

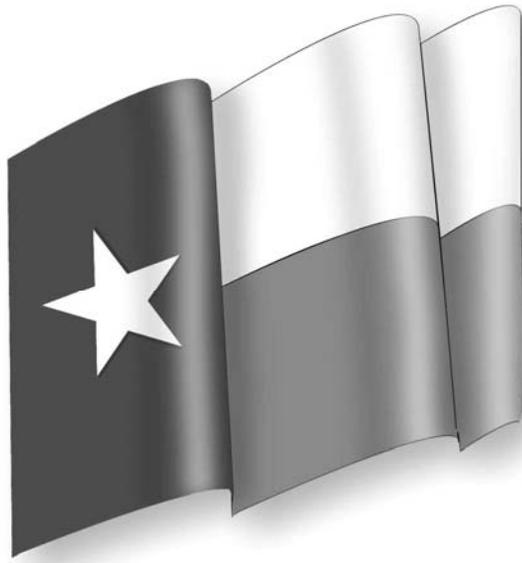
Agenda Item 1.3.
Presented by: Katherine Thomas
Meeting Date: January 18-19, 2007

Final Sunset Report with Decisions

The attached document was presented to the Sunset Commission by the Commission Staff at the December 12, 2006 hearing on the agency Sunset report. It contains further analysis of issues by the Sunset Staff, including clarification of Issues prompted by the Agency and external comments.

Final decisions can be found at the end of each Issue section.

SUNSET COMMISSION DECISIONS



Board of Nurse Examiners

December 2006

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.

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.

Issues/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.

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. | 1.7 The Board should develop a process to allow for Board approval of hospital-based diploma programs. |
| 1.2 Limit the Board's role to approving nursing education programs leading to initial licensure. | 1.8 The Board should approve nursing education programs for a period longer than one year. |
| 1.3 Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing. | 1.9 The Board should discontinue its policy of requesting letters of support from surrounding nursing programs. |
| 1.4 Require the Board to streamline its initial approval process for nursing education programs. | 1.10 The Board should discontinue the use of waivers for nurse faculty requirements. |

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

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.

Responses

Agency Response

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. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Rec. 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.

Agency Response to 1.1

The Board of Nurse Examiners suggests deleting Recommendation 1.1. 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 (DOE). The DOE recognizes a number of accrediting bodies that vary in purpose, focus, and quality, and do not provide assurance that nursing education programs comply with standards pertinent to the Nurse Practice Act. While the focus of the entities is educational quality, they do not specifically focus on professional outcomes which includes an emphasis on patient safety and consumer protection. Exempting nursing education programs accredited by DOE-recognized agencies from the Board's purview eliminates ongoing monitoring and consultation regarding consistent, equitable standards that promote quality nursing education programs, and safe, competent licensees.

Exempting programs accredited by 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. 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. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Staff comment: The agency’s response to Recommendation 1.1 appears to miss two key points contained in the staff recommendation. First, the programmatic accreditation agency envisioned to approve nursing education programs would not be recognized solely by the U.S. Department of Education, but would also have to be determined by the Board to have acceptable standards. Second, the recommendation would not change the current requirement for new nursing education programs to receive initial approval from the Board. Nursing accreditation agencies do not currently approve new or proposed education programs until these programs have received approval from a state nursing board. Under Recommendation 1.1, however, if a nursing accreditation agency should approve new education programs in the future – and the Board determines that the agency is capable of providing that initial approval – the Board should defer its own approval of those education programs to that accrediting agency.

Affected Agency Response to 1.1

The Texas Higher Education Coordinating Board has responsibility to recognize accrediting agencies that accredit institutions and not to defer to the recognition of accreditors performed by the U.S. Department of Education. It thus suggests the following modification.

Coordinating Board Modification

1. Clarify that a nursing education program would be approved if it maintains programmatic accreditation from a “nursing accrediting agency,” with the understanding that the institution offering the nursing program must maintain institutional accreditation by an accreditor recognized by the Coordinating Board. Clarify that “national accrediting agency” should actually read “nursing accrediting agency.”

(Raymund A. Paredes, Commissioner of Higher Education – Texas Higher Education Coordinating Board)

For 1.1

Irma G. Ray, RN, PhD, Director – Tarrant County College District

Cindy Sterling, Marble Falls

Against 1.1

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Margie Dorman-O’Donnell, MSN, RN, Vice President – Texas Nurses Association

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Jere Hammer, President – Texas Organization for Associate Degree Nursing

Marjorie L. Archer, MS, RN

Modifications

2. Clarify that the accreditation agency is a nursing accrediting organization, not just any accrediting agency recognized by the U.S. Department of Education. (Helen Reid – Texas Organization for Associate Degree Nursing)

3. Provide for regulations regarding the practice component of nursing education proposed by the Board, particularly regarding faculty/student ratio in clinical settings, maximum workload for Deans/Directors, and the educational credentials of faculty, to be maintained as standards governing Texas nursing programs. (Collene Lewis – Nurse Education Policy Coalition)
4. Provide that nursing programs that are currently approved by the Board or are accredited by an agency recognized by the U.S. Department of Education, are qualified to submit proposals to develop new professional nursing programs. Clarify that the Board approves nursing program effectiveness and that the Coordinating Board approves institutional effectiveness. Provide for the Board's regulatory function for approving nursing programs to be less restrictive, such as removing specific regional accreditation requirements, since the approval for new nursing programs involves approval processes from both the Nurse Board and the Coordinating Board. (Nancy Maebius, PhD, RN, San Antonio)

Rec. 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.

Agency Response to 1.2

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.2

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Cindy Sterling, Marble Falls

Against 1.2

Collene Lewis – Nurse Education Policy Coalition Modification

Irma G. Ray, RN, PhD, Director – Tarrant County College District

Helen Reid – Texas Organization for Associate Degree Nursing

Rec. 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.

Agency Response to 1.3

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.

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 Texas. If allowed to operate in Texas without Board approval, the program would be conducting clinical experiences with students without regulatory oversight – a situation which poses safety concerns for the citizens of Texas.

A Board advisory committee is studying this issue and recommendations could include an expedited review of programs from other states and approval by the Board. Such a review would ensure that another state's education standards are equivalent to the Board's and that any needed action to address issues affecting safety is taken.

Agency Modification

5. 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 Texas to comply with the Nurse Practice Act.

(Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Staff comment: Recommendation 1.3 is in no way intended to reduce the Board's authority to approve nursing education programs physically located in other states who have students living in Texas. It is intended, instead, to clarify the Board's authority over these programs and to make it easier for the Board to approve such programs approved by nursing board in other states. While the recommendation suggests that the Board can accept an education program simply on the basis of its approval by the other state's nursing board, it does not require the Board to accept such a program, as the agency's response implies. The Board would develop policies to ensure the other state's education standards are substantially the same as the Board's, and thus could reject programs that do not meet these standards. The review process suggested in the agency modification could serve this purpose, but should not give rise to a cumbersome, bureaucratic process that undermines the overall intent of the recommendation to streamline the approval process.

Affected Agency Response to 1.3

Current rules of the Texas Higher Education Coordinating Board require an out-of-state institution having a physical presence in Texas (including conducting the clinical component of a nursing course at a health care facility in Texas) to hold a Certificate of Authority or approval to operate a

branch campus, extension center, or other off-campus unit. It appears that the intent of this recommendation is to eliminate the requirement for out-of-state nursing students enrolled in clinical courses at accredited nursing programs to hold a Texas RN license. However, the institution would still be subject to oversight by the Coordinating Board. (Raymund A. Paredes, Commissioner of Higher Education – Texas Higher Education Coordinating Board)

For 1.3

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Cindy Sterling, Marble Falls

Nancy Maebius, PhD, RN, San Antonio

Against 1.3

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association

Rec. 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.

Agency Response to 1.4

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Affected Agency Response to 1.4

The Texas Workforce Commission suggests that the recommendation that requirements for establishing new programs be more clearly defined and disseminated will help to set a clear and identifiable standard for those wishing to provide nursing education in Texas. (Diane Rath, Chair and Commissioner Representing the Public – Texas Workforce Commission)

For 1.4

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Cindy Sterling, Marble Falls

Nancy Maebius, PhD, RN, San Antonio

Against 1.4

None received.

Rec. 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.

Agency Response to 1.5

The Board of Nurse Examiners suggests deleting Recommendation 1.5. This recommendation suggests that the Board has developed rules, policies, and procedures that exceed minimal competency requirements for entering the profession of nursing. The Board believes this assertion is erroneous. Education rules provide for minimum competency in nursing students. The Board believes that the public's confidence that nurses in Texas are competent, meet established standards and are held accountable for their actions, is due in main part to holding nurses and nursing education programs to standards that ensure competent, safe licensees. The Board requests this recommendation be deleted as the Board's nursing education rules provide for minimum competency in nursing students. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.5

Cindy Sterling, Marble Falls

Nancy Maebius, PhD, RN, San Antonio

Against 1.5

None received.

Rec. 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.

Agency Response to 1.6

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.6

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Collene Lewis – Nurse Education Policy Coalition

Irma G. Ray, RN, PhD, Director – Tarrant County College District

Helen Reid – Texas Organization for Associate Degree Nursing

Cindy Sterling, Marble Falls

Against 1.6

None received.

Rec. 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.

Agency Response to 1.7

The Board of Nurse Examiners suggests deleting Recommendation 1.7. 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. The Board agrees that it needs guidance in how to address this significant public policy issue raised by the resurgence of diploma programs, and through its Advisory Committee on Education, is investigating the approval and accreditation of hospital-based nursing programs. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Affected Agency Response to 1.7

The Texas Higher Education Coordinating Board suggests that as in Recommendation 1.1, this recommendation should be clarified to prevent confusion and to preserve the Coordinating Board's authority to determine which accrediting agencies met Texas standards. Authority to operate a diploma- or certificate-granting institution derives from approval by the Texas Workforce Commission, and not by an institution having accreditation. The recommendation that the Board accept "any form of accreditation recognized by the U.S. Department of Education" does not take into account this fact. It might also confuse the public about the role of the Coordinating Board by suggesting some other recognition of institutional accreditors exists beyond that provided by the Coordinating Board.

Coordinating Board Modification

6. Clarify that the Board of Nurse Examiners must accept nursing education program maintaining programmatic accreditation from a "nursing accrediting agency recognized by the U.S. Department of Education" rather than "any form of accreditation" recognized by the DOE, as the recommendation is currently worded.

(Raymund A. Paredes, Commissioner of Higher Education – Texas Higher Education Coordinating Board)

For 1.7

Cindy Sterling, Marble Falls

Nancy Maebius, PhD, RN, San Antonio

Lolly Lockhart, PhD, RN, Austin

Beverly Skloss, RN, MSN, Harlingen

Against 1.7

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Helen Reid – Texas Organization for Associate Degree Nursing

Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association

Modification

7. Require that by 2015, all diploma programs in the State of Texas be associated with a degree-granting institution. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Collene Lewis – Nurse Education Policy Coalition; Irma G. Ray, RN, PhD, Director – Tarrant County College District)

Rec. 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.

Agency Response to 1.8

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.8

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Helen Reid – Texas Organization for Associate Degree Nursing

Cindy Sterling, Marble Falls

Against 1.8

None received.

Modification

8. Require nursing programs with a low NCLEX score for two years to review their programs, streamlining the review depending on the scores obtained and other relevant factors. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Collene Lewis – Nurse Education Policy Coalition; Irma G. Ray, RN, PhD, Director – Tarrant County College District)

Rec. 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.

Agency Response to 1.9

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.9

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Collene Lewis – Nurse Education Policy Coalition

Irma G. Ray, RN, PhD, Director – Tarrant County College District

Helen Reid – Texas Organization for Associate Degree Nursing

Cindy Sterling, Marble Falls

Against 1.9

None received.

Modification

9. Instead of requiring letters of support, provide for programs in a specific area to be notified regarding plans for a new program. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Collene Lewis – Nurse Education Policy Coalition; Irma G. Ray, RN, PhD, Director – Tarrant County College District)

Rec. 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.

Agency Response to 1.10

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For 1.10

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Pamela G. Watson, RN, ScD, President – Texas Organization of Baccalaureate and Graduate Nursing Education

Helen Reid – Texas Organization for Associate Degree Nursing

Cindy Sterling, Marble Falls

Against 1.10

None received.

Recommended Action: Adopt Recommendation 1.1 with Modification 2 to clarify that the accreditation must be by a nursing accreditation agency and not any accrediting agency recognized by the U.S. Department of Education. Adopt Recommendations 1.2 through 1.10.

Commission Decision: Adopted Recommendation 1.1 with Modification 2. Adopted Recommendations 1.2 through 1.6. Adopted Recommendation 1.7 with Modification 7 as a statutory change to require all diploma programs in the State to be associated with a degree-granting institution by 2015. Adopted Recommendations 1.8 through 1.10.

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

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.

Responses

Agency

The Board of Nurse Examiners suggests deleting Recommendations 2.1 and 2.2. The Board and staff agree that we can and should better identify crimes related to the practice of nursing. However, the recommended statutory change is unnecessary because the Board has adopted a number of policies and rules that speak to the relationship of crimes to the practice of nursing.

In Recommendation 2.2, 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. While the Board and staff agree that an arrest alone is not grounds for discipline, proof that is otherwise a violation of Nursing Practice Act is relevant. The Board reviews arrest information under its authority to deny licensure for violations, including unprofessional or dishonorable conduct. This 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. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Cindy Sterling, Marble Falls

Taralynn Mackay, RN, PhD, Austin

Rachel Hammon, BSN, RN, Director of Clinical Practice and Regulatory Affairs – Texas Association for Home Care

Kevin Hadacek, San Antonio

Against

None received.

Modification

1. Modify Recommendation 2.2 to stop the use of arrest record information in licensure decisions. (Dr. Bruce Wilson, Edinburg)

<p>Recommended Action: Adopt Recommendations 2.1 and 2.2.</p>
<p>Commission Decision: Adopted Recommendations 2.1 and 2.2.</p>

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

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

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.

Responses

Agency

The Board of Nurse Examiners 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 tasks forces, rather than as chairs.

Agency Modification

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

(Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Cindy Sterling, Marble Falls

Charlene Basler, RN, National Nurses Organizing Committee

Against

None received.

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: Adopted Recommendation 3.1.

Issue 4 The Current Process for Authorizing Qualified Advanced Practice Nurses to Practice in Texas Does Not Promote Mobility Within the Profession.

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.

Responses

Agency

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Mark Adams, President – Texas Association of Nurse Anesthetists

Cindy Sterling, Marble Falls

Against

None received.

Modification

1. Provide for the legislation enacting the Advanced Practice Registered Nurse Compact include the following elements.
 - ◆ a sunset date of approximately five years after the Compact's effective date so that if implemented by December 31, 2011 as recommended in the Sunset staff report, the Compact would have a sunset date of December 31, 2015;
 - ◆ provisions parallel to those applicable to the RN/LVN Compact when it was adopted, including assuring that nurses practicing in Texas under the Compact have the same rights and privileges as Texas-licensed nurses; ensuring that nurses have access to laws and rules governing the practice of nursing in Texas; and giving the Governor the authority to withdraw Texas from the Compact; and
 - ◆ consideration to adopting the Compact as an add-on or addendum to the current RN/LVN Compact.

(Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association)

Recommended Action: Adopt Recommendation 4.1.

Commission Decision: Adopted Recommendation 4.1.

Issue 5 The Nursing Practice Act Does Not Address Discipline for Impaired Nurses Who Commit Practice Violations.

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.

Responses

Agency

The Board of Nurse Examiners suggests either deleting Recommendation 5.1 or modifying it as noted below. The 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. The Board understands from the report that if a sanction is justified, it must be imposed regardless of whether the practice violation was a direct result of a treatable impairment.

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 of the Health and Safety Code, 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 suggests the modification below.

The Board fully supports Recommendations 5.2 and 5.3.

Agency Modification

1. Amend the statutory reporting requirement regarding impairment by chemical dependency or mental illness to require that all third party referrals involving practice errors must be reported to the Board.

(Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

Staff comment: As the agency notes in its response to Recommendation 5.1, impaired nurses who commit practice violations would be subject to disciplinary action in addition to being referred to peer assistance. However, the recommendation does not require a sanction to be imposed, but would make the nurse subject to appropriate discipline by the Board. The Board would have discretion to impose a sanction or to allow a nurse to participate in peer assistance even if no other Board action is taken.

For

Cindy Sterling, Marble Falls

Against

Jennifer Duncan, RN, BSN, CNOR

Recommendation 5.1

Mark Adams, President – Texas Association of Nurse Anesthetists

Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association

Rachel Hammon, BSN, RN, Director of Clinical Practice and Regulatory Affairs – Texas Association for Home Care

Freth Carroll, RN, CNOR, CRNFA, Central Texas Surgical Assistance

Shirley Rhoades, RN

Jo Rake, RN, MSN, CNAA, Texas Nurses Association and Texas Nurses Foundation

Michael Van Doren, Program Director – Texas Peer Assistance Program for Nurses

Taralynn Mackay, RN, JD, Austin

Lynda Woolbert, Director of Public Policy – Coalition for Nurses in Advanced Practice

Ann Bryant, RN, BSN, CNOR, Education Coordinator, Perioperative Services – Midland Memorial Hospital

Verlinda Cobb, RN, Denison

Seifu Tesfay, RN, BS, Dallas

Janice Ills, RN

Judy Melby

Recommendations 5.1 and 5.3

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Modifications

2. Provide for reporting to the Board regarding impaired nurses suspected of committing a practice violation, but not as a change in statute. (Marjorie L. Archer, MS, RN)
3. Provide that only acts directly affecting nursing performance – such as intoxication at work, but not DWI – should be reportable to the nurse peer assistance program. The Board should stay out of the nurse peer assistance process. (Dirk Rogers, RN, CCRN)

Recommended Action: Adopt Recommendation 5.1 with Modification 1. Adopt Recommendations 5.2 and 5.3.

Commission Decision: Adopted Recommendation 5.1 with Modification 1, as further modified, to amend the statutory reporting requirement regarding chemical dependency or diminished mental capacity, to require all third-party referrals involving practice errors to be reported to the Board. Adopted Recommendations 5.2 and 5.3.

Issue 6 Targeted Continuing Education Requirements Dilute the Board's Ability to Ensure Nurses Maintain Competence to Practice.

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.

Responses

Agency

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Cindy Sterling, Marble Falls

Against

None received.

Recommended Action: Adopt Recommendation 6.1.

Commission Decision: Adopted Recommendation 6.1.

Issue 7 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

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

Changing the statutory basis for the late renewal penalty would result in lost revenue of approximately \$100,000.

Responses

Agency

The Board of Nurse Examiners fully supports these recommendations. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Cindy Sterling, Marble Falls

Recommendations 7.1, 7.7, and 7.11: Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Recommendations 7.1 and 7.7: Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association

Against

Recommendation 7.1: Jere Hammer, President – Texas Organization for Associate Degree Nursing

Modification

1. Modify Recommendation 7.1 regarding the jurisprudence examination to add testing of knowledge of concepts relating to patient safety and human error to the jurisprudence exam. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association)

Recommended Action: Adopt Recommendations 7.1 through 7.14.

Commission Decision: Adopted Recommendations 7.1 through 7.14.

Issue 8 Texas Has a Continuing Need for the Board of Nurse Examiners.

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.

Responses

Agency

The Board of Nurse Examiners fully supports this recommendation. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners)

For

Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association

Marjorie L. Archer, MS, RN

Cindy Sterling, Marble Falls

Against

None received.

Recommended Action: Adopt Recommendation 8.1.

Commission Decision: Adopted Recommendation 8.1.

Across-the-Board Recommendations

Board of Nurse Examiners

Recommendations	Across-the-Board Provisions
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.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

New Issues

New Issues

The following issues were raised in addition to the issues raised in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

9. Change the Board's name to the Texas Board of Nursing. (Katherine A. Thomas, MN, RN, Executive Director – Board of Nurse Examiners; Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association)

10. Recognize the Board of Nurse Examiners as the appropriate state agency to regulate nursing assistive personnel if that personnel is certified, licensed, or otherwise regulated by the State. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association)

Staff Comment: In public testimony, Rachel Hammon with the Texas Association for Home Care, spoke in favor of the status quo, **not** giving the Nurse Board authority over unlicensed assistive personnel.

11. Require that all continuing nursing education (CNE) required for license renewal be approved as what the Board classifies as Type I CNE. (Clair Jordan, Executive Director, and Jim Willmann, Director, Governmental Affairs – Texas Nurses Association; Margie Dorman-O'Donnell, MSN, RN, Vice President – Texas Nurses Association)

Staff Comment: Type I CNE comprises courses approved by an organization recognized by the Board, and excludes self study.

12. Require the Board to honor the credentials of a licensed nurse from another state. (Jane Ezell, RN, PhD, Director of Nursing Practice – Seton Healthcare Network; Julia Davis, Marble Falls)

13. Provide for the Board to recognize military training from all armed services, including the navy and air force, as it currently does for the army, as acceptable for licensure in Texas if the person has a license in good standing from another state and has passed the National Council Licensure Examination. (Cindy Sterling, Marble Falls; Julia Davis, Marble Falls)

14. Create a mechanism within the Board of Nurse Examiners for investigating claims by healthcare workers who report unsafe patient care conditions. (Charlene Basler, RN, National Nurses Organizing Committee)

15. Specify in the Nurse Practice Act the right of the RN to be a patient advocate before, giving the nurse the right and obligation as a requirement of licensure to improve health care, to intervene on behalf of patients before harm is done, and to educate patients about all medical options before action is taken. (Charlene Basler, RN, National Nurses Organizing Committee)

16. Specify that the Board of Nurse Examiners' mission to protect the public mandates minimum nurse patient ratios. (Charlene Basler, RN, National Nurses Organizing Committee)

17. Provide for a study of the safe harbor provision contained in the Nurse Practice Act to see if it has met its objectives and to recommend changes to protect nurses and patients. (Charlene Basler, RN, National Nurses Organizing Committee)

Recommended Action: Staff makes no recommendations on any of the new issues.

Commission Decision: Adopted a new issue, raised by Senator Whitmire, to require the Board of Nurse Examiners, in collaboration with nursing education stakeholders and the Texas Higher Education Coordinating Board, to create innovative models for nursing education that promote increased enrollment in Texas nursing programs. As a management action, the recommendation directs the Nurse Board to report back to the Sunset Commission by March 2007 regarding the Board's efforts in creating these models so that the Legislature can make needed changes to the agency's appropriations or statute. As a statutory change, the recommendation requires the Board to implement a statewide plan for creating these models and to report back to the Sunset Commission by September 1, 2008 regarding the plan and the Board's efforts to increase enrollment in nursing education programs.