

# **Board of Nurse Examiners for the State of Texas**



## **Response to the Sunset Advisory Staff Report on the Agency**

**October 2006**

# **Board of Nurse Examiners**

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## **Agency Mission**

The mission of the Board of Nurse Examiners for the State of Texas is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing education programs. This mission, derived from the Nursing Practice Act, supersedes the interest of any individual, the nursing profession, or any special interest group.

TEXAS STATE BOARD OF NURSE EXAMINERS' RESPONSE TO THE  
SUNSET ADVISORY STAFF REPORT ON THE AGENCY

**RESPONSE TO THE RECOMMENDATIONS**

The members and staff of the Texas State Board of Nurse Examiners fully support all of the recommendations in the report with the following exceptions.

- Recommendation 1.1 - Clarify that nursing programs, once accredited by an agency recognized by the U.S. Department of Education, are exempt from Board approval.
- Recommendation 1.3 - Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.
- Recommendation 1.5 - The Board should review and revise its education rules, policies and procedures to ensure they do not exceed the board's responsibility to certify minimum competence to enter the profession of nursing.
- Recommendation 1.7 - The Board should develop a process to allow for Board approval of hospital-based diploma programs.
- Recommendation 2.1 - Require the Board to more clearly identify which crimes relate to the practice of nursing.
- Recommendation 2.2 - Require the Board to establish guidelines to direct its use of arrest information when determining an applicant's eligibility for licensure or disciplining a nurse.
- Recommendation 3.1 - Require the board's advisory committees to meet standard structure and operating criteria.
- Recommendation 5.1 - Clarify that individuals and organizations required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.

**Issue 1 - The Board's Process of Approving Nursing Education Programs Developed without Clear Statutory Guidance Could Contribute to the Nurse Shortage in Texas.**

**Background**

The Board's process of approving nursing education programs does not contribute to the nursing shortage in Texas. The nursing shortage is a widespread problem across the country and is the result of many factors. These include the increased need for nursing care due to an aging population requiring increased health services, aging of the current nursing workforce, a shortfall of new nursing graduates to meet present and future needs, and a limited number of nurse educators which affects the number of nursing students allowed into a program.

Total RN graduates in Texas have increased from 4,531 in 2001 to 6,335 in 2005, a 40% increase in four years. During this time frame, the Board approved 11 new RN programs and 8 new Vocational programs. Ultimately, the Board denied only two programs during this time frame because the programs did not meet the Board's established criteria for approval of a new nursing education program.

The number of nursing students passing the NCLEX examination in the United States is a key component in alleviating the nursing shortage and the Board's oversight of nursing education programs assures quality nursing education resulting in higher passage rates of graduates. There are only two state boards of nursing that do not oversee the approval of nursing programs, Mississippi and New York. Texas and New York are very similar in the number of nurses licensed, number of domestic and international students, and the number of nursing schools approved to accept nursing students. Over the last four fiscal years when compared to New York's passage rates, Texas has consistently achieved higher passing rates. Texas' passage rates are 6% higher for RNs and 7% higher for LVNs. A drop in Texas NCLEX pass rates to the level of New York's pass rates would equate to 1,394 fewer RNs and 1,068 fewer LVNs entering the workforce.

In addition to the Board's approval process for new programs, the educational rules provide flexibility in faculty requirements which allow supervised clinical assistants to work with faculty thereby increasing the faculty-to-student ratio and thus allowing for increased enrollment of nursing students. The Board rules also permit the utilization of preceptors in clinical learning experiences which also increases the faculty-to-student ratio.

Despite the gains in the number of nursing graduates, a need still exists for increased enrollments in professional nursing programs. Several major issues impede the process:

- Faculty shortages related to an aging cohort (70% over the age of 50);
- Discrepancies in salaries between educational programs and the service sector;
- The demanding nature of professional nursing education programs with only about 70% of enrolled students graduating on time;
- Increased competition for clinical spaces; and

## Texas State Board of Nurse Examiners' Response to the Sunset Advisory Staff Report on the Agency

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- Limited fiscal and physical resources for program expansion.

The Board believes that many recommendations offered by the Sunset Commission will assist in improving the Board's role in assuring a proactive, responsible approach to regulating nursing education programs. The Board, however, believes that maintaining appropriate regulatory oversight of nursing education programs is necessary to ensure that educational standards are adequate to promote the graduation of competent, safe nursing licensees in Texas.

### **Recommendation 1.1 - Clarify that nursing programs, once accredited by an agency recognized by the U.S. Department of Education, are exempt from Board approval.**

This recommendation would exempt accredited schools from the Board's regulation until the NCLEX pass rates drop below established standards. In addition, it would allow existing and new programs a choice of any credentialing body deemed by the Department of Education (hereinafter DOE).

#### **Background**

The Board began its mission to protect the public in 1909 by regulating schools of nursing for the purpose of ensuring consistency and quality in educational programs. Today, 96% of the state boards of nursing in the United States continue to provide ongoing regulatory oversight of nursing education programs. The Board's mission to protect the public and promote patient safety through the regulation of nursing programs is based on a process similar to licensing individuals: The Board screens programs seeking initial approval; monitors existing programs; and provides remediation when necessary.

The Board recognizes the value of certain approved accrediting agencies whose quality has been verified, and has exempted educational programs accredited by nursing accreditors from certain requirements such as survey visits. The DOE recognizes a number of accrediting bodies that vary in purpose, focus and quality. While the focus of the entities is educational quality, there is no specific focus on professional outcomes which includes an emphasis on patient safety and consumer protection. Agencies accredited by the DOE often accredit schools for the purpose of establishing eligibility to participate in federal student financial assistance programs administered by the Department under Title IV of the Higher Education Act of 1965. Some accrediting bodies have much more rigorous standards and, consequently, provide assurance of quality programs. For example, the Texas Higher Education Coordinating Board (hereinafter THECB) has recommended Southern Association of Colleges and Schools accreditation for institutions of higher learning because of their rigorous standards and assurance of quality. The Board supports the THECB's recommendation and has deferred to their policy.

Exempting programs accredited by the DOE from the Board's oversight until there are problems would reflect a reactive rather than proactive approach to the regulation of

nursing education. The report calls for the Board's review only when a program's pass rate drops below the Board's standard. Waiting for a program's pass rates to fall below standards before Board intervention imposes a disservice to the students in the program and delays the program from identifying and implementing corrective actions. RN education programs are generally a minimum of two years in length. Failure of the Board to intervene in a timely fashion results in graduates who may ultimately be unable to pass the licensure exam and enter the workforce. The Board also believes that the NCLEX examination rate is but one indicator of a quality program and cannot be used alone to determine the quality of education programs. An individual program's success is based on many factors including, but not limited to: clinical experiences; student attrition/retention; faculty qualifications; and faculty/student ratios, all of which contribute to the assurance of competent, safe graduates. In addition, board nursing consultants are readily available to the programs to offer expertise and assistance in many areas such as incorporating the Differentiated Entry Level Competencies (DELIC) into the curricula, conducting safe clinical learning experiences, maximizing faculty ratios, and assistance with the implementation of other pertinent rules.

### **Suggestion - Delete Recommendation 1.1**

As outlined above, agencies accredited by the U.S. Department of Education vary in purpose and do not provide assurance that nursing education programs comply with standards pertinent to the Texas Nursing Practice Act. Exempting nursing education programs accredited by DOE recognized agencies from the Board of Nurse Examiners' purview eliminates ongoing monitoring and consultation regarding consistent, equitable standards that promote quality nursing education programs, and safe, competent licensees.

### **Recommendation 1.3 Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.**

This recommendation suggests that the Board recognize programs from other states that may be conducting business in Texas. The Board believes that the consequence of such recognition is that the Board lacks jurisdiction over the educational and clinical experiences occurring in Texas.

### **Background**

With the development of on-line nursing education programs, regulatory oversight of these programs is being discussed across the country. The problem lies with the regulatory purview of the involved boards. For example, if a nursing education program approved by the Virginia Board of Nursing wanted to open a program in Texas, neither the Virginia Board nor the Texas Board would have the jurisdiction to address and take action on any safety or quality issues that occurred in the State of Texas. If allowed to operate in Texas without BNE approval, the program would be conducting clinical experiences with students

without regulatory oversight - a situation which poses safety concerns for the citizens of Texas. Other state boards are beginning to study this issue and many states are requiring a concurrent review and approval by both states. The Board's Advisory Committee on Education, a group comprised of stakeholders from the nursing education and practice community, is presently studying this issue and recommendations could include an expedited review of programs from other states and approval by the Board. The purpose of the review would be to ensure that another state's education standards are equivalent to the Board's, as recommended by the Sunset Staff, and that any needed action to address issues affecting safety is taken.

### **Suggestion – Modify Recommendation 1.3**

The Board requests this recommendation be revised to clarify the Board's authority to review and approve out-of-state nursing education programs that want to conduct business in Texas. If the education program is approved by another state board of nursing, the Board will implement a review process to ensure that Texas' standards are met. This recommendation will allow students living in Texas but enrolled in a nursing program outside of Texas to comply with §301.004(a)(6), Texas Occupations Code.

### **Recommendation 1.5 - The Board should review and revise its education rules, policies and procedures to ensure they do not exceed the Board's responsibility to certify minimum competence to enter the profession of nursing.**

This recommendation suggests that the Board has developed rules, policies and procedures that exceed minimal competence requirements for entering the profession of nursing. The Board believes this assertion is erroneous.

### **Background**

The Board's educational rules and policies are based on the assurance of minimally competent graduate nurses who are able to enter the workforce and practice safely. The Sunset report states that the Board believes it "must hold nurses and the nursing profession to a higher standard." Sunset staff state the Board should not be concerned with a focus of "professional advancement or the image of the nursing profession." Sunset staff, however, also notes "the Board, through its regulatory activities, helps provide Texans with the confidence that nurses practicing in the state are competent, meet established standards and are held accountable for their actions."

The Board believes that the public's confidence is due in main part to holding nurses and nursing education programs to standards that ensure competent, safe licensees.

**Suggestion: Delete Recommendation 1.5**

The Board requests this recommendation be deleted as the Board's nursing education rules provide for minimum competency in nursing students.

**Recommendation 1.7 - The Board should develop a process to allow for Board approval of hospital-based diploma programs.**

This recommendation clarifies that the Board should have processes in place to approve hospital-based diploma programs.

**Background**

The Board has received only one formal request for an application to approve a diploma program since 1957. By current standards, diploma programs are an anachronism. The drop in numbers of diploma programs began in the mid 1960's when the profession called for public policy that supported the movement of nursing education into institutions of higher education to ensure sound educational principles that promoted safe, patient care. Thus nurses began earning college credit, which permitted educational mobility and advancement. The only existing diploma programs in Texas, Covenant School of Nursing in Lubbock and Baptist Health System in San Antonio, were established in 1918 and 1903 under criteria related to that era. These criteria do not address many requirements expected in institutions of higher learning and, therefore, exist under grandfathering principles. Covenant School of Nursing in Lubbock has an official articulation agreement with an Associate Degree in Nursing program to provide its graduates an opportunity to obtain a degree in nursing.

The Nursing Practice Act contains an obsolete provision that permits approval of diploma programs. Over the past half century the Board's education standards for professional nursing have evolved to apply to academic schools of nursing. The Board's current rules are not appropriate for the evaluation of diploma programs. In the face of this new request, however, the BNE, through its Advisory Committee on Education, is investigating the approval and accreditation of hospital-based nursing programs.

**Suggestion: Delete Recommendation 1.7**

This recommendation is currently under review by the Board's Advisory Committee on Education. Current statute permits the approval of diploma programs; however, the Board agrees that it needs guidance in how to address this significant public policy issue raised by the resurgence of diploma programs which has not been seen or supported for fifty years.

## **Issue 2. Board Guidelines Do Not Ensure Consistent and Fair Consideration of Criminal History Information in Licensing and Disciplinary Decisions.**

### **Background**

Each applicant for licensure as a nurse must submit evidence that they have successfully completed an approved nursing program and that they possess "good professional character." See Tex. Occ. Code Ann. §§301.252(a)(1) and (2). The requirement for professional character before licensure as a nurse is granted is axiomatic. Nursing practice requires decisions directly related to health and safety. Patients under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse - patient relationship. Especially vulnerable are the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized. Nurses frequently provide care autonomously in private homes and home-like settings. The legislature has recognized the necessity to review criminal history before licensure. All applicants for a professional nurse or a vocational nurse license in Texas must undergo a criminal history background check to ensure that they do not have any criminal convictions or history involving moral turpitude that could affect their ability to practice nursing.

The Board of Nurse Examiners may deny licensure based on criminal history pursuant to Chapter 53 of the Occupations Code and under the authority of Section 301.452(b)(3) of the Occupations Code which allows the denial of licensure or disciplinary action based on "a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude."

The criminal history reports received from DPS and the FBI contain all criminal activity by the individual, including arrests, felony and misdemeanor convictions, and deferred adjudication dispositions. Thus the Board has access to this information in determining whether to issue a license or discipline a nurse pursuant to its authority granted under the Nursing Practice Act

### **Recommendation 2.1 - Require the Board to more clearly identify which crimes relate to the practice of nursing.**

This recommendation would require the Board to determine which crimes relate to the practice of nursing in rule. This recommendation has resulted in consideration of a proposed rule at the October 19-20, 2006 Board Meeting.

### **Background**

The members and staff of the Texas Board of Nurse Examiners would generally agree that there can be improvement in the manner the Board utilizes criminal history information in making informed decisions regarding whether to allow a candidate the opportunity to be a nurse.

As the first health professions licensing agency to implement FBI background checks, the BNE has experienced a significant increase in the number of complaints related to criminal history. Complaints increased by approximately 2,000 between fiscal years 2004 - 2005, the first year of implementation of these background checks. The Board's experience has informed a developing policy with regard to disciplinary sanctions for criminal conduct.

The Board has adopted a number of policies and rules which speak to the relationship of crimes to the practice of nursing. Rule 213.28 discusses the *Licensure of Persons with Criminal Convictions*. This rule outlines the factors the Board must consider when determining whether criminal convictions render the individual ineligible for licensure as required by Chapter 53, Tex. Occ. Code. Similarly, the Board has adopted four disciplinary sanction guidelines which in part relate specific types of crimes to the practice of nursing. These policies include the *Disciplinary Sanctions for Sexual Misconduct*; *Disciplinary Sanctions for Fraud, Theft and Deception*; *Disciplinary Sanctions for Nurses with Chemical Dependency*; and *Disciplinary Sanctions for Lying and Falsification*. Additionally, the Board has adopted a more comprehensive statement of policy entitled *Disciplinary Guidelines for Criminal Conduct*. This guideline was proposed by the Board as a pilot in October 2005 and adopted as modified in July 2006 and is intended to provide licensees and the public with guidance to the board's view of the effect of the commission of certain crimes on nurse licensure and applicants for licensure.

However, unlike the Nursing Practice Act, Chapter 53 is silent as to crimes resulting in "deferred adjudication." Therefore, it appears that the Board maintains a basis to take disciplinary action on a licensee or to deny licensure of an applicant, where Chapter 53 does not.

Since September 1, 2005, the Board has been authorized to take action against an applicant or licensee who committed a crime resulting in a disposition other than a conviction, such as deferred adjudication and the Board should evaluate these non conviction dispositions similarly. Identifying those crimes that most directly and consistently relate to the practice of nursing would allow the Board to prioritize its licensing and enforcement efforts related to criminal activity, and thus allow the Board to better allocate its resources.

### **Suggestion: Delete Recommendation 2.1**

The Board and staff would agree that we can and should better identify crimes related to the practice of nursing. However, the recommended statutory change is unnecessary as evidenced by the Board's adoption of rules and guidelines.

**Recommendation 2.2 - Require the Board to establish guidelines to direct its use of arrest information when determining an applicant's eligibility for licensure or disciplining a nurse.**

The Sunset report suggests that currently the Board inappropriately uses arrest information. The Board believes that this assertion is incorrect. The Board is not opposed to developing guidelines regarding the use of arrest information.

**Background:**

The Nursing Practice Act does not provide the Board with specific guidance regarding how to use arrest information when considering an applicant's or nurse's criminal history. However, the Board frequently reviews arrest information when disciplining a nurse or determining an applicant's eligibility for a license, although statute provides no specific authority to do so. This is because the Board is authorized to deny licensure for all violations enumerated in Tex. Occ. Code §301.452(b) including "unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud or injure a patient or public." See Tex. Occ. Code §301.452(b)(10). The Board has taken action on the underlying conduct which led to the arrest based on evidence received. The Board and Staff would agree that the fact of an arrest occurred is not a sufficient ground for disciplinary action.

For some time, "unprofessional conduct" identified in §301.452(b)(10), Tex. Occ. Code, has been used as a ground to discipline a nurse without a conviction and without waiting for a conviction. Proof of sexual misconduct and fraudulent prescription activities are the prime examples. However, many violations in §301.452 Tex. Occ. Code, may be grounds for denial of a license and yet be unprosecuted crimes. For example, "fraud in procuring license;" "conduct resulting in revocation of probation;" "use of . . .counterfeited" material in seeking license; and "aiding in unlicensed practice."

**Suggestion: Delete recommendation 2.2**

While the Board and staff agree that arrest alone is not grounds for discipline, proof that is otherwise a violation of the NPA is relevant. Such recommendation could result in unintended consequences of barring action when conduct of the licensee or applicant puts the public at risk of harm from a licensed nurse. The Board agrees that guidelines for the use of arrest information would be helpful; however, this does not require a statutory change.

**Issue 3 - The Board Has Not Defined the Purpose and Structure of Its Advisory Committees to Obtain the Most Benefit from Them.**

**Background:**

The purpose of the Board's standing advisory committees and time-limited task forces is to assure broad stakeholder input into rules, guidelines and policies that effect the regulation of nursing education, practice, advanced practice, and discipline. Though the Board has established written guidelines for its advisory committees that set forth the membership, terms, quorum, and other requirements, such details are not currently part of board rules. Historically, a Board Member has served as the non-voting chair of each committee to clarify the Board's jurisdiction so that recommendations to the full board reflect the Board's mission to protect the public above any individual, the nursing profession, or special interest group. The Board's written guidelines and policies regarding its standing committees have been periodically reviewed, amended, and adopted in open meeting.

These committees have enjoyed unprecedented success. For example, the Nurse Practice Advisory Committee was reconstituted to include vocational nursing interests shortly after the BVNE and BNE were combined. This committee (which included both a LVN and RN Board member facilitator) conscientiously drafted and recommended dramatic amendments to Rules 217.11 (Standards of Nursing Practice) and 217.12 (Unprofessional Conduct). This was a huge step in incorporating the LVN scope of practice into state regulation. These rules were proposed and ultimately adopted by September 28, 2004, with virtually no negative comment. They are popularly regarded as a positive advancement in regulation and remain unchallenged. Similarly, the Advanced Practice Nursing Advisory Committee (APNAC) in 2004 and 2005, studied and eventually recommended amendments to Rule 221.2 relating to the authorization and restrictions to use of advanced practice titles. These eventual recommendations were considered very controversial and were nationally debated. The Board eventually proposed Rule 221.2 and took public comment in open hearing. After its adoption in 2005, Rule 221.2 is now nationally considered an innovation in advanced practice regulation and the model for other jurisdictions grappling with how to properly regulate the transitioning nature of advanced practice. Additionally, in 2000, APNAC recommended rules to the Board for anesthesia services for nurse anesthetists in outpatient settings which had been required of the Board in Tex. Occ. Code Ann. §301.602. Sunset Staff positively commented on the Board's use of committee stakeholder input in adopting rules when it was analyzing the practices of the Texas Medical Board in 2005.

**Recommendation 3.1 - Require the Board's advisory committees to meet standard structure and operating criteria.**

This recommendation would result in removal of board members as chairs of the Board's advisory committees and remove funding for their travel to the committee meetings.

**Background:**

The Board supports the recommendation that specific structure and function of advisory committees be formalized through incorporation into the Board's rules.

The Board further supports the recommendation that Board members serve in a liaison capacity to the Board's advisory committees and task forces, rather than as chairs. However, travel reimbursement to Board members should be maintained to permit them to continue to attend these meetings. Board member attendance and input is valuable to the committee's work because they provide the board's perspective.

**Suggestion: Modify Recommendation 3.1**

Restore the \$2,400 per year funding to reimburse board members' travel to attend advisory committee meetings as liaisons.

**Issue 5 - The Nursing Practice Act does not address Discipline for Impaired Nurses who Commit Practice Violations.**

**Background**

Because impairment by drugs and/or alcohol is a violation of the Nursing Practice Act, the Board has authority to sanction a nurse for this type of behavior. The Act lays out several mandatory reporting requirements regarding impaired nurses and nursing students. Nurses, peer review committees, nurse educational programs, professional associations, and employers, such as hospitals, must report an impaired nurse or nursing student to the Board.

Section 301.410 of the Nursing Practice Act, however, specifically authorizes a nurse who is required to be reported because of impairment or mental illness to be reported to a peer assistance program approved by the Board under Chapter 467 of the Texas Health and Safety Code. The Texas Peer Assistance Program for Nurses (TPAPN) is considered a peer assistance program created pursuant to Chapter 467 of the Texas Health and Safety Code. Through a competitive bidding process, the Board has contracted with the Texas Nurses Foundation, a nonprofit organization within the Texas Nurses Association, to provide peer assistance for chemically dependent and mentally impaired professional and vocational nurses.

The Board funds TPAPN through a \$6 fee assessed on all nurse license renewals. In fiscal year 2005, the Board paid TPAPN \$504,000, which funded the cost of administering the program. Program participants pay for the costs of actual treatment and drug testing.

As outlined in the Sunset staff's report, an impaired or mentally ill nurse may be referred to TPAPN in one of four ways: the nurse may be referred by the Board by letter; issued an order by the board requiring participation in TPAPN; referred by a third-party; or self-referred. Therefore, an impaired or mentally ill nurse may be referred to TPAPN and never be reported to the Board.

**Recommendation 5.1 - Clarify that Individuals and Organizations Required to Report Impaired Nurses Must Notify the Board if They Suspect the Nurse has also Committed a Practice Violation.**

This recommendation appears to suggest that impaired nurses, who commit practice violations, should be subject to disciplinary action in addition to being referred to a peer assistance program.

**Background**

It is the Board's experience that most cases of chemical dependency in the workplace involve violations of unprofessional conduct or a standard of care violation. These nurses may sign out controlled substances that they use for themselves or be impaired at work

## Texas State Board of Nurse Examiners' Response to the Sunset Advisory Staff Report on the Agency

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resulting in errors. The Board evaluates the individual case including recommendations of the nurse manager, the nurse's past performance, etc., to determine whether treatment and monitoring would cure the conduct. A referral to TPAPN may be appropriate to accomplish this goal. Texas Occ. Code §301.410 references Chapter 467 of the Health and Safety Code which says in the section on confidentiality, "[i]t is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments."

The Sunset recommendation appears to suggest that the Board must sanction any practice error before the nurse is referred to a peer assistance program. The Board understands from the report if a sanction is justified it must be imposed regardless of whether the practice violation was a direct result of a treatable impairment. The Sunset Report specifically cites the Medical Board and Pharmacy Board examples of having better defined guidelines. The Board would note, however, that Section 467.002 of the Health and Safety Code specifically excludes physicians and pharmacists from Ch. 467. As a result these agencies do not implement their peer assistance programs with the same confidentiality provisions required by Ch. 467 of the Health and Safety Code and reporting exception of Sec. 301.410.

### **Suggestion - Delete, or in the alternative, Modify Recommendation 5.1**

The Board understands Sunset Staff's recommendation for the reasons stated in the report and appreciates the need to appropriately monitor nurses who are impaired. However, the Board believes that the recommendation may be inconsistent with the legislative intent of Chapter 467 to "encourage impaired professionals to seek treatment" since most referrals will be reported to the Board for disciplinary action.

If the legislature desires that nurses be first reported to the board, the Board believes that discretion regarding disciplinary action for practice violations associated with impairment should be left to the Board. To accomplish this recommendation, the Board believes that Section 301.410 would need to be amended to require that all third party referrals involving practice errors must be reported to the Board.

## **ADDITIONAL ISSUE**

### **Board Name Change**

The Board's name should be changed to the Texas Board of Nursing.

### **Background**

The statutory name of the agency does not accurately reflect its functions and powers. As of 1993 the board ceased to administer the licensure exam. The continued use of "Examiners" creates confusion for the public, elected officials, and other state agencies. The accepted term for boards that regulate nursing is "Board of Nursing".

Currently the Board's jurisdiction includes the oversight of nurse education programs as well as the enforcement of nursing practice standards. Furthermore, the powers and functions of the agency are much broader than the current name implies. "Board of Nursing" would be a more appropriate name for the agency.

### **Suggested Action**

The Nursing Practice Act, Texas Occupations Code § 301.002, should be amended to rename the agency the "Texas Board of Nursing." The impact would be minor to board publications.

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# SUNSET ADVISORY COMMISSION

Board of Nurse Examiners

Staff Report  
September 2006



# Sunset Advisory Commission

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*In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.*

**BOARD OF NURSE EXAMINERS**

**SUNSET STAFF REPORT**

**SEPTEMBER 2006**



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# SUMMARY

Nurses pride themselves on being the most respected profession – ahead of pharmacists, veterinarians, medical doctors, and even clergy members. This respect may result from the impact that nurses have on health care delivery. Nurses work in a range of diverse settings, including hospitals, schools, long-term care facilities, and personal residences. The tasks nurses perform also vary greatly, from taking a patient's vital signs, prescribing and administering medication, performing diagnostic tests, giving injections, administering anesthesia, and assisting with surgery. Recognizing that the tasks nurses perform can pose significant risks, and that nurses practice in settings where patients are vulnerable, the Legislature, in 1909, established the Board of Nurse Examiners to ensure that only competent individuals practice nursing in Texas.

Sunset staff found that Board members and agency staff are highly dedicated to protecting the public through the regulation of professional, vocational, and advanced practice nurses. As a result, the Board is widely recognized as one of the State's most well-run, effective regulatory agencies. Largely because of the respect afforded it, the Board has also had heightened expectations placed on it for regulating nursing in Texas. The Board, for its part, has wedded these high

expectations with the high respect for the nursing program to impose rigorous standards for who can become a nurse, which education program can train those nurses, and when and how to discipline nurses who pose a risk to the public.

In the absence of clear statutory direction, however, the Board has been left to develop many of its rules and policies without clear legislative guidance or approval, resulting in actions that test the Legislature's intent as to how the State should regulate nurses. Sunset staff concluded that clearer legislative direction in certain areas – such as the Board's authority to approve nursing education programs and the Board's use of criminal history information – would provide the Board with a clearer picture of its mission and allow the Board to better serve both its licensees and the public.

The following material provides a summary of the Sunset staff recommendations included in this report.

## Issues and Recommendations

### Issue 1

**The Board's Process of Approving Nursing Education Programs, Developed Without Clear Statutory Guidance, Could Contribute to the Nurse Shortage in Texas.**

#### Key Recommendations

◆ Clarify that nursing programs, once accredited by an agency recognized by the

U.S. Department of Education, are exempt from Board approval.

- ◆ Limit the Board's role to approving nursing education programs leading to initial licensure.
- ◆ Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.

————— **Issue 2** —————

**Board Guidelines Do Not Ensure Consistent and Fair Consideration of Criminal History Information in Licensing and Disciplinary Decisions.**

**Key Recommendations**

- ◆ Require the Board to more clearly identify which crimes relate to the practice of nursing.
- ◆ Require the Board to establish guidelines to direct its use of arrest information when determining an applicant’s eligibility for licensure or disciplining a nurse.

————— **Issue 3** —————

**The Board Has Not Defined the Purpose and Structure of Its Advisory Committees to Obtain the Most Benefit From Them.**

**Key Recommendation**

- ◆ Require the Board’s advisory committees to meet standard structure and operating criteria.

————— **Issue 4** —————

**The Current Process for Authorizing Qualified Advanced Practice Nurses to Practice in Texas Does Not Promote Mobility Within the Profession.**

**Key Recommendation**

- ◆ Adopt the Advanced Practice Registered Nurse Multistate Compact.

————— **Issue 5** —————

**The Nursing Practice Act Does Not Address Discipline for Impaired Nurses Who Commit Practice Violations.**

**Key Recommendations**

- ◆ Clarify that individuals and organizations required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.

- ◆ Require the Board to adopt rules clearly outlining its peer assistance program.
- ◆ The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating the standards of practice.

————— **Issue 6** —————

**Targeted Continuing Education Requirements Dilute the Board’s Ability to Ensure Nurses Maintain Competence to Practice.**

**Key Recommendation**

- ◆ Authorize the Board to establish guidelines for targeted continuing education requirements.

————— **Issue 7** —————

**Key Elements of the Board’s Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

**Key Recommendations**

- ◆ Standardize the Board’s licensing functions by requiring nurse applicants to pass a jurisprudence exam; changing the basis for assessing delinquent renewal penalties; eliminating application notarization requirements; and allowing examination fee refunds under special circumstances.
- ◆ Improve the Board’s ability to protect the public by granting cease-and-desist authority; requiring the Board to track and analyze complaints; authorizing refunds as a part of the agreed settlement process; and requiring the Board to provide enforcement information on its website.
- ◆ Update elements related to the policy body by authorizing travel reimbursement for Board members.

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**Issue 8**

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**Texas Has a Continuing Need for the Board of Nurse Examiners.**

**Key Recommendation**

- ◆ Continue the Board of Nurse Examiners for 10 years.

**Fiscal Implication Summary**

When fully implemented, the recommendations in this report would result in a loss to the General Revenue Fund of about \$97,600.

- ◆ Issue 3 – Prohibiting Board members from serving on advisory committees and specifying that Board members are not required to attend advisory committee meetings, even as liaisons, would eliminate the need for travel reimbursement, resulting in an annual savings of \$2,400.
- ◆ Issue 7 – Changing the statutory basis for the late renewal penalty would result in lost revenue of approximately \$100,000.

<i><b>Fiscal Year</b></i>	<i><b>Loss to the General Revenue Fund</b></i>	<i><b>Savings to the General Revenue Fund</b></i>
2008	\$100,000	\$2,400
2009	\$100,000	\$2,400
2010	\$100,000	\$2,400
2011	\$100,000	\$2,400
2012	\$100,000	\$2,400



# ISSUES

## *The Board's Process of Approving Nursing Education Programs, Developed Without Clear Statutory Guidance, Could Contribute to the Nurse Shortage in Texas.*

### Summary

#### Key Recommendations

- ◆ Clarify that nursing programs, once accredited by an agency recognized by the U.S. Department of Education, are exempt from Board approval.
- ◆ Limit the Board's role to approving nursing education programs leading to initial licensure.
- ◆ Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.

#### Key Findings

- ◆ Because the statute regarding nursing education programs is vague, the Board's policies and procedures have evolved without the sanction of the Legislature and may limit opportunities for new nursing programs in Texas.
- ◆ The Board's process for approving nursing education programs duplicates some of the processes of other state agencies, as well as national accrediting agencies.
- ◆ The Board has made recommendations and issued requirements to nursing programs that surpass the Board's responsibility to ensure minimum competency levels of nurses.
- ◆ No other health licensing agency in Texas has authority to approve education programs, as other health professions have a more streamlined, nationally standardized process.

#### Conclusion

Authority to approve education programs is uncommon among Texas health licensing agencies. Because of the roots of nursing education, the Board has historically approved nursing education programs in Texas. However, in the absence of clear statutory direction, the Board has established an education approval process that duplicates the efforts of other state agencies and national accrediting agencies and exceeds what is necessary to ensure minimal competence to enter the profession, which could have an impact on the shortage of nurses in Texas.

Nationally, the nature of regulation of nursing education programs is changing, with state boards of nursing recognizing the need for national educational standards and increasingly relying on national accreditation agencies, which more closely mirrors other professions. Coordinating the role of entities that approve nursing education, and using accrediting agencies in lieu of certain Board approval processes, could more effectively ensure the quality of nursing education programs without unnecessarily restricting opportunities for nursing programs in Texas, and without unnecessary duplication.

## Support

**The Board is responsible for approving nursing education programs, a critical function given the acute shortage of nurses and nurse faculty in Texas.**

- ◆ The Nursing Practice Act directs the Board to set minimum requirements and standards for nursing education programs in Texas, and to approve nursing schools and programs that prepare professional – or registered – nurses and vocational nurses for initial entry into nursing practice.<sup>1</sup> The Board must establish standards for the types of programs described in the textbox, *Nursing Education Programs*.

### ***Nursing Education Programs***

The Board is required to prescribe three programs of study to prepare professional – or registered – nurses, including:

- ◆ a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university;
- ◆ an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university; and
- ◆ a diploma program that is conducted by a single-purpose school, usually under the control of a hospital.

The Board also must prescribe two programs of study to prepare vocational nurses, including:

- ◆ a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and
- ◆ a program conducted by a hospital.



*The Board approves nursing education programs for vocational, professional, and advanced practice nurses.*

- ◆ The Board also approves post-licensure programs, such as bachelor's degree programs designed for individuals who already hold a professional nurse license. In addition, the Board approves education programs that prepare advanced practice nurses, who are licensed as professional nurses, and have completed an advanced education program and received certification in a specialized area.
- ◆ Currently, the Board approves 90 professional nursing programs, 117 vocational nursing programs, and six advanced practice nursing programs. Unlike education programs for other health professions, nursing education is not post-graduate, and can begin out of high school in one-year vocational nursing programs. Programs are based in Texas colleges and universities, community and junior colleges, career schools, hospitals, and the military. Graduates can earn a certificate, a diploma, an associate's degree, a bachelor's degree, a master's degree, or a doctoral degree in nursing. All students, regardless of what level of nursing education they are pursuing, must complete clinical practice as part of the course of study to graduate from a program.<sup>2</sup>

- ◆ To establish a nursing education program in Texas, an institution must first submit a proposal to the Board. The proposal covers areas such as need for the program, financing, faculty qualifications, admissions criteria, curriculum, and affiliated clinical facilities and settings. Board staff works with school and program staff throughout the approval process. Staff also conducts a site visit of the proposed program's facilities. Staff then presents the final proposal to the Board in a public hearing.

The Board can give initial approval of the proposal, defer action on the proposal, or deny the proposal. After a program's first class of students graduates and takes the appropriate national exam, the Board grants full approval to programs that meet all of the Board's requirements. The average time for the Board to grant initial approval to a new nursing education program is between six and nine months, although at times can vary from three months to more than a year. The flow chart on page 8, *Nursing Education Program Approval Process*, details the steps a nursing education program must undergo to receive Board approval.

- ◆ To receive approval from the Board, programs must also have approval from the Texas Higher Education Coordinating Board (THECB) or the Texas Workforce Commission (TWC). The Coordinating Board approves certificate- and degree-granting programs in public or state-funded colleges and universities to help eliminate duplication in academic programs. The Workforce Commission oversees workforce development services, such as career schools, that provide career development, job search resources, and training programs.
- ◆ Nursing education programs may also seek voluntary accreditation from a national accrediting agency. The two main national nursing accreditation agencies are the National League of Nursing Accreditation Commission (NLNAC) and the Commission on Collegiate Nursing Education (CCNE), although the U.S. Department of Education also recognizes other accreditation agencies for vocational nursing programs. These national accreditations are disciplinary-specific and focus on the quality of nursing education as well as academic standards.
- ◆ Texas is currently experiencing a shortage of nurses that is predicted to grow more critical as aging nurses retire and baby boomers have an increased need for medical care.<sup>3</sup> Education programs also are experiencing a shortage of nurse faculty, as nursing faculty members retire and fewer nurses turn to teaching because they typically can earn a higher salary in clinical practice than in academia. The average age of nurse faculty in Texas is 54 years old.<sup>4</sup>

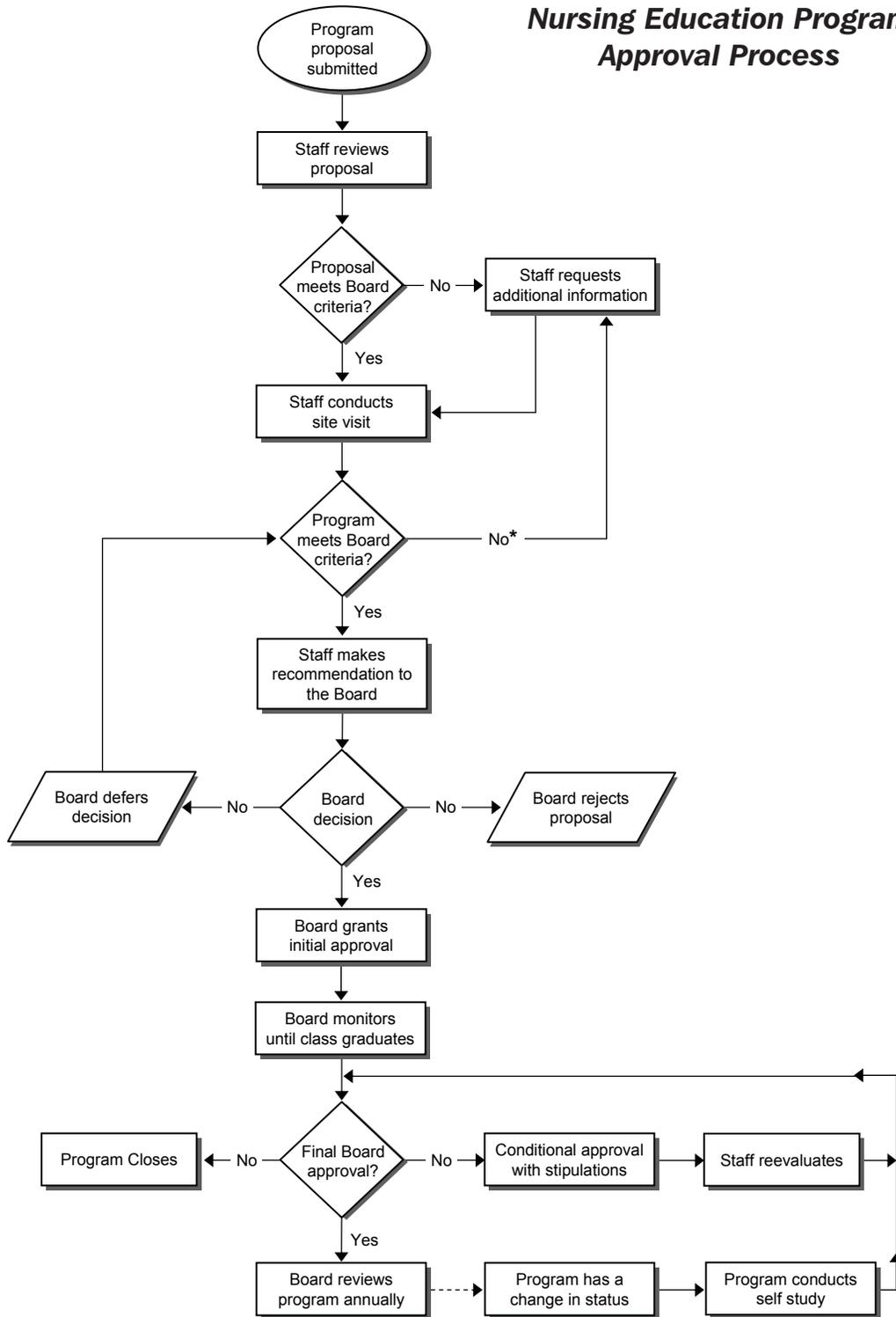


*Board approval of new nursing programs can vary from three months to more than a year.*



*Nursing programs are approved by the Board, THECB or TWC, as well as voluntary national accrediting agencies.*

## Nursing Education Program Approval Process



\* If the program does not meet Board criteria, the program can withdraw its proposal or place the proposal on hold. Staff may make a recommendation to the Board on a proposal that does not meet Board criteria.

**Because the statute regarding nursing education programs is vague, the Board's policies and procedures have evolved without the sanction of the Legislature and may limit opportunities for new nursing programs in Texas.**

- ◆ The Nursing Practice Act provides little direction to the Board regarding requirements or standards for nursing education programs. Statute outlines the levels of education – such as an associate's degree or a certificate – required to enter professional nursing and vocational nursing, but does not give the Board any guidance on what the minimum standards for those education programs should include. Thus, the Board has developed minimum standards and requirements through its rules and policies, some of which may limit opportunities for new nursing education programs.

While the Board has only rejected two proposals in the past five years, the overall effect of the Board's approval process may have more far-reaching consequences. First, the extensive nature of getting approved may prevent potential programs from submitting proposals. In addition, caught up in the nationwide movement to professionalize nursing, the Board has traditionally been reluctant to approve nursing programs that do not promote opportunities for professional advancement. Also, the Board has been more reactive than proactive in recognizing the need for approval mechanisms for emerging and other nontraditional nursing education programs.

- ◆ Through its rules, the Board has established a policy preventing hospital-based diploma programs from opening in Texas, although statute clearly authorizes this type of nursing education program. The Nursing Practice Act requires the Board to prescribe standards for hospital-based diploma programs that prepare professional nurses to practice. However, Board rules require the governing institution of a professional nursing education program to be accredited by a Board-recognized agency, which the Board informally defines as a regional accreditation agency for degree-granting institutions, such as the Southern Association of Schools and Colleges (SACS) or one of its counterparts.<sup>5</sup> Diploma programs are not eligible for regional accreditation because they do not grant degrees. Because the Board will not approve a new nursing education program until it receives regional accreditation, the Board has in effect established a ban on new diploma programs from opening in Texas.

Organizations have expressed interest in opening diploma programs in Texas in recent years, including in summer 2006, but were not eligible for Board approval because they cannot gain regional accreditation. As a result, the Board effectively rejected an avenue for educating nurses. In contrast, Arizona, which is also experiencing a nurse shortage, recently approved a Texas-based diploma program to provide nursing education and subsequently increase the number of nurses practicing in that state.



*Statute provides little guidance to the Board in developing minimum standards for nursing programs.*



*Board rules prevent hospital-based diploma programs from opening in Texas.*



*The Board has not been proactive in addressing emerging forms of nursing education.*

- ◆ The Board’s interpretation of the Nursing Practice Act may limit some emerging and nontraditional education programs from being used in Texas. While the Act allows nursing students to practice nursing as part of their education program without having to be licensed, the Board’s interpretation extends only to students enrolled in a Texas-based, and thus Board-approved, program – not programs in other states.<sup>6</sup> Nursing students enrolled in out-of-state programs who wish to complete the clinical portions of their programs in Texas cannot do so, as they are considered to be practicing nursing without a license.

However, if these same nursing students had simply completed their education at an approved program in their home state, they would be eligible for licensure in Texas.<sup>7</sup> Thus, the Board accepts graduates of out-of-state and online schools for licensure, but does not allow students of these same programs to conduct clinicals in Texas.

- ◆ The nursing faculty shortage has prompted the Board to issue waivers to nursing education programs that cannot recruit qualified faculty. Current Board policy requires master’s-level faculty for professional nursing programs and provides that even experienced nurses who hold a bachelor of science degree in nursing are not eligible to teach.<sup>8</sup> However, the Board’s faculty waiver allows nurses who do not currently hold a master’s degree to serve as faculty in professional nursing programs. As outlined in the chart, *Faculty Waivers*, the number of waivers granted by the Board has almost tripled in the past five years. Despite waiving its standard, the Board has not received any complaints or found any evidence that the quality of nursing education has dropped in programs that received waivers. The Board’s allowance for programs to use alternative methods of meeting faculty qualifications through waivers – including allowing nurses who hold a bachelor’s degree in nursing or have additional relevant nursing experience to serve as faculty members – suggests that the Board, itself, recognizes the difficulty caused by these faculty qualifications.

**Faculty Waivers**

Fiscal Year	Number of Waivers Issued
2001	22
2002	33
2003	36
2004	54
2005	49
2006	62



*The nurse faculty shortage has prompted the Board to waive its faculty requirements.*

When faced with other critical workforce shortages, the Legislature has offered alternative methods to satisfy education qualification requirements. For example, the Legislature significantly expanded alternative certification methods for teachers to address the acute educator shortage in the state. Alternative certification programs allow individuals who already hold bachelor’s degrees to complete a teacher training program while an individual is in a paid teaching position. From the 2002 to 2004 school years, the number of teachers using alternative certification almost doubled, from 5,856 to 10,310 alternatively certified teachers per year.<sup>9</sup>

- ◆ Members of the Board’s education advisory committee, which the Board recently charged to study and recommend new rules regarding approving nursing education programs outside of Texas’ jurisdiction, appear reluctant to approve innovative, emerging, and other forms of nursing education programs, including online, out-of-state, and even hospital-based diploma programs. This theme is reflected in Board rules previously drafted by the committee. Because the Board relies heavily on this committee for developing much of the Board’s nursing education policy, the advisory committee has a great deal of influence on the Board’s decisions and policies, and thus the committee’s reluctance to approve emerging and alternate forms of nursing education may carry into future Board rules.

By not considering the range of nursing education programs, such as diploma and online programs, advisory committee members, and the Board, may overlook innovative and different ways to train more nurses, a critical need given the current shortage of practicing nurses. In a recent meeting, after discussing whether the Board should approve diploma and online programs, committee members suggested limiting the number of new nursing schools in Texas, similar to a previous Board position discouraging proposals for new nursing education programs.<sup>10</sup> Committee members also expressed concern over the loss of faculty and clinical sites to diploma, online, or out-of-state programs. While existing nursing schools have legitimate concerns over the loss of faculty and clinical sites, any new nursing education program – not just diploma, online or out-of-state programs – would cause the same concerns. The protection of clinical sites for the benefit of existing programs, however, is not a legitimate public safety concern for the Board.

**The Board’s process for approving nursing education programs duplicates some of the processes of other state agencies, as well as national accrediting agencies.**

- ◆ Because the Board, the Coordinating Board, and the Workforce Commission are each responsible for approving or accrediting nursing education programs, the agencies duplicate some functions. Requirements for each agency are confusing, as the processes can occur simultaneously or overlap, and each process has similar requirements. In addition, many programs seek national accreditation, which also evaluates comparable criteria and performs similar tasks in evaluating nursing education programs in Texas. Nursing education program administrators have questioned the need to work so extensively with each entity, as approval from each is duplicative, time-consuming, and unnecessary. As illustrated in the table on page 12, *Major Criteria Evaluated by Approval and Accreditation Agencies*, each of the major criteria that the Board evaluates is also evaluated by THECB, TWC, national accrediting agencies, or a combination of these entities, although the specific focus within the criteria may vary from agency to agency.



*The Board may be overlooking innovative ways to train more nurses.*



*Overlapping approval processes can confuse nursing program administrators.*

### **Major Criteria Evaluated by Approval and Accreditation Agencies**

	BNE	THECB	TWC	NLNAC/CCNE
<b>Purpose and Need</b>				
Community Need	✓	✓		✓
Opportunity for Community to Comment	✓	✓		✓
Student Demand	✓	✓		
<b>Organization and Administration</b>				
Mission and Goals	✓	✓		✓
Structure, Organizational Policies, and Relationships	✓	✓	✓	✓
Other Accreditations or Approvals	✓	✓		✓
Director and Faculty Qualifications	✓	✓	✓	✓
Personnel Policies	✓			✓
Budget	✓	✓	✓	✓
Documentation	✓			✓
<b>Curriculum</b>				
Content	✓	✓	✓	✓
Implementation of Curriculum	✓	✓		✓
Curriculum Changes	✓	✓		✓
<b>Students</b>				
Selection	✓		✓	✓
Policies	✓		✓	✓
<b>Resources and Facilities</b>				
Faculty	✓	✓		✓
Classrooms, Laboratories, and Equipment	✓	✓	✓	✓
Relationships Established with Clinical Sites	✓	✓	✓	✓
Support Services	✓			✓
Library	✓	✓		
<b>Program Evaluation</b>	✓			✓
<b>Site Visit</b>	✓		✓	✓
<b>NCLEX Pass Rates</b>	✓			✓

- ◆ Although the Board requires a nursing program to have THECB approval before receiving Board approval, both agencies acknowledge that the process is often reciprocal. The Board has approved new nursing programs pending approval from THECB, and vice versa. As a result, both agencies review similar criteria, as neither has a lead role in approving nursing education programs, and the agencies have not established a process that ensures that the agencies do not review the same criteria.
- ◆ The Workforce Commission also evaluates similar criteria as the Board. Like the Board, TWC annually monitors the graduation rate of a nursing program's students and clinical relationships, as well as conducts site visits. TWC evaluates similar criteria in evaluating approval for other occupational programs, such as pharmacy technicians and dental assistants. However, the Board has not established a process to ensure that no duplication exists between itself and TWC.

- ◆ Although regional and national accrediting agencies, such as NLNAC and CCNE, are voluntary, they evaluate the same minimum educational standards as the Board and the Coordinating Board. Seventy-three of 90 professional nursing programs and four of 117 vocational nursing programs are also approved by CCNE or NLNAC.<sup>11</sup> The Board differentiates its role from that of accrediting agencies in that national accrediting agencies focus on educational quality rather than ensuring patient safety through the competence of graduates, which the Board says falls solely under its purview.<sup>12</sup> As a result, the Board believes that national accrediting agencies could not replace the Board’s role in education approval, even though this structure is common among other health licensing agencies. Nursing education program administrators, however, maintain that national accreditation agencies actually evaluate similar criteria for accreditation, and in fact, hold programs to a more rigorous evaluation process than the Board does.
- ◆ The Board has recognized that some of its steps in the education approval process can be performed by national accreditation agencies. The Board exempts nursing education programs that have national accreditation from the Board’s site visit requirement because accreditation agencies visit the program once every 10 to 12 years. Unaccredited programs are subject to periodic site visits by the Board every six years. The Board retains authority to conduct site visits if a program experiences problems, such as having low pass rates on the national licensing exam.



*The Board already allows national accrediting agencies to perform some Board tasks.*

**The Board has made recommendations and issued requirements to nursing programs that surpass the Board’s responsibility to ensure minimum competency levels of nurses.**

- ◆ The Board has made recommendations and issued requirements to individual nursing education programs that go beyond ensuring the minimum competence of nurses. Although Board rules and policies specify the Board’s minimum education requirements, the Board, in practice, seeks to hold programs to a higher standard. Board staff has repeatedly said that because Americans named nurses as the most trusted professionals, the Board must hold nurses and the nursing profession to a higher standard.<sup>13</sup> Sunset staff found this philosophy reflected in numerous recommendations and deliberations by the Board in which it sought to exceed minimum requirements set in rule, as described in the accompanying textbox.

**Examples of Board Deliberations Exceeding Minimum Requirements**

- ◆ The Board has required programs to require mandatory remediation for students in jeopardy of not passing the national licensure exam because of suspected personal problems. Further, the Board’s recommendation to require remediation can violate a program’s internal policies explicitly prohibiting mandatory remediation.
- ◆ The Board has also required programs to require students to pass an exit exam.<sup>14</sup> Programs have adopted this recommendation because of concern about having the Board revoke a program’s approval status if their NCLEX pass rate falls below 80 percent.
- ◆ The Board asked a nursing education program director questions related to the commute between the program’s two campuses. Discussions further considered recommending the program appoint a separate director for the second campus.
- ◆ During an education advisory committee meeting, a representative from a proposed program was questioned regarding how the program would retain “the Mexican culture” and language within the program if the Board authorized the program to open in South Texas.<sup>15</sup>



*Concern over the professionalism of nurses subtly influences Board policy.*

- ◆ The Board's concern over the professionalism of nurses also is subtly reflected in its education policies and in the way the Board treats education programs. The Legislature established the Board to protect the public by ensuring that nurses are minimally competent to practice, not to improve the professional image of nurses, a task more appropriate for professional associations than for a state regulatory agency.

For example, the Board rationalizes that new diploma programs should not open, as graduates may not be able to further their education by transferring courses towards an associate's or bachelor's degree. However, diploma programs have evolved since the mid-1900s – when they were the standard means for educating nurses – with curricula that mirror those in degree-granting programs, and some colleges and universities accept diploma program credits to count toward an associate's or bachelor's degree. Also, the Board argues that some hospitals may require or prefer a bachelor of science degree in nursing for management and administrative positions. However, not all nurses intend to move into management or administration positions. The Board's role – especially during an acute nurse shortage – is not to ensure nurses are prepared for management roles, but instead to ensure that nurses are minimally competent to practice.

- ◆ The Board's role in approving post-licensure nursing education programs is unnecessary and exceeds the Board's responsibility to ensure nurses are competent to enter practice. Because students in post-licensure programs already hold a license to practice nursing and are merely furthering their education, typically to go from an associate's degree to a bachelor's degree, Board approval does not relate to a graduate's competence to enter practice. Further, most post-licensure programs drop Board approval after gaining national accreditation, which typically occurs after the program graduates its first class. Thus, state funds and agency resources are used to perform approvals of programs that educate nurses who are already licensed, and that will likely retain Board approval only for a short time.



*The Board's role in approving post-licensure nursing programs is unnecessary.*

- ◆ The Board requires that new nursing programs get letters of support from existing nursing schools within a 25-mile radius of the proposed program's location. Because new schools threaten existing schools with the loss of faculty members and local clinical opportunities, this requirement may present a conflict of interest for existing schools. In addition, a lack of support from existing schools may unfairly bias the Board.
- ◆ Approval of nursing education programs dominates the Board's meetings. In contrast, licensing and enforcement matters take up a minimal amount of the Board's business, as the Board has delegated most licensing and enforcement decisions to staff. Yet, in the last year, the Board has voted against staff recommendations for nursing education programs only once out of more than 250 education decisions considered.

**No other health licensing agency in Texas has authority to approve education programs, as other health professions have a more streamlined, nationally standardized process.**

- ◆ Approving education programs is not a typical role of a regulatory board. No other health licensing agency in Texas approves education programs for the profession it regulates. Other agencies, such as those that regulate physicians, physician assistants, physical therapists, occupational therapists, chiropractors, dentists, and veterinarians, accept programs approved by the Coordinating Board and recognized accreditation programs to satisfy minimum education requirements for licensure. Statutes for these other agencies typically specify that an educational program must be accredited by a specific, federally-approved accrediting agency. While other professions may not have the multiple levels of education characteristic of nursing, an approval mechanism exists for each of those levels of education at either THECB, TWC, or a national accrediting agency.
- ◆ The Legislature has limited the role of other health regulatory agencies to issuing licenses and disciplining licensees; roles in education are extremely narrow. For example, the Texas State Board of Pharmacy is limited to establishing education standards for approving degree requirements for colleges of pharmacy.<sup>16</sup> However, the Pharmacy Board has declared the Board's minimum standards to be standards of the Accreditation Council for Pharmacy Education, the national accrediting agency for pharmacy schools in the United States. The Pharmacy Board also may set standards for pharmacy technician training programs, although this authority does not allow the Pharmacy Board to approve pharmacy technician schools. Similarly, the Texas State Board of Acupuncture Examiners provides input to the Coordinating Board on standards used to evaluate acupuncture schools in Texas, but does not have authority to approve acupuncture schools.<sup>17</sup>
- ◆ Nursing boards in other states increasingly are incorporating national accrediting agencies, such as CCNE and NLNAC, into their education approval processes. Five state boards of nursing require national accreditation for all nursing programs, and one state will require national accreditation for its nursing programs by 2008.<sup>18</sup> Similarly, seven state boards of nursing accept national accreditation in lieu of state board approval altogether, although state boards retain authority to intervene if problems, such as low NCLEX pass rates or complaints, arise.<sup>19</sup> This indicates state nursing boards' desire for and recognition of the need for uniform national education standards, especially in light of increasing participation in online and other nontraditional forms of nursing education.
- ◆ The Board has acknowledged that a national or multistate agreement, similar to the Nurse Licensure Compact, would help standardize nursing education requirements across states.<sup>20</sup> Discussions before the education advisory committee have even noted that an education compact would allow states to



*Roles of health licensing agencies in education are extremely narrow.*



*State nursing boards are increasingly incorporating national accrediting agencies into approval processes.*

agree to accept education requirements, as well as increase nurses' mobility among states.<sup>21</sup> Such a concept is similar to the nationally recognized accreditation agencies used by other health professions, as all states recognize standards used by national accreditation agencies to evaluate education programs in these professions. While the Nurse Licensure Compact has provided standardization of licensing requirements, the Compact does not address the process for approving nursing education programs, and therefore is not intended to serve as a means to standardize nursing program approvals by state boards of nursing.

## Recommendations

### Change in Statute

#### **1.1 Clarify that nursing programs, once accredited by an agency recognized by the U.S. Department of Education, are exempt from Board approval.**

Any nursing program that maintains accreditation through a nursing accrediting agency recognized by the U.S. Department of Education, and determined by the Board to have acceptable standards, would be deemed approved and would be exempt from needing to adhere to Board rules regarding ongoing program approval, to the extent that the program's pass rate on the NCLEX exam does not indicate a problem. If a program's pass rate on the NCLEX exam drops below the Board's established standard, the program would be subject to review by the Board. The Board could take action to assist the program to return to compliance with Board standards. Any program having its approval rescinded would have the right to reapply.

Because national accrediting agencies currently do not approve new or proposed nursing education programs until the program receives approval from a state board of nursing, this recommendation would not directly affect these programs' need to receive initial approval from the Board. In the future, however, if national accrediting agencies provide initial approval of new nursing programs, similar to national accreditation of other professions, and the Board determines that such an accrediting agency is capable of initial approval, the Board should defer approval of nursing education programs to that agency. At such time, should a new nursing education program receive initial approval from a national accrediting agency, the program would not need to also receive initial approval from the Board to establish a program in Texas. To accomplish this, the Board would determine which accrediting agencies' standards are acceptable and then would allow graduates from any nursing education program approved by those accrediting agencies to be eligible for licensure in Texas.

#### **1.2 Limit the Board's role to approving nursing education programs leading to initial licensure.**

This recommendation would limit the Board to approving only nursing education programs that lead to initial licensure as a professional or vocational nurse. Thus, RN-to-BSN programs, advanced practice nursing education programs, and master's and doctoral programs that do not lead to initial licensure as a professional or vocational nurse would not be required to obtain Board approval. This recommendation would bring the Board more in line with its role to ensure that nurses are minimally competent to enter practice.

### **1.3 Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.**

To address the increase of nontraditional nursing education programs, such as online and out-of-state programs, this recommendation would clarify that the Board can recognize and accept nursing education programs that are approved by another state board of nursing. The Board would develop policies to ensure that another state's education standards are substantially equivalent to the Board's.

This recommendation would allow Texas nursing students enrolled in an online or out-of-state program approved by the state board of nursing where the program is physically located to complete clinicals in Texas without needing to hold a Texas license. Thus, the Board would discontinue its practice of considering these students as practicing nursing without a license.

### **1.4 Require the Board to streamline its initial approval process for nursing education programs.**

To avoid duplication, the Board would streamline its initial approval process by identifying tasks that are duplicated or overlap between the Board and THECB or TWC, and coordinating evaluation of new nursing programs with these other agencies. Responsibility for tasks identified as duplicative should be performed by THECB or TWC, not the Board, recognizing those agencies' primary roles in approving education programs.

In doing so, the Board would work with THECB and TWC to establish guidelines for initial approval of nursing education programs, incorporating the part of the process conducted by THECB or TWC, to be available in writing and on the Board's website to nursing education programs. These guidelines would specify that approval by THECB or TWC would precede approval by the Board. Such guidelines would provide current program administrators as well as potential new nursing programs with clear, consistent information regarding how to receive initial approval in Texas.

## **Management Action**

### **1.5 The Board should review and revise its education rules, policies, and procedures to ensure they do not exceed the Board's responsibility to certify minimum competence to enter the profession of nursing.**

The Board should review and revise its education rules, policies, and procedures to ensure that they appropriately reflect the Board's role as regulatory body. In this review, the Board should maintain its focus on public protection through ensuring minimum competence to enter the practice of nursing according to the statutory direction of the Legislature, and should revise or delete rules, policies, or other requirements that do not relate to its public safety mission. The Board's concern should not be with the professional advancement of practitioners or the image of the nursing profession. Instead, the Board, as a regulatory agency, should concentrate on ensuring that nurses meet the requirements to receive a license in Texas and that they comply with state laws and Board rules once licensed. This philosophy should be communicated consistently among Board members, such as in Board training, and to staff and advisory committee members, to ensure that future Board policies and actions continue to serve the Board's regulatory mission.

### **1.6 The Board should delegate approval of nursing education programs to staff.**

The Board should delegate decisions regarding initial and ongoing approval of education programs to agency staff, as the Board has done for licensing and disciplinary decisions. The Board would retain

final decision-making authority, as it does with licensing and disciplinary decisions. Staff could refer a proposal to the full Board that requires the Board's input. In addition, the Board would be able to pull education decision items from a consent agenda to allow for discussion and separate decision by the Board. This recommendation would streamline the education program approval process and allow the Board to focus on setting policy and addressing practice concerns at its quarterly meetings. Members of the public who wish to address the Board about a proposed program would still have the opportunity to do so during the public hearing portion of the Board's quarterly meetings.

**1.7 The Board should develop a process to allow for Board approval of hospital-based diploma programs.**

To comply with statute, the Board should change its rules to allow an avenue for new diploma programs to gain Board approval and become operational in Texas. For example, the Board should discontinue requiring regional accreditation for nursing education programs, as diploma programs are not eligible for regional accreditation. The Board could use other forms of accreditation to allow flexibility in accreditation eligibility or could adopt a broader policy of accepting any form of accreditation recognized by the U.S. Department of Education. Developing a process to allow diploma programs to be eligible for Board approval would comply with legislative intent that diploma programs provide an avenue to licensure.

**1.8 The Board should approve nursing education programs for a period longer than one year.**

The Board should extend its continuing approval of those nursing education programs subject to Board approval for longer than one year. Reviewing requirements to maintain approval status could easily be performed in longer intervals without jeopardizing the quality of the nursing programs. For example, the Board could review continuing approval in conjunction with its site visits every six years. The Board would retain authority to move up consideration of a program's continuing approval status if problems are indicated through a program's annual report, which would still be required for informational purposes.

The Board should also revise its policy for maintaining NCLEX pass rates to allow nursing programs an opportunity for self-correction before submitting to Board review. Factors such as small class sizes, odd testing dates, and other student-related issues could easily keep a nursing program from meeting minimum NCLEX pass rates for one year, but the program's pass rates could exceed the Board's requirement the next year. Under this recommendation, the Board would revise its standard to allow for exemptions for mitigating circumstances before a nursing education program would be subject to automatic Board review for low NCLEX pass rates, which usually result in such measures as a self-study or change in approval status.

**1.9 The Board should discontinue its policy of requesting letters of support from surrounding nursing programs.**

The Board should discontinue its policy of requesting letters of support for new nursing programs from nursing programs within a 25-mile radius. The Board could instead provide opportunity for programs to support or object to proposed nursing programs in a public hearing or by responding to a notice of intent to open a new nursing program. This would eliminate a conflict of interest for existing schools of nursing, as well as eliminate potential bias by the Board against schools that lack support from other nursing programs.

### **1.10 The Board should discontinue the use of waivers for nurse faculty requirements.**

The Board should adopt its current requirements for waivers of faculty requirements into Board rule. Allowing nurses with a bachelor's degree in nursing to serve as nurse faculty if the nurse meets current eligibility conditions would eliminate the need for a waiver from faculty qualifications. Thus, existing waiver qualifications for nurse faculty, such as if a nurse is working towards a master's degree or has a certain amount of clinical experience, would become Board rule, and the Board would no longer need to issue waivers. The Board would also adopt other stipulations used with waivers, such as a limit on the total number of bachelor's-prepared nurses eligible to serve as faculty in each nursing program.

#### **Fiscal Implication**

Streamlining the Board's process for granting initial and continuing approval of nursing education programs by allowing national accreditation to substitute for Board approval, clarifying that the Board does not approve post-licensure education programs, and issuing continuing approvals for longer time frames would have a small positive impact, as the Board would save staff time and resources, which the Board could use in other areas of regulating the practice of nursing.

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- 1 Texas Occupations Code, sec. 301.157.
- 2 Texas Occupations Code, sec. 301.157(d).
- 3 Texas Department of State Health Services, Nursing Workforce Data Section, Center for Health Statistics, *Increasing RN Graduates: Admission, Progression and Graduation in Texas Schools of Nursing 2004, Executive Summary* (Austin, Texas, July 2005), p. 1.
- 4 Texas Department of State Health Services, Nursing Workforce Data Section, Center for Health Statistics, *Increasing RN Graduates: Admission, Progression and Graduation in Texas Schools of Nursing 2004, Executive Summary* (Austin, Texas, July 2005), p. 2.
- 5 Texas Administrative Code, Title 22, part 11, rule 215.6(a). Diploma programs are eligible for accreditation by NLNAC.
- 6 Texas Occupations Code, sec. 301.004(a)(6).
- 7 Texas Administrative Code, Title 22, part 11, rule 217.2(a)(2) and rule 217.1(5).
- 8 Nurses who hold a bachelor of science degree in nursing can serve as faculty members for vocational nursing programs, and as preceptors for clinicals for professional nursing programs, although the clinical ratio is smaller for such nurses than for a master's-prepared preceptor or faculty member.
- 9 Texas PK-16 Public Education Information Resource, Teacher Production by Certification Area – Longitudinal Certification Count, Statewide by Program, Certification Program: Alternative Program. Online. Available: [www.texaseducationinfo.org/TPEIR/CE10\\_ViewReport.asp](http://www.texaseducationinfo.org/TPEIR/CE10_ViewReport.asp). Accessed August 17, 2006.
- 10 The previous Board position stated that schools considering proposing a new nursing program should investigate the feasibility of assisting students to attend established programs rather than developing a new program, or to form a partnership with an established program as a distance education site prior to seeking Board approval for a new nursing program.
- 11 The Board has recently begun asking vocational nursing education programs if they hold national accreditation, but has not received a complete set of data. As a result, the number of vocational nursing programs with national accreditation is not known.
- 12 Board of Nurse Examiners for the State of Texas, “The Regulation of Nursing Education Programs in Texas,” (Austin, Texas, 2005).
- 13 “Nurses Deemed Most Trusted Professionals in Gallup Poll – Statistical Data Included,” *Association of Operating Room Nurses Journal*, June 2000. Online. Available: [www.findarticles.com/p/articles/mi\\_m0FSL/is\\_6\\_71/ai\\_64424160](http://www.findarticles.com/p/articles/mi_m0FSL/is_6_71/ai_64424160). Accessed: August 14, 2006.
- 14 Board of Nurse Examiners for the State of Texas, “Continuation of Approval Status Based on 2006 NCLEX-PN Examination Pass Rate, Review of 2006 Annual Report and Review of Self Study: Coastal Bend College at Kingsville Vocational Nursing Education Program,” Agenda Item 3.2.2.c, Board of Nurse Examiners Quarterly Meeting, Austin, Texas, July 20-21 2006; and, letter from Board of Nurse Examiners to Coastal Bend College at Kingsville, Vocational Nursing Program, July 24, 2006.
- 15 Board of Nurse Examiners, Meeting of the Advisory Committee on Education (Austin, Texas, June 27, 2006).
- 16 Texas Occupations Code, sec. 558.051(a)(2)(D).
- 17 Texas Occupations Code, sec. 205.206(d).
- 18 Five state boards of nursing requiring national accreditation include: Wisconsin, Mississippi, Nevada, Utah, and Hawaii, with Colorado requiring national accreditation for all schools of nursing by 2008.
- 19 States accepting national accreditation in lieu of state board approval include Florida, Arizona, Wisconsin, Mississippi, Utah, South Dakota, and New Mexico.
- 20 Through the Nurse Licensure Compact, 23 states have agreed to recognize a nurse’s license from another Compact state as equivalent to their own, allowing professional and vocational nurses licensed in a Compact state to practice in any other Compact state without needing to hold a license in each state.
- 21 Board of Nurse Examiners, Meeting of the Advisory Committee on Education (Austin, Texas, June 27, 2006).

## *Board Guidelines Do Not Ensure Consistent and Fair Consideration of Criminal History Information in Licensing and Disciplinary Decisions.*

### Summary

#### Key Recommendations

- ◆ Require the Board to more clearly identify which crimes relate to the practice of nursing.
- ◆ Require the Board to establish guidelines to direct its use of arrest information when determining an applicant's eligibility for licensure or disciplining a nurse.

#### Key Findings

- ◆ The Board has not adequately identified the types of crimes that relate to the practice of nursing.
- ◆ No guidelines exist to ensure the Board appropriately uses arrest information when determining licensure eligibility or disciplinary action.
- ◆ The Board's process for reviewing criminal convictions may delay the time it takes to conduct investigations, potentially overburdening its enforcement efforts.
- ◆ Other agencies have more clearly defined how to use criminal history information when making licensing and disciplinary decisions.

#### Conclusion

Because nurses work with patients who are physically, emotionally, and financially vulnerable, the Legislature directed the Board to ensure that applicants and license holders do not have criminal convictions or have not engaged in criminal activity that could affect their ability to safely practice nursing. To accomplish this goal, the Board conducts fingerprint-based background checks on both applicants for licensure and existing licensees.

The Legislature has directed occupational licensing agencies – including the Board – to tie criminal activity to the regulated profession. However, the Board has adopted a policy that all criminal convictions relate to the practice of nursing. Further, when determining whether an individual's past criminal activity affects their ability to hold a license, the Board considers arrests, although the Board has not established guidelines to direct its use of this information.

Identifying the types of crimes that relate directly to the practice of nursing and prioritizing licensing and enforcement activities on those areas would allow the Board to better protect the public, while ensuring that applicants and license holders are treated consistently and fairly.

## Support

### **The Board conducts fingerprint-based criminal history background checks on nurses and applicants for licensure.**

- ◆ All applicants for a professional nurse or a vocational nurse license in Texas must undergo a criminal history background check to ensure that they do not have any criminal convictions or history involving moral turpitude that could affect their ability to practice nursing. In addition, in 2005, the Board began phasing in background checks on current license holders by running checks on 10 percent of license renewals each year. The Board also conducts background checks as part of its declaratory order process for certain students enrolled or planning to enroll in a nursing education program. These are students who notify the Board that they have reason to believe that they may be ineligible for a license because of criminal convictions, other criminal history, or mental impairment.
- ◆ The Board bases its criminal history background checks on fingerprints submitted by the applicant or nurse. The Texas Department of Public Safety (DPS) runs a check on the fingerprints through the Computerized Criminal History System, a statewide repository of criminal history data reported by local criminal justice agencies in Texas, then forwards the fingerprints to the FBI. The FBI's database includes criminal activity information from every state. DPS sends the results of both its and the FBI's background checks to the Board.



*All of an individual's criminal history is reported to the Board.*

In fiscal year 2005, the Board processed 12,734 fingerprint-based background checks, including 12,144 for professional – or registered – nurses and 590 for vocational nurses. The positive hit rate for professional nurses averages about 11 percent, while the positive hit rate for vocational nurses averages about 15 percent.

- ◆ The criminal history reports received from DPS and the FBI contain all criminal activity by the individual, including arrests, felony and misdemeanor convictions, and deferred adjudication dispositions. The reports include activity that occurred as a minor, as well. After running the initial background check, DPS maintains an individual's fingerprints on file, and notifies the Board if a nurse has any subsequent criminal activity. The FBI does not retain a nurse's fingerprints on file or monitor subsequent criminal activity for nurses.
- ◆ The Board collects a \$39 fee from applicants and a \$10 fee from current licensees and forwards this money to DPS to pay for processing its and the FBI's criminal history background checks. In fiscal year 2005, the Board collected \$482,032, which it passed through to DPS, for background checks. Applicants and licensees also pay to be fingerprinted. The individual pays this cost – which typically is about \$10 – directly to a local law enforcement office or a fingerprinting service.

- ◆ A conviction, placement on deferred adjudication community supervision, or deferred disposition for a felony or a misdemeanor involving moral turpitude is grounds for disciplinary action by the Board.<sup>1</sup> Based on the criminal history record information obtained, the Board can deny an application for license, refuse to renew a license, or suspend or revoke a license or temporary permit.<sup>2</sup> The Board also can deny an application for licensure or take action against an existing license if the nurse does not demonstrate good professional character.<sup>3</sup> In addition, in 2005, the Legislature directed the Board to suspend, revoke, or refuse a license for individuals convicted of or placed on deferred adjudication for certain felonies, outlined in the textbox, *Felony Offenses*.<sup>4</sup>

### **Felony Offenses**

The Legislature requires the Board to suspend, revoke, or refuse a license for the following offenses:

- ◆ murder or manslaughter;
- ◆ kidnapping;
- ◆ sexual assault;
- ◆ indecency with a child;
- ◆ aggravated assault;
- ◆ injury to a child, elderly individual, or disabled individual;
- ◆ abandoning or endangering a child;
- ◆ aiding suicide;
- ◆ domestic or family violence;
- ◆ violation of a protective order;
- ◆ agreeing to abduct a child from custody;
- ◆ sale or purchase of a child;
- ◆ robbery;
- ◆ offense requiring registration as a sex offender; and
- ◆ violation of federal, other states,' or military law substantially similar to one of the above offenses.

### **The Board has not adequately identified the types of crimes that relate to the practice of nursing.**

- ◆ The Board has not adequately adopted rules or established guidelines, as required by statute, that define the crimes that relate to the practice of nursing.<sup>5</sup> Like most occupational licensing agencies, the Board must comply with Chapter 53 of the Texas Occupations Code regarding criminal convictions, which sets out the criteria to be used by an agency in evaluating whether a person with a criminal conviction should be issued a license.<sup>6</sup> Chapter 53 requires the Board to issue guidelines stating the reason that a particular crime is considered to relate to the practice of nursing, as well as any other criteria that affects the Board's decisions, and publish these guidelines in the *Texas Register*.<sup>7</sup>
- ◆ Because nurses practice in a variety of settings and often interact with individuals who are physically, emotionally, and financially vulnerable, the Board considers all criminal behavior, whether violent or nonviolent, as highly relevant to an individual's fitness to practice nursing.<sup>8</sup> Board staff often speaks of "the mores of nursing," and says that nurses must be held to a higher standard than other professions. As a result, the Board may discipline a nurse, deny an application, or issue a license with disciplinary sanctions for *any* criminal conviction, regardless of whether the crime relates to the practice of nursing.

For example, through rule, the Board has determined that an individual guilty of a felony is conclusively deemed to lack good professional character, and that the crime in question does not have to relate to a patient or to the practice of nursing to be considered unprofessional conduct under the Nursing Practice Act.<sup>9</sup>



*The Board has deemed that any felony conviction is a lack of good professional character.*



*The Legislature has outlined some crimes that relate to the practice of nursing.*

- ◆ Although the Nursing Practice Act does not specify that criminal convictions must relate to the practice of nursing, Chapter 53 – with which the Board must comply – specifies that a licensing agency may revoke, suspend, or deny a license on grounds that the conviction directly relates to the duties and responsibilities of the licensed occupation.<sup>10</sup> While the Nursing Practice Act is a more specific statute as compared to the more general nature of Chapter 53, the Board should read the two statutes together so as to give effect to both, eliminating any perceived conflict between the two.

In addition, the Legislature has indicated that the Board has authority only to discipline applicants or licensees for crimes that relate to the practice of nursing. For example, the Legislature authorized the Board to establish a criminal investigations unit to investigate suspected criminal acts relating to the practice of nursing.<sup>11</sup> Also, the Legislature has provided some guidance to the Board regarding the types of crimes that directly relate to an individual's ability to practice nursing.<sup>12</sup>

- ◆ Lack of guidelines has led to the Board's recommended actions in eligibility and disciplinary cases being rejected by the State Office of Administrative Hearings (SOAH) when an applicant or nurse appeals the Board's recommended action. In several cases, SOAH has ruled that the Board did not prove how a crime related to the practice of nursing, and thus recommended either dismissal of an enforcement case or a lesser sanction.

For example, a SOAH judge rejected the Board's action revoking the license of a nurse convicted of intoxication assault solely on the basis that the felony conviction showed that the nurse did not have good professional character. SOAH found that the Board did not prove that the nurse lacked good professional character, as defined by Board rule, and that the nurse's conviction did not relate to the practice of nursing.

**No guidelines exist to ensure the Board appropriately uses arrest information when determining licensure eligibility or disciplinary action.**

- ◆ The Board has not adopted rules or established guidelines to outline how the Board uses arrest information. The Board frequently relies on arrest information obtained through criminal history reports when disciplining a nurse or determining an applicant's eligibility for a license, even if the arrest did not result in a conviction or deferred adjudication. Given that the Board bases some eligibility and disciplinary decisions on the arrest, not the ultimate conviction, the Board cannot ensure that it considers arrest information to discipline nurses and applicants consistently. As a result, the Board's enforcement recommendations and decisions that incorporated arrest information may be unfairly and inconsistently applied and, as such, susceptible to rejection by SOAH or reversal or modification by district court, should the applicant or nurse appeal the Board's action.

- ◆ Neither the Nursing Practice Act nor other statutes provide the Board with any direction on how to use arrest information. Although the Act authorizes the Board to obtain criminal history record information, the Board does not have any statutory direction regarding use of the arrest information that appears on the criminal history records. The Act specifies that a person is subject to disciplinary action or denial of a license if convicted for or placed on deferred adjudication community supervision or deferred disposition for a felony or misdemeanor involving moral turpitude.<sup>13</sup> However, the Act does not include arrests in this list.

Despite this, the Board asks for arrest information on its application for licensure. While the Board may have an interest in an unresolved arrest, which still has the potential to result in a criminal conviction, the Board does not have specific authority to deny a license or take disciplinary action based on arrests. The Board may be interested in conduct as well as convictions, and arrest information could suggest a pattern of behavior or relate to unprofessional conduct. Because the Legislature has not provided the Board with direction on how to use arrest information, the Board should only use such information when the underlying cause for the arrest relates to grounds for which the Board does have jurisdiction.

- ◆ Board staff appears to second-guess the criminal justice system when evaluating some criminal convictions. The Board also uses meetings with applicants or licensees scheduled to discuss a specific criminal conviction to examine unrelated events or to uncover other criminal activity. Applicants and nurses appear before an informal settlement conference panel or the Board's Eligibility & Disciplinary Committee because of a particular conviction only to have the Board probe into unrelated issues that were not the reason for setting the meeting. The textbox, *Examples of Criminal History Cases*, provides examples of these actions.



*Statute is unclear on how the Board should use arrest information.*

#### **Examples of Criminal History Cases**

- ◆ An applicant had been arrested for theft, but the charges were dismissed, as the court documents said, “so that justice may be served.” A Board attorney, however, insisted that the phrase implied something happened. Staff pressed the applicant to get more information about why the case was dismissed, even asking if the applicant turned state’s witness. Ultimately, staff deemed the applicant eligible to sit for the licensing exam, but not before considerable pressure by Board members and staff.
- ◆ The Board required an applicant convicted of a misdemeanor of conspiracy to commit murder when he was 18 years old to receive a psychiatric evaluation. In the evaluation and written report to the Board, the psychiatrist focused on the applicant’s past extramarital affairs. When the case came before the Board’s Eligibility & Disciplinary Committee, committee members focused the majority of their questions on the affairs discussed in the evaluator’s report – not the criminal conviction. Ultimately, the final action recommended by the Committee was based solely on the crime, not the affairs.
- ◆ An applicant appeared before the Committee because she was arrested for misdemeanor offenses of DWI, possession of marijuana, and unlawful possession of medication. During the discussion about the arrest, committee members and agency staff questioned the applicant about her relationship with her fiancé, whether she ever had to repeat courses in school, and if she graduated from a nursing education program with an acceptable grade point average. None of this information related to the applicant’s criminal conviction, and therefore did not relate to whether the applicant could practice nursing safely.

- ◆ Conducting criminal history background checks and using information obtained from these checks have been issues discussed nationally among nursing professionals. When the National Council for State Boards of Nursing (NCSBN) developed guidelines for using criminal background checks to inform boards' licensure decision making, NCSBN noted that a board's role is to use conviction histories in decision making regarding competence conduct and licensure, "not to retry a case."<sup>14</sup>

**The Board's process for reviewing criminal convictions may delay the time it takes to conduct investigations, potentially overburdening its enforcement efforts.**

- ◆ Since beginning to conduct background checks, the Board's number of unresolved complaints more than a year old has increased from 22 percent of total complaints in fiscal year 2003, to 28 percent in fiscal year 2005. In the first 11 months of fiscal year 2006, that rate had risen to 31 percent, or nearly one-third of all complaints remaining unresolved after one year. Of the complaints unresolved after one year, 37 percent are practice-related complaints. The table, *Unresolved Complaints*, illustrates the number, types, and age of the Board's complaints.

**Unresolved Complaints – FY 2006**

<b>Allegation</b>	<b>Less than 6 months</b>	<b>6 months to 1 year</b>	<b>1 to 2 years</b>	<b>2 to 3 years</b>	<b>3 to 4 years</b>	<b>4 to 5 years</b>	<b>Total</b>
Practice or Standard of Care	387	304	348	96	9	0	1,144
Fraud, Deception, Theft, Impairment	690	473	546	78	5	0	1,792
Eligibility	659	110	65	11	0	0	845
Continuing Education	126	20	44	16	16	1	223
<b>Total</b>	<b>1,862</b>	<b>907</b>	<b>1,003</b>	<b>201</b>	<b>30</b>	<b>1</b>	<b>4,004</b>

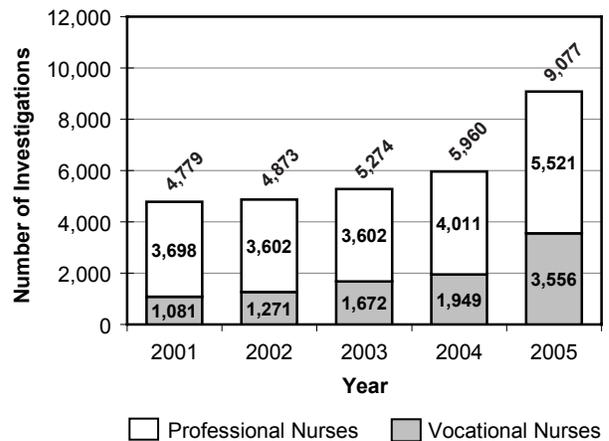
- ◆ Also, since beginning to run fingerprint-based background checks, the Board has experienced an increase in the number of investigations performed by Board staff, as illustrated in the chart on the following page, *Investigations Conducted*. For example, in fiscal year 2002 – the year before the Board began running background checks – the Board completed 4,873 investigations. In fiscal year 2005, the Board conducted almost twice as many investigations, with staff conducting 9,077 investigations.

Board staff indicates that this increase is due almost exclusively to additional complaints against professional nurses resulting from criminal history background checks. Because few background checks were conducted on vocational nurses before September 1, 2005, the Board anticipates a significant increase in the number of complaints against vocational nurses resulting from criminal history beginning in fiscal year 2006.<sup>15</sup> As a result,

the Board's enforcement workload will increase even more in upcoming years. In addition, the Board has seen its average caseload per investigator increase, from 197 cases per investigator in fiscal year 2003 compared to 327 cases in fiscal year 2005.

- ◆ Professional associations and licensees also have expressed concern about the time it takes the Board to conduct investigations, including investigations related to criminal history. As previously mentioned, the number of investigations conducted by the Board has almost doubled since the Board began conducting criminal history background checks, overwhelming agency staff and causing delays in conducting investigations and closing complaint cases.

**Investigations Conducted  
FY 2001 – 2005**



**Other agencies have more clearly defined how to use criminal history information in making licensing and disciplinary decisions.**

- ◆ In October 2003, the State Board for Educator Certification (SBEC) began requiring applicants for initial credential, including a standard certificate, probationary certificate, one-year certificate, and temporary teaching certificate or permit to undergo a fingerprint-based national criminal background check similar to the Board's process. SBEC has adopted rules defining what crimes relate directly to the duties and responsibilities of the education profession.<sup>16</sup> For example, crimes identified by SBEC that relate directly to the education profession include crimes involving any form of sexual or physical abuse of a minor or student or other illegal conduct with a student; crimes involving school property or funds; and crimes that occur wholly or in part on school property or at a school-sponsored event.<sup>17</sup>
- ◆ The Texas Department of Licensing and Regulation (TDLR), which regulates 22 occupations and industries, has identified criminal convictions that relate to each regulated profession, and has published guidelines on its website outlining these crimes, as well as the reasons why particular crimes are considered to relate to each type of license.<sup>18</sup>

For example, TDLR identified crimes involving prohibited sexual conduct or involving children as victims as directly relating to licensure as an electricians. In its criminal conviction guidelines, TDLR notes that staff made this determination because electricians have direct access to private residences and business facilities and deal directly with the general public and owners and employees of businesses.<sup>19</sup> In addition, TDLR identified the general factors that staff uses in each case to determine whether an individual with a criminal conviction should be denied a license or disciplined by the Board.

As a result, TDLR has established the types of criminal convictions that it considers a priority for each occupation it regulates, yet has allowed itself flexibility to consider each case on its own merits.

- ◆ Use of arrest information is not part of the licensing and disciplinary processes of other health licensing agencies. Sunset staff, through its review of other agencies, could not find any instances where the Legislature has addressed this issue or an agency that engages in such activity.

## Recommendations

### Change in Statute

#### **2.1 Require the Board to more clearly identify which crimes relate to the practice of nursing.**

This recommendation would clarify the Board's responsibility to adopt guidelines that follow the requirements of Chapter 53 of the Occupations Code by specifically requiring the Board to develop rules defining which crimes relate to an individual's ability to practice nursing. Reading the Nursing Practice Act with Chapter 53 would allow the Board to take action against an applicant or licensee who committed a crime – including a crime that resulted in a disposition other than a conviction, such as deferred adjudication – identified by the Board as relating to the practice of nursing. While the Board should have authority to consider each case on its own merits, identifying those crimes that most directly and consistently relate to the practice of nursing would allow the Board to prioritize its licensing and enforcement efforts related to criminal activity, and thus allow the Board to better allocate its resources. Simply defining all crimes as related to the practice of nursing does not meet the intent of the Legislature and is not the norm among health licensing agencies.

#### **2.2 Require the Board to establish guidelines to direct its use of arrest information when determining an applicant's eligibility for licensure or disciplining a nurse.**

Because the Nursing Practice Act does not provide the Board with guidance regarding how to use arrest information when considering an applicant's or nurse's criminal history, the Board should adopt guidelines, in rule, to ensure that it uses arrest information consistently and fairly, and should only use arrest information to the extent that the underlying conduct relates to the practice of nursing. While the underlying conduct of an arrest may be relevant to an individual's ability to practice nursing, the Board should be judicious when using arrest information, especially arrests dismissed without charges that have not been tried in a court of law or had the alleged criminal action proven.

### Fiscal Implication

This recommendation would not have a fiscal impact to the State. Although the Board would spend less staff resources on investigating criminal convictions and deferred dispositions that do not relate to the practice of nursing, the Board would direct these resources to its other licensing and enforcement activities.



- <sup>1</sup> Texas Occupations Code, sec. 301.452(b)(3).
- <sup>2</sup> Texas Occupations Code, sec. 301.453.
- <sup>3</sup> Texas Occupations Code, sec. 301.452(b)(10).
- <sup>4</sup> Texas Occupations Code, sec. 301.4535.
- <sup>5</sup> Texas Occupations Code, sec. 53.025.
- <sup>6</sup> Texas Occupations Code, sec. 53.002. Chapter 53 applies to all occupational licenses except those for attorneys, peace officers, and individuals who have both a drug-related felony conviction and a license as a physician, physician assistant, acupuncturist, pharmacist, dentist, or veterinarian.
- <sup>7</sup> Texas Occupations Code, sec. 53.025(a).
- <sup>8</sup> Texas Administrative Code, Title 22, part 11, rule 213.28(b).
- <sup>9</sup> Texas Administrative Code, Title 22, part 11, rule 213.27(c)(2).
- <sup>10</sup> Texas Occupations Code, sec. 53.021(a).
- <sup>11</sup> Texas Occupations Code, sec. 301.161(d).
- <sup>12</sup> Texas Occupations Code, sec. 301.4535.
- <sup>13</sup> Texas Occupations Code, sec. 301.452(b)(3).
- <sup>14</sup> National Council of State Boards of Nursing, Using Criminal Background Checks to Inform Licensure Decision Making, p. 15. Online. Available: [www.ncsbn.org/pdfs/Criminal\\_Background\\_Checks.pdf](http://www.ncsbn.org/pdfs/Criminal_Background_Checks.pdf). Accessed: August 19, 2006.
- <sup>15</sup> The Board did not receive funding to conduct background checks on vocational nurses until fiscal year 2006.
- <sup>16</sup> Texas Administrative Code, Title 19, part 7, subchapter B, rule 249.16.
- <sup>17</sup> Texas Administrative Code, Title 19, part 7, subchapter B, rule 249.16(b).
- <sup>18</sup> Texas Department of Licensing and Regulation, Criminal Conviction Guidelines, [www.tdlr.state.tx.us/crimconvict.htm](http://www.tdlr.state.tx.us/crimconvict.htm). Accessed: August 21, 2006.
- <sup>19</sup> Texas Department of Licensing and Regulation, Criminal Conviction Guidelines, [www.tdlr.state.tx.us/crimconvict.htm](http://www.tdlr.state.tx.us/crimconvict.htm). Accessed: August 21, 2006.



## *The Board Has Not Defined the Purpose and Structure of Its Advisory Committees to Obtain the Most Benefit From Them.*

### **Summary**

#### **Key Recommendation**

- ◆ Require the Board's advisory committees to meet standard structure and operating criteria.

#### **Key Findings**

- ◆ Having Board members serve on agency advisory committees can undermine the advisory purpose of these committees.
- ◆ The Board lacks adequate guidelines regarding the purpose and structure of its advisory committees.
- ◆ The Legislature has consistently shown interest in proper construction and structure of advisory committees.

#### **Conclusion**

The Board uses advisory committees for input on a variety of topics, including nursing practice, education, and disciplinary issues. Policy boards like the Board of Nurse Examiners use advisory committees to receive expert advice from a broad perspective in an objective, independent forum.

Because the Board has not formally outlined the purpose and structure of its advisory committees, the committees lack guidance to perform their delegated tasks. Further, having Board members serve on advisory committees, as the Board does, may undermine the purpose for which these committees were established.

Requiring the Board's advisory committees to meet standard structure and operating criteria and requiring the Board to adopt rules outlining this structure would help the Board ensure the most effective, objective use of these committees.

## Support

### The Board has established four advisory committees to advise Board members and agency staff on a variety of topics.



*Four advisory committees assist the Board in developing rules and policies.*

- ◆ State agencies and policy bodies use advisory committees to provide independent, external expertise to policy body members and agency staff on how the agency's policies and procedures affect certain entities or stakeholders; offer best practices for implementing and improving agency programs; and help identify needs for new agency programs and services. The term advisory committee includes a committee, council, commission, task force, or other entity with multiple members that primarily functions to advise a state agency in the executive branch of state government.<sup>1</sup>
- ◆ Under its general statutory authority, the Board has established four advisory committees, consisting of Board members and stakeholders, to advise and make recommendations to the Board. The Board and agency staff use the advisory committees for advice in developing rules, regulations, and position statements, and to address specific charges dictated by the Board.<sup>2</sup> Board staff supports the advisory committees by doing all relevant research, preparing all written materials, communicating with committee members, and preparing minutes and reports for the full Board.<sup>3</sup> The table, *Advisory Committees*, identifies each of the Board's advisory committees and its charge.

#### **Advisory Committees**

<b>Committee</b>	<b>Charge</b>
Nursing Practice Advisory Committee	Identify, review, and analyze major practice issues that significantly affect or will potentially affect the practice of nursing.
Advisory Committee for Education	Identify, review, and analyze issues in the education and practice arenas that have or may have a significant impact on the regulation of nursing education in Texas, including approval and evaluation of graduates for licensure.
Advanced Practice Nursing Advisory Committee	Identify, study, and analyze major practice issues that significantly affect or will potentially affect advanced practice nursing and regulation of advanced practice nurses.
Advisory Committee on Licensure, Eligibility, and Discipline	Review and evaluate agency rules for consistency in the Board's eligibility and disciplinary processes.

### Having Board members serve on agency advisory committees can undermine the advisory purpose of these committees.

- ◆ Having Board members serve on advisory committees can significantly influence or inhibit the committee's actions, discussions, or recommendations. Advisory committees are supposed to act as objective,

independent, and external sources of information for the Board. Committee members should be able to discuss issues openly and make recommendations to the Board accordingly. However, having Board members work on advisory committees inherently influences the committees' independence and objectivity.

Board members serving on advisory committees can also affect the role of Board members when they deliberate on issues with the full Board. Because the Board member was intricately involved in the advisory committee's discussions and final decisions or recommendations, the Board member can have undue influence over the rest of the policy body members when they vote on or discuss items brought to the Board by the advisory committee.

- ◆ The Board's practice of designating a Board member to serve as chair of each of its four advisory committee increases the Board's influence over the advisory committee to the point of potentially directing its outcomes. This practice can negate the objectivity provided by an independent advisory committee that provides input to and presents its work for approval by the Board. For example, when Board members clarify for advisory committee members what the Board's position on an issue is, it can affect the tone and direction of the discussion, potentially depriving the committee and the Board of a different perspective on that Board policy.

**The Board lacks adequate guidelines regarding the purpose and structure of its advisory committees.**

- ◆ The Board has not adopted rules or written guidelines that detail the purpose, responsibility, or structure of its advisory committees. The only formal mention of advisory committees in the Board's rules is one sentence stating that the Board president, with the Board's authorization, may appoint advisory committees.<sup>4</sup> Similarly, in its *Board Member Policy Book*, the Board has outlined general guidelines, such as that advisory committee members serve three-year terms, but does not include any specific information for each committee.<sup>5</sup> By not adopting rules or formal guidelines regarding the advisory committees, the Board has not provided advisory committee members with needed direction to achieve desired results, and cannot ensure that these committees operate effectively, comply with statutory standards, and are held accountable.
- ◆ The Board also has no written guidelines on the size, composition, or quorum requirements of its advisory committees. When the Board creates an advisory committee, the Board identifies organizations to serve on the committees. However, after this initial decision to establish an advisory committee, the Board does not systematically review the composition of the advisory committees to ensure they still include needed representation or to see that the organizations on the committees actually participate by sending a representative to committee meetings. As a result, the Board cannot ensure it receives input from all stakeholders directly affected by the Board's policies being discussed by the committee.



*Having Board members on advisory committees can influence the committees' independence and objectivity.*



*The Board does not systematically review the composition of its advisory committees.*



*Posting all advisory committee meetings would meet the spirit of the open meetings law.*

- ◆ The Board does not always provide public notification of advisory committee meetings. Out of the 55 advisory committee meetings held within the past five years, the Board did not provide public notice for 20 of them.<sup>6</sup> While the applicability of the Open Meetings Act to advisory committees has been debated in the past, the Attorney General has said that advisory committees whose recommendations are rubber-stamped by the parent body are subject to the Act and those that serve a purely advisory role are not.<sup>7</sup> Regardless of the weight the Board gives feedback from its advisory committees, failure to post meetings under the Open Meetings Act deprives the public of access to these committees and, thus, can limit the public's opportunity for input when Board rules and policies are being developed. While the Board is not violating the letter of the law, to comply with the spirit of the law, it should provide notification of all of its advisory committee meetings.

**The Legislature has consistently shown interest in proper construction and structure of advisory committees.**

- ◆ Chapter 2110 of the Government Code, first passed in 1993 and updated in 2001, outlines the requirements and responsibilities of state agency advisory committees. The statute sets out requirements for the establishment, composition, reporting, and reimbursement of advisory committees. For example, Chapter 2110 requires advisory committees to provide a balanced representation between the industry or occupation, and its consumers. The chapter also directs state agencies to request authority through the appropriations process to reimburse the expenses of advisory committee members.
- ◆ The Texas Sunset Act charges the Sunset Commission and its staff to review the objectives, need, and use of advisory committees, and to make recommendations regarding the continuation, reorganization, or abolishment of those committees.<sup>8</sup> During recent reviews, the Sunset Commission has made recommendations, which were adopted by the Legislature, directly relating to the formation or structure of advisory committees. For example, the Sunset Commission recommended that advisory committees created and used by the Texas Department of Economic Development, the Texas Board of Professional Land Surveying, and the Texas State Board of Podiatric Medical Examiners, be required to meet standard structure and operating criteria, including prohibiting Board members from serving on the advisory committees.
- ◆ Other health licensing agencies clearly establish guidelines that govern advisory committees to provide expertise and advice on rule development. For example, the Texas Optometry Board established the Optometric Health Care Advisory Committee to make recommendations regarding the scope of therapeutic optometry. This committee's purpose, size, composition, membership qualifications, terms of office, and method of operation are



*Other health licensing agencies have established guidelines to govern advisory committees.*

clearly stated in the Optometry Board's rules.<sup>9</sup> Likewise, the Texas Board of Professional Land Surveying established examination advisory committees for the purpose of developing and scoring examinations. These committees' goals and responsibilities, such as writing exam questions and reviewing selected exams for accuracy, are specifically outlined in rule, as well as size, quorum, qualifications, terms of office, and requirements for the committees.<sup>10</sup>

## Recommendation

### Change in Statute

#### **3.1 Require the Board's advisory committees to meet standard structure and operating criteria.**

This recommendation specifies that the Board's advisory committees must provide independent, external expertise on Board functions and policies; not be involved in setting policy; and not include Board members on the committees. The Board would adopt rules regarding the purpose, structure, and use of its advisory committees, including:

- ◆ the purpose, role, responsibility, and goal of the committees;
- ◆ size and quorum requirements of the committees;
- ◆ composition and representation provisions of the committees;
- ◆ qualifications of the members, such as experience or geographic location;
- ◆ appointment procedures for the committees;
- ◆ terms of service;
- ◆ training requirements, if needed;
- ◆ the method the Board will use to receive public input on issues acted upon by the advisory committees; and
- ◆ the requirement that the Board comply with the requirements of the Open Meetings Act.

This recommendation would ensure that the Board's advisory committees are structured and used to advise Board members and agency staff, and not involved in setting policy. This recommendation also prohibits Board members from serving on the Board's advisory committees, which would allow the committees to actually serve in an advisory capacity. The Board would change its current advisory committee structure to ensure that it is consistent with these requirements. While Board members would not be eligible to sit on the committees, they could serve as liaisons between the committees and the full Board, but would not be required to attend committee meetings. A liaison who opts to attend a meeting would do so as an observer, and not as a participant. The liaison's role would be limited to clarification of the Board's charge and intent to the committee.

The Board should ensure that its advisory committees meet the requirements of the Open Meetings Act, including notification requirements. Doing so would address any questions about the applicability of the Act, and allow all interested parties to attend advisory committee meetings.

## Fiscal Implication

These recommendations would have a small positive fiscal impact to the State. In fiscal year 2005, the Board reimbursed Board members for advisory committee participation in the amount of \$2,400. Prohibiting Board members from serving on advisory committees and specifying that Board members are not required to attend advisory committee meetings, even as liaisons, eliminates the need for such reimbursement. Should the Board decide to reimburse advisory committee members, the Board would first need to receive specific reimbursement authority for advisory committee members through the appropriations process.

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>
2008	\$2,400
2009	\$2,400
2010	\$2,400
2011	\$2,400
2012	\$2,400

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<sup>1</sup> Texas Government Code, ch. 2110, sec. 2110.001.

<sup>2</sup> Board of Nurse Examiners for the State of Texas, "Policy on Advisory Committees and Taskforces," in Board Member Policy Book, ch. 5, July 2006.

<sup>3</sup> Ibid.

<sup>4</sup> Texas Administrative Code, Title 22, part 11, rule 211.6(f).

<sup>5</sup> Board of Nurse Examiners for the State of Texas, *Board Member Policy Book*, ch. 5.

<sup>6</sup> Five of the advisory committee meetings that were not posted in the *Texas Register* were e-meetings.

<sup>7</sup> Office of the Attorney General, State of Texas, *Open Meetings 2006 Handbook* (Austin, Texas), p. 13.

<sup>8</sup> Texas Government Code, sec. 325.011-325.012.

<sup>9</sup> Texas Administrative Code, Title 22, part 14, rule 208.7.

<sup>10</sup> Texas Administrative Code, Title 22, part 29, rule 665.1.

## *The Current Process for Authorizing Qualified Advanced Practice Nurses to Practice in Texas Does Not Promote Mobility Within the Profession.*

### Summary

#### Key Recommendation

- ◆ Adopt the Advanced Practice Registered Nurse Multistate Compact.

#### Key Findings

- ◆ Advanced practice nurses provide a range of health services that fill a valuable health care need, especially in underserved areas.
- ◆ The process for authorizing qualified APNs from other states to practice in Texas does not facilitate their ease of movement.
- ◆ The same process that already allows qualified professional and vocational nurses to move easily between states could work for APNs.

#### Conclusion

By practicing in an expanded role, advanced practice nurses (APNs) provide valuable access to care in Texas, especially in certain underserved areas of the State. In recent years, Texas has seen an increase in the number of APNs from other states that come to Texas to practice. However, the process for authorizing APNs licensed in other states to practice in Texas does not facilitate their ease of movement.

The Nurse Licensure Compact allows professional and vocational nurses licensed in a Compact state to practice in other Compact states without having to obtain a separate license in each state. Similarly, the Advanced Practice Registered Nurse Multistate Compact could facilitate interstate movement of APNs by likewise eliminating an administrative step in the Board's licensing process.

The Sunset review evaluated the Board's process for authorizing APNs already recognized by another state to practice in Texas. Sunset staff found that adopting the APRN Multistate Compact into state law would allow the Board to streamline its process for approving APNs, thus making it easier for these valuable health care practitioners to come to Texas.

## Support

**Advanced practice nurses provide a range of health services that fill a valuable health care need, especially in underserved areas.**



*Advanced practice nurses are professional – or registered – nurses with additional qualifications.*

- ◆ Advanced practice nurses (APNs) are professional – or registered – nurses who have completed an advanced education program and received certification in a specialized area.<sup>1</sup> Practicing in an expanded role of care, APNs work independently or in collaboration with other health care providers. APNs diagnose and treat a range of illnesses and injuries, interpret lab results, counsel patients, develop treatment plans, and prescribe medications. APNs work in hospitals, long-term care facilities, physician and other health care provider offices, schools, and health care agencies, among other settings. Texas recognizes four types of APNs in the Nursing Practice Act: nurse practitioners, clinical nurse specialists, nurse anesthetists, and nurse midwives. Within these areas, APNs can further specialize, as outlined in the textbox, *APN Specialty Areas*.

### **APN Specialty Areas**

- ◆ Nurse Anesthetists
- ◆ Nurse Midwives
- ◆ Nurse Practitioners
  - acute care adult
  - acute care pediatric
  - adult
  - family
  - gerontology
  - neonatology
  - pediatrics
  - psychiatry/mental health
  - women's health
- ◆ Clinical Nurse Specialists
  - adult health/medical-surgical
  - community health
  - critical care
  - gerontology
  - pediatrics
  - psychiatry/mental health

- ◆ To practice as an APN in Texas, an individual must hold a professional nurse license or multistate privilege to practice in Texas and must receive authorization every two years from the Board. The Board's requirements for becoming an APN are described in the textbox, *APN Authorization Requirements*. Although a nurse may receive authorization to practice as an APN, the Board does not issue a separate APN license. Instead, the nurse maintains a professional nurse license, but has the authority to practice a wider scope. To renew authorization, an APN must maintain current national certification; complete 400 hours of practice within the preceding biennium; and obtain 20 hours of continuing education in the nurse's advanced practice specialty.

### **APN Authorization Requirements**

To receive authorization from the Board as an advanced practice nurse, an individual must meet the following requirements.

- ◆ Hold a professional – or registered nurse – license in Texas or a state that participates in the Nurse Licensure Compact.
- ◆ Have a master's degree in an advanced practice specialty from an advanced practice nurse program approved by the Board or a national accrediting agency recognized by the Board.
- ◆ Have completed 400 hours of current practice within the previous biennium.
- ◆ Hold current certification in the advanced practice specialty from a national certifying agency recognized by the Board.

- ◆ In fiscal year 2005, the Board authorized 10,650 professional nurses to practice as APNs, including 6,061 nurse practitioners, 2,813 nurse anesthetists, 1,414 clinical nurse specialists, and 362 nurse midwives. That year, the Board issued 944 new APN authorizations. The Board has seen a steady increase of APNs applying for authorization in Texas in recent years.
- ◆ The Nursing Practice Act authorizes the Board to set standards for approving a professional nurse for advanced nursing practice. The Board also has adopted rules outlining the scope of practice and standards for practice for APNs. For example, the Board has defined the supervision standards under which a nurse anesthetist can provide anesthesia in licensed hospitals and ambulatory surgical centers, and in outpatient settings.<sup>2</sup>

APNs can carry out or sign a prescription drug order if a physician has delegated that authority to the nurse and the APN has received authorization from the Board to prescribe medications. An APN's prescribing privileges are limited to four settings: physician's primary practice sites, alternate sites, facility-based sites, and sites serving certain medically underserved populations. A physician may request a waiver or modification of these limitations from the Texas Medical Board. According to the Board, just more than half of practicing APNs have prescriptive authority. In fiscal year 2005, the Board granted prescriptive authority to 708 APNs.

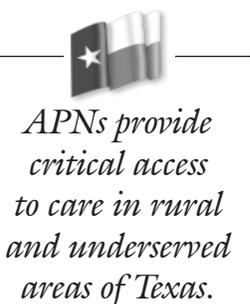
- ◆ Nationally, APNs play a crucial role in delivering timely, cost-effective, quality health care, especially to chronically underserved populations such as the elderly, the poor, and those in rural areas, as they provide critical health care services and valuable access to care with an emphasis on health promotion and disease prevention in diverse settings.<sup>3</sup> For example, APNs often serve as primary care providers in areas such as along the Texas-Mexico border, where access to physicians and other health care providers is limited.
- ◆ Nurses are highly mobile, as they often move across state lines for professional opportunities. In fact, travel nursing is a popular career option for nurses, particularly APNs. Employers, such as hospitals, use traveling nurses to alleviate the nursing shortage by filling their short-term staffing needs. The demand for traveling nurses is particularly high in places like Texas where the population fluctuates seasonally.
- ◆ Texas is one of 23 states participating in the Nurse Licensure Compact, which provides greater coordination and cooperation among states in the licensing and regulation of nurses, and facilitates interstate practice. Modeled after the Driver's License Compact, the Nurse Licensure Compact allows professional and vocational nurses licensed in a Compact state to practice in any other Compact state without needing to hold a license in each state. Developed by state boards of nursing in 1999, the Compact extends only to professional and vocational nurses.



*About 10,650  
APNs are  
authorized to  
practice in Texas.*



*The Nurse  
Licensure Compact  
allows nurses to  
practice in other  
states without an  
additional license.*



### **The process for authorizing qualified APNs from other states to practice in Texas does not facilitate their ease of movement.**

- ◆ Under current law, Board staff must verify educational and experience qualifications and the disciplinary history of each APN recognized in another state who is applying to practice in Texas. Inconsistency in the requirements for certification among states, including the level of education and practice, delays the Board's verification of qualifications and thus delays APNs' ability to practice in Texas.
- ◆ The current endorsement process can delay the ability of APNs to accept temporary assignments and fill immediate health care needs in Texas. APNs are increasingly accepting temporary assignments to provide access to health care in areas that would otherwise not have access to certain health care services, such as anesthesia services. The process for licensing through endorsement could hinder nurses from other states who may want to practice in Texas, including during emergencies or natural disasters, such as hurricanes, because of the time required to validate an application for APN authorization.

The difficulty this situation presents to APNs is most apparent along state borders, where they must hold authorization in each state in which they practice, as well as meet all requirements for maintenance of that authorization in each state. For example, APNs in El Paso must maintain authorization in both Texas and New Mexico if they wish to practice in both states.

- ◆ Given the critical shortage of health care practitioners, particularly in rural and underserved areas of Texas, APNs play an increasingly prominent role in providing access to care, giving the state a strong incentive to encourage APNs to come to Texas. In fact, almost half of the APNs practicing in Texas have come from another state. Thus, increasing the administrative ease with which an APN can be authorized to practice in Texas could improve access to care in the state's critically underserved areas, as well as relieve the Board's increasing workload.

### **The same process that already allows qualified professional and vocational nurses to move easily between states could work for APNs.**

- ◆ In 1999, Texas was one of the first states to adopt the Nurse Licensure Compact, allowing professional and vocational nurses licensed in other Compact states to practice in Texas without having to go through the Board's endorsement process. Currently, 23 states are members of this Compact. Based on the success of the Nurse Licensure Compact, state boards of nursing developed the Advanced Practice Registered Nurse (APRN) Multistate Compact to facilitate the mobility of APNs across state lines.

Like the Nurse Licensure Compact, the APRN Compact removes an administrative step associated with separately verifying educational and other prerequisites for authorizing APNs in each state. Member states recognize the same requirements for practice, eliminating the need for separate verification as must now occur through endorsement.

Nurses practicing under the APRN Compact must comply with the laws of the state in which they are practicing, just as with the Nurse Licensure Compact. Both compacts only streamline the licensing process; neither has an impact on scope of practice. Therefore, the APRN Compact would not change scope of practice or practice standards established by the Legislature or the Board for APNs practicing in Texas. Each state's legislature retains authority to determine the scope of practice for APNs within that state.

- ◆ Because being licensed as a professional nurse is a requirement to receive APN authorization, the Nurse Licensure Compact is a prerequisite for Texas to enter into the APRN Compact. Although Texas has already adopted the Nurse Licensure Compact, the state has not adopted the APRN Compact and, thus, the Board cannot implement steps to streamline authorization of APNs.

Two states, Iowa and Utah, already have adopted the APRN Compact into state law. Other states, such as Illinois, are in the process of receiving legislative approval to join the APRN Compact. The Board anticipates additional states will adopt the APRN Compact soon.

## Recommendation

### Change in Statute

#### 4.1 Adopt the Advanced Practice Registered Nurse Multistate Compact.

Adopting the APRN Compact would allow qualified APNs from other member states to practice in Texas without having to go through the Board's authorization process. However, if an APN practicing under an APRN Compact license establishes residency in Texas, the APN would be required to obtain APN authorization in Texas. The APRN Compact would include the following provisions.

- ◆ An APN practicing in Texas would be required to comply with the Nursing Practice Act and Board rules.
- ◆ Texas would have authority to limit or revoke the multistate advanced practice privilege of an APN in Texas.
- ◆ Texas would participate in a coordinated licensure information system of all APNs to include licensure and disciplinary data on each APN in APRN Compact states.
- ◆ Texas would report all adverse actions to the coordinated licensure information system and the home state of an APN practicing in Texas under an APRN Compact privilege.

- ◆ The Board's Executive Director would serve as the administrator of the APRN Compact, just as with the Nurse Licensure Compact, and the Board would be authorized to develop rules to implement the APRN Compact.

Adopting the Advanced Practice Registered Nurse Multistate Compact in state law would not expand the scope of practice for any advanced practice nurses in Texas, as the Legislature would still define APNs' scope of practice, including prescriptive authority, through the Nursing Practice Act and other state laws. Authority to establish criteria for recognizing APNs would remain with the Board and would not be dictated by the APRN Compact. Should any existing provisions in the Nursing Practice Act or other state laws conflict with the APRN Compact, the existing language would prevail. The Board would adopt rules necessary for implementation of the APRN Compact by December 31, 2011. If the Board has not done so by then, authority to implement the APRN Compact would expire.

### **Fiscal Implication**

This recommendation would have a small positive fiscal impact to the State, resulting from some administrative efficiencies once the APRN Compact becomes widely implemented. These savings would result from a reduction in the number of APN authorizations the Board's staff would need to process by endorsement, but the amount cannot be estimated for this report.

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<sup>1</sup> Most states use the term advanced practice registered nurse, or APRN. However, Texas uses advanced practice nurse, or APN. The terms are interchangeable.

<sup>2</sup> Texas Administrative Code, Title 22, part 11, rule 221.15–221.16.

<sup>3</sup> American Nurses Association, *Advanced Practice Nursing: A New Age in Healthcare*, [www.nursingworld.org/readroom/fsadvprc.htm](http://www.nursingworld.org/readroom/fsadvprc.htm). Accessed: July 28, 2006.

## *The Nursing Practice Act Does Not Address Discipline for Impaired Nurses Who Commit Practice Violations.*

### **Summary**

#### **Key Recommendations**

- ◆ Clarify that individuals and organizations required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.
- ◆ Require the Board to adopt rules clearly outlining its peer assistance program.
- ◆ The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating the standards of practice.

#### **Key Findings**

- ◆ The Nursing Practice Act may allow nurses who have violated standards of practice to avoid disciplinary action.
- ◆ The Board does not have adequate guidelines and procedures to ensure it consistently handles and accounts for impaired nurses.
- ◆ Other health licensing agencies in Texas and other state boards of nursing have more defined peer assistance procedures.

#### **Conclusion**

To encourage nurses to report their impairment and undergo treatment, the Board allows nurses to participate in its peer assistance program. However, provisions in the Nursing Practice Act regarding reporting requirements may be unclear and may result in allowing a nurse who has committed a practice violation to escape disciplinary action by the Board.

In dealing with impairment issues, the Board seeks to balance its interests in protecting the public by adequately disciplining nurses who commit practice violations with the desire not to create a disincentive for impaired nurses to seek needed treatment. Ultimately, however, the Board's public protection mission must prevail.

Clarifying that practice violations by impaired nurses be reported to the Board, and clarifying a clear working relationship between the Board and its peer assistance provider, would help ensure impaired nurses receive sufficient treatment while seeing that the public is adequately protected.

## Support

### The Board is responsible for ensuring that impaired nurses do not harm the public through the practice of nursing.

- ◆ The Nursing Practice Act establishes use of alcohol or drugs that endangers, or could endanger, a patient as grounds for disciplinary action or refusal to issue a license.<sup>1</sup> Because impairment is a violation of the Act, the Board has authority to use its full range of sanctions – including license suspension or revocation – on nurses found to be impaired in the practice of nursing. The Act lays out several mandatory reporting requirements regarding impaired nurses and nursing students. Nurses, peer review committees, nursing education programs, professional associations, and employers, such as hospitals, must report an impaired nurse or nursing student to the Board if the individual's ability to practice nursing is, or could be, affected by the impairment.



- ◆ The Board contracts with the Texas Nurses Foundation, a nonprofit organization within the Texas Nurses Association, to provide assistance for chemically dependent and mentally impaired professional and vocational nurses. This rehabilitation program – the Texas Peer Assistance Program for Nurses (TPAPN) – identifies, treats, and monitors nurses experiencing mental health, alcohol, or drug problems that affect or could affect a nurse's ability to practice. TPAPN is an approved peer assistance program, as defined by statute, and meets the criteria established by the Texas Department of State Health Services.<sup>2</sup>

The Board funds TPAPN through a \$6 fee assessed on all nurse license renewals. In fiscal year 2005, the Board paid TPAPN \$503,750, which funded the cost of administering the program. Program participants pay for the costs of actual treatment and drug testing.

- ◆ Nurses enter the peer assistance program in four ways, as follows.

**Board Order** – The Board typically issues a disciplinary order requiring an impaired nurse to participate in the peer assistance program when the nurse has previously been under investigation by the Board or has violated state laws or Board rules while under the influence of drugs or alcohol. In fiscal year 2005, the Board ordered 108 licensees to TPAPN.

**Board Referral** – If the Board receives a complaint regarding mental impairment or chemical dependency, and the nurse has no prior investigative history, the Board may refer the nurse to the peer assistance program without a Board order. This differs from a Board order because a referral is not a disciplinary action against a nurse's license. In fiscal year 2005, the Board referred 353 nurses to TPAPN.

**Third-Party Referral** – Nurses also may enter the peer assistance program through a referral from a third party. Typically, the nurse's employer initiates the third-party referral by contacting the peer assistance program;

the Board is not involved at all. However, if the nurse fails to report to the peer assistance program, TPAPN reports the nurse to the Board.

**Self-Referral** – If nurses suspect they have a chemical dependency or mental impairment, they can seek assistance through TPAPN by self-reporting to the program. TPAPN does not notify the Board of self-referrals.

- ◆ Peer assistance program requirements may include random drug and alcohol screenings; mandatory support group meetings, such as Alcoholics Anonymous or Narcotics Anonymous; therapy sessions; psychological evaluations; and return-to-work restrictions, including limitations on overtime and narcotics access, and supervisory requirements. To complete the program, nurses must comply with all TPAPN requirements, demonstrate sobriety or recovery for two years, and practice nursing safely for at least one year after returning to work. The peer assistance program typically is a two-year program. In fiscal year 2005, TPAPN had 722 nurses participating in the program, including the 461 nurses ordered or referred by the Board.
- ◆ The Board also maintains its own mental impairment and chemical dependency monitoring program. The Board primarily uses this program, for nurses with an extensive chemical dependency history, nurses with a criminal history involving drugs or alcohol, and nurses who have caused harm to a patient or the public as a result of chemical dependency. In fiscal year 2005, 132 nurses participated in the Board's monitoring program. Participants in the Board's program must submit to random drug and alcohol tests as well as provide the Board with quarterly employer and health care provider reports. The Board's program is separate from TPAPN and includes more stringent requirements for supervision. Other rehabilitative efforts, such as requiring support group attendance, vary between the Board's program and TPAPN.

**The Nursing Practice Act may allow nurses who have violated standards of practice to avoid disciplinary action.**

- ◆ Impaired nurses may not be disciplined by the Board, even if their impairment caused a practice violation. Under the Nursing Practice Act, a person may report an impaired or likely impaired nurse to a Board-approved peer assistance program instead of the Board, even when the nurse may have committed a practice violation.<sup>3</sup> As a result, the Board may not know if a nurse referred to the peer assistance program also violated the standards of practice.<sup>4</sup> If peer assistance program counselors discover that a program participant committed a practice violation, they are supposed to notify the Board. However, this notification provision places TPAPN in an awkward position of assuming the Board's role of investigator in determining if a practice violation occurred, even though TPAPN staff does not have the Board's disciplinary expertise or the Board's mission to protect the public. As a result, this notification may not always occur.



*Nurses must demonstrate two years of sobriety to complete the peer assistance program.*



*A person may report an impaired nurse to TPAPN instead of the Board.*

- ◆ The Board does not have to sanction the license of a nurse who violates the Act. Instead, the Board can require the nurse to submit to care, counseling, or treatment.<sup>5</sup> While this may appropriately address the nurse's chemical dependency or mental impairment, it does not necessarily address violations committed by the nurse while impaired, especially practice violations. Although the Board indicates that it would not allow an impaired nurse who committed a serious practice violation to avoid discipline, neither the Act nor the Board's own actions provide a clear indication that the Board will, in fact, take appropriate disciplinary action against the nurse's license.

**The Board does not have adequate guidelines and procedures to ensure it consistently handles and accounts for impaired nurses.**

- ◆ The Board and TPAPN do not have working guidelines to ensure that they consistently account for nurses ordered or referred to TPAPN by the Board. While the Board has a contract with the Texas Nurses Foundation to operate TPAPN, the contract does not address how the Board and TPAPN will communicate about individual nurses ordered or referred to the peer assistance program by the Board, including when and how TPAPN will notify the Board about the status of nurses in the program. The Nurses Foundation has adopted internal policies and procedures for administering TPAPN and the Board has established a position paper on disciplinary sanctions for nurses with chemical dependency. However, neither the TPAPN policies nor the Board's position statement address how the Board and TPAPN will communicate and refer nurses to TPAPN. As a result, despite their needed interaction, the Board and TPAPN have developed policies in a vacuum, and therefore monitor impaired nurses inconsistently, which is reflected in the reporting of data regarding impaired nurses.

For example, the Board and TPAPN provide different information regarding the number of nurses ordered and referred by the Board to the peer assistance program. In fiscal year 2005, the Board indicated it ordered 108 and referred 353 nurses to TPAPN, while TPAPN reported receiving 121 nurses by Board order and 173 nurses by Board referral. Board staff attributes the discrepancy to differences in reporting methodology. For instance, TPAPN tracks individual nurses ordered to the program while Board staff tracks the number of orders. Because a nurse can have multiple TPAPN orders, the nurse would be counted more than once by the Board. The Board often relies on data that TPAPN reports at quarterly Board meetings, although this information may not match data maintained by the Board. By not having clear guidelines, the Board and TPAPN cannot ensure that they rely on the same data and track nurses in the program consistently.



*The Board and TPAPN monitor impaired nurses inconsistently.*

- ◆ In monitoring nurses who are ordered or referred to the peer assistance program, the Board does not distinguish between those who sign peer assistance program participation agreements and those who do not. The Board relies on TPAPN to report nurses who do not report to TPAPN within 45 days after being ordered or referred to the program by the Board. Nurses who fail to sign peer assistance participation agreements are subject to further Board action, including another Board order or referral returning the nurse to TPAPN. However, the Board has no written procedures to ensure nurses ordered or referred to TPAPN actually sign participation agreements. Also, no written guidelines exist for handling nurses who fail to sign such agreements, including specifying how many times the Board will order or refer a nurse to TPAPN before taking disciplinary action.
- ◆ The Board has not established guidelines to determine whether to refer a nurse to the peer assistance program or place the nurse in the Board's monitoring program. The Board requires some nurses suspected of impairment who violate the standard of care to participate in the Board's own monitoring process. The Board typically uses this process to more closely monitor impaired or likely impaired nurses or applicants who also have a criminal history or previous disciplinary activity. However, with no guidelines or procedures outlining this Board practice, the Board may not consistently handle impairment cases.



*The Board has no written procedures to ensure impaired nurses participate in peer assistance.*

**Other health licensing agencies in Texas and other state boards of nursing have more defined peer assistance procedures.**

- ◆ Other health licensing boards in Texas that allow practitioners to participate in peer assistance programs – regardless of whether the agency uses its own peer assistance program or contracts for this service – also assess sanctions for any practice violations that occurred at the same time as or because of the practitioner's impairment. For example, physicians who violate the standard of care are subject to disciplinary action by the Medical Board and are not eligible for a private, rehabilitation order, which allows an impaired physician to participate in the Medical Board's peer assistance program without disciplinary action by the Board. Physician assistants and acupuncturists are subject to the same requirements by their regulatory boards.

Other boards have also established clear policies to guide the agency on when to refer a licensee to a peer assistance program, how to monitor a licensee's compliance, and how to interact with the peer assistance program provider. For example, the Pharmacy Board has adopted rules that require any theft of a controlled substance to be reported to the Board. In this instance, the Pharmacy Board typically suspends this pharmacist's license until the pharmacist has completed a treatment program or has been evaluated by a mental health professional. At a minimum, the Pharmacy Board places the pharmacist's license on probation for five years and includes additional restrictions.



*Other boards have clear policies to guide how they interact with peer assistance programs.*

- ◆ Other states' boards of nursing, such as those in Oklahoma and North Carolina, have peer assistance programs in which successful program completion is monitored by the board. For example, the North Carolina Board of Nursing follows up with its peer assistance provider to ensure that each nurse successfully completes the program. The North Carolina Board also has specific process guidelines to ensure fairness and consistency in dealing with impaired nurses. In these states, the peer assistance program also is required to notify the nursing board when any nurse referred or ordered to the peer assistance program by the board completes the program.

## Recommendations

### Change in Statute

#### **5.1 Clarify that individuals and organizations required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.**

The recommendation would ensure the Board is aware of practice violations that occur as a result of a nurse's chemical or mental impairment. In these cases, the Board would have responsibility for determining if a nurse violated the Act, and is therefore subject to appropriate discipline by the Board. The Board could still decide to allow the nurse to participate in the peer assistance program by referral if no other Board action is taken. As a result, the Board's responsibility regarding practice violations and the peer assistance program's role for evaluating a nurse's eligibility for the program would be clearly delineated. The Board should remain cautious in how it approaches balancing the need to protect the public from impaired nurses with the need to ensure that nurses and third parties are not deterred from seeing that an impaired nurse seeks treatment.

#### **5.2 Require the Board to adopt rules clearly outlining its peer assistance program.**

Under this recommendation, the Board would develop guidelines, in rule, that outline the following:

- ◆ the roles and responsibilities of the Board and the peer assistance program provider;
- ◆ the process for referring complaints alleging practice violations to the Board, should the peer assistance program learn of such a violation;
- ◆ successful program completion and compliance notification requirements for individual nurses ordered or referred by the Board to the program; and
- ◆ procedures for evaluating the peer assistance program's success over time.

These guidelines would allow the Board to make decisions regarding impairment issues more consistently and fairly, and would improve information sharing and communication between the Board and its peer assistance provider.

## Management Action

### **5.3 The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating standards of practice.**

Under this recommendation, the Board would establish a process to consistently evaluate impairment cases to determine whether a nurse ordered or referred to TPAPN committed other violations of the Act or Board rules, including standards-of-practice or unprofessional conduct violations. If an investigation reveals that such a violation did occur, the Board would determine whether it should assess disciplinary sanctions in addition to ordering the nurse to TPAPN. Doing so would provide public protection and would ensure that nurses are held accountable for their actions, yet receive needed treatment.

## Fiscal Implication

These recommendations would not have a fiscal impact to the State. The amount of the Board's contract with its peer assistance program provider is defined in the General Appropriations Act, and would continue to be so. While the Board could see an increase in complaints as a result of all practice violations being reported to the Board, this number should not be significant and can be handled with existing resources.

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<sup>1</sup> Texas Occupations Code, sec. 301.452 (b)(9).

<sup>2</sup> Texas Health and Safety Code, ch. 467.

<sup>3</sup> The only peer assistance program currently approved by the Board is TPAPN.

<sup>4</sup> Texas Occupations Code, sec. 301.410.

<sup>5</sup> Texas Occupations Code, sec. 301.453 (b)(1).



## *Targeted Continuing Education Requirements Dilute the Board's Ability to Ensure Nurses Maintain Competence to Practice.*

### **Summary**

#### **Key Recommendation**

- ◆ Authorize the Board to establish guidelines for targeted continuing education requirements.

#### **Key Findings**

- ◆ While continuing education keeps nurses current on industry practices in their specialized fields and settings, the Legislature has gone further to require continuing education in targeted areas.
- ◆ Requiring CE in specific topics for all nurses does not benefit all nurses.
- ◆ The Board has difficulty verifying nurses' compliance with CE requirements targeted at a subset of nurses.
- ◆ Other regulatory agencies do not have statutorily required continuing education in specific topics.

#### **Conclusion**

Nurses must complete continuing education requirements as a condition of license renewal to ensure continued competence to practice. All nurses must take 20 hours of continuing education during every two-year licensing period. Nurses can choose continuing education courses that relate to their work setting and practice area, which benefits employers and patients. After requiring that nurses take continuing education in certain areas, the Legislature instructed the Sunset Commission to evaluate the necessity and effectiveness of mandating continuing education courses for nurses on specific topics.

Because the scope of practice, work setting, and professional requirements for nurses vary greatly, requiring all nurses to take continuing education in certain topics reduces the effectiveness of continuing education. In addition, requiring certain nurses to complete targeted continuing education courses creates an administrative burden for the Board. As a result, targeted continuing education should be used sparingly. Should the Legislature or the Board determine that targeted continuing education requirements are warranted in certain circumstances, the Board should be able to make the requirements workable for the Board and beneficial for the nurse.

## Support

**While continuing education keeps nurses current on industry practices in their specialized fields and settings, the Legislature has gone further to require continuing education in targeted areas.**



- ◆ Like most professionals, nurses must complete continuing education (CE) as a condition of license renewal. The Nursing Practice Act authorizes the Board to require nurses to demonstrate continuing competence through various methods, including completion of targeted CE programs.<sup>1</sup> During each two-year licensing period, all professional nurses and vocational nurses must complete 20 hours of CE. A nurse must complete at least 10 of these hours from a Board-approved provider, or type I CE. The remaining 10 hours can consist of type II CE courses, including self-study, auditing academic courses, and home study. All 20 hours can be type I CE.

Advanced practice nurses (APNs), who are professional – or registered – nurses with additional qualifications, must take 20 hours of CE in the nurse’s advanced specialty area, such as midwifery or women’s health.<sup>2</sup> These 20 hours satisfy requirements to renew the individual’s professional nurse license *and* APN authorization. An APN who has prescriptive authority also must complete at least an additional five hours of CE in pharmacotherapeutics every two years.<sup>3</sup>

- ◆ Nurses work in a variety of settings, including large, urban hospitals and surgical centers; small, rural hospitals; emergency rooms; physician’s offices; long-term care facilities; nursing homes; schools; research organizations; academia; and private businesses. Like physicians, nurses also work in a variety of specialty areas, including pediatrics, obstetrics, gynecology, psychiatry, intensive care, neonatology, and gerontology. The combination of varied settings and varied specialties, however, creates unique practice areas for nurses.
- ◆ The types of nurses and their scopes of practice vary greatly. For example, a vocational nurse can perform very limited tasks, such as taking vital signs, administering a limited number of medications, and applying dressings. Vocational nurses work under supervision, typically from a professional nurse, physician, podiatrist, dentist, or physician assistant. Professional nurses perform a broader array of tasks, including conducting assessments, providing care and counsel, recording medical histories and symptoms, performing diagnostic tests and analyzing results, administering treatment and medications, and helping with patient follow up and rehabilitation. Advanced practice nurses work in collaboration with a physician, but may practice in an independent setting without direct supervision. They perform advanced nursing tasks such as administering anesthesia, interpreting lab results, developing a treatment plan, delivering a baby, and prescribing dangerous drugs and controlled substances.

- ◆ The purpose of continuing education is to ensure that licensees stay abreast of current industry practices, enhance their professional competence, learn about new technology and treatment regimens, and update their clinical skills. Doing so allows nurses to provide better health care to patients and practice within state and federal laws that regulate nursing.

For example, new medications are constantly being introduced to treat a variety of medical conditions. Because nurses may be involved in administering these medications, nurses must stay up to date on the use of medications, standard dosages, and potential side effects and drug interactions. Taking continuing education courses provides an avenue for a nurse to learn about new medications and stay informed about changes in pharmacology issues.

- ◆ When renewing their licenses, nurses attest to having completed the mandatory CE hours for the two-year licensing period. The Board requires nurses to maintain records supporting the signed statement for four years. Every month, the Board randomly audits a percentage of nurses for compliance with the Board's CE requirements. If a nurse does not complete the required CE, the Board takes disciplinary action against the nurse, including assessing a fine and requiring the nurse to complete the missing CE hours. In addition, beginning in fiscal year 2007, the Board will not renew a license until a nurse selected for audit submits proof of CE compliance.
- ◆ The Legislature has imposed some mandatory CE requirements in targeted topics. Some of these requirements apply to all licensed nurses, while others apply only to a select group of nurses. Current statutory requirements mandate that all nurses complete at least two hours of CE in bioterrorism response as part of a nurse's required 20 hours of CE during each licensing period. This requirement expires on September 1, 2007.<sup>4</sup> In addition, all nurses employed in an emergency room setting must complete at least two hours of CE relating to forensic evidence collection by September 1, 2008.<sup>5</sup> Also, all nurses who renewed a license between June 1, 2002, and June 1, 2004, had to take at least two hours of CE about the prevention, assessment, and treatment of the hepatitis C virus. This requirement expired on June 1, 2004.<sup>6</sup>
- ◆ In 2003, when the Legislature abolished the Texas Board of Vocational Nurse Examiners and merged it into the Texas Board of Nurse Examiners, it also included language requiring the Sunset Commission to evaluate targeted CE for nurses.<sup>7</sup> The language in the bill directing the review of targeted CE requirements is in the accompanying textbox.



**House Bill 1483 (78<sup>th</sup>)**

Sec. 3.004, included:

(c) As part of the next review conducted under Section 301.003, Occupations Code, as amended by this Act, the Sunset Advisory Commission shall evaluate the necessity and effectiveness of mandating continuing education courses for nurses on specific topics.

## Requiring CE in specific topics for all nurses does not benefit all nurses.



*Specific CE requirements do not necessarily relate to each nurse's practice.*

- ◆ Requiring nurses to take CE in specific topics lessens the effectiveness of requiring nurses to complete CE. While some subjects, such as ethics, apply across the board to all types of nurses, most nurses work in highly specialized fields or settings. Because the environments and specialties in which nurses work vary greatly, specific continuing education requirements do not necessarily relate to each nurse's practice. For example, a professional – or registered – nurse working in a hospital may be responsible for conducting an assessment of a patient's condition or interpreting lab results, while these tasks do not fall under a vocational nurse's scope of practice. Therefore, despite both working in a hospital, a professional nurse and a vocational nurse have different needs to ensure their continued professional competence.
- ◆ Specifying targeted CE requirements reduces the nurse's flexibility to select CE courses that relate to the nurse's practice and therefore provide more direct benefit. Allowing a nurse to choose which CE courses to take allows the nurse to tailor a plan for continued competence to the individual nurse's needs. Specific CE requirements mean fewer of the required 20 hours per biennium available for the nurse to take courses that directly relate to the nurse's practice, diminishing the benefit nurses get from CE. Given that the CE requirement is the only way the State can ensure that nurses keep up with important changes and issues in their fields, such as reducing medication and other errors that occur in hospitals, nurses should be encouraged to take as much CE in their practice area as possible.
- ◆ Because recently mandated targeted CE requirements have included expiration dates, these targeted CE requirements do not ensure that future nurses will complete CE in the required subject area. While current licensees may complete the course, future nurses will not have to, and therefore they will not have the continued competence in an area that the Legislature felt was critical for all nurses.

For example, in requiring nurses to complete two hours of CE related to hepatitis C, the Legislature noted that the number of deaths attributable to the hepatitis C virus could increase substantially during the next two decades, and therefore deemed it “imperative that health care professionals such as licensed nurses are knowledgeable about the diagnosis, treatment, and prevention of hepatitis C.”<sup>8</sup> However, this requirement lasted for only two years, expiring on June 1, 2004. As a result, the approximately 16,000 new nurses licensed every year will not necessarily obtain training in this area that the Legislature had determined was so important.

## **The Board has difficulty verifying nurses' compliance with CE requirements targeted at a subset of nurses.**

- ◆ Because the Board does not track licensees by specialty or employer, the Board has difficulty determining whether a particular nurse falls under the requirements for taking CE in specific areas. For example, to implement the forensic evidence collection CE requirement, the Board had to begin asking nurses to indicate if they work in an emergency room on their renewal form. However, after this requirement expires in September 2008, the Board will not need this information.

Also, nurses are highly mobile due to the high demand created by the current acute nurse shortage in Texas. As a result, a nurse may change jobs, including type of job setting, during a licensing period. This would prevent some nurses identified as needing the CE from meeting the targeted CE requirement.

- ◆ Targeted CE requirements could quickly become a problem for the Board. Because of the incredible variety of settings and specialties in which a nurse may work, the Board would likely not be able to determine from a renewal form the needed information to ensure that a nurse completed all targeted CE requirements.
- ◆ The Board's staggered license renewal process makes it difficult to ensure that a nurse has met the required CE requirements. The Board is authorized to stagger the renewal of its more than 250,000 licensees. However, the Board has indicated that depending on when particular targeted CE requirements begin and end, a nurse may not fall under the targeted CE requirement. Verifying each nurse's compliance with varying CE requirements also adds to the workload of the Board's small licensing staff.

In addition, one-time targeted CE requirements may be hard to verify as well. If a nurse is audited for CE compliance, the Board only checks for compliance for the previous licensing period. However, if a nurse completed a targeted CE requirement during a different licensing period, Board staff cannot know for sure that the CE requirement was met.

- ◆ Nurses' compliance with CE requirements has declined since targeted CE requirements began. The Board conducted an analysis of the declining rates for vocational nurses and found that targeted CE contributed to vocational nurses not meeting CE requirements. Compliance fell from 83 percent in August 2004 – the month before the bioterrorism CE requirement began – to 53 percent in March 2006.<sup>9</sup>



*One-time targeted  
CE requirements  
may be hard for  
the Board to verify.*

**Other regulatory agencies do not have statutorily required continuing education in specific topics.**

- ◆ Physicians must complete at least 24 hours of continuing education every 12 months. At least half of these hours must be in formal, category I courses; the other hours may be obtained through informal means, such as self-study. Since 1999, the Board – not statute – has required that at least one of the formal hours must involve the study of medical ethics or professional responsibility.

Statute encourages, but does not require, physicians who specialize in pain management to include CE in pain treatment among the formal CE hours obtained annually. Also, since September 2005, physicians who work in emergency rooms have the option of taking CE in forensic evidence collection.<sup>10</sup>

- ◆ Physician assistants must complete 40 hours of continuing education annually. No requirements for completion of specific topics exist, either from the Physician Assistant Board or from the Legislature.
- ◆ Pharmacists must complete 30 hours of continuing education during every biennial license renewal period. Neither the Pharmacy Board nor statute requires that any of these hours be in a specific subject area.

## **Recommendation**

### **Change in Statute**

#### **6.1 Authorize the Board to establish guidelines for targeted continuing education requirements.**

Under this recommendation, the Board would define the parameters of targeted continuing education requirements imposed by the Legislature or the Board. The Board would establish, in rule, the following:

- ◆ the nurses required to complete the targeted CE requirement;
- ◆ the types of courses that satisfy the targeted CE requirement;
- ◆ the time frame in which a nurse must complete the CE;
- ◆ how often a nurse must meet the targeted CE requirement, such as a one-time requirement or during every licensing renewal period; and
- ◆ other requirements identified by the Board.

The recommendation would not preclude targeted CE from being required for nurses and would not change the current requirement for 20 hours of CE in each two-year period. Authorizing the Board to define conditions of targeted CE, however, would give the Board flexibility to make such CE requirements more workable, while ensuring that nurses meet the requirements set for them by the Legislature and the Board.

### **Fiscal Implication**

This recommendation would not have a fiscal impact to the State.



- <sup>1</sup> Texas Occupations Code, sec. 301.303(a)(1).
- <sup>2</sup> Texas Administrative Code, Title 22, part 11, rule 216.3(3)(B).
- <sup>3</sup> Texas Occupations Code, sec. 301.152(c)(2) and Texas Administrative Code, Title 22, part 11, rule 216.3(3)(C).
- <sup>4</sup> Texas Occupations Code, sec. 301.305.
- <sup>5</sup> Texas Occupations Code, sec. 301.306.
- <sup>6</sup> Texas Occupations Code, sec. 301.304 expired June 4, 2004, by its own terms.
- <sup>7</sup> House Bill 1483, 78<sup>th</sup> (2003).
- <sup>8</sup> Office of House Bill Analysis, Bill Analysis of House Bill 2650, 77<sup>th</sup> (2001).
- <sup>9</sup> Board of Nurse Examiners for the State of Texas, “LVN Continuing Education Compliance Data,” Agenda Item 2.2, Board of Nurse Examiners quarterly meeting (Austin, Texas, July 20-21, 2006).
- <sup>10</sup> Texas Occupations Code, sec. 156.057. While nurses are required to take a CE course in forensic evidence collection, physicians who work in an emergency room have the option of taking such a course.



## *Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.*

### **Summary**

#### **Key Recommendations**

- ◆ Standardize the Board's licensing functions by requiring nurse applicants to pass a jurisprudence exam; changing the basis for assessing delinquent renewal penalties; eliminating application notarization requirements; and allowing examination fee refunds under special circumstances.
- ◆ Improve the Board's ability to protect the public by granting cease-and-desist authority; requiring the Board to track and analyze complaints; authorizing refunds as a part of the agreed settlement process; and requiring the Board to provide enforcement information on its website.
- ◆ Update elements related to the policy body by authorizing travel reimbursement for Board members.

#### **Key Findings**

- ◆ Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- ◆ Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.
- ◆ Provisions for the Board's policy body conflict with standard practice, potentially hindering the Board's ability to operate efficiently.

#### **Conclusion**

Various licensing, enforcement, and administrative processes in the Nursing Practice Act do not match model standards developed by Sunset staff and experience gained through more than 90 occupational licensing reviews over the last 29 years. The Sunset review compared the Board's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the Board in line with the model standards.

## Support

### **Regulating occupations, such as nursing, requires common activities that the Sunset Commission has observed and documented over more than 29 years of reviews.**

- ◆ The Board's mission is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in Texas is competent to practice safely. To fulfill this mission, the Board regulates the practice of nursing in Texas.

In fiscal year 2005, the Board licensed 264,450 nurses, including 186,192 professional nurses and 78,258 vocational nurses. That year, the Board approved 213 nursing education programs, including 117 for vocational nurses, 90 for professional nurses, and six for advanced practice nurses. The Board also enforces the Nursing Practice Act and Board rules by investigating and resolving complaints against nurses. In fiscal year 2005, the Board received 6,342 jurisdictional complaints and resolved 5,339, including taking disciplinary action against 1,577 nurses.

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 90 licensing agency reviews.

Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the Board's statute and rules differ from these model standards, and describes the potential benefits of conforming the Board's statute and rules to standard practices.



*Nurses do not have to pass a jurisprudence exam to receive a license.*

### **Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.**

- ◆ *Jurisprudence exam.* An agency should ensure that licensees are familiar with the laws and rules under which they practice. Unlike many health licensing agencies in Texas, the Board does not require a jurisprudence examination as a condition of licensure. As a result, nurses may be unaware of state laws or have limited knowledge about state regulations regarding issues that affect their practice. For example, the recent merger of the professional nurse and vocational nurse boards resulted in vocational nurses having, for the first time, a defined scope of practice. Also, professional, vocational, and advanced practice nurses have varying levels of delegation and supervision authority. Nurses should understand this authority to ensure they do not exceed their scope of practice, which can lead to practice errors. Requiring

a jurisprudence exam for all applicants for licensure would establish that nurses have a clear understanding of the laws and policies that guide their professional practice.

- ◆ **Examination procedures.** Agency rules or policies should reflect exam procedures governing all parts of the testing process, including test admission and administration. Although the National Council of State Boards of Nursing (NCSBN) administers the licensing exam for professional and vocational nurses, the Board approves applicants' eligibility to sit for the national exam. Therefore, applicants likely refer to the Board's website or other Board materials for information on the exam process. However, the Board has not adopted policies that reference NCSBN's examination process. Doing so would provide potential applicants with a simple, one-stop source for information on the exams required to become a nurse in Texas.
- ◆ **Refundable fees.** Fees from both initial exams and exam retakes should not be refundable, except in cases of emergencies and reasonable advance notice of withdrawal. Applicants submit exam fees directly to NCSBN's testing vendor, although Board staff evaluates written refund requests and recommends whether the testing vendor should issue a refund. However, the Board has no written refund policy and therefore cannot ensure all applicants are treated with consistency and fairness. Authorizing the Board to determine under what circumstances to recommend a refund of exam fees would balance the needs of both the agency and applicants.
- ◆ **Late renewal penalties.** Nurses who fail to renew their licenses on time should pay a penalty set at a level that is reasonable to ensure timely payment and that provides comparable treatment for all licensees. The Nursing Practice Act ties the late-renewal penalty to the national licensure exam, although the Board bases the penalty on the \$100 exam application fee collected by the Board, not the \$200 exam fee collected by NCSBN. A fairer, more consistent practice would be to require delinquent licensees to pay a late renewal fee based on the Board's renewal fee, instead of the exam fee. Doing so would scale the late-renewal penalty to the cost of renewing a license, and would ensure that nurses are treated the same as other individuals licensed by the State.

A licensing agency's statute should also establish standard time frames for delinquent license renewal, including designating that a licensee delinquent in renewal for one year or more must be re-examined. Currently, the Nursing Practice Act requires the Board to determine the length of time beyond which an expired license cannot be renewed.<sup>1</sup> The Board has not set such a limit; instead, the Board requires a nurse who failed to renew a license for four years or more to take a refresher course, complete 20 hours of continuing education, and pay the required renewal fee and penalties. The Board's requirements for returning to practice never include retaking a licensing exam, which is standard among other licensed professions,



*The Board has not set a limit beyond which an expired license cannot be renewed.*

including physicians, physician assistants, and pharmacists. As a result, nurses have less incentive to renew their licenses on time. Specifying that nurses who fail to renew their licenses within the standard one-year period must retake the licensing exam would provide a better incentive for nurses to renew on time and would bring the Board in line with other licensing agencies.



*The Board requires  
notarization  
of paper, but  
not online,  
applications.*

- ◆ ***Licensure application.*** Licensure processes should not overburden applicants or unreasonably restrict entry into practice. Currently, the Board requires applicants to notarize paper applications to ensure that information provided on the application is correct. Applicants who apply online do not have to get their applications notarized. Instead, the Board only requires them to check a box attesting that the information in the application is accurate. The notarization requirement for paper applications is not only inconsistent, but is also unnecessary, as notarizing a document does not ensure that the information within it is accurate, only that the person signing the document is identified correctly.

The Board requires verification by affidavit that the applicant has met all curricular requirements. The affidavit must be provided directly by the school of nursing. Examination results are sent to the Board by NCSBN, and therefore are secure and accurate. State law already prohibits a person from knowingly making a false entry in a government record.<sup>2</sup> Removing the notarization requirement for individuals who submit paper applications would ensure that all individuals undergo the same process when applying for a nurse license.

### **Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.**

- ◆ ***Enforcement matrix.*** An occupational licensing agency should scale its disciplinary sanctions to the nature of the violation and should maintain consistency in types of sanctions assessed. Establishing a matrix to guide an agency's decisions on disciplinary action provides Board members and agency staff with a method for ensuring that enforcement decisions are made consistently and in line with agency precedent.

The Board has established a matrix for determining the administrative penalty amount and has recently established a disciplinary grid to guide Board and staff members when making disciplinary and eligibility decisions related to criminal convictions or other criminal history. However, the Board has not established a matrix or guidelines for other violations of law or Board rules, such as standard-of-care or professional boundaries violations. In these instances, the Board relies on Board and staff members' memories of past cases and Board actions.

Nurses and applicants for licensure, as well as the public, cannot readily access the Board's guidelines for disciplining individuals with a criminal history, as the Board has not established them in rule or posted them on its

website. Adopting a matrix to offer guidance for all types of violations would help ensure fair and consistent treatment of nurses, while also ensuring that the public is protected by proper disciplinary actions against nurses who violate state laws.

- ◆ **Complaint trend analysis.** Agencies should analyze the sources and types of complaints and violations to identify problem areas and trends. Identifying such trends can help an agency to manage its resources more effectively, leading to greater protection of consumers. An agency can use such information to create educational materials for licensees about common violations of laws and agency rules. The Board currently does not perform a trend analysis of complaints or violations. As a result, the Board does not have a clear method for determining regulatory problem areas. Conducting an analysis on complaints and violations allows the Board to focus on areas identified as a problem, leading to more informed nurses and fostering better public protection.
- ◆ **Complaint dismissal.** Agency staff should have the authority to dismiss complaints without having to involve the Board, although the Board should be informed of all such dismissals. This approach saves the Board time in considering each complaint while still providing Board members information on staff actions. The Nursing Practice Act authorizes the Board to dispose of a complaint through dismissal.<sup>3</sup> The Act also specifies that the Board must be notified of dismissed complaints.<sup>4</sup> Based on this implied authority, the Board has delegated to staff the ability to dismiss complaints, even though the statute does not specifically authorize this. Also, staff does not inform the Board of all dismissals. Clarifying staff’s authority to dismiss complaints in categories delegated by the Board and requiring staff to notify the Board of these dismissals would expedite the complaint process while ensuring that Board members are aware of staff actions.
- ◆ **Administrative penalty.** An agency’s administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. The Board has authority to impose a penalty amount of up to \$2,500 per violation per day for violations of state law or Board rules. Given the significant harm that can result from illegal activity related to the practice of nursing and the access to dangerous drugs and controlled substances that nurses have, the Board’s current administrative penalty amount may not be adequate to deter illegal behavior. Other health licensing agencies have authority to impose a penalty amount of up to \$5,000 per violation per day, as illustrated in the table, *Administrative Penalty Maximums*. Increasing the Board’s



*The Board does not have a clear method for determining regulatory problem areas.*

**Administrative Penalty Maximums**

Agency	Maximum Penalty
Board of Nurse Examiners	\$2,500
Texas Medical Board	\$5,000
Physician Assistant Board	\$5,000
State Board of Dental Examiners	\$5,000
State Board of Pharmacy	\$5,000
State Board of Veterinary Medical Examiners	\$5,000

administrative penalty limit to \$5,000 per violation per day for any violation of state laws or Board rules would give the Board authority to address the potentially severe nature of illegal activity and would conform the Board to the standard penalty amount.

- ◆ **Refund authority.** The goal of a refund is to allow a complainant to receive some or all of what was lost as a result of the act that prompted a complaint and resulted in violation of state laws or Board rules. Refunds can be granted when a consumer has been defrauded or subjected to a loss that can be quantified, such as the amount of money or property stolen by a nurse from a patient or the cost of an examination by an advanced practice nurse. The Board's enforcement tools are designed to correct licensee behavior, but do not allow for repayment to the aggrieved party. Including refund authority as an additional enforcement tool would enable the Board to help a consumer who was harmed by a nurse.
- ◆ **Cease-and-desist authority.** A licensing agency should have enforcement authority not only over its licensees, but over those who engage in the unlicensed activity of the profession. However, the standard range of sanctions against licensees does not apply to such unlicensed activity. While injunctive authority allows agencies to take legal action to stop unlicensed activity, cease-and-desist orders provide an interim step that agencies may take on their own to stop unlicensed activity.



*Cease-and-desist authority could help the Board deal with nurse imposters.*

The Board lacks broad authority to issue cease-and-desist orders. Through the Nurse Licensure Compact, the Board has statutory authority to issue cease-and-desist orders, but this authority extends only to a nurse licensed in another state practicing in Texas under the Compact. The Board's current process of issuing a warning letter to stop unlicensed practice lacks the force of law, while seeking injunctions through the Attorney General can be cumbersome and time consuming. This could limit the Board's ability to deal with nurse imposters, who pose a great risk to the public. Cease-and-desist orders provide for faster action by regulatory agencies, especially when violators of these orders are subject to additional sanctions, such as administrative penalties. Also, violations of cease-and-desist orders may help the agency obtain injunctive relief more easily.

- ◆ **Nonjurisdictional complaints.** A licensing agency should have a process to refer complaints not within its jurisdiction to the appropriate agency or organization. The agency should keep track of these nonjurisdictional complaints to have a full picture of the public's problems and concerns in the regulatory area. The Board frequently receives nonjurisdictional complaints about certified nurse aides, nursing homes, and hospitals, including complaints about standard of care. Although the Board refers the complainant to the proper agency – such as the Texas Department of Aging and Disability Services, which regulates certified nurse aides – the Board does not track the number of these complaints. Improved tracking of

nonjurisdictional complaints would enable the Board to identify trends in the regulatory area, as well as identify potential areas where greater coordination is needed between the Board and other agencies.

- ◆ **Enforcement information.** Agencies should make all enforcement information, such as final disciplinary orders and sanctions, readily available to the public. This provides the public with information to make informed choices. While the Board identifies on its website nurses subject to current Board enforcement actions and publishes disciplinary actions in its quarterly newsletter, detailed information regarding these current Board actions, as well as information regarding past disciplinary orders and sanctions against nurses, is not easily accessible to consumers.

Because disciplinary actions are public information, the Board will provide this information to anyone who calls the agency and requests it. However, this limits the public's access to disciplinary information regarding nurses, as consumers may not know to call Board staff to request such information. This also creates an unnecessary workload for Board staff. The information does not describe the violations or the conditions of the disciplinary order. Requiring the Board to include more information on current disciplinary actions, provide information on past violations, and display all enforcement actions in a user-friendly format would more readily provide the public with complete information about nurses disciplined by the Board.

**Provisions for the Board's policy body conflict with standard practice, potentially hindering the Board's ability to operate efficiently.**

- ◆ **Compensation.** Board members should be subject to reasonable standards for travel reimbursement, which should be reflected in statute. While the General Appropriations Act indicates that reimbursement for policy body members includes transportation, meals, lodging, and incidental expenses, the Nursing Practice Act prohibits Board members from receiving reimbursement for any travel-related expenses other than transportation.<sup>5</sup>

In practice, the Board reimburses policy body members for all travel-related expenses. For the purpose of reimbursement, the Board considers policy body members as state employees, and therefore eligible for travel reimbursement. Eliminating the prohibition on travel reimbursement would make the Nursing Practice Act consistent with the General Appropriations Act and other agencies' statutes, and provide the Board with clear direction regarding Board member reimbursement for Board business.



*Detailed information regarding current Board actions is not accessible to consumers.*

## Recommendations

### Licensing – Change in Statute

#### **7.1 Require applicants to pass a jurisprudence exam as a condition of licensure.**

This recommendation builds on existing licensure requirements by requiring applicants, including applicants for licensure by endorsement, to pass a jurisprudence exam to be eligible for licensure. The Board would need to develop an examination based on the Nursing Practice Act and Board rules, and other applicable state laws and regulations affecting the practice of nursing. The Board would determine the method of administering the exam, such as an online, take-home, or open-book test. In doing so, the Board should consult other health licensing agencies that require their applicants to pass a jurisprudence exam. These other agencies could also provide guidance in determining the best method to deliver the exam, such as through a statewide testing service.

The Board would also establish rules regarding examination development, fees, administration, reexamination, grading, and notice of results. The Board would develop an exam and begin exam administration by September 1, 2008. The requirement to pass the jurisprudence exam would only apply to individuals who apply for licensure on or after September 1, 2008; individuals licensed before then would be exempt from passing the jurisprudence exam.

#### **7.2 Require the Board to adopt clear procedures governing all parts of the testing process, including test admission and administration.**

Under this recommendation, the Board would adopt guidelines detailing procedures for the testing process, including national exam requirements. To ensure that applicants and potential applicants can readily find information on exam requirements, the Board would reference NCSBN's testing procedures, including test admission and administration on the Board's website.

#### **7.3 Direct the Board to establish a policy for nonrefundable examination fees.**

This recommendation would authorize the Board to recommend to NCSBN or its testing vendor whether all or part of an applicant's examination fees should be refunded, based on the applicant providing reasonable advance notice or a satisfactory excuse, such as an emergency. The Board would establish a written policy defining the reasonable notification period and the emergencies that would warrant a refund. In establishing its policy, the Board should ensure that the policy does not conflict with any of NCSBN's exam fee or refund policies.

#### **7.4 Change the basis for the Board's late renewal penalties.**

This recommendation would require the Board to use the standard renewal fee set by the Board as the basis for late renewal penalties, rather than the cost of the exam required for licensure. To renew a nurse's license that has been expired for 90 days or less, the renewal fee would equal 1-1/2 times the standard renewal fee. If the nurse's license has been expired for more than 90 days, but less than one year, the renewal fee would equal two times the standard renewal fee. A nurse whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. This recommendation would remove the Board's authority to set the time frame beyond which a delinquent license may be renewed. However, the Board would retain the authority to determine time frames for renewal of an inactive license.

This recommendation does not apply to nurses who were licensed in Texas and moved to another state to practice. Instead, a person who is licensed in this state, moved to another state, and is currently

licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license in Texas without reexamination. In addition, this recommendation would not apply to nurses who no longer hold licenses because they have been revoked or surrendered as the result of disciplinary action.

## **Licensing – Management Action**

### **7.5 The Board should remove the requirement that applications for licensure filed with the Board be notarized.**

The Board should eliminate its requirement that applicants who file a paper application must have it notarized. Doing so would remove an unnecessary burden for some applicants and would ensure that all applicants are treated consistently. Existing provisions of the Penal Code that make falsifying a government record a crime would continue to apply to all license applications.

## **Enforcement – Change in Statute**

### **7.6 Require the Board to adopt an enforcement matrix in rule.**

This recommendation would require the Board to establish, in rule, a matrix to use when determining disciplinary actions for nurses who have violated state laws or Board rules. Doing so would ensure that the Board's disciplinary actions appropriately relate to violations of the Nursing Practice Act and Board rules. While adopting an enforcement matrix will help the Board make consistent, fair disciplinary decisions, the matrix would not be used as a one-size-fits-all approach, as the Board would maintain flexibility in determining the most appropriate sanction for each violation.

In developing the matrix, the Board should take into account factors including the licensee's compliance history, seriousness of the violation, the threat to the public's health and safety, and mitigating factors. Adopting the enforcement matrix in rule would provide the public with the opportunity to comment on the development of the matrix, and would provide nurses with ready access to the Board's enforcement guidelines, allowing them to better understand the potential consequences of violations.

### **7.7 Require the Board to develop a method for analyzing trends in complaints and violations.**

This recommendation would require the Board to develop a method for analyzing the sources and types of complaints and violations. The Board would establish categories for complaints and violations, such as section of statute, Board rule, or broader categories, including standard of care and professional boundaries. The agency would analyze complaints and violations to identify trends and regulatory problem areas. The Board could use this analysis to focus its information and education efforts on specific areas. Developing a method to analyze complaints would provide the Board with improved information regarding the nature of complaints.

### **7.8 Authorize staff to dismiss baseless cases.**

Under this recommendation, the Board would establish, in rule, staff's authority to dismiss complaints if an investigation shows no violation occurred or if the complaint does not fall under the Board's jurisdiction, or in other situations delegated by the Board to staff. Staff would report administratively dismissed complaints to Board members at each of the Board's regular public meetings.

### **7.9 Increase the amount of the Board's administrative penalty authority.**

The amount of an administrative penalty the Board would be able to impose on an individual who violates the Nursing Practice Act, Board rule, or other state laws, would be increased to \$5,000 per violation per day, from \$2,500 per violation per day. The provision that each day a violation continues

or occurs is a separate violation for purposes of imposing the penalty would continue to apply. This recommendation reflects the significant harm that can result from illegal activity in the practice of nursing and would pose as a larger deterrent than the existing penalty amount, especially given nurses' access to drugs – including controlled substances – in their practice.

#### **7.10 Authorize the Board to require refunds as part of the agreed settlement process.**

Under this recommendation, the Board would be allowed to include refunds as a part of an agreed order. Authority would be limited to providing a refund not to exceed the amount the patient paid for services or the actual amount a nurse stole or defrauded from a patient. Any refund order would not include an estimation of other damages or harm, and must be agreed to by the nurse. The refund may be in lieu of or in addition to other sanctions against a nurse.

#### **7.11 Authorize the Board to issue cease-and-desist orders.**

Cease-and-desist authority would allow the Board to move more quickly to stop unlicensed activity, including in cases involving nurse imposters, that threaten the health and safety of the public. This recommendation would also authorize the Board to assess administrative penalties against individuals who violate cease-and-desist orders. The Board would still be able to refer unlicensed activity cases to local law enforcement agencies or the Attorney General for prosecution. However, the Board should count unauthorized practice cases as jurisdictional and direct investigators to pursue and follow up with unlicensed individuals to ensure compliance.

### **Enforcement – Management Action**

#### **7.12 The Board should track the number and types of nonjurisdictional complaints it receives.**

The Board should document the nonjurisdictional complaints it receives by keeping track of the number of complaints received, the subject matter of complaints, and the agency to which the Board referred the complaint. Doing so would allow the Board to get a more accurate picture of the types of complaints received, address areas of confusion to the public, and better coordinate with other agencies.

#### **7.13 The Board should post information about disciplinary actions on its website.**

Under this recommendation, consumers would have improved access to the Board's disciplinary information. The Board should provide more detailed information about nurses disciplined by the Board, including a citation of the law or Board rule violated, the Board's action, and the date of the Board's order. In addition to increasing the public's accessibility to enforcement data, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

### **Administration and Policy Body – Change in Statute**

#### **7.14 Authorize Board members to receive reimbursement for travel expenses.**

This recommendation would remove the conflict between the Nursing Practice Act and the General Appropriations Act. As a result, Board members would have clear authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business. With this change, the Board would no longer need to classify Board members as state employees for reimbursement purposes.

## Fiscal Implication

These recommendations would result in a loss to the General Revenue Fund. The Board would incur a cost to develop the jurisprudence exam, but this cost would be recovered in the examination fee collected by the Board. Changing the statutory basis for the late renewal penalty would result in lost revenue to the State of approximately \$100,000. Other recommendations are procedural improvements that would not require additional resources.

<i><b>Fiscal Year</b></i>	<i><b>Loss to the General Revenue Fund</b></i>
2008	\$100,000
2009	\$100,000
2010	\$100,000
2011	\$100,000
2012	\$100,000

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<sup>1</sup> Texas Occupations Code, sec. 301.301(d).

<sup>2</sup> Texas Penal Code, sec. 37.10.

<sup>3</sup> Texas Occupations Code, sec. 301.463(a)(4).

<sup>4</sup> Texas Occupations Code, sec. 301.204(a)(3).

<sup>5</sup> House Bill 1, General Appropriations Act, 79th Legislature (2005), Article IX, sec. 4.04.



## *Texas Has a Continuing Need for the Board of Nurse Examiners.*

### **Summary**

#### **Key Recommendation**

- ◆ Continue the Board of Nurse Examiners for 10 years.

#### **Key Findings**

- ◆ Texas has a continuing need to regulate professional, vocational, and advanced practice nurses.
- ◆ Review of the Board and other related agencies did not reveal serious opportunities for consolidation or transfer of functions.
- ◆ All 50 states regulate nurses, although organizational structures vary.

#### **Conclusion**

Nurses play a critical role in providing health care to all Texans. From practicing in a school to working bedside in a hospital to providing home-health services, nurses perform an array of tasks, including taking a patient's vital signs, prescribing and administering medication, performing diagnostic tests, giving injections, administering anesthesia, and assisting with surgery.

The Sunset review evaluated the continuing need to regulate nurses, as well as the effectiveness of the Board of Nurse Examiners in performing this regulation. Sunset staff found that because the tasks nurses perform can pose significant risks, and because nurses practice in settings where patients are vulnerable, the State has an interest in regulating professional, vocational, and advanced practice nurses. The review also found that the Board, through its regulatory activities, helps provide Texans with the confidence that nurses practicing in the state are competent, meet established standards, and are held accountable for their actions. Staff concluded that the agency should be continued for another 10 years.

## Support

### The Board of Nurse Examiners seeks to protect the public by ensuring that only qualified nurses practice in Texas.



*A single board  
now regulates  
professional and  
vocational nurses.*

- ◆ The State began regulating the practice of nursing in 1909, when the Texas Legislature passed the Nursing Practice Act creating the Board of Nurse Examiners and setting requirements for licensure. In 1951, the Legislature distinguished between professional – or registered – nurses and vocational nurses by establishing the Board of Vocational Nurse Examiners, and creating a separate licensing act for vocational nurses.
  - ◆ In 2003, the Legislature abolished the Board of Vocational Nurse Examiners and transferred its functions to the Board of Nurse Examiners.<sup>1</sup> The Board now consists of 13 members: six nurses, including one advanced practice nurse, two registered nurses, and three vocational nurses; three nurse faculty members; and four public members.
  - ◆ Both the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were scheduled to undergo Sunset review in 2005, at the same time as many other health licensing agencies. However, the Legislature moved the date to 2007 to give the newly combined Board time to transition the functions of the two boards into one agency before being reviewed by the Sunset Commission. The Board’s mission is outlined in the accompanying textbox.
- Board of Nurse Examiners’ Mission**

The mission of the Board of Nurse Examiners is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing education programs.
- ◆ The Board’s main functions include:
    - licensing qualified individuals to practice professional nursing and vocational nursing;
    - authorizing qualified professional nurses for advanced nursing practice and approving prescriptive authority;
    - establishing standards for nursing education and approving nursing education programs; and
    - investigating and resolving complaints, and taking disciplinary action when necessary to enforce the Nursing Practice Act and Board rules.
  - ◆ In fiscal year 2005, the Board regulated 264,450 nurses, including 186,192 professional nurses and 78,258 vocational nurses. In addition, the Board authorized 10,650 professional nurses to practice as advanced practice nurses. Also in fiscal year 2005, the Board granted initial approval to four new professional nursing education programs and one new vocational nursing program, and accepted closure of two advanced practice nursing

programs and one vocational nursing program.<sup>2</sup> This brings the total of Board-approved nursing education programs to 213, including 90 for professional nurses, 117 for vocational nurses, and six for advanced practice nurses.

- ◆ The Board received 6,342 jurisdictional complaints and resolved 5,339 in fiscal year 2005. Of the resolved complaints, 1,246 resulted in disciplinary action, including 411 license revocations.<sup>3</sup> In fiscal year 2005, the Board operated on a budget of \$4.8 million and contributed \$3.7 million to General Revenue beyond what it received in appropriations that year.

### **Texas has a continuing need to regulate professional, vocational, and advanced practice nurses.**

- ◆ The practice of nursing affects all Texans, as nurses play an integral role in providing health care in the state. Nurses work in a variety of settings, although hospitals employ about half of licensed nurses in Texas. Other settings in which nurses work include physicians' offices, long-term care facilities, schools, and private businesses, among others. In many settings, a patient spends more time with a nurse than with any other health care practitioner.

Nurses can also perform a wide array of tasks, depending on the type of license the nurse holds. For example, professional nurses can give therapeutic treatments and intravenous medications, conduct physical assessments, assist during surgery, and supervise vocational nurses, nurse aides, and other unlicensed assistive personnel. Vocational nurses can take a patient's vital signs, apply dressing and change bandages, give medication, document a patient's condition and treatment, and supervise certain unlicensed assistive personnel. Advanced practice nurses collaborate with physicians and specialize in areas that allow them to perform such advanced medical tasks as delivering a baby or administering anesthesia. These nurses also perform physical examinations, prescribe medicine, order and read tests, and take patient histories. In some settings, advanced practice nurses may serve as the primary health care provider, as a physician is only present one or two days a week.

- ◆ The Board licenses individuals to ensure they can practice nursing safely and competently. To protect the public from the unprofessional, improper, and incompetent practice of nursing, the Board enforces the Nursing Practice Act and Board rules, adopts policies establishing standards for practice, provides an avenue for consumers to lodge a complaint if they receive substandard care, and disciplines nurses who violate the law.

### **Review of the Board and other related agencies did not reveal serious opportunities for consolidation or transfer of functions.**

- ◆ Other state agencies play a role in regulating health care practitioners and in providing health care services to Texans, and other state agencies have



*Tasks nurses perform vary with the type of license held.*

responsibilities that involve nurses. However, no other agency has any regulatory responsibility for licensing and disciplining nurses. Sunset staff examined organizational options for the State’s efforts to regulate the practice of nursing. While other agencies could perform the Board’s licensing and enforcement functions, Sunset staff did not find clear opportunities for merging or transferring the regulation of nurses to another agency.

- ◆ While the Board could fit within an umbrella structure and add expertise benefiting other regulatory efforts, no workable structure exists that could effectively accommodate a program of the size and sophistication of the Board of Nurse Examiners. Because the Board is generally effective in licensing nurses and enforcing the Nursing Practice Act, it would not stand to benefit greatly from being under an umbrella structure. Such a reorganization would likely cause at least a temporary dilution of resources and attention currently focused on regulating nurses in favor of smaller regulatory programs that have much more to gain from this type of structure.

In addition, through its 2003 consolidation of the State’s two nurse regulatory boards, the Legislature has effectively expressed its opinion regarding the Board’s organizational structure. Consideration of a larger consolidation would best occur in conjunction with a deeper analysis of other health licensing agencies that are similar to the Board. Most of these agencies underwent Sunset review in 2005, at which time consolidation of health licensing agencies was considered. These agencies are scheduled to be reviewed again in 2017.

- ◆ The large number of licensees and the size of the Board’s regulatory program preclude significant benefit from consolidating the Board with other health licensing agencies. The Board licenses almost five times as many practitioners

as the next largest regulatory program at the Texas Medical Board, as illustrated in the table, *Licensed Health Professionals in Texas*. In addition, although nurses serve as health care practitioners, their scope of practice, statutory responsibilities, and licensing requirements differ from those of other health care providers, such as physicians and physician assistants. As a result, no existing licensing agency could absorb the Board’s regulatory responsibilities without a significant transfer of resources.

**Licensed Health Professionals in Texas**

Agency	# of Licensees
Board of Nurse Examiners	264,450
Texas Medical Board	54,092
Texas State Board of Pharmacy	22,180
Texas State Board of Dental Examiners	13,909
Texas Board of Chiropractic Examiners	4,688
Texas Physician Assistant Board	3,608
Texas State Board of Podiatric Medical Examiners	848

- ◆ The Texas Department of Aging and Disability Services (DADS) has oversight for long-term care facilities, nursing homes, and home-health services, all of which employ nurses. DADS also has regulatory authority for certified nurse aides, who work in DADS-licensed long-term care facilities and are supervised by nurses. DADS maintains a registry of nurse aides who meet training and examination requirements, and investigates



allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing home. If DADS finds a violation, DADS revokes the nurse aide's certification and notes this on the registry.

DADS employs nurses, who conduct licensing and certification surveys and investigate complaints regarding nurse aides and facilities regulated by DADS. However, DADS has no regulatory authority over nurses. Should Department staff suspect that a nurse working in a facility it regulates has violated the law or Board policy, DADS refers the case to the Board, as it would with any other health care provider – such as a physician – working in its facilities. Because the Board's and DADS' duties do not overlap, moving the Board under DADS' authority would require a transfer of the Board's resources and staff and would not result in a significant benefit to the State.

- ◆ The Texas Department of State Health Services (DSHS) also regulates health care facilities, including hospitals, ambulatory surgical centers, birthing centers, and clinical laboratories, among others. While these facilities employ nurses, DSHS does not have any regulatory authority over nurses. Like the Department of Aging and Disability Services, DSHS notifies the Board if it suspects a nurse working in one of its licensed facilities has violated the law or Board policies.

DSHS does have regulatory authority for allied health practitioners, such as emergency medical technicians, perfusionists, social workers, medical radiologist technicians, and midwives. DSHS staff evaluates credentials, gives examinations, monitors continuing education activities, and conducts complaint investigations for individuals in the 23 programs under its jurisdiction. While DSHS does have an established structure for regulating health care practitioners, this function is a legacy of the former Texas Department of Health, and differs from the larger service-delivery mission of DSHS as it has been reorganized under the Health and Human Services umbrella. Further, none of the programs regulated by DSHS approaches the size and complexity of the regulatory program for nurses. For example, one of the larger professions under DSHS' authority is social work, which has about 22,000 licensees. With more than 250,000 nurses licensed in Texas, DSHS would need a large transfer of staff and resources to absorb the Board's regulatory activities.

- ◆ The Health Professions Council functions as a coordinating council for 12 health care professional licensing agencies representing 36 professional licensing boards and programs, including nursing. Member agencies collocate in one state office building to facilitate resource sharing, including sharing conference rooms, an imaging system, courier services, information technology staff, human resources, and accounting activities among member agencies. The Council is not an umbrella organization, and does not have oversight or regulatory authority. Therefore, under its current structure, the Council would not be capable or appropriate to assume the responsibilities of the Board.



*Nurses work in facilities licensed by other state agencies.*

**All 50 states regulate nurses, although organizational structures vary.**



*Twenty-two states regulate nursing through an independent agency.*

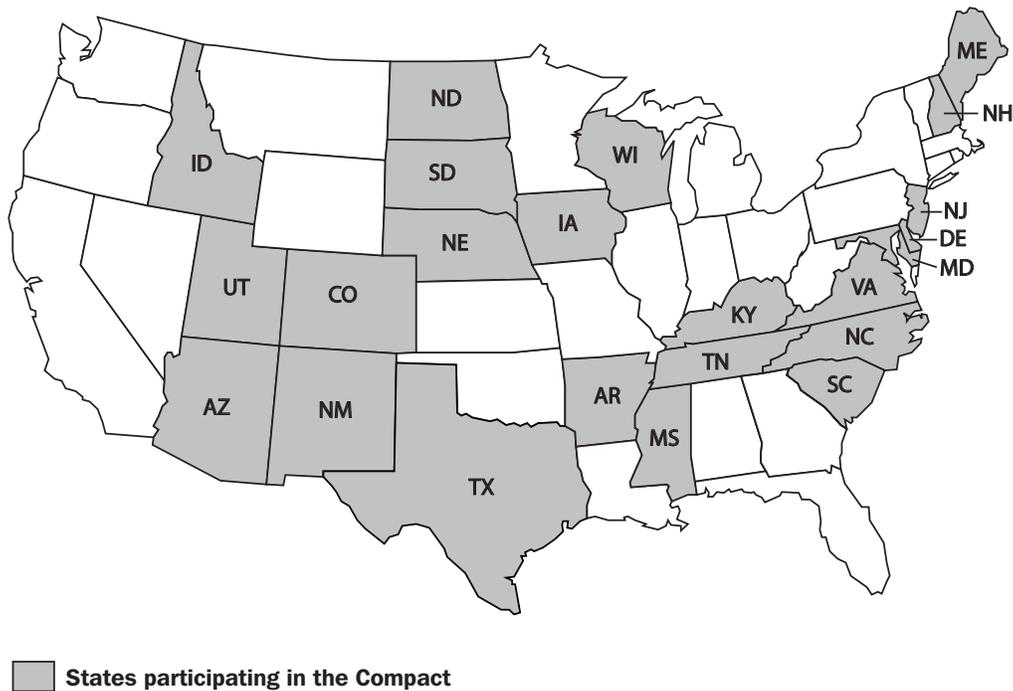
- ◆ The chart, *Regulation of Nursing in the United States*, describes the structure of state agencies that regulate professional and vocational nurses in the United States.<sup>4</sup> Twenty-two states regulate nursing through an independent agency. Four states – California, Georgia, Louisiana, and West Virginia – regulate professional nurses and vocational nurses through separate agencies. In addition, all states except Tennessee regulate advanced practice nurses, although each state does not recognize the four types of advanced practice nurses that Texas does.<sup>5</sup>

**Regulation of Nursing in the United States**

Structure	Number of States	States
Independent Agency	22	Texas, Alabama, Arizona, Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, West Virginia, Wyoming
Health Professions Agency	1	Virginia
Professional/Occupational Licensing Agency	12	California, Colorado, Delaware, Illinois, Indiana, Maine, Missouri, New York, South Carolina, Utah, Washington, Wisconsin
Department of Health or Human Services	8	Connecticut, Florida, Maryland, Massachusetts, Michigan, Nebraska, Rhode Island, Tennessee
Other Umbrella Agency <sup>6</sup>	7	Alaska, Georgia, Hawaii, Montana, New Jersey, Pennsylvania, Vermont

- ◆ Twenty-three states, including Texas, have joined the Nurse Licensure Compact, as illustrated by the graphic, *Nurse Licensure Compact States*. The Compact allows a nurse licensed in a Compact state to practice in any other Compact state without needing to hold a license in each state. The Compact provides greater coordination and cooperation among participating states, and facilitates the interstate movement of nurses, which allows nurses and employers greater flexibility without compromising a state’s regulatory oversight of nurses.

## Nurse Licensure Compact States



## Recommendation

### Change in Statute

#### 8.1 Continue the Board of Nurse Examiners for 10 years.

This recommendation would continue the Board as an independent agency responsible for regulating professional, vocational, and advanced practice nurses in Texas for 10 years, until 2017. The Board would continue to implement the Nursing Practice Act and adopt agency rules and policies to ensure that only qualified nurses practice in Texas. Continuing the Board for 10 years, instead of the standard 12-year period, would bring the Board's next review in line with the Sunset review dates of other similar, stand-alone health care regulatory boards, such as the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy.

### Fiscal Implication

If continued by the Legislature, the Board's annual appropriation of \$6.5 million would continue to be required.

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<sup>1</sup> Texas House Bill 1483, 78th Legislature (2003).

<sup>2</sup> One of the advanced practice nursing programs that the Board considers closed dropped Board accreditation, as the program did not need to be approved by the Board. The program is still in operation.

<sup>3</sup> This figure includes 198 revocations by the Board as well as 213 voluntary surrenders by licensees.

<sup>4</sup> Most states use the title “practical nurse.” Only Texas and California refer to these practitioners as “vocational nurses.”

<sup>5</sup> National Council of State Boards of Nursing, Inc., *2002 Profiles of Member Boards*, (Chicago, 2003) pp. 245-257. The four types of advanced practice nurses are certified nurse midwife, certified nurse anesthetist, clinical nurse specialist, and nurse practitioner. Each state determines which types of advanced practice nurses it recognizes. For example, New Jersey, New York, Pennsylvania, and Wisconsin do not recognize certified nurse anesthetists. Although Tennessee does not regulate or recognize advanced practice nurses as a separate group, the state does regulate prescriptive authority for qualified professional nurses.

<sup>6</sup> Alaska and Hawaii house their boards of nursing within the state Commerce Department; New Jersey’s board of nursing is within the Office of Attorney General; Georgia and Vermont have their nursing boards under the Secretary of State; Pennsylvania’s board of nursing falls under the Department of State; and Montana has structured its board of nursing under the state Labor Department.

**ACROSS-THE-BOARD RECOMMENDATIONS**



**Board of Nurse Examiners**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Update	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



# **Agency Information**

# Agency Information

## Agency at a Glance

The mission of the Board of Nurse Examiners for the State of Texas is to protect the public and promote the welfare of Texans by regulating the practices of professional nursing and vocational nursing. The State began regulating nursing in 1909, when the Legislature passed the Nursing Practice Act creating the Board and setting standards for licensure. In 1951, the Legislature distinguished between professional – or registered – nurses and vocational nurses by establishing the Texas Board of Vocational Nurse Examiners and creating a separate licensing act for vocational nurses. The Legislature combined the two boards and their licensing acts in 2003. The Board's main functions include:

- ◆ licensing qualified individuals to practice professional nursing and vocational nursing;
- ◆ authorizing qualified professional nurses to practice as advanced practice nurses and to carry out or sign a prescription drug order;
- ◆ establishing standards for and approving nursing education programs; and
- ◆ investigating and resolving complaints, and taking disciplinary action to enforce the Nursing Practice Act and Board rules.



*Information about the regulation of nurses and the practice of nursing in Texas can be found on the Board's website, [www.bne.state.tx.us](http://www.bne.state.tx.us).*

## Key Facts

- ◆ **Merger.** In 2003, the Legislature merged the Board of Vocational Nurse Examiners into the Board of Nurse Examiners, creating a single agency responsible for regulating all nurses in Texas. The Board consists of 13 members representing professional nursing, vocational nursing, nursing education, and the public.
- ◆ **Funding.** In fiscal year 2005, the Board operated with a budget of \$4.8 million. All costs are covered by licensing fees collected from the profession.
- ◆ **Staffing.** The Board employs a staff of 79, all based in Austin.
- ◆ **Education.** The Board currently has approved 213 nursing education programs in Texas, including 90 for professional nurses, 117 for vocational nurses, and six for advanced practice nurses.
- ◆ **Licensing.** The Board regulates 264,450 licensees, including 186,192 professional nurses and 78,258 vocational nurses. In fiscal year 2005, the Board issued 16,207 new licenses.
- ◆ **Enforcement.** In fiscal year 2005, the Board received 6,342 jurisdictional complaints and resolved 5,339. Of the resolved complaints, 1,246 resulted

in disciplinary action, with the largest category of violations relating to unprofessional conduct. The Board also took disciplinary action against 369 applicants for licensure because of criminal history.

## Organization

### Policy Body



*Thirteen Board members represent professional and vocational nursing, nursing education, and the general public.*

The Board of Nurse Examiners consists of 13 voting members – six nurses, three nurse faculty members, and four public members – appointed by the Governor, with advice and consent of the Senate, to serve staggered six-year terms. The six nurse members include one advanced practice nurse, two registered nurses, and three vocational nurses.<sup>1</sup> For the three nurse faculty members, one must come from a program that offers a baccalaureate degree for professional nurses; one must come from a program that offers an associate degree for professional nurses; and one must come from a program at an institution of higher education that prepares vocational nurses. The Governor designates the Board’s presiding officer, while Board members select other officers. The table, *Board of Nurse Examiners Policy Body*, identifies current Board members.

**Board of Nurse Examiners Policy Body**

Member	City	Qualification	Term Expiration
Linda R. Rounds, RN, FNP President	Galveston	Advanced Practice Nurse	2011
Richard Gibbs, LVN Vice President	Mesquite	Licensed Vocational Nurse	2007
Joyce Adams, RN	Houston	Vocational Nursing Program Faculty	2007
Deborah H. Bell	Abilene	Public Member	2011
George H. Buchenau, Jr., RN	Amarillo	Registered Nurse	2007
Virginia M. Campbell, RN	Mesquite	Registered Nurse	2007
Blanca Rosa Garcia, RN	Corpus Christi	Associate Degree Nursing Program Faculty	2011
Rachel Gomez, LVN	Harlingen	Licensed Vocational Nurse	2009
Brenda Jackson, RN	San Antonio	Baccalaureate Degree Nursing Program Faculty	2009
Beverley Jean Nutall, LVN	Bryan	Licensed Vocational Nurse	2011
Anita S. Palmer	Olney	Public Member	2009
Phyllis Caves Rawley	El Paso	Public Member	2009
Frank Sandoval, Jr.	San Antonio	Public Member	2007

The Board sets policies and adopts rules to carry out statutory provisions, determines eligibility for licensure for certain applicants, approves nursing education programs, gives final approval for disciplinary actions, and hires the agency’s Executive Director. The Board typically meets quarterly.

The Board has three standing subcommittees. The Eligibility and Disciplinary Committee consists of three Board members – two nurse members and one public member – and meets every month, except months when Board meetings are held. The committee determines applicants’ eligibility for licensure; approves default judgments issued by the State Office of Administrative Hearings; and makes decisions regarding disciplinary action, including emergency temporary license suspension, for licensees. The Board has delegated authority to the committee to make final decisions; therefore, the full Board does not approve the committee’s actions.

The Education Liaison Committee includes the three Board members who represent nursing education programs. This subcommittee, which meets via e-mail, advises Board staff on matters relating to faculty waivers, proposed curriculum revisions, and other issues related to nursing education. The Advanced Practice Liaison Committee consists of three members who advise Board staff on issues related to advanced practitioner waivers. Committee members communicate via e-mail, as well.

In addition, the Board has established four advisory committees consisting of Board members, stakeholders, and subject experts for assistance in developing rules and policies. The table, *Advisory Committees*, outlines the makeup and purpose of each advisory committee. The Board appoints other advisory committees as issues warrant.

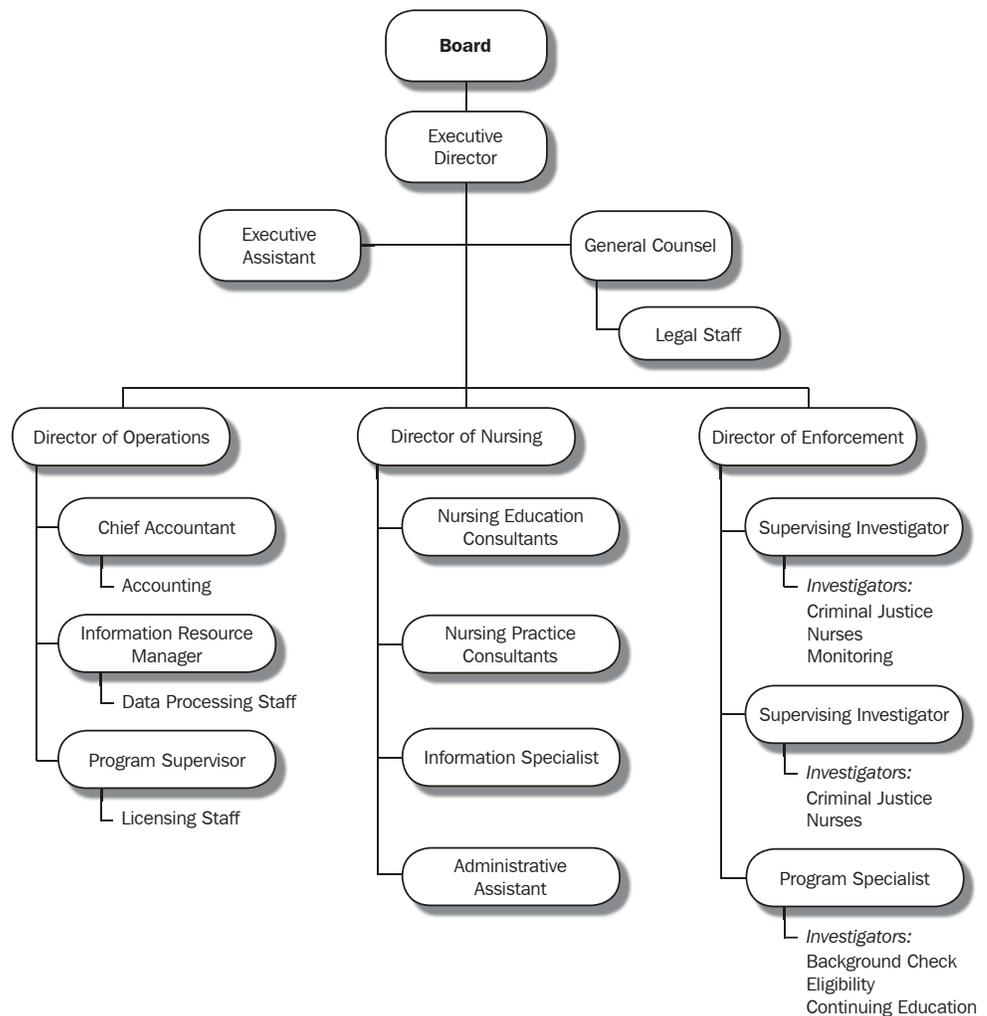
**Advisory Committees**

<b>Committee</b>	<b>Membership</b>	<b>Purpose</b>
Nursing Practice Advisory Committee	Representatives of nursing practice and education, nursing organizations, and state agencies involved with nursing; and one Board member, who serves as chair.	Identify, review, and analyze major practice issues that significantly affect or will potentially affect the practice of nursing.
Advisory Committee for Education	Nurses who are nurse educators from all levels of nursing education; members from various organizations and associations that represent nursing education programs; and one faculty representative from the Board, who serves as chair.	Identify, review, and analyze issues in the education and practice arenas that have or may have a significant impact on the regulation of nursing education in Texas, including approval and evaluation of graduates for licensure.
Advanced Practice Nursing Advisory Committee	Representatives of nursing practice and education, nursing organizations, and state agencies involved with advanced practice nursing; and one Board member with advanced practice authority who serves as chair.	Identify, study, and analyze major practice issues that significantly affect or will potentially affect advanced practice nursing and regulation of advanced practice nurses.
Advisory Committee on Licensure, Eligibility, and Discipline	Twelve members, including two Board members who serve as co-chairpersons. Representatives of nursing practice and education, and experts in areas relevant to licensure.	Review and evaluate agency rules for consistency in the Board’s eligibility and disciplinary processes.

## Staff

The Board has a staff of 79, all based in Austin. The Executive Director, under the direction of the Board, manages the agency's day-to-day operations and implements policies set by the Board. Employees work in four general areas: administration, operations, nursing, and enforcement. Staff processes license applications and renewals; reviews proposals for nursing education programs; drafts position statements regarding the practice of nursing; investigates complaints; and conducts informal settlement conferences, among other tasks. The *Board of Nurse Examiners Organizational Chart* depicts the structure of the agency.

**Board of Nurse Examiners  
Organizational Chart**



The Board is a member of the Health Professions Council (HPC), which coordinates selected functions among various health care regulatory agencies. Board staff provides assistance to HPC in areas such as budgeting, information technology, and human resources. Currently, the Board's Executive Director serves as Chair of the Health Professions Council.

Appendix A compares the agency’s workforce composition to the minority civilian workforce over the past three years. Generally, the Board met the civilian workforce percentages in most job categories. In those categories where the Board experienced difficulty meeting the percentages, the agency typically has a small number of employees.

## Funding

### Revenues

In fiscal year 2005, regulation of nurses generated revenue of about \$10.7 million through various fees and assessments. As a licensing agency, the Board covers its administrative costs through licensing and renewal fees, and deposits revenue generated through these fees into the State’s General Revenue Fund. In fiscal year 2005, revenue from licensing fees for nurses totaled more than \$7.4 million.

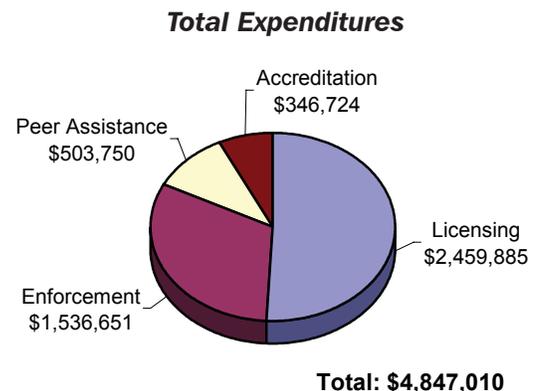
As part of their initial license and biennial license renewal fees, nurses pay several fees collected by the Board, but passed through to other state agencies, including fees for a criminal history check conducted by the Texas Department of Public Safety (DPS) and the FBI; the Texas Online system, which allows nurses to renew their licenses via the Internet; the Texas Center for Nursing Workforce Studies, which collects nursing educational and employment data and analyzes it for trends; and the Office of Patient Protection.<sup>2</sup> Nurses also pay a fee for the Board’s peer assistance program and the Board’s quarterly newsletter. The table, *License Fees*, details the licensing and renewal fees currently charged by the Board.

**License Fees**

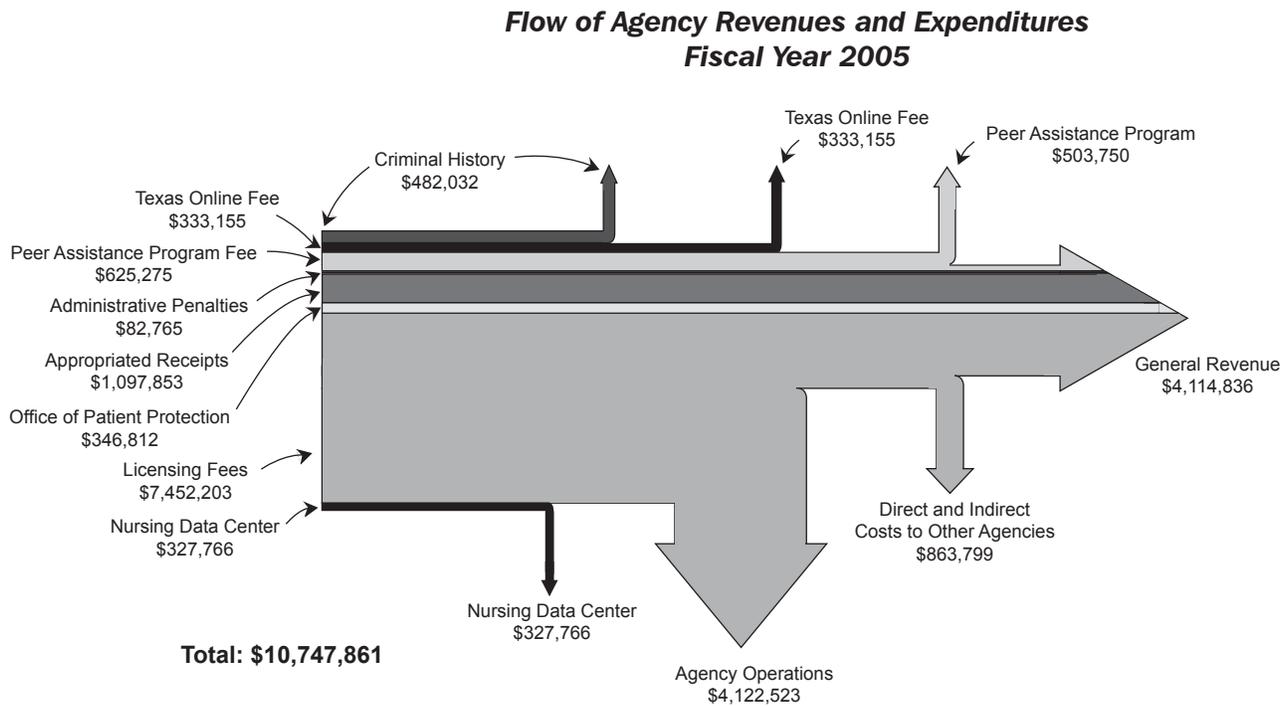
Description	Board Fee	Criminal History Check	Texas Online	Office of Patient Protection	Peer Assistance	Board Newsletter	Nursing Data Center	Total
License by exam	\$91	\$39	\$4	\$5	\$0	\$0	\$0	\$139
License by endorsement	\$151	\$39	\$5	\$5	\$0	\$0	\$0	\$200
Biennial license renewal (RN)	\$38	\$10	\$2	\$2	\$6	\$6	\$3	\$67
Biennial license renewal (VN)	\$41	\$10	\$2	\$2	\$6	\$4	\$2	\$67

### Expenditures

In fiscal year 2005, the Board spent \$4.8 million on four main areas – licensing, enforcement, accreditation, and peer assistance – as detailed in the pie chart, *Total Expenditures*. In addition, the Legislature has directed the Board and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees to cover direct and indirect costs appropriated to other agencies. Examples of these costs include rent and utilities paid by the Texas Building and Procurement Commission and employee benefits paid by the Employees Retirement System. In fiscal year 2005, these costs for the Board totaled \$863,799.



The chart, *Flow of Agency Revenues and Expenditures*, breaks down the agency's revenues and expenditures for fiscal year 2005. Subtracting the agency's operating expenses and the direct and indirect costs incurred by other agencies from total revenues, the Board generated more than \$4.1 million to be used for state purposes other than regulating nurses.



Appendix B describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2002 to 2005. The Board typically makes purchases in the special trade, professional services, commodities, and other services categories. The Board exceeded some of the State's HUB purchasing goals, but had difficulty meeting other goals because the agency purchases items or uses contracts not available from HUB vendors in several categories.

## Agency Operations

To ensure that only qualified individuals practice nursing in Texas, the Board approves applicants to take the licensing exam; issues and renews licenses to practice professional nursing and vocational nursing; authorizes advanced practice nurses; approves nursing education programs; provides guidance to nurses and employers on nursing practice issues; investigates complaints; and disciplines individuals who violate state laws or Board rules.

### Licensing

Under the Nursing Practice Act, the Board licenses two types of nurses – registered – or professional – nurses (RNs) and vocational nurses

(VNs).<sup>3</sup> Professional nurses record patients' medical histories and symptoms, help perform diagnostic tests and analyze test results, operate medical machinery, administer treatment and medications, and help with patient follow up and rehabilitation. Vocational nurses work under the supervision of a professional nurse, physician, dentist, podiatrist, or physician assistant, and provide basic bedside care, commensurate with their education and experience. Vocational nursing tasks include taking vital signs, such as temperature, blood pressure, pulse, and respiration. Vocational nurses also prepare and give injections and enemas, monitor catheters, apply dressings, treat bedsores, and give alcohol rubs and massages. Nurses work in a variety of settings, such as hospitals, doctors' offices, nursing homes and long-term care facilities, and home-health settings.

To obtain a nurse license in Texas, applicants must meet education and examination requirements specified in the Act and Board rules, and satisfy a criminal history background check – based on the applicant's fingerprints – conducted by DPS and the FBI. The textbox, *Becoming a Professional or Vocational Nurse*, details the requirements to receive a license as a professional nurse or vocational nurse in Texas. In fiscal year 2005, the Board regulated 264,450 nurses, including 186,192 professional nurses and 78,258 vocational nurses. In Texas, about 90 percent of nurses are female, and the average age of nurses is 45 years old.

#### ***Becoming a Professional or Vocational Nurse***

To receive a license to practice nursing in Texas, a person must meet the following requirements.

##### Professional Nurses

- ◆ Graduate from a Board-approved degree-granting or hospital-based nurse education program.
- ◆ Pass a national nursing exam for registered nurses.
- ◆ Undergo a criminal history background check.

##### Vocational Nurses

- ◆ Obtain a high school diploma or GED.
- ◆ Complete a Board-approved college-, hospital-, or proprietary school-based nurse education program.
- ◆ Pass a national nursing exam for practical nursing.
- ◆ Undergo a criminal history background check.

### **Education**

All applicants for licensure must complete a nursing education program, approved by the Board and either the Texas Higher Education Coordinating Board or the Texas Workforce Commission, that includes both didactic and clinical courses. Professional nursing programs are usually two- to four-year degree programs that prepare graduates to provide and manage direct nursing care for patients with predictable or unpredictable health care needs, including an emphasis on nursing care supervision. Vocational nursing programs typically are one-year certification programs that prepare graduates to provide assistive nursing care in structured health settings for patients experiencing common, well-defined health problems with predictable outcomes. No internship, residency, or prior work experience is required to obtain a nursing license in Texas.

### **Examination**

To become licensed as a nurse in Texas, applicants must pass the appropriate national examination – the National Council Licensure Examination for professional, or registered, nurses (NCLEX-RN) or the National Council Licensure Examination for vocational, or practical, nurses (NCLEX-PN). Developed by the National Council of State Boards of Nursing (NCSBN), these computerized exams assess an applicant's knowledge, skills, and abilities to practice entry-level nursing safely and effectively.

All 50 states use the national exams, which are administered at testing centers throughout the United States, its territories, and selected other countries. In fiscal year 2005, the Board approved 8,028 applicants to take the NCLEX-RN and 4,704 applicants to take the NCLEX-PN. Applicants do not take a jurisprudence exam as a condition of licensure.

### Advanced Practice Nurses

Advanced practice nurses (APNs), who are professional nurses with additional qualifications, work in collaboration with a physician, but may practice in an independent setting without direct supervision. These nurses perform advanced nursing tasks such as administering anesthesia, delivering a baby, or prescribing dangerous drugs and controlled substances. To practice as an APN, an individual must receive authorization from the Board and meet the requirements in the textbox, *Becoming an Advanced Practice Nurse*. The Board does not issue a separate license for APNs; instead professional nurses receive authorization to practice as an APN. APNs must maintain their professional – or registered – nurse license, however. In fiscal year 2005, a total of 10,650 APNs held authorization from the Board. The chart, *Advanced Practice Nurses*, outlines the four types of APNs recognized by the Board and the number of authorizations issued by the Board for each type.

#### **Becoming an Advanced Practice Nurse**

To receive authorization to practice as an APN, an individual must meet the following requirements.

- ◆ Hold a license as a professional nurse.
- ◆ Complete a master’s-level Board-approved or nationally accredited advanced nurse education program.
- ◆ Complete 400 hours of clinical practice or be a recent graduate of an APN program.
- ◆ Pass a national certification exam.
- ◆ Receive national certification in an advanced practice specialty from a Board-recognized national certifying agency.

### License Renewal

Nurses renew their licenses every two years and must complete 20 hours of continuing education (CE) during that period. At least 10 of those hours must be obtained from courses taught by Board-approved providers, or type I CE. The remaining 10 hours can consist of informal activities – or type

### Advanced Practice Nurses

Specialty	Responsibilities	Number Authorized
Nurse Practitioners (NPs)	Practice independently under a collaborative agreement with a physician, or work in hospitals, long-term care facilities, or health care agencies. Most NPs function primarily as clinicians. NPs diagnose and treat a wide range of acute and chronic illnesses and injuries, interpret lab results, counsel patients, develop treatment plans, and prescribe certain medications.	6,061
Clinical Nurse Specialists (CNSs)	Practice independently under a collaborative agreement with a physician, or work in hospitals, long-term care facilities, or other health care agencies. CNSs also function as administrators, researchers, policymakers, educators, or consultants.	1,414
Certified Registered Nurse Anesthetists (CRNAs)	Provide anesthetics to patients in collaboration with surgeons, anesthesiologists, dentists, podiatrists, and other health care professionals. CRNAs practice in every setting in which anesthesia is delivered, including hospitals; ambulatory surgical centers; and offices of dentists, podiatrists, ophthalmologists, plastic surgeons, and pain management specialists.	2,813
Certified Nurse Midwives (CNMs)	Provide primary health care to women, including evaluation, assessment, treatment, and referral to a specialist, if required. CNMs provide preconception counseling, care during pregnancy and childbirth, normal gynecological services, and care of the peri- and post-menopausal woman.	362

II CE – such as self-study, writing a paper, or auditing academic courses. Currently, all nurses must complete two hours of continuing education in bioterrorism response.<sup>4</sup> Advanced practice nurses must complete 20 hours of continuing education within their recognized advanced specialty area.<sup>5</sup> An APN who holds prescriptive authority must complete an additional five hours of continuing education in pharmacotherapeutics.

All nurses in good standing may complete their renewals through the Texas Online system. Ninety percent of professional nurses and 78 percent of vocational nurses renewed their licenses online in fiscal year 2005. Nurses who do not plan to practice can put their license on inactive status indefinitely. While on inactive status, nurses do not pay a license fee or complete continuing education requirements. Nurses who have been inactive for four years or less can reinstate their license by paying the appropriate fee and completing 20 hours of continuing education. Nurses who have been inactive for four or more years must also take a refresher course. In fiscal year 2005, the Board had 67,410 nurses on inactive status.

### **Out-of-State Nurses**

Nurses already licensed in other states frequently seek to practice nursing in Texas. Also, individuals who completed a nursing education program and took the national licensing exam in another state apply to the Board for a Texas license. The Board's processes for allowing these nurses to practice in Texas are outlined in the discussion below.

#### ***Nurse Licensure Compact***

Since January 1, 2000, Texas has participated in the Nurse Licensure Compact, which provides greater coordination and cooperation among states in the licensing and regulation of nurses, and facilitates interstate practice. Texas was one of the first three states to adopt the Compact; currently, 23 states have adopted it.<sup>6</sup> Modeled after the Driver's License Compact, the Nurse Licensure Compact allows a professional nurse or vocational nurse licensed in a Compact state to practice in any other Compact state without needing to hold an additional Texas license in each state, which benefits many nurses living or working near Texas' borders.

A nurse practicing under the Compact must comply with the laws and regulations of the state in which the patient is located at the time the nurse provides care. While Compact states can limit or revoke the privileges of any nurse to practice in that state, only the state in which the nurse holds a license – the home state – can take disciplinary action against a nurse's license.

#### ***Endorsement***

If nurses under the Nurse Licensure Compact change permanent residence, they must apply for licensure by endorsement in the new home state. Nurses licensed in a state that does not participate in the Compact also must go through the endorsement process to receive a license to practice nursing in Texas. Through endorsement, the Board recognizes other states' education and examination requirements if they are substantially equivalent to the Board's. These applicants pay an out-of-state licensing fee and undergo the



*The Nurse  
Licensure Compact  
provides greater  
coordination  
among states in  
regulating nurses.*

same state and federal criminal history background checks as Texas applicants. The Board typically issues an out-of-state nurse a temporary license for up to 120 days, during which time Board staff ensures that the applicant has a clean compliance history in the other states where licensed.

### Nursing Education

The Board approves education programs in Texas for professional nurses, vocational nurses, and advanced practice nurses. Only graduates from Board-approved nursing education programs are eligible to take the national licensing exam and apply for a license to practice nursing in Texas. The flow chart, *Nursing Education Program Approval Process*, on page 8 in Issue 1 of this report, details the steps a nursing education program must undergo to receive Board approval.

In addition to receiving Board approval, nursing education programs in Texas also must have approval from the Texas Higher Education Coordinating Board or the Texas Workforce Commission. Education programs may also seek voluntary accreditation from a national accrediting agency, such as the Nation League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

To establish a nursing education program in Texas, an institution must submit a proposal to the Board. The proposal covers areas such as need for the program, financing, faculty qualifications, admissions criteria, curriculum, and affiliated clinical facilities and settings. Board staff works with school and program staff throughout the approval process. Staff also conducts a site visit of the proposed program’s facilities. Staff then presents the final proposal to the Board in a public hearing.

The Board can give initial approval of the proposal, defer action on the proposal, or deny the proposal. After a program’s first class of students graduates and takes the appropriate national exam, the Board grants full approval to programs that meet all of the Board’s requirements, such as attaining an 80 percent pass rate on the licensing exam. The average time for the Board to grant initial approval to a new nursing education program is between six months and nine months, although at times can vary from three months to more than a year.

In fiscal year 2005, the Board approved four new professional nursing programs and one new vocational nursing program, bringing the current total of nursing education programs in Texas to 90 professional programs, 117 vocational programs, and six advanced practice nursing programs. The table, *Texas Nursing Programs*, details the type and number of Board-approved nursing education programs in Texas.

**Texas Nursing Programs**

Type of Program	Number of Programs
<b>Professional Nursing</b>	<b>90</b>
Diploma Nursing	2
Associate’s Degree	57
Bachelor’s Degree	26
Basic Master’s Degree	1
Bachelor’s Degree for RNs	4
<b>Vocational Nursing</b>	<b>117</b>
Community College-Based	100
University-Based	3
Proprietary	6
Hospital-Based	5
Military	2
Dual Hospital-Based/Proprietary	1
<b>Advanced Practice Nursing</b>	<b>6</b>
<b>Total</b>	<b>213</b>

Once a program has received Board approval, Board staff continues to monitor the program. The Board awards continuing approval status through review of required annual reports submitted by the programs, national exam pass rates, scheduled survey visits, and other pertinent information. If the national exam pass rate for a program's graduates falls below 80 percent in any year, the program must submit a self-study, which details the program's plan to regain compliance with Board requirements. The Board may sanction a program and change its approval status if the program does not continue to meet Board requirements. In fiscal year 2005, the Board sanctioned two professional nursing programs and 10 vocational nursing programs.

### **Nurse Practice**

Through staff – most of whom are nurses – in its Nursing Practice Division, the Board provides nurses, employers, and the public with information on the Nursing Practice Act, Board rules, and scope-of-practice issues. Staff also handles all issues related to advanced practice nurses, including evaluating criteria for applicants seeking authorization from the Board to practice as an APN, and provides information to other state agencies in developing rules and policies. In fiscal year 2005, Board staff responded to approximately 750 calls and 650 e-mails related to practice issues each month.

In addition, Board staff conducts voluntary jurisprudence workshops throughout the state to keep nurses up to date on legal and ethical issues. While some workshop participants attend to satisfy disciplinary requirements, others use the workshops to satisfy continuing education requirements for license renewal. In fiscal year 2005, the Board held 10 workshops with a total of 2,390 participants.

Board staff also publishes a quarterly newsletter, which includes information on relevant practice-related issues, frequently asked questions, and explanations of new Board rules. The Board uses the newsletter to clarify nurse practice issues, identify nurses who have been disciplined by the Board, and notify nurses and employers about nurse imposters.

Staff annually updates the Board's position statements on commonly asked practice questions and relevant practice issues, such as the performance of laser therapy by a nurse or a nurse's responsibility for initiating standing orders from a physician. Before the statements are adopted by the Board, staff seeks stakeholder input through the Board's Nursing Practice Advisory Committee. Examples of topics covered by these practice position statements are in the accompanying textbox. Staff assists with the Board's eligibility and disciplinary activities by providing expert testimony on the Nursing Practice Act and Board rules at contested case hearings before the State Office of Administrative Hearings (SOAH).



*Board staff provides nurses, employers, and the public with information on state laws and regulations, as well as scope-of-practice issues.*

#### **Practice Position Statements**

Examples of topics covered by Board staff in practice position statements include the following.

- ◆ Nurses Carrying out Orders From Physician Assistants
- ◆ Role of the LVN in the Pronouncement of Death
- ◆ Nurses with the Responsibility for Initiating Physician Standing Orders
- ◆ Performance of Laser Therapy by RNs or LVNs
- ◆ The Role of the Nurse in Moderate Sedation
- ◆ Delegated Medical Acts
- ◆ Role of the RN and LVN as School Nurses
- ◆ Nurses Engaging in Reinsertion of Permanently Placed Feeding Tubes



*In fiscal year 2005, the Board conducted 12,734 criminal history background checks, 13 percent of which resulted in positive hits.*

## **Criminal History Background Checks**

The Board conducts criminal history background checks on all applicants for licensure. In addition, the Board is phasing in background checks on all currently licensed nurses by running checks on 10 percent of license renewals each year. Run by DPS and the FBI, the background checks are based on fingerprints submitted by the applicant or licensee. The Board also runs background checks on nurses who are the subject of a complaint if the allegations pertain to criminal history.

The Board requires the background checks to ensure that nurses do not have a criminal history involving moral turpitude that could affect their ability to practice nursing. When determining whether to issue or renew a license, the Board considers convictions for felonies and misdemeanors, deferred adjudication, pretrial diversion, and pending charges. If a background check reveals that an applicant or nurse has a relevant criminal history, Board staff opens an enforcement case and investigates the case as it would a complaint.

A criminal history does not always preclude an individual from holding a nurse license in Texas. After reviewing the past activity, the Board may determine the activity does not relate to the practice of nursing and issue an unencumbered license, or may offer the applicant or nurse a license under a Board order with stipulations or practice limitations. In fiscal year 2005, the Board ran 12,734 background checks, 13 percent of which resulted in positive hits.

### **Declaratory Orders**

The Board also provides a mechanism for students enrolled or planning to enroll in nursing education programs to determine their eligibility for licensure before they submit their application. Students who have reason to believe that they may be ineligible for a professional nurse or vocational nurse license may request a declaratory order from the Board, in which staff conducts criminal history background checks and investigations for these students, just as the Board would for a regular applicant for licensure. If the Board determines that a student is not eligible for a license, the student can appeal the Board's decision to SOAH. In fiscal year 2005, the Board processed 1,891 requests for declaratory orders. Of these, the Board approved 1,432 without stipulations, 368 with stipulations, and denied 91.

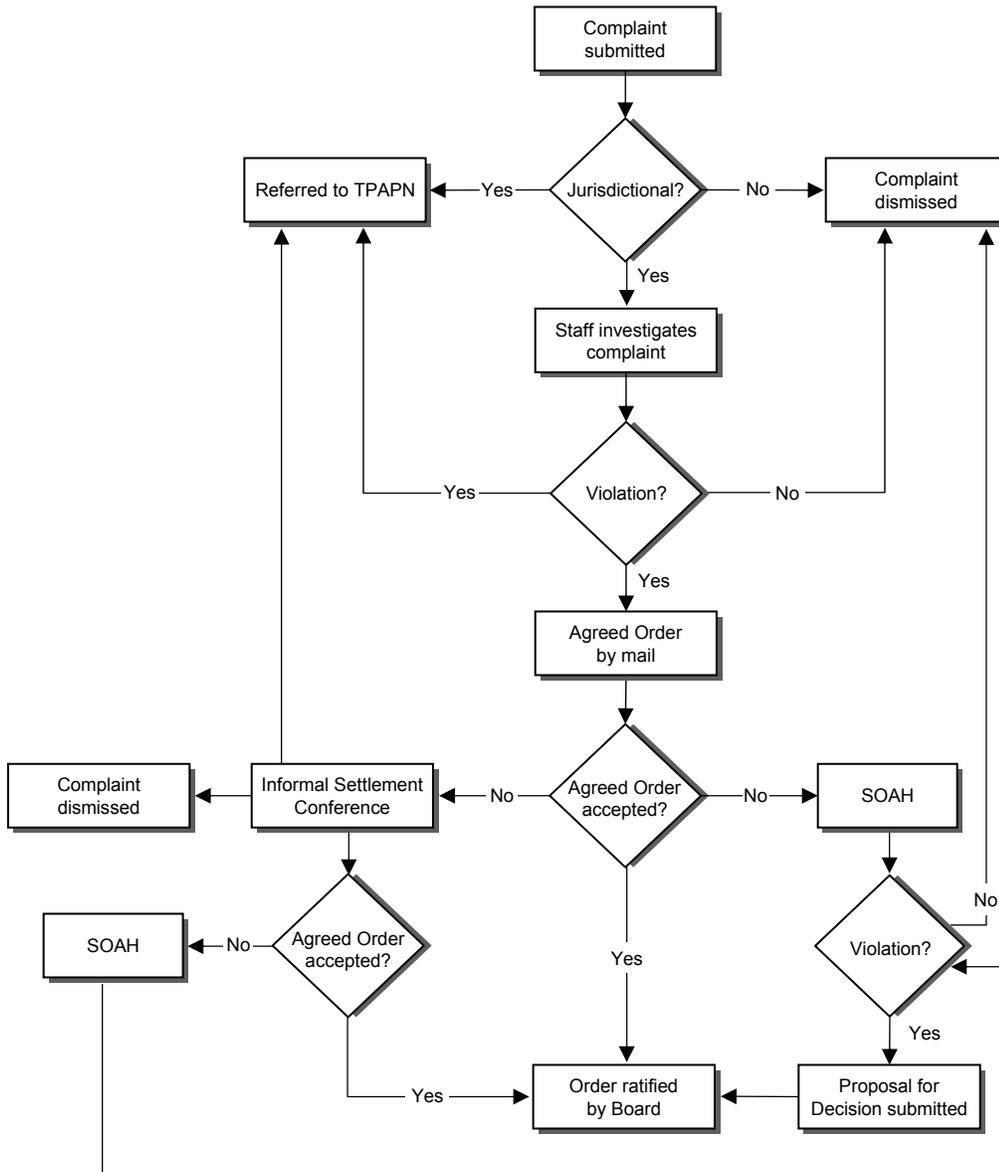
### **Enforcement**

The Board enforces the Nursing Practice Act and Board rules by investigating complaints against licensees and applicants for licensure, sanctioning nurses with disciplinary action, and monitoring violators for compliance. The flow chart on page 93, *Board of Nurse Examiners Enforcement Process*, illustrates how the Board resolves complaints.

### **Investigations**

State law requires that nurses, peer review committees, nursing education programs, employers, and professional associations report nurses to the Board who violate professional conduct, standard-of-care, or fitness-to-practice

### Board of Nurse Examiners Enforcement Process



standards. Failure to comply with these mandatory reporting requirements can result in disciplinary action by the Board.

The Board generates most of the agency’s total complaints through identification of eligibility issues related to a student’s, applicant’s, or nurse’s criminal history. Most of practice-related complaints come from peer review committees. In fiscal year 2005, the Board received 6,342 jurisdictional complaints, of which 3,889 related to professional nurses and 2,453 related to vocational nurses. Since the Board began conducting criminal history background checks in 2003, the Board has experienced a dramatic increase in enforcement activity, as illustrated by the chart, *Investigations Conducted*, on page 27 in Issue 2.



*When an investigation shows that no violation occurred, the Board expunges the complaint from a nurse's file.*

Complaints must be in writing, and Board staff screens complaints to ensure they are jurisdictional. Jurisdictional complaints are given a priority level, according to the seriousness of the alleged violations, then assigned to one of the Board's investigators.<sup>7</sup> Complaints alleging practice issues or unprofessional conduct are assigned to an investigator with a nursing background; complaints regarding other violations, such as fraud or substance abuse, are assigned to an investigator with a criminal justice background. All staff investigators work out of the Board's office in Austin.

After gathering documentation and records related to the case, the investigator prepares a case review, which includes a recommendation regarding further action. If staff closes the case because the investigation showed no violation occurred, the complaint is expunged from the nurse's file. However, if staff closes a case without prejudice, the Board retains the complaint and all evidence for two years. Should the Board receive additional complaints relating to the nurse during that time, the Board may reopen the previously closed case.

If the investigation finds that a violation of the Act or Board rules occurred, staff may send the nurse an agreed order outlining the violations and the Board's proposed disciplinary action. If the nurse accepts the terms of the agreed order, the nurse signs the order and returns it to the Board. If the nurse does not sign the agreed order, or if the Board does not offer an agreed order, staff may hold an informal settlement conference (ISC) or file charges at SOAH. All agreed orders must be approved by the Board.

### **Hearings**

The Board holds an ISC between the nurse and a panel of Board staff when staff wants to hear directly from the nurse or wants the nurse to provide more information. The Board generally grants ISCs to nurses who request them. The ISC panel includes the Executive Director, the Director of Enforcement, the investigator who worked on the case, and a staff attorney. Other Board staff, such as staff nurses, may attend as well. The ISC panel can close the case, recommend an agreed order, file charges at SOAH, or refer cases that involve impairment to the Texas Peer Assistance Program for Nurses. In fiscal year 2005, Board staff held 163 ISCs.

The Board must approve all agreed orders resulting from an ISC. The Board has the option of accepting the order, rejecting the order and sending it back for another ISC, or modifying the order, which requires the respondent to agree to the changes. The table, *Informal Settlement Conferences*, provides statistics on the results of ISCs held by the Board in fiscal year 2005.

**Informal Settlement Conferences  
FY 2005**

	<b>ISCs Held</b>	<b>Dismissals</b>	<b>Agreed Orders</b>	<b>Referrals to SOAH</b>
LVNs	48	6	40	2
RNs	115	15	96	4
Total	163	21	136	6

Sanctions available to the Board include revocation, suspension, probation, public reprimand, administrative penalty, and restriction. The Board may include other conditions in a final disposition, such as requiring the nurse to

take jurisprudence, ethics, or continuing education courses; perform public service; or submit to care, counseling, or treatment by a designated health provider. The Board also may summarily suspend a nurse's license when faster action is required because the Board believes allowing the nurse to continue practicing poses a continuing and imminent threat to public welfare.

If the Board opts not to hold an ISC, a nurse does not sign an agreed order, or the Board does not accept an agreed order recommended by staff, the Board sets a contested case hearing at SOAH before an administrative law judge who recommends action in the case, subject to final approval by the Board. In fiscal year 2005, the Board set 71 cases at SOAH, with SOAH actually hearing 20 cases. The table, *Disciplinary Actions*, highlights information regarding the Board's disposition of complaint cases in fiscal year 2005. This information does not include action taken on licenses issued to new applicants. In fiscal year 2005, the Board took an average of 152 days to resolve complaints.

The Board also responds to complaints of minor incidents. Minor incidents include errors and other incidents that do not pose a continuing risk of harm to patients.<sup>8</sup> The Board can dismiss minor incidents, although the Board keeps records of minor incident complaints to detect patterns of behavior necessitating corrective action. A series of minor incidents could lead the Board to open an investigation against a nurse.

**Disciplinary Actions  
FY 2005**

Type of Allegation	Enforcement Actions								
	Revocation*	Suspension	Restriction	TPAPN	Reprimand	Warning	Administrative Penalty	Remedial Education	Total Board Actions
Lack of Fitness to Practice	13	5	1	11	2	1	0	0	33
Standard of Care	37	8	0	5	13	32	1	53	149
Unprofessional Conduct**	101	28	2	61	28	71	135	53	479
Intemperate Use of Alcohol or Drugs	77	15	1	37	8	3	1	2	144
Felony or Misdemeanor Involving Moral Turpitude	64	7	0	2	3	3	0	5	84
Fraud or Deceit	5	0	0	1	1	0	0	0	7
Revocation or Suspension in Another Jurisdiction	46	9	0	0	2	2	1	2	62
Other Rules (CE, Noncompliance with Board Orders)	62	12	0	2	5	9	181	2	273
Other Statutory Violation ***	6	1	0	3	1	0	2	2	15
<b>Total Allegations</b>	<b>411</b>	<b>85</b>	<b>4</b>	<b>122</b>	<b>63</b>	<b>121</b>	<b>321</b>	<b>119</b>	<b>1,246</b>

\* This category includes 198 revocations by the Board and 213 surrenders.

\*\* Unprofessional conduct includes sexual misconduct.

\*\*\* The Board could not determine the type of statutory violation from its computer data files.

For nurse imposters – or individuals practicing without a license – the Board reports the case to the District Attorney. The Board may also publish a nurse imposter’s picture in the Board’s newsletter. In fiscal year 2005, the Board received 27 complaints of individuals posing as licensed nurses and referred 10 of those cases to the District Attorney.

### **Peer Assistance**

The Board contracts with the Texas Nurses Association (TNA) to provide assistance to chemically dependent and mentally impaired professional and vocational nurses. The Texas Peer Assistance Program for Nurses (TPAPN), which operates through TNA’s nonprofit Texas Nurses Foundation, is funded through a \$6 surcharge on nurse license renewals. In fiscal year 2005, the Board spent \$503,750 on the program.

The peer assistance program does not pay for actual treatment, but provides professional referral for treatment and offers support and monitoring of participants while they participate in the program. Participants enter the program voluntarily; by referral from the Board or a third party, such as an employer; or through a Board order. Program staff notifies the Board if a nurse admitted to the program through a Board order or third-party referral does not complete the program. Nurses who enter the program voluntarily, and those who enter through third-party referral and complete the program, remain confidential and are not disclosed to the Board. The Board may take additional disciplinary action against nurses who do not comply with a Board order to enroll in TPAPN or who do not complete the program’s requirements. In fiscal year 2005, 722 nurses participated in the peer assistance program, including 461 ordered or referred by the Board.

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<sup>1</sup> The Board members who are appointed to the registered nurse and vocational nurse positions may not be members of a nurse faculty. Texas Occupations Code, sec. 301.051(a)(1)(B)-(C).

<sup>2</sup> The Texas Legislature abolished the Office of Patient Protection in 2005. However, the requirement that the Board – and other health licensing agencies – collect a fee from applicants for licensure and existing licensees remains. The Board deposits the fees it collects into General Revenue. Texas Occupations Code, sec. 101.307.

<sup>3</sup> Most states use the title “practical nurse.” Only Texas and California refer to these practitioners as “vocational nurses.”

<sup>4</sup> The requirement that nurses participate in continuing education relating to bioterrorism response expires on September 1, 2007. Texas Occupations Code, sec. 301.305. Nurses can fulfill the bioterrorism response CE requirement as either Type I or Type II CE. Texas Administrative Code, Title 22, Part 11, rule 216.3(5)(B).

<sup>5</sup> The CE hours completed by an advanced practice nurse satisfy the CE requirements for renewal of the nurse’s professional nurse license and the APN authorization.

<sup>6</sup> Colorado, Kentucky, and New Jersey are in the process of adopting the Compact.

<sup>7</sup> Texas Occupations Code, sec. 301.204(a)(1).

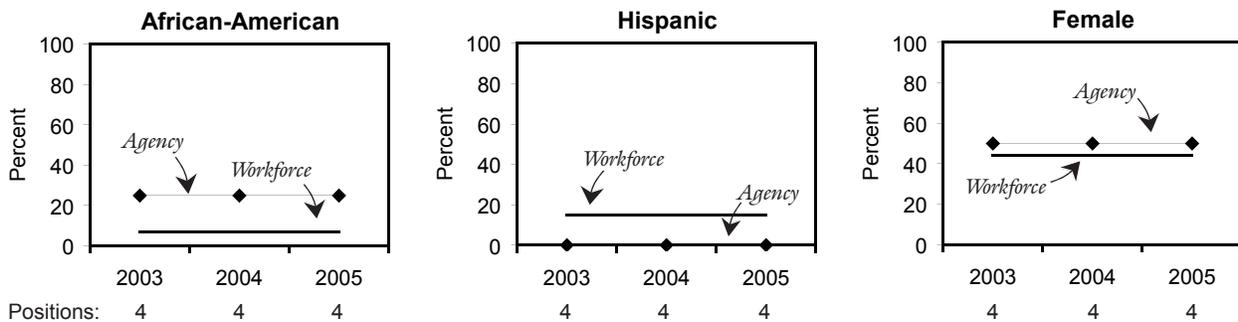
<sup>8</sup> Texas Occupations Code, sec. 301.419(a).

# APPENDICES

## Equal Employment Opportunity Statistics 2003 to 2005

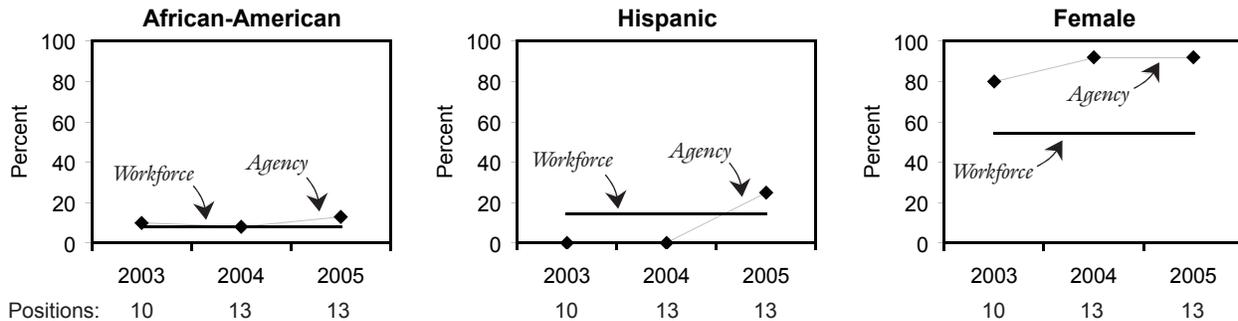
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Board of Nurse Examiners' employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. The Board met the civilian workforce percentages in most job categories. In those categories where the Board experienced difficulty meeting the percentages, the agency typically had a small number of employees in the category.

### Administration



The Board exceeded the civilian workforce percentages for African-Americans and females in the administration category every year, but fell below the percentages for Hispanics every year. However, in each of these years, the Board had a small number of employees in this category.

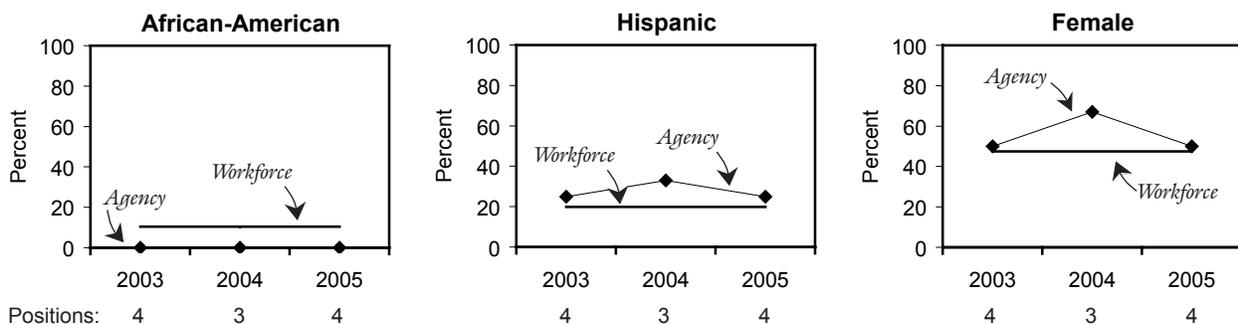
### Professional



In the professional category, the Board fell short of the civilian workforce percentages for African-Americans in fiscal year 2004, and for Hispanics in fiscal years 2003 and 2004. The Board greatly exceeded the percentages for females every year.

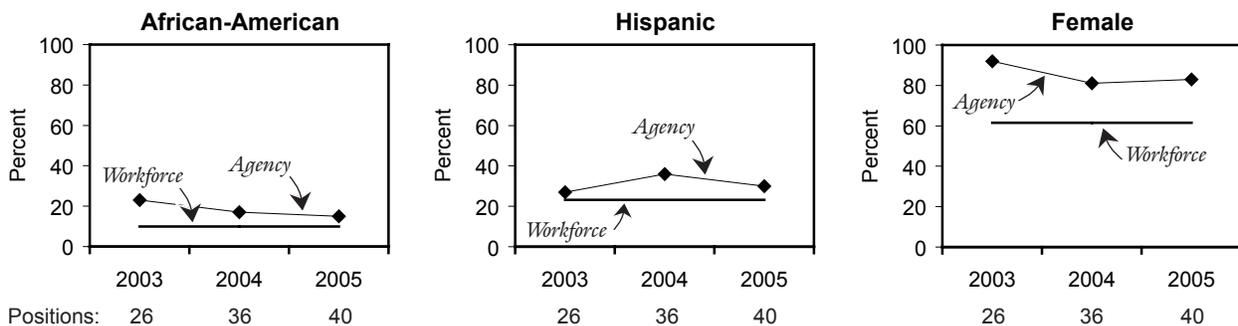
# Appendix A

## Technical



The Board exceeded the civilian workforce percentages for Hispanics and females in the technical category every year, but did not meet the percentages for African-Americans in any year. However, the Board had very few employees in this category.

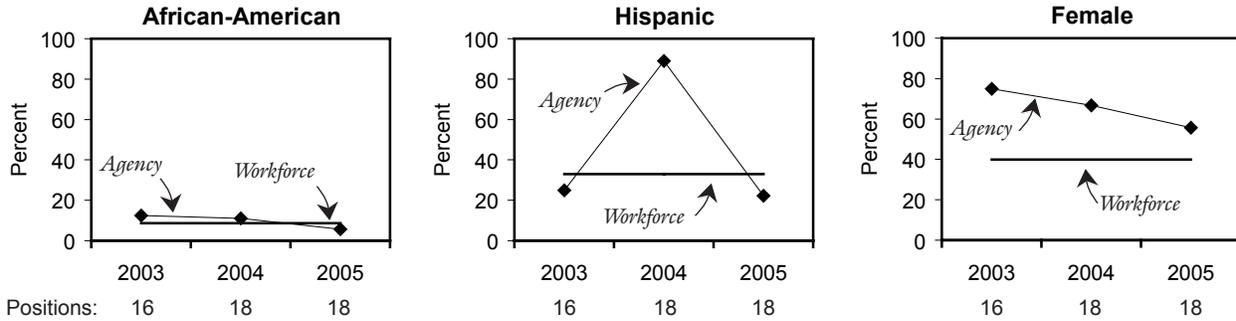
## Administrative Support



The Board exceeded the civilian workforce percentages every year for African-Americans, Hispanics, and females in the administrative support category.

# Appendix A

## Service/Maintenance



In the service/maintenance category, the Board exceeded the civilian workforce percentages for African-Americans in fiscal years 2003 and 2004, Hispanics in fiscal year 2004, and females every year. The Board fell short of the percentages for African-Americans in fiscal year 2005 and for Hispanics in fiscal years 2003 and 2005.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.



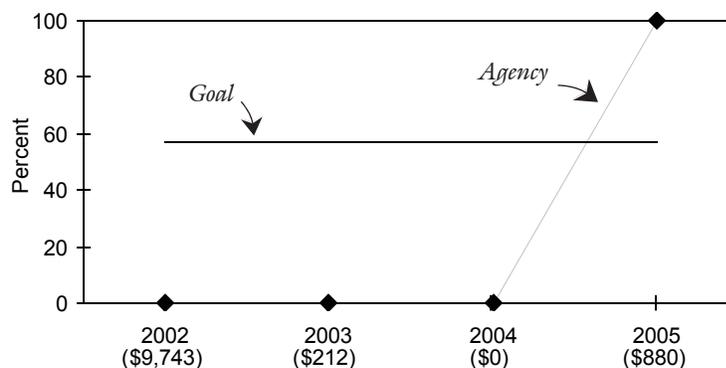
## Historically Underutilized Businesses Statistics

### 2002 to 2005

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Board of Nurse Examiners' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The Board exceeded some of the State's HUB purchasing goals, but had difficulty meeting other goals because the agency purchases items or contracts that were not available from HUB vendors in several categories. The Board met other HUB-related requirements, such as appointing a HUB coordinator and establishing a HUB policy. However, the Board did not comply with some HUB requirements, such as developing a mentor-protégé program or establishing a program of HUB forums, as agency resources cannot support such programs.

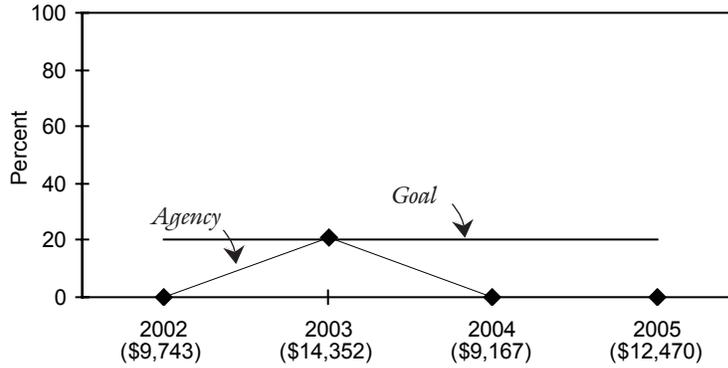
#### Special Trade



The Board fell short of the state's goal for spending in special trade in fiscal years 2002, 2003, and 2004, when the Board did not spend any money with HUBs in this category. In fiscal year 2004, the Board did not spend any money at all for special trade services. The Board greatly exceeded the State's goal in fiscal year 2005, when 100 percent of the money spent in special trades going to HUBs. Because the Board's offices are in the Hobby Building, which is maintained by the Texas Building and Procurement Commission, the Board rarely makes any purchases in the special trade category.

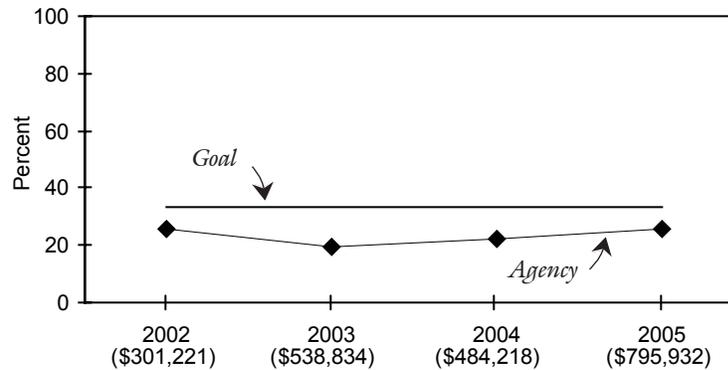
## Appendix B

### Professional Services



The Board did not spend any money with HUBs in the professional services category in fiscal years 2002, 2004, and 2005, and thus fell short of the State's goal for HUB spending in those years. In fiscal year 2003, however, the Board met the State's goal in this category. Purchases in this category include accounting services for assistance with the Board's annual financial report and use of expert witnesses to review enforcement and practice information not available from Board staff.

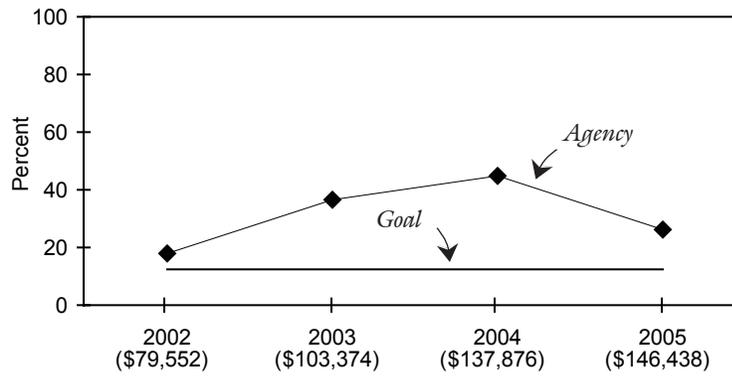
### Other Services



In the other services category, the Board fell below the State's goal for spending each year. The Board's contract for its peer assistance program, which comes from a sole-source provider, makes up more than half of the agency's expenditures in this category.

## Appendix B

### Commodities



The Board exceeded the State's goal for spending in commodities every year. The majority of the Board's expenditures in this category include paper, computers, printing, hotels, and leases on copy machines.

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<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.



## Staff Review Activities

During the review of the Board of Nurse Examiners, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Board meetings and reviewed minutes from past meetings; met with Board members; conducted interviews with and solicited written comments from stakeholder groups and the public; reviewed agency documents, reports, complaint files, data, state statutes and rules, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff performed the following activities unique to this agency.

- ◆ Accompanied Board staff on a survey visit of a proposed new nursing education program.
- ◆ Met with administrators and faculty of several nursing education programs.
- ◆ Toured rural and urban hospitals, and met with hospital administrators and hospital nursing staff.
- ◆ Attended informal settlement conferences and eligibility and disciplinary hearings conducted by the Board.
- ◆ Attended a contested case hearing conducted by the State Office of Administrative Hearings.
- ◆ Observed the operations of the Board's customer call center.
- ◆ Attended meetings of the Board's Advisory Committee for Education and Advanced Practice Nursing Advisory Committee.
- ◆ Met with or interviewed staff from the Texas Department of Aging and Disability Services, Texas Health and Human Services Commission, Texas Department of State Health Services, Texas Statewide Health Coordinating Council, Texas Center for Nursing Workforce Studies, Texas Higher Education Coordinating Board, Texas Workforce Commission, Texas Department of Public Safety, State Office of Administrative Hearings, Texas State Board of Pharmacy, Texas Medical Board, and Texas Education Agency.



**SUNSET REVIEW OF THE  
BOARD OF NURSE EXAMINERS**

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