

OTHER COMMON COMPLAINT ISSUES

- Owner/Buyer asserts Undervaluation

- Is this alone actionable?
 - NO - It's a matter of professional judgment and opinion
 - Provided that supporting data and analysis exists
- Does this sometimes reveal OTHER problems which are actionable?
 - YES – [ASC Policy Statement 7](#)
 - Even if it doesn't, who wants to spend time responding to a complaint to TALCB when they shouldn't need to?

OTHER COMMON COMPLAINT ISSUES

- Careless Reporting of Facts

- Small Things Do Matter
- Gives a complaint traction b/c it shows factual inaccuracies even if they don't understand analysis
- Makes them wonder if your value opinion is credible

OTHER COMMON COMPLAINT ISSUES

- Careless Reporting of Facts

What has shown up in complaints filed?

- Incorrect Zoning
- Inaccurate Measurement of Site or Improvements
- Actual age
- Undocumented outbuildings
- Missing pools
- Errant garages
- Adjacent property characteristics - [Power lines](#)/Greenbelt/Lakes

AMC RELATED ISSUES

- Registration issues – when must I register with Texas?
 - More than 15 appraisers in Texas on panel
 - 25 or more in two or more states (possible statute change coming due to federal requirements)
 - Can't rotate panelists to game the numbers

AMC RELATED ISSUES

- Panel membership – is this appraiser on my panel?
 - AMC required to verify current credential and panel status
 - AMC must ensure competency (by [statute](#) and [rule](#))
 - Appraiser forbidden from accepting work if not on panel

AMC RELATED ISSUES

- Review work:
 - [Who](#) can do it?
 - Qualified to have done report under review
 - Credentialed in state if scope includes an “opinion of value”
 - What must be done to comply?
 - § 1104.155 requires on a “periodic basis” that the AMC perform an “appraisal review” of the appraiser’s work product to ensure:
 - USPAP Compliance
 - Compliance with other standards prescribed by rule

AMC RELATED ISSUES

- Review work:
 - 22 TAC § 159.155 fleshes out this requirement by specifying that:
 - The AMC must review 1 of the first 5 appraisals performed, before the appraiser receives their 6th assignment; and,
 - This is not required if the appraiser has already performed 5 appraisals for the AMC prior to the AMC's obligation to be registered with TALCB (i.e. July 2012)
 - The AMC must review a 5% random selection of all appraisals performed during each 12 month cycle the AMC is registered with TALCB
 - The review of 1 of the first 5 appraisals counts towards the 5% total

AMC RELATED ISSUES

- Mandatory Reporting – when must I do it?
 - Tex Occ Code § 1104.160, when an AMC “has a reasonable basis to believe” that an appraiser is:
 - failing to comply with USPAP “in a manner that materially affects a value conclusion,”
 - violating applicable laws, or
 - otherwise engaging in unethical or unprofessional conduct
- Reporting is not satisfied by simply sending an email or placing a call to TALCB. The law requires that an official complaint form be completed and sent to TALCB.

EXPERIENCE AUDITS

- What is an experience audit?
 - Review of appraisal report *and* workfile to determine competence and general USPAP compliance
 - General Rule -- No workfile >>> No credit
 - RATIONALE: we need materials we can actually audit

EXPERIENCE AUDITS

- 2 samples of work experience from submitted log are randomly chosen
- Investigator will perform review just as with a complaint
- Audit will document issues found

EXPERIENCE AUDITS

- Credit still given if generally complies with USPAP
- If 1 file passes, but 1 does not...
- Request 3rd file to use as tie-breaker

EXPERIENCE AUDITS

- If some issues found, but can be corrected through more experience/education...
- >> Contingent Approval

EXPERIENCE AUDITS

***SUPERVISORY APPRAISERS AND
TRAINEES: WHAT TO BE CAREFUL
ABOUT?***

EXPERIENCE AUDITS

- Serving as a supervisory appraiser is a ***VOLUNTARY***, legal obligation – 22 TEX. ADMIN. CODE §§ 153.20(a)(15) and 153.21(e)
- Obligation of supervisory appraiser is to: “diligently supervise the appraiser trainee” under his or her supervision

EXPERIENCE AUDITS

- Direct supervision and training as necessary
- Ongoing training and supervision as necessary after the supervisory appraiser determines that the trainee no longer requires direct supervision
- Communication with and accessibility to the trainee
- Review and quality control of the trainee's work
- also extends to:
 - “any person not licensed or certified under the Act who assists the license holder in performing real estate appraiser services” 22 TEX. ADMIN. CODE § 153.20(a)(15)

EXPERIENCE AUDITS

- BEWARE OF THE ***“SWEAT SHOP MENTALITY”***
 - *Quicker, faster, more, more, more....*
 - Don't send the trainee to inspect, and represent in the report the certified appraiser did the inspection
 - Don't represent that the certified appraiser conducted the analysis and research, but really only spend 10 minutes reviewing the report
 - Don't sign off on a trainee's experience log and affidavit after scanning it for 5 minutes
 - THE SUPERVISORY APPRAISER IS AFFIRMING INFORMATION TO THE BOARD
 - Reports require CERTIFICATION – if not true, can be perjury or falsification of a govt record

NEW DEVELOPMENTS

***WHAT'S NEW AT TALCB THAT IMPACTS
APPRAISERS AND OTHER INDUSTRY
MEMBERS?***

Confidentiality of Complaint Materials (amendments to 1103.460)

- Makes complaint material confidential
 - Not disclosable under the PIA or “other means of legal compulsion”
 - Covers all “information or material”...including an investigative file “prepared or compiled”
 - Covers complaints, audits and investigations
 - Permits certain disclosures to facilitate the process; [confidentiality agreement](#)
 - Once resolution is complete, material is subject to PIA disclosure

Statute of Limitations (1103.451)

- Limits jurisdiction to complaints filed within 4 years of the occurrence of the alleged violation
 - Includes AMC complaints
- Simplifies things by removing “discovery rule” issues
- Board Rule 153.20(f) was amended accordingly

Voluntary Trainee Reviews: 22 TAC 153.22

- Trainee may apply for PIC review of work product *prior* to experience audit
- Up to 2 applications allowed:
 - After 500 hrs.
 - After 1,000 hrs.

Voluntary Trainee Reviews: 22 TAC 153.22

- Trainee must submit application, pay \$75 fee and send work file
- PIC will review and staff will notify in writing of findings
- *Trainee* will have immunity if mere negligence
 - Supervisory Appraiser receives detailed second opinion of a trainee's work
 - Nobody has immunity for gross negligence or intentional bad conduct

Reinstatement: 22 TAC 153.16

- Effective for applications filed after January 1, 2016
- Can only be used to obtain same level of license that previously expired
- Provides for recognition of previous experience by only requiring 10 reports/10% of usual hours (whichever is greater)
- Some allowance for missing work files for appraisals more than 5 years old
- Must complete *all* missing CE (14 hrs. per year)

Reinstatement: 22 TAC 153.16

- Still requires passing new experience audit
- Does not dictate automatic approval
 - Reinstatement the applicant's previous appraiser license;
 - Reinstatement upon completion of additional education, experience or mentorship; or
 - Deny the application.

Experience Audits for Upgrade Applicants: 22

TAC 153.15

- Potential Staff-*proposed* Rule change to allow those seeking to upgrade to use older work towards hours of experience:
 - Would make it consistent with Reinstatement policy change

Identity Theft: 22 TAC 153.26

- Increasing incidence noted by the TALCB staff
 - [Rule](#) created to address ID theft issues
 - Requires notice to TALCB within 90 days by filing a complaint
 - Fill out required [form](#)
 - Get new license issued at no cost to you
- Can result in a criminal referral

Wrapping Things Up

Don't forget - We all have bad days

Q & A SESSION

Topics

- Who are We and What Do We Do?
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REMINDER

PLEASE, IF YOU HAVE
ANY QUESTIONS OR
CONCERNS, CALL/E-
MAIL US *FIRST* TO
DISCUSS THINGS...