

## REPORT OF THE EXECUTIVE DIRECTOR

### NATIONAL ISSUES

**APRN Consensus Paper:** Since the Board adopted the paper titled, *Consensus Model for APRN Regulation: Licensure, Accreditation, Certification, and Education* in July, the National Council of State Boards of Nursing (NCSBN) adopted model Statute and Rules and Regulations to implement the model and the NCSBN Board of Directors endorsed the paper. Other organizations and Boards are also approving/endorsing the paper at this time. A group has been formed to monitor and support implementation. The group, LACE, will consist of representatives of the four entities.

**Fraud Imposter Tracking:** The NCSBN Disciplinary Resources Advisory Panel defines an imposter as someone claiming to be a nurse who is not authorized to be a nurse. Imposters include the individual who practices as a nurse but is not legally authorized (licensed) to be a nurse (may have some education but does not meet licensure requirements); instances where a license is fraudulently obtained through use of false credentials; or a person who practicing or attempting to practice by assuming the entire identity of a properly licensed nurse (both practicing without authority and presenting fraudulent credentials).

Currently, boards of nursing can send information about imposters to NCSBN in the form of a PDF / word document. NCSBN compiles the information from the Boards and publishes them in the web site for viewing. A new proposal being considered is the Fraudulent Imposter Tracking Tool which will allow boards to track incidents of fraud and nurse imposter through an online portal, sharing the fraudulent documents, searching for individuals practicing or presenting false credentials, and the ability to create a repository on how to identify fake documents; fraudulent schools and organizations; and nurse imposters. Anthony Diggs is participating in the group that is developing the Fraud Imposter Tracking System.

**Student Criminal Background Checks Grant:** The Board received a \$50,000 grant from the National Council of State Boards of Nursing through its federal grant for licensure portability. The purpose of the grant is to aid in a smooth implementation of Criminal Background Checks (CBCs) for student nurses. The grant is subject to audit and its impact will be monitored by NCSBN. All implementation activities and reports must be completed by August 1, 2009 per federal policy for year two funding. In September, the student criminal background check process began on a voluntary basis. Schools of nursing who are interested in having their students screened before enrollment or clinical experiences may chose to participate in the project. It is anticipated at this time that should this program continue, it will require additional funding in the next biennium and such request was incorporated into the Legislative Appropriations Request for the FY 10-11 biennium.

**Healthcare Integrity and Protection Data Bank:** HIPDB is a federal data bank that the Board is required to report disciplinary actions to within 30 days of taking action. Because the Board reports disciplinary data to the NCSBN Nursys data base to share with all Boards of Nursing, we chose to have NCSBN be our agent in reporting to HIPDB, thereby avoiding duplication of effort. Recently many states, including Texas, were notified by the HIPDB that they are non-compliant

with the 30 day reporting requirement. In investigating the problem, NCSBN determined that the data sent to us by Healthcare Research and Services Agency (HRSA), the agency responsible for the data bank, for the first quarter of 2008 (Jan 1-Mar 31), was not an accurate depiction of our board's compliance since it included clean-up data. The clean-up data simply reflects that most missing data elements; for example, date of birth or name of the nursing education program may have been omitted from the electronic file. In other words, the discipline data is complete but an additional data element is missing from the nurse's file. HRSA clarified to NCSBN that it will not refer any of the notified nursing boards for publication in the Federal Register as a penalty for non-compliance with the 30 day rule. NCSBN has increased their reports to HIPDB to daily updates and they are communicating missing data to participating boards weekly. This has enabled us to make corrections more timely. Staff have worked on this HIPDB Compliance Project for the past 3 months and improved compliance. I will have an updated report at the Board meeting regarding the Compliance report that staff expect to receive by October 13<sup>th</sup>.

**Nursys Data Integrity Project:** The Nursys data base at NCSBN houses licensure and disciplinary data for most boards of nursing. This data base 1.) creates a national data base for verification of licensure and sharing of disciplinary information, and 2.) collapses licensure files on individual nurses licensed in more than one jurisdiction. The primary aim of the project is to address gaps and anomalies in the Nursys data, which ultimately helps the application serve its customers. Staff has been provided a spreadsheet of missing data elements or inaccuracies in data and we are working with NCSBN staff to explain or correct data.

## **STATE ISSUES**

**Health Professions Council:** HPC has been working on a data base project during the past two quarters. The Council has been working with the Department of Information Resources (DIR) to develop a licensure data base (software) program for five of the Council member agencies who have outdated data bases. DIR has awarded contracts to vendors. With the information gained through their research, HPC will amend their Legislative Appropriations Request to request funding for this project during the next biennium, including an information technology FTE for this project.

**Fraudulent Nursing Educational Program Update:** An informational report was provided to Board members at the April 2008 Board meeting regarding the presence of fraudulent nursing educational programs, and the following five schools were identified as operating in Texas without Board approval:

Career Advanced  
Esther Medical Tutorial and Nursing Review Center  
IF Tech  
Merit Excellence Institute  
Vocational Training Educational Center or VTEC

The Texas Workforce Commission (TWC) ordered the schools to cease and desist operation. TWC referred all of the cases to the Office of the Attorney General (OAG) on June 26, 2008 with the request that the OAG file lawsuits to stop operations of the fraudulent nursing programs. Temporary injunctions have been entered against VTEC and Esther Medical and trials are set in both of these matters. Other lawsuits may be filed.

## BOARD ISSUES

**BNE Bulletin Articles:** The October issue of the *Board of Nursing Bulletin* contains articles on how to contact the Board, staff participation in national regulatory activities, and the Board's Innovations in Nursing Education Workshop.

**Board Development:** Generally, at each board meeting, a board development session is held. We are currently focusing on disciplinary processes to educate new board members and refresh experienced Board members. At this Board meeting Matthew Ferrara, PhD, will do a presentation on Forensic Psychological Evaluations with Sexual Predator Component. The Board will also receive training on our new software for accessing board materials electronically.

**October Board Retreat:** The Board Retreat to be held on October 22nd. The retreat will be held at the Lady Bird Johnson Wildflower Center in south Austin. <http://www.wildflower.org/> The retreat is a board development session designed to assist the Board in governance and communications. The Board will have an opportunity to hear from two experts in these fields. In the morning, Joey Ridenour, Executive Director of the Arizona Board of Nursing will be presenting on Board Governance. Joey is also a former President of the National Council of State Boards of Nursing. Prior to her position as ED of the AZ BON, Joey served as a Board member of the AZ BON. And before her regulatory experience, she was a hospital nursing administrator.

In the afternoon, Kelly Vito, with EGAPP, Inc. (Excellence in Government Accountability and Performance Practices ) will present on effective communication.

Ms. Vito is an independent consultant and instructor providing a broad range of strategic human resource assistance and training to executive level management and agencies in state and local government. Prior to consulting and teaching, Ms. Vito served as the Texas State Classification Officer, the highest ranking HR executive in the State. Dress casually but bring a jacket or sweater in case the indoor temperature is cool.

## AGENCY ISSUES

**Staff:** You will meet new investigators and a new nurse consultant at the Board meeting. We are pleased to welcome the following new investigators to the staff.

Bonnie Krznarich was promoted to the position of Investigator in August 2008 from the position of Administrative Technician. Ms. Krznarich was originally began her employment with the Board in June 2006, and her previous experience includes: three years as an Emergency Services Dispatcher with Carlsbad Police Department, Carlsbad, New Mexico; one year as a Police Dispatcher with the San Jose Police Department, San Jose, California; one year as an Administrative Assistant with the Denton County District Attorney's Office; and one year as a Administrative Assistant with the Executive Clemency Section of the Texas Department of Criminal Justice.

Christen M. Werley was hired as an Investigator on August 18, 2008, and completed a Baccalaureate Degree in Criminal Justice from Texas State University with a minor in Forensic Psychology, in May 2005. Christen was a member of the Texas State Strutters and the Criminal Justice Fraternity, Lambda Alpha Epsilon. Christen's experience includes more than three years as an Escrow Assistant with Independence Title Company.

Erin Menefee was hired as an Investigator on August 18, 2008. Erin received a Baccalaureate Degree in Criminal Justice with a minor in Political Science from Tarleton State University in December 2006. Erin was a member of the Criminal Justice Fraternity, Lambda Alpha Epsilon, and was an intern with the Caldwell County District Attorney's office in 2006. In 2007, Erin became a conservatorship worker for Child Protective Services with The Department of Family and Protective Services, and Erin currently volunteers a fraction of her free time to a children's advocacy program.

Jennifer Ellis, RN, was hired as a Nurse Investigator with the Board in August 2008. Jennifer received an Associate Degree in Nursing in California and has been a Registered Nurse for 25 years, practicing 23 of those years in California. Jennifer's nursing background includes experience in psychiatric, telemetry, med-surg and PACU, and Jennifer managed the outpatient departments of NorthBay Medical Center, Fairfield, California, which served patients of all age ranges for surgeries, chemo-therapy, cardiac catheterization, endoscopy procedures, radiologic intervention procedures, and liver, kidney and bone marrow biopsies. After leaving NorthBay Medical Center in Fairfield, California, Jennifer gained further experience in discharge planning, advice nursing, and correctional health care.

Amy Grissom, RN, was hired to the position of Nurse Investigator with the Board in August 2008. Amy received an Associate Degree in Nursing in Oregon and has been licensed as a Registered Nurse since 1993. Amy's previous nursing experience includes 3 years experience as a Team Leader and 5 years experience as a field nurse in a hospital based Home Health Agency, and the rest of her years in nursing in various positions from Director of Nursing to floor nurse in a number of Skilled Nursing Facilities in Oregon and one in Texas.

Sam Smelser joined the Board as an Investigator on August 18, 2008. He joined the United States Army in 1968 and served for three years as a Military Police Officer. After leaving the military, Sam served as a city Police Officer and Deputy Sheriff in west Texas (Big Spring) until 1976, when he joined the Texas Alcoholic Beverage Commission as an Agent. Sam served in Houston, Abilene, Big Spring, New Braunfels, San Antonio and Austin, where for the last 13 years, he was the Assistant Chief and Chief of the Enforcement Division. Sam retired after 31 years of service, and also retired from the Texas Army National Guard in 2002 with 30 years of service as a Sergeant Major for the Directorate of Facilities and Engineering. Sam holds a Baccalaureate Degree in Arts from The University of Texas of the Permian Basin in Criminal Justice/Law Enforcement Management and is a graduate of the Law Enforcement Management Institute of Texas.

In the nursing department, we welcome back Paul Waller, RN, PhD, nursing consultant. Dr. Waller rejoins the Board staff as an Nursing Consultant in Education, having previously worked for the Board in the same capacity in the mid-1990s. He is a graduate of St. Luke's School of Nursing (Diploma program in Sioux City, Iowa), Briar Cliff College (BSN in Sioux City), and The University of Texas at Austin (MSN and PhD in nursing). Paul was an Assistant Professor in Nursing at both the University of Colorado and The University of Texas at Austin before his prior tenure at the Board. Since that time, he has worked in project management in clinical trials in pharmaceuticals for ten years with SCIREX Corporation, and then in spinal surgical implant devices for about three years with Abbott Spine, a division of Abbott Laboratories.

**Request for Outside Assistance in Legal:** The Board's Legislative Appropriations Request includes an exceptional item for additional staff in enforcement and legal. The rationale describes increasing workload related to 1.) Steady growth the nursing population; 2.) a 15% increase in complaints including criminal history; 3.) the growing backlog of formal charges and unresolved complaints; 4.) tightening of board policy with regard to enforcement and eligibility; 5.) increasing representation by attorneys resulting in more contested matters; and 6.)

increase in complexity of SOAH proceedings. In the meantime, the Legal department has lost two attorneys and the backlog is increasing. There are currently over 30 cases which need to be set at SOAH. Mr. Legris has been hired as an attorney but two attorneys is not sufficient to catch up with the current workload. Therefore, staff have approached the Attorney General's Office to request assistance. I will have an update on their response at the Board meeting.

**Jurisprudence Examination:** The Jurisprudence examination required for initial licensure by Texas Occupations Code Section 301.252, License Application, has been implemented as required by law. Access to the Board's examination is available through the website, <http://www.bon.state.tx.us/olv/je.html> . Those applying for initial licensure by exam or endorsement **after** September 1, 2008 must pass the Jurisprudence Exam in order to be eligible for licensure. Thus far most of the examinees have been applicants for endorsement. Many of the exam applicants will not complete their programs until October-December so we expect to see the numbers of examinees increasing over the next few months.

**Website:** The website has been updated. The new education policies adopted at the July meeting have been added.

**Comptroller's Audit:** The agency has been the subject of a routine audit by the Comptroller of Public Accounts. This Post Payment and Texas Procurement and Support Services (Purchasing) Audit was conducted August 11-15, 2008. The audit covered travel, purchase vouchers, payroll and purchasing policies. We are awaiting the report and will share with the Board as soon as it is available.

**Internal Audit:** The Board contracts with an auditor for purposes of conducting internal audits. The last such audit was initiated by staff last year to look at our performance measures and determine if our measures are accurately collected and reported. Recommendations of the auditor were helpful in refining our processes. At any time, should the Board desire to conduct an internal audit of any area of Board functions, the Board can direct staff to have the auditor meet with the Board to discuss such audit. The Board's Liaison for Internal Audits is Deborah Bell.

**SAO Monitors Implementation of Sunset Management Actions:** The State Auditors Office surveyed agencies who had Sunset management recommendations in the 80<sup>th</sup> Legislative Session. The Board responded to the status of specific management recommendations. The report on this is attached.

**Key Meetings and Presentations:** I have attended/presented at the following meetings since the last Board meeting:

- *Meeting:* Advanced Practice Nursing Licensure, Accreditation, Certification, and Education (LACE) meeting, July 24-25, 2008, Washington, D.C.
- *Presentation:* *BON Update*, to Nursing Leadership of the Department of State Health Services; July 28, 2008, Austin.
- *Presentation:* *Consensus Model for APRN Regulation*, to Doctorate in Nursing Practice Conference, July 31, 2008, Texas Tech University, Lubbock.
- *Meeting:* Nurse Licensure Compact Administrators Meeting, August 4, 2008, Nashville, TN.

- *Meeting:* National Council of State Boards of Nursing (NCSBN) Annual Meeting and Delegate Assembly, August 5-8, 2008, Nashville, TN.
- *Meeting:* Discussion of the Board's Legislative Appropriations Request, with Tony Gilman, Office of the Governor, August 13, 2008, Austin.
- *Meeting:* with Texas Nurses Association to discuss Nurse Practice Act, August 13, 2008, Austin.
- *Meeting:* The Nursing Legislative Agenda Coalition, August 16, 2008, Austin.
- *Meeting:* Texas Team Educational Summit Follow up meeting, August 20, 2008, Austin.
- *Conference Call:* Advanced Practice Nursing Licensure, Accreditation, Certification, and Education (LACE), August 27, 2008.
- *Meeting:* NCSBN Board meeting, September 3-5, Chicago.
- *Meeting:* Health Professions Council, September 8, 2008, Austin.
- *Testimony:* On the agency's budget to the Joint Budget Hearing of the Legislative Budget Board and the Office of the Governor, September 8, 2008, Austin.
- *Meeting:* Texas Center for Nursing Workforce Studies Advisory Committee, September 10, 2008, Austin.
- *Presentation: Board of Nursing Update on Rules and Budget* to Texas Nurses Association Nursing Leadership Conference, September 11, 2008, Austin.
- *Conference Call:* with NCSBN Information Technology staff to discuss licensure and disciplinary clean up project, September 22, 2008.
- *Conference Call:* with Nurse Licensure Compact Administrators (NLCA), September 22, 2008.
- *Meeting:* Texas Nursing Education Capacity Team planning meeting, September 24, 2008, Austin.
- *Meeting:* with staff of the Legislative Budget Board to discuss Legislative Appropriations Request, September 26, 2008, Austin.
- *Presentation: Consensus Paper on APRN Regulation* to Texas Nurse Practitioners, September 27, 2008, Austin.
- *Presentation: Board of Nursing Update* to Deans and Directors of Texas Nursing Programs, October 3, 2008, Austin.
- *Conference:* Attended 6<sup>th</sup> Biennial Legislative Communications Conference, October 7, 2008, Austin.
- *Meeting:* with Jennifer Nitschmann, UTMB Chief Nursing Officer UTMB Health Systems to discuss correctional care issues, October 13, 2008, Austin.

- *Conference Call:* Texas Center for Nursing Workforce Studies Advisory Committee, October 13, 2008.
- *Conference Call,* Nurse Licensure Compact Administrators meeting, October 14, 2008.
- *Conference Call:* NCSBN Executive Officers meeting, October 20, 2008.

Staff have presented/attended:

- *Presentation:* Mark Majek and Richard Wier, *Nursing Jurisprudence Examination and Student Criminal Background Checks* to the U.S. Army LPN Programs, Ft. Sam Houston, San Antonio, Texas, September 26, 2008.
- *Presentation:* Mark Majek, *Nursing Jurisprudence Examination, Criminal Background Checks and the Examination Process* to the Texas Student Nurses Association, September 27, 2008, San Antonio, Texas.
- *Meeting:* Mary Beth Thomas, Nursing Legislative Agenda Coalition, August 16, 2008, Austin.
- *Presentation:* Mary Beth Thomas and Nursing Consultants, the Board's Encouraging Innovation in Texas Nursing Education Workshop, September 12, 2008, Austin.
- *Presentation:* Mary Beth Thomas, *BON Education Update*, Deans and Directors Meeting, October 3, 2008, Austin.

Quarterly Statistics Where Executive Director Closed Cases in Compliance with Board Policy:

**Case Resolution Report**  
**June 1, 2008 through August 31, 2008**

<b>Type of Action</b>	<b>RN</b>	<b>LVN</b>	<b>Total</b>
No Jurisdiction	1	0	1
No Violation	21	13	34
No Action	278	262	540
Insufficient Evidence	40	4	44
Admonish	4	9	13
Without Prejudice	26	12	38
TPAPN Referrals	108	58	166
EEP Referrals	9	8	17
<b>Totals</b>	<b>487</b>	<b>366</b>	<b>853</b>

## LVN DISCIPLINARY ORDERS AND ENDORSEMENTS

Time frame: July 1, 2008, through September 30, 2008

<b>DISCIPLINARY</b>	
10	<p><b>FINE WITH REMEDIAL EDUCATION</b></p> <ul style="list-style-type: none"> <li>6 Non disclosure/disclosures of Criminal History on Renewal Application or Positive Random Audit</li> <li>4 Practiced nursing without a valid nursing license</li> </ul> <hr style="width: 10%; margin-left: 0;"/> <p>10</p>
6	<p><b>REMEDIAL EDUCATION</b></p> <ul style="list-style-type: none"> <li>1 Failed to intervene when observed a resident being physically and verbally abused by the residents son</li> <li>1 Misappropriated Phenergan from a patient and administered the medication to a staff member</li> <li>1 Failed to assess the effectiveness of pain medication for a patient</li> <li>1 Failed to accurately document the assessment of a patient in the medical record</li> <li>1 Failed to assess a Resident following an incident of inappropriate sexual behavior by another Resident</li> <li>1 Documented in error the amount of medication administered</li> </ul> <hr style="width: 10%; margin-left: 0;"/> <p>6</p>
20	<p><b>VOLUNTARY SURRENDER</b></p> <ul style="list-style-type: none"> <li>11 Submitted a statement of Voluntary Surrender</li> <li>1 Sleeping while on duty; failed to administer medication as ordered</li> <li>1 Attempted to pass a fraudulent oral or telephonic prescription for Norco; felony offense of Possession of a Controlled Substance by Fraud</li> <li>1 Possession and use of Marijuana; misappropriated Morphine, Narcan, Metoprolol Tartrate, and Heparin</li> <li>1 Failed to appropriately assess and intervene</li> <li>3 Charged with the felony offense of Possession of a Controlled Substance</li> <li>1 Intemperate use of Cocain, LSD, and Morhpine</li> <li>1 Failed to assess and intervene resulting in death</li> </ul> <hr style="width: 10%; margin-left: 0;"/> <p>20</p>
10	<p><b>TPAPN BOARD ORDER</b></p> <ul style="list-style-type: none"> <li>1 Intemperate use of Alcohol and Cocaine</li> <li>1 Withdrew medications but failed to document the administration; withdrew medications without a physician's order; failed to follow wastage procedures</li> <li>2 Convicted of Possession of Marijuana</li> <li>1 Intemperate use of Cocaine</li> <li>1 Lacked fitness to practice safely; disclosed commitment to a detox facility</li> <li>1 Misappropriated Lortab</li> <li>1 Misappropriated medications for own personal use</li> <li>1 Intemperate use of Opiates, Oxazepam and Methadone; Lacked fitness to practice safely</li> <li>1 Non compliance with previous Board Order</li> </ul> <hr style="width: 10%; margin-left: 0;"/> <p>10</p>

334	<p><b>APPLICANTS/ PETITIONERS</b></p> <ul style="list-style-type: none"> <li>4 Denial of Licensure</li> <li>4 Non disclosure of criminal history</li> <li>1 Diagnosed with Bipolar Disorder</li> <li>1 Felony offenses of Forgery, Burglary of Habitation and Theft of Government Property</li> <li>1 State jail felony offense of Forgery</li> <li>1 Misdemeanor offenses of Possession of Marijuana and Driving While Intoxicated</li> <li>1 Misdemeanor offenses of Unemployment Fraud, Swindling by Worthless Check and Failure to Report Child Abuse</li> <li>1 Felony charge of Possession of a Controlled Substance</li> <li>2 Felony offense of Securing Execution of Document by Deception</li> <li>1 Misdemeanor offenses of Theft of Property, Possession of Marijuana, Reckless Conduct, Use of Marijuana, and Disorderly Conduct</li> <li>1 Felony offenses of False Statement of Vehicle Registration Act and Unlawfully Filing an Insurance Claim</li> </ul> <p><u>316</u> No Grounds for Denial/Youthful Indiscretion 334</p>
2	<p><b>ENDORSEMENTS</b></p> <ul style="list-style-type: none"> <li><u>2</u> Non disclosure of criminal history</li> <li>2</li> </ul>

## RN DISCIPLINARY ORDERS AND ENDORSEMENTS

Time frame: July 1, 2008, through September 30, 2008

<b>DISCIPLINARY</b>	
19	<p><b>FINE WITH REMEDIAL EDUCATION</b></p> <ul style="list-style-type: none"> <li>1 Prescribed excessive controlled substance to patients</li> <li>1 Failed to discharge a patient from home health services as ordered; failed to submit agency documents for missed visits; failed to perform nurse skilled visits</li> <li>1 Disciplinary action taken by another licensing authority</li> <li>3 Practiced without a valid license</li> <li>1 Attempted to purchase pain medication from a patient</li> <li>1 Non compliance with Continuing Education Audit</li> <li>11 Non disclosure/disclosures of Criminal History on Renewal Application or Positive Random Audit</li> </ul> <hr style="width: 100%; border: 0.5px solid black;"/> <p>19</p>
12	<p><b>REMEDIAL EDUCATION</b></p> <ul style="list-style-type: none"> <li>1 Erroneously administered Hurricane Spray to a patient; Brought the wrong baby to the wrong mother</li> <li>1 Failed to administer medication according to physician's orders</li> <li>1 Failed to document the ventilator settings, lab values, patient intake and output amount, and physician's awareness of the patient's condition in the medical record</li> <li>1 Disciplinary action taken by another licensing authority</li> <li>1 Failed to accurately document assessment of patients in medical records</li> <li>1 Provided false and deceptive information on the online renewal application</li> <li>1 Failed to administer Penicillin-K liquid suspension orally; inappropriately administered the intravenous medication Mannitol/Lasix to her assigned patient</li> <li>1 Inappropriately obtained Phenergan and administered the medication without a physician's order</li> <li>1 Discharged a patient without a discharge order</li> <li>1 Failed to assess and document the stats of a resident after the resident fell out of bed</li> <li>1 Left a needle in a central catheter port after administering medication to the patient</li> <li>1 Failed to notify oncoming staff or family members that a Resident had fallen</li> </ul> <hr style="width: 100%; border: 0.5px solid black;"/> <p>12</p>
14	<p><b>VOLUNTARY SURRENDER</b></p> <ul style="list-style-type: none"> <li>4 Submitted a statement of Voluntary Surrender</li> <li>2 Non compliance with previous Board Order</li> <li>1 Felony offense of Arson Bodily Injury/Death at a Place of Worship</li> <li>1 Performed a digital rectal exam in an 11 year old female without a doctor's order or witness present</li> <li>1 Misappropriated narcotics</li> <li>1 Use of prescribed pain medications may have adversely affected her behavior at her job as a CRNA</li> <li>1 Failed to appropriately intervene and document in the medical record of a resident who fell and hit her head</li> <li>1 Violated nurse/client boundaries in that she took a patient to her own home to provide nursing care</li> <li>1 Lacked fitness to practice; left her nursing assignment numerous times throughout her shift; attempted to destroy a patient's vital sign flow sheet; intemperate use of LSD, Morphine, and Cocaine.</li> </ul> <hr style="width: 100%; border: 0.5px solid black;"/> <p>1 Passed forged prescriptions</p> <hr style="width: 100%; border: 0.5px solid black;"/> <p>14</p>

10	<p><b>TPAPN BOARD ORDER</b></p> <ul style="list-style-type: none"> <li>1 Misappropriated Demerol, Fentanyl, Hydrocodone, and Versed; Intemperate use of Demerol, Fentanyl \ and Versed</li> <li>1 Lacked fitness to practice nursing safely; intemperate use of alcohol</li> <li>1 Misappropriated Butorphanol, Fentanyl, Morphine and Valium; Intemperate use of Opiates and Tetrahydrocannabinol</li> <li>1 Intemperate use of Alcohol, Cocaine, Hydromorphone, and Morphine</li> <li>1 Intemperate use of Vicodin and Xanax</li> <li>1 Intemperate use of Barbiturates and Merperidine</li> <li>1 Charged with the misdemeanor offense of Driving While Intoxicated</li> <li>1 Intemperate use of Soma</li> <li>1 Intemperate use of Barbiturates</li> <li><u>1</u> Admitted to illegal drug use, including marijuana, ecstasy and ICE</li> </ul> <p>10</p>
9	<p><b>ENDORSEMENTS</b></p> <ul style="list-style-type: none"> <li>3 Denial of Licensure</li> <li>1 Disciplinary action taken by another licensing authority</li> <li>1 Two counts of the misdemeanor offense of Deadly Conduct</li> <li>1 Felony offense of Theft</li> <li><u>8</u> Non disclosure of criminal history</li> </ul> <p>14</p>
296	<p><b>APPLICANTS/ PETITIONERS</b></p> <ul style="list-style-type: none"> <li>2 Denial of licensure</li> <li>1 Felony offense of Possession of a Controlled Substance</li> <li>1 Two counts of the felony offense of Theft</li> <li>1 Three counts of Driving While Intoxicated</li> <li>1 Thirteen counts of Theft by Check</li> <li>1 State jail felony offense of Tampering with Government Records</li> <li>1 Charged with Burglary of a Vehicle, Criminal Mischief, Intimidation and two counts of Theft</li> <li>1 Disciplinary action taken by another licensing authority</li> <li>2 Non disclosure of criminal history</li> <li><u>285</u> No Grounds for Denial/Youthful Indiscretion</li> </ul> <p>296</p>



John Keel, CPA  
State Auditor

A Review of  
**State Agencies' Implementation of  
Sunset Advisory Commission Management Actions**

August 7, 2008

Members of the Legislative Audit Committee:

The State Auditor's Office has reviewed the status of 11 state agencies' implementation of 28 non-statutory recommendations (management actions) included in the *Sunset Advisory Commission Report to the 80th Legislature*. Nineteen of the 28 recommendations were reported as having been fully or substantially implemented.

The following five agencies reported that they had fully implemented all management actions:

- Commission on the Arts.
- Comptroller of Public Accounts - Prepaid Higher Education Tuition Board.
- Historical Commission.
- Teacher Retirement System.
- Library and Archives Commission.

The following six agencies reported that they had fully implemented or were in the process of implementing all management actions:

- Animal Health Commission.
- Criminal justice agencies (Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles).
- Real Estate Commission.
- Department of Agriculture – Structural Pest Control Board.
- Veterans Commission.
- Board of Nursing.

The table in the attachment to this letter summarizes the implementation status of the management actions at the 11 agencies reviewed.

**Objective, Scope, and Methodology**

Texas Government Code, Section 325.012 (b), provides for the State Auditor's Office's examination of the non-statutory management actions that the Sunset Advisory Commission (Commission) recommends.

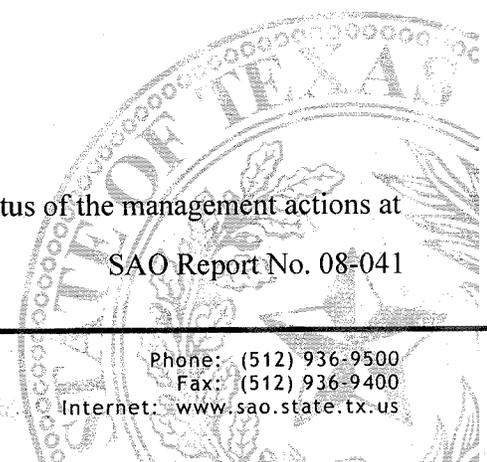
The objective of this review was to determine the implementation status of non-statutory recommendations (management actions) included in the Commission's report to the 80th Legislature.

The scope included 11 agencies to which the Commission directed management actions in its report to the 80th Legislature.

This review relied on self-reported information provided by the agencies. The information in this report was not subjected to all the tests and confirmations that would be performed in an audit.

The following members of the State Auditor's staff performed the review:

- Lauren Godfrey, CGAP (Project Manager).
- J. Scott Killingworth CIA, CGAP, CGFM (Quality Control Reviewer).
- Babette Laibovitz, MPA (Audit Manager).



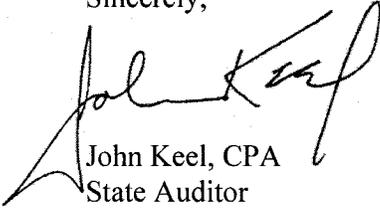
Members of the Legislative Audit Committee

August 7, 2008

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We appreciate the agencies' cooperation during this review. If you have any questions, please contact Babette Laibovitz, Audit Manager, or me at (512) 936-9500.

Sincerely,

A handwritten signature in black ink, appearing to read "John Keel". The signature is fluid and cursive, with a large initial "J" and "K".

John Keel, CPA  
State Auditor

Attachment

cc: Mr. Joey Longley, Director, Sunset Advisory Commission  
Boards, commissions, and executive management of the following agencies:

- Animal Health Commission
- Commission on the Arts
- Criminal Justice Agencies (Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles)
- Comptroller of Public Accounts – Prepaid Higher Education Tuition Board
- Historical Commission
- Library and Archives Commission
- Board of Nursing
- Real Estate Commission
- Department of Agriculture – Structural Pest Control Board
- Teacher Retirement System
- Veterans Commission



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# Attachment

## Agencies' Implementation of Sunset Advisory Commission Management Actions

Table 1 presents information on agencies' implementation of non-statutory recommendations (management actions) in the *Sunset Advisory Commission Report to the 80th Legislature*. The definitions of each implementation status are as follows:

- **Fully Implemented:** Successful development and use of a process, system, or policy to implement a prior recommendation.
- **Substantially Implemented:** Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.
- **Incomplete or Ongoing:** Ongoing development of a process, system, or policy to address a prior recommendation.
- **Not Implemented:** Lack of a formal process, system, or policy to address a prior recommendation.

Table 1

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
<b>Real Estate Commission</b>		
Direct the Real Estate Commission (Commission) to improve on its collection of complaint and violation statistics and to develop a method for complaint trend analysis.	Incomplete/ Ongoing	<p>The Commission agrees with the need to keep more detailed statistics regarding complaints to enable agency staff and others to analyze and respond to trends.</p> <p>At present, the Commission's licensing and complaint database captures, among other data, the dates on which enforcement cases are opened and closed, the types of complaints that are opened for investigation, and a single, broad category of cases that are determined to be non-jurisdictional. However, the system cannot currently generate the reports identified in this recommendation. The Technology Services Division has undertaken a programming project to create reports that can be automatically generated at regular intervals to reflect enforcement case resolution time frames by case type; numbers, types, and ages of open complaints at any given time; and specific types of non-jurisdictional complaints. Once these reports are available, it will be possible to begin assembling monthly, quarterly, and annual trend data for further analysis. (Due to systems limitations, these reports will be available from the point of implementation forward; it will not be possible to generate them based on previous time periods.) This process (development of the system enhancements) has been delayed by the fact that the Technology Services staff has been stretched to its limits to address new statutory changes, such as fingerprinting, while keeping a core system that was developed in the 1980s and is now operating well beyond its functional life expectancy.</p>

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
<p>The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should coordinate their enforcement efforts.</p>	<p>Incomplete/ Ongoing</p>	<p>The Commission agrees that agencies regulating related industries should coordinate enforcement efforts and should memorialize the inter-agency cooperation that already exists. This is already occurring on an informal basis, but a formal document among the agencies has not been ratified.</p> <p>Pursuant to House Bill 716 (80th Legislature), the Commission participates in the Mortgage Fraud Task Force, which provides for widespread coordination of enforcement efforts regarding mortgage fraud, encompassing not only the state agencies identified in this recommendation, but also the Office of the Attorney General and local law enforcement agencies.</p> <p>The Commission has also drafted and circulated for consideration a memorandum of understanding (MoU) regarding the referral of non-jurisdictional complaints among the agencies identified in this recommendation. Administrator Tim Irvine (who is also the Appraiser Licensing and Certification Board Commissioner) has distributed the MoU to the Insurance Commissioner and the Savings and Mortgage Lending Commissioner, as well as their general counsels. The other agencies have expressed agreement, and it is anticipated that the MoU will be executed shortly.</p>
<p><b>Department of Agriculture – Structural Pest Control Board</b></p>		
<p>The Department of Agriculture should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.</p>	<p>Incomplete/ Ongoing</p>	<p>Effective September 1, 2007, House Bill 2458 (80th Legislature) abolished the Structural Pest Control Board (Board) and transferred its responsibility of licensing and regulation to the Texas Department of Agriculture (TDA). TDA completed the following activities since September 2007, to transition the functions of the Board:</p> <ul style="list-style-type: none"> <li>▪ Evaluated and revised all job descriptions for the former Board's full-time equivalent (FTE) positions.</li> <li>▪ Posted, interviewed for, and hired all structural pest control FTE positions.</li> <li>▪ Closed and moved the former Board's office to the TDA location.</li> <li>▪ Conducted new employee orientation.</li> <li>▪ Transferred the existing regulations for structural pest control to TDA.</li> <li>▪ Adopted new regulations for the newly created Structural Pest Control Advisory Committee (Advisory Committee) in October 2007.</li> <li>▪ Conducted structural pest control field inspector training in October 2007 implementing a shift in focus from a strict civil and criminal enforcement approach to an approach of employing a wider range of enforcement options and incorporating a compliance assistance concept into routine inspections.</li> <li>▪ Provided inspectors new computers, printers, and cameras in October 2007.</li> <li>▪ Solicited applications for appointment to the Advisory Committee in November 2007 and completed appointments in January 2008.</li> <li>▪ Ordered and issued state vehicles to structural pesticide inspectors in January 2008.</li> <li>▪ Conducted an initial Advisory Committee meeting in March 2008 and a second meeting in May 2008.</li> <li>▪ Began cross training and incorporated structural pest control inspectors into the statewide pesticide inspector training in April 2008 to begin making the inspections similar.</li> <li>▪ Proposed changes to the structural pest control regulations in July 2008 for public comment and possible adoption by September 2008.</li> </ul> <p>TDA still uses the Board's processes, business practices, and licensing system for continuity of services. However, TDA's Pesticide Division is currently working with TDA's Information Management Division to gather the requirements necessary to incorporate the structural pest control</p>

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

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		<p>component into its information management system platform used to conduct electronic inspections. Priority has been given to activities needed to transition the program.</p> <p>The Structural Pest Control Service has modified its inspection process to incorporate a compliance assistance component to ensure that inspected noncommercial entities currently being inspected understand the pesticide regulatory requirements pertaining to structural pest control. A primary focus of TDA in management of regulatory programs is to increasingly utilize the public to draw feedback on program management and to seek out regulatory concerns, such as unlicensed commercial activity. To expand outreach efforts, TDA plans to use its Pesticide Division's established working relationship with the Texas AgriLife Extension Service and the Texas Department of State Health Services to develop new and expand existing outreach efforts focused on noncommercial activity.</p>
<p>The Department of Agriculture should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.</p>	<p>Incomplete/ Ongoing</p>	<p>Effective September 1, 2007, House Bill 2458 (80th Legislature), abolished the Structural Pest Control Board (Board) and transferred its responsibility of licensing and regulation to the Texas Department of Agriculture (TDA). See response to the recommendation above for an explanation of activities since September 2007 that were priorities to accomplish the transitioning of the Board functions in the last 10 months.</p> <p>TDA still uses the Board's processes, business practices, and licensing system for continuity of services. TDA has taken preliminary actions toward implementation. However, the limited amount of enforcement data currently captured by the Board's system limits TDA's ability to implement this recommendation. Currently, extensive resources would be needed to manually gather additional data. TDA began working in April 2008 to gather the requirements necessary to incorporate the structural pest control component into its information management system platform. TDA will have the capability to capture comprehensive enforcement data once the system upgrades are complete. Then reports will be available to evaluate enforcement data to identify compliance trends and modify inspection needs based on the noncompliance risks identified.</p>
<p>The Department of Agriculture should conduct criminal background checks for all license applications and renewals.</p>	<p>Fully Implemented</p>	
<p><b>Board of Nursing (Formerly the Board of Nurse Examiners)</b></p>		
<p>The Board of Nursing (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.</p>	<p>Incomplete/ Ongoing</p>	<p>The Board through consultation with the Advisory Committee on Education (composed of constituents representing nursing education and practice and professional organizations) has reviewed all education rules and processes relating to vocational and professional nursing education. The mission of the Board was a major focus during the review to ensure that the Board's responsibility was met but not exceeded. Rule revisions have already been approved and implemented. Some rule revisions relate to other Sunset recommendations, which required rule revisions for activation. Additional rule revisions will be presented to the Board at the July 17-18, 2008, meeting. Following the Board's approval, staff will begin revisions of associated Board policies and education guidelines with an anticipated completion date in Spring 2009. The Advanced Practice Nursing Advisory Committee plans to begin a review of Rule 219 related to Advanced Practice Nursing Education in Spring 2009.</p> <p>The following items have been <b>fully implemented</b>:</p> <ul style="list-style-type: none"> <li>▪ New rules empowering dean/directors to grant faculty waivers.</li> <li>▪ New rules delineating the flexibility of clinical faculty ratios.</li> <li>▪ New rules allowing qualified RNs to function as clinical teaching assistants.</li> </ul>

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
		<ul style="list-style-type: none"> <li>▪ New rules eliminating faculty-to-student ratios in all clinical learning experiences except those involving direct patient care.</li> <li>▪ Adopted a process whereby a career school/college may submit a proposal for a new professional nursing educational program while awaiting accreditation.</li> <li>▪ Adopted a process to allow approval of nursing programs outside Texas' jurisdiction to conduct clinical learning experiences in Texas.</li> </ul> <p>The following items are <b>incomplete/ongoing</b>:</p> <ul style="list-style-type: none"> <li>▪ Collaborated with Texas Workforce Commission and Texas Higher Education Coordinating Board to reduce duplicative processes in the approval of new nursing educational programs, streamlining the process. Will be presented to the Board July 17-18, 2008.</li> <li>▪ Collaborated with nursing accreditation agencies to compare accreditation standards and Board approval criteria in order to select an accreditation agency(ies) with acceptable standards. Will be presented to the Board July 17-18, 2008.</li> <li>▪ Developed a process allowing for Board approval of hospital-based diploma programs. Will be presented to the Board July 17-18, 2008.</li> </ul>
The Board should develop a process to allow for Board approval of hospital-based diploma programs.	Incomplete/ Ongoing	A process to allow for Board approval of hospital-based diploma programs has been developed and will be presented to the July 17-18, 2008, Board meeting for approval. Implementation will follow.
The Board should approve nursing education programs for a period longer than one year.	Incomplete/ Ongoing	<p><b>Substantially Implemented:</b> The Advisory Committee on Education approved moving program approval from one year to two years at the August 28, 2007, meeting. Board approved at the October 18-10, 2007, meeting.</p> <p>The Board in collaboration with the Texas Center for Nursing Workforce Studies have redesigned two data tools to gather ongoing data important to both agencies. The first is an annual data form entitled the "Nursing Educational Program Information Survey (NEPIS)" and the second a biennial compliance audit, the "Compliance Audit for Nursing Educational Programs (CANEP)." The NEPIS gathers data related to student, faculty, and program factors affecting admission and graduation rates. The CANEP validates program compliance with Texas rules and regulations. Required information will be limited for programs accredited by national nursing accreditation organizations.</p> <p><b>Incomplete/Ongoing:</b> In regards to requirements for programs to develop a self-study report following a low NCLEX examination pass rate, when the pass rate seems to be related to a small number of students taking the examination, out of sequence test-takers, or other mitigating factors, the program is requested to provide a letter of explanation rather than a self-study report. Board staff conducted a study in 2007 of effective corrective measures implemented by programs who had experienced a low pass rate on the NCLEX examination. Self study reports for two years were reviewed and corrective measures were classified and analyzed. It was found that 95 percent of programs who wrote a self-study were able to bring the pass rate up above 80 percent in the following examination year. Programs frequently attest to the value of critically evaluating their programs for factors which may have contributed to the low pass rate.</p> <p>Board staff will continue to consider and evaluate the self-study process in order to make it a valuable activity rather than a burden on programs.</p>
The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating standards of practice.	Fully Implemented	

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

<b>Management Action</b>	<b>Implementation Status</b>	<b>Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented</b>
The Board should post information about disciplinary actions on its Web site.	Fully Implemented	
<b>Animal Health Commission</b>		
The Animal Health Commission (Commission) should make its compliance database available to its employees statewide to facilitate better sharing of information and consistency in staff's approach to compliance.	Fully Implemented	
The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.	Incomplete/ Ongoing	<p>The Commission began review of possible strategies for implementing a Commission-wide succession plan in the summer of 2006. Human resources and administration staff attended training presented by the State Auditor's Office on succession planning. Implementation and brainstorming sessions were held with the Deputy Director of Administration and Finance and human resource staff to determine the correct course of action.</p> <p>The Commission's performance appraisal form was updated in September 2006. The form contains a section dedicated to career planning. It is being used to determine employees' career goals. The document lines out the steps required to move the employee toward his/her career objectives, including additional training, and coaching and mentoring needs. Each year during the employee's performance appraisal these objectives are reviewed to determine if progress has been made toward stated career goals. The performance appraisal document has therefore become an effective succession planning tool for the Commission.</p> <p>The Commission has also expanded training opportunities for staff through the Governor's Center for Management Development and various outside sources for technical/specialized training. This training allows employees to better serve in current job capacities, but it also provides tools needed to advance into areas of greater responsibility.</p> <p>During the summer of 2007, Commission staff began succession planning for line staff by updating career ladder modules. These modules are designed to develop requisite knowledge, skills, and abilities of staff, including management training at the top tier of the career ladders, to ready staff for the possibility of promotion into supervisory/management positions.</p> <p>The career ladders have not been fully implemented at this time because a component of advancement is salary enhancement when certain milestones are reached throughout an employee's advancement. The Commission is evaluating the cost of full implementation to determine if sufficient funds are available or if additional funding must be requested through the Legislative Appropriation Request to fulfill this important initiative.</p> <p>During the development of 2009-2013 workforce plan, the executive staff and division/department heads were consulted about critical knowledge shortages, now and in the future, so that the Commission can continue to develop strategies for recruiting, hiring, retaining, and/or developing the needed talent for continuance of Commission success. This information will be used to determine where training expenditures should be concentrated to ensure current and future staff has the knowledge, skills, and abilities needed to perform seamless service to the citizens of the state of Texas, now and in years to come.</p>
<b>Criminal Justice Agencies (Department of Criminal Justice, Board of Pardons and Paroles, and Correctional Managed Health Care Committee)</b>		
The Department of Criminal Justice (TDCJ) should conduct routine program evaluations of all rehabilitation programs designed to reduce	Incomplete/ Ongoing	TDCJ created a position within the agency's Executive Services Department for the purpose of conducting programs evaluations designed to determine the impact of rehabilitation programs on reducing recidivism as well as conducting other statistical analysis. Rehabilitation tier programs included in the report to the 81st Legislature will include the Substance Abuse Felony

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reincarcerations and revocations, and report the findings to the Legislature.		Punishment, In-Prison Therapeutic Community, Pre-Release Therapeutic Community, Pre-Release Substance Abuse, Sex Offender Treatment, Sex Offender Education, and Innerchange Program. The methodology used for measuring recidivism will be consistent with previous evaluations of these programs in order to facilitate comparisons of program effectiveness over time. Targeted date for submission of first biennial report to Legislature is December 31, 2008.
TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.	Fully Implemented	
<b>Teacher Retirement System</b>		
The Teacher Retirement System should improve the convenience of counseling services for its members.	Fully Implemented	
<b>Historical Commission</b>		
Direct the Texas Historical Commission (THC) to establish a clear and open process to prioritize projects for financial assistance from Friends of the Texas Historical Commission, Inc.	Fully Implemented	
Direct the agency to help build the capacity of county historical commissions to more effectively research and evaluate resources appropriate for official historical markers.	Fully Implemented	
Direct THC staff to evaluate and prioritize its many programs and initiatives, linking them back to the agency's most important goals.	Fully Implemented	
<b>Veterans Commission</b>		
The Veterans Commission (Commission) should explore ways to better integrate its new programs into the agency's overall mission.	Fully Implemented	
The Commission should adopt rules to guide its programs.	Fully Implemented	
The Commission should reduce the number of training conferences it conducts.	Fully Implemented	
The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.	Fully Implemented	
The Commission should formally document its duties in writing by	Substantially Implemented	

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

<b>Management Action</b>	<b>Implementation Status</b>	<b>Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented</b>
updating its manuals and making them available to all employees electronically.		
The Commission should evaluate its promotion and evaluation policies and revise them to include measures of job performance.	Fully Implemented	
<b>Library and Archives Commission</b>		
The Library and Archives Commission should use its Library Systems Act Advisory Board in the development of a new system formula.	Fully Implemented	
<b>Comptroller of Public Accounts - Prepaid Higher Education Tuition Board</b>		
The Prepaid Higher Education Tuition Board (Board) should consider restructuring its next Request for Proposals for the Savings Plan manager to encourage a wider variety of respondents.	Fully Implemented	
The Board should regularly evaluate the impact of its advertising campaign to ensure that it is cost-effectively generating new enrollment.	Fully Implemented	
<b>Commission on the Arts</b>		
The Commission on the Arts should evaluate the agency's programs and initiatives to ensure compliance with the legislative direction to focus on arts promotion and grants.	Fully Implemented	

<b>Summary for All Agencies Reviewed</b>					
	<b>Fully Implemented</b>	<b>Substantially Implemented</b>	<b>Incomplete/Ongoing</b>	<b>Not Implemented</b>	<b>Total</b>
<b>Number of Management Actions</b>	18	1	9	0	28