

Summary of Request:

The following report provides the results and observations noted during an advisory engagement to evaluate the Board of Nursing's ethics-related objectives, programs, and activities.

Historical Perspective:

The results of the project evaluation performed on the design, implementation, and effectiveness of the BON's ethics-related objectives, programs, and activities and intended for the use of the Texas Board of Nursing management and Governing Board.

Pros: The Texas BON will be in compliance with the *International Standards for the Professional Practice of Internal Auditing* and the Texas Internal Auditing Act.

Cons: None.

Staff Recommendation:

Board Action: Move to accept Internal Audit Report #2017-2, Ethics Evaluation as prepared by Jay Steppe, CPA.



Texas Board of Nursing

Internal Audit Report #2017-2

Ethics Evaluation

Prepared by:
E. Jaye Stepp, CPA, CIA, CGAP, CRMA
Austin, Texas

Table of Contents

Internal Auditor’s Report	1
Executive Summary	2
Overall Conclusion.....	4
1. Code of Ethics.....	5
2. Culture and Consistency	6
3. Awareness	7
4. Structure and Accountability.....	8
5. Process Automation and Integration	9
6. Goals and Metrics	10
Report Distribution List.....	12

ACCROYNMS

- DO Director of Operations
- ED Executive Director
- GC General Counsel
- HR Human Resources
- IIA Institute of Internal Auditors
- NEO New Employee Orientation
- NPS Nurse Practice Act
- OAG Office of Attorney General
- SAO State Auditor’s Office
- TAC Texas Administrative Code
- TEC Texas Ethics Commission
- TGC Texas Government Code

E. J. STEPP, CPA

305 CARGILL DRIVE, SPICEWOOD, TEXAS 78669-2450

Internal Audit Report

June 24, 2017

Texas Board of Nursing

The following report provides the results and observations noted during the advisory engagement to evaluate the Board of Nursing's ethics-related objectives, programs, and activities.

We conducted this review in accordance with the *International Standards for the Professional Practice of Internal Auditing* and the Texas Internal Auditing Act. We believe that our work fully supports our conclusions.

The results of the project evaluation performed on the design, implementation, and effectiveness of the BON's ethics-related objectives, programs, and activities supports an overall maturity rating of "Repeatable" (Level 2). This level of maturity includes compliance and ethics practices established with some policy structure, but high reliance on existing personnel creates exposure to change. In some areas BON activities support a "Defined" (Level 3) maturity rating. This level encompasses ethics awareness and overall compliance, where gaps are detected and remediated timely. The BON can mature its Ethics Program with suggestions detailed in the following report.

This report is distributed to and intended for the use of the Texas Board of Nursing management and Governing Board.

Jaye Stepp

E. J. Stepp, CPA
Internal Auditor for BON
Austin, Texas

Executive Summary

Texas Government Code 572 Subchapter C: *Standards of Conduct and Conflict of Interest Provisions*, requires each state agency to adopt a written Ethics Policy for the agency's employees, and distribute a copy of the Ethics Policy to new employees and officers. To comply with this mandate, the BON has developed and documented guidance and expectations related to ethical conduct and conflicts of interest in their Ethics Policy that includes Standards of Conduct and the revolving door policy for regulatory agencies as prescribed by the Office of the Attorney General in their model ethics policy.

IIA Standard 220.A1 provides that "the internal audit activity must evaluate the design, implementation, and effectiveness of the organization's ethics-related objectives, programs, and activities." This report summarizes the scope and observations of the work performed in the evaluation of the BON Ethics Evaluation.

Ethics is defined as "the branch of philosophy that defines what is good for the individual and for society and establishes the nature of obligations or duties that people owe themselves and one another" by the Thomson Gale Encyclopedia.

To assess and evaluate the ethics-related objectives and program at the BON, Internal Audit reviewed agency materials and conducted interviews to gain an understanding of the BON's Ethics program. We also developed a short survey and requested input from all staff. Internal audit used the information gathered on the BON Ethics Program and the IIA's Practice Guide on Evaluating Ethics-related Programs to identify the current maturity level for the BON. The report also identifies how the maturity levels evolve and progress through five states from "Initial" to "World Class".

The maturity model program design covers the following six ethics-related attributes:

1. Code of Ethics (policies, procedures, standards)
2. Culture and consistency
3. Awareness
4. Structure and Accountability
5. Process Automation and Integration
6. Goals and Metrics

Professional guidance describes a strong ethical climate as the foundation of good governance. The IIA practice guide provides that "An ethical culture is created through a robust ethics program that sets expectations for acceptable behaviors in conducting business within the organization and with external parties. It includes effective board oversight, strong tone-at-the-top, senior management involvement, organization wide commitment, a customized code of

conduct, timely follow-up and investigation of reported incidents, consistent disciplinary action for offenders, ethics training, communications, ongoing monitoring systems, and an anonymous incident reporting system.”

The BON Board oversees the ethical climate and ensures management has sound ethics-related objectives and programs. Management is responsible for promoting, exemplifying, and evaluating ethical behavior and each employee should be encouraged to be an ethics advocate. The BON has not formally delegated an Ethics Officer or ombudsman for the agency; someone available to answer questions and research issues that concern state ethics laws and/ or the agency’s guidelines. Policies on Ethics and Fraud Detection provide guidance for staff on who to report to for those areas of concern. In our survey staff expressed overall confidence in knowing who to consult with at the BON if they should encounter an ethical challenge.

Senior management has primary responsibility for promoting and exemplifying ethical behavior. To promote ethical behavior in a small organization with frequent interaction between senior management and employees, methods include leadership by example and informal communications.

Operational management is responsible for promoting, exemplifying, and evaluating ethical behavior in their areas of responsibility. Each manager’s attitude and behavior around ethics is important to the ethical subculture of their areas.

All people in the agency share responsibility for the state of its ethical culture and each individual should be encouraged to be an ethics advocate.

Third-party service providers and other suppliers can be a risk to the agency for unethical actions taken on its behalf by these parties. To protect itself, the agency should incorporate into contracts a requirement that they comply with its pertinent policies such as those related to accepting or offering gifts.

The specific methods used to promote ethical behavior will vary according to the organization’s environment and maturity. For a small organization with frequent interaction between senior management and employees, leadership by example and informal communication may be more influential. A larger, more mature entity with an enhanced, highly effective ethical culture will likely include a multitude of methods.

In evaluating the ethical climate at the BON, the internal audit activity developed a survey instrument for staff input, conducted interviews with staff, and reviewed:

- The BON’s ethics-related policies and processes
 - Ethics Policy

- Prevention and Detection of Fraud Policy
- Board Policy on Conflicts of Interest and Recusal
- Policy on Criminal Background Checks on Employees
- The UT Survey of Employee Engagement results for 2014 and 2016

Overall Conclusion

The results of the project evaluation performed on the design, implementation, and effectiveness of the BON's ethics-related objectives, programs, and activities supports an overall maturity rating of "Repeatable" (Level 2). This level of maturity includes a defined overall compliance and ethics awareness where gaps are detected and remediated timely, which are characteristics of a "Defined" Ethics Program.

Overall Maturity Rating	Repeatable (2)
--------------------------------	-----------------------

Ethics Program Maturity Attributes		
Maturity Evolution	World Class (Level 5)	The compliance and ethics program is considered "World Class," based on benchmarking and continuous improvement; many aspects of the program are highly automated and self-updating, thus creating a competitive advantage; extensive use of real-time monitoring and executive dashboards.
	Mature (Level 4)	KPIs and monitoring techniques are employed to measure success; greater reliance on prevention versus detection of compliance violations and ethical misconduct; strong self-assessment of operating effectiveness; assignments of responsibilities and accountabilities exist and are well understood.
	Defined (Level 3)	Compliance and ethics requirements are well defined and documented, thus there is consistency even in times of change; overall compliance and ethics awareness exists; gaps are detected and remediated timely ; performance monitoring is informal, placing great reliance on the diligence of people and independent audits.
	Repeatable (Level 2)	Compliance and ethics practices are established with some policy structure; formal requirements are still lacking; some clarity on roles, responsibilities, and authorities, but not on accountability; increased discipline and guidelines support repeatability; high reliance on existing personnel creates exposure to change.
	Initial (Level 1)	Compliance and ethics practices are fragmented and ad hoc; generally managed in silos and reactive; lack of formal policies and procedures; dependent on the "heroics" of individuals to ensure compliance and sound ethical conduct; greater potential for violations; higher costs due to inefficiencies; not sustainable.

The BON can mature its Ethics Program from “Repeatable” (Level 2) to “Defined” (Level 3) by:

- Developing, documenting, and implementing ethical values, responsibilities, and periodic attestations of compliance with the Code of Ethics and Standards of Conduct;
- Reviewing policy and training materials to ensure they are consistent and include guidance such as inappropriate actions, scenarios and quizzes addressing ethical issues, dilemmas, and conflicts of interest; and
- Developing, documenting, and implementing goals, metrics, and a formal process for ongoing monitoring of the Ethics Program.

The Institute of Internal Auditors’ (IIA) Practice Guide on Evaluating Ethics-Related Programs and Activities provides the maturity model that was used in this engagement. The IIA’s attribute ratings for the 5 levels of maturity will be shown here for informational purposes to the reader of this report. The tables provide examples of the various components that drive the various levels of maturity. (RC-2 IIA 06-2012).

1. Code of Ethics Rating

Repeatable (Level 2)

Code of Ethics Rating – How effectively does the Code outline management’s expectation regarding ethical conduct?

The BON has implemented an ethics program that covers Board members and employees. The Board Policies include the Conflict of Interest and Recusal policy, as well as the policy for criminal background checks on employees.

The Ethics Policy at BON mirrors the model provided by the Attorney General’s office for state agencies, including the additional clauses for regulatory agencies that includes the revolving door policy. BON also has a Policy for Prevention and Detection of Fraud, which formalizes the policy and assigns responsibility for coordination of policy and compliance efforts to the Director of Operations.

The BON’s Human Resources Manual also has a section on Standards of Conduct that includes the Ethics Policy and Conflicts of Interest. The agency ethics policy is to be distributed to new employees no later than the third business day after the date of employment with the agency. This is accomplished by having new employees take a series of online training courses on their first two days of employment. Conflicts of interest are also discussed in the manual, and the guidance again follows the OAG model. The BON employees must

acknowledge receipt of the rules in the HR Manual, and the acknowledgments must be available for public inspection. New acknowledgments are not required unless the content of the law is changed by the Legislature. (HR Manual, pg 41)

The BON Ethics Survey shows that 81% of respondents believe that executive leadership and management within their divisions demonstrate high ethical standards. They also showed confidence that they know who to go to in the event of concerns and their responsibilities for abiding by the Ethics Policy. In our survey, 100% asserted that they are aware of the agency Ethics Policy.

Recommendations:

To mature the Code of Ethics attribute from Level 2 Repeatable to Level 3 Defined, the BON should consider:

- Have the Board or designee approve the ethics-related policies and review them periodically to determine what updates are needed
- Ensure employees consistently receive copies of all required ethics-related policies and standards, and sign a policy receipt that is comprehensive.
- Have employees sign periodic attestations of compliance with the ethics-related policies and Standards of Conduct.

Management Response: 2. Culture and Consistency

Repeatable (Level 2)

How does the organization perceive management's commitment to compliance?

The BON Ethics Policy was developed to address legal ramifications of noncompliance. The survey was mostly positive in staff's perception of management's commitment to compliance. Staff indicated that they are willing to seek guidance or consultation on ethical issues by 92%. Even though there is not a designated Ethics Officer at the BON, survey results show 90% of staff say they know the appropriate person to contact for guidance or consultation if they have an ethical issue, dilemma, or conflict of interest. Most staff (85%) also indicated they know the communication channel and process for reporting suspected improprieties, policy violations, fraud, waste, or abuse. BON needs to be aware that 15% of staff either disagreed with that statement, meaning they are not confident about the communication channel or process.

Recommendations:

- Include expectations for ethical conduct in job descriptions and interviews
- Provide refresher training on policies such as Ethics, Fraud Prevention, etc

- Encourage employees to raise compliance questions before they're a problem
- Ensure compliance and ethics are topics at agency meetings, with a consistent message

3. Awareness Rating

Repeatable (Level 2)

Awareness is measuring how aware employees and outside stakeholders are of the compliance program and its requirements. The survey indicates that BON employees are well aware of the ethics policies, had training on them, and intuitively know some, if not all, requirements of the program. 95% stated that they understand workplace policies and rules and have an effective resource for obtaining clarification of policies when needed. 68% agreed that BON ethics-related objectives, programs, and activities are effective (successful in producing the desired or intended result), while 10% disagreed, and 22% indicated they didn't know if they are effective.

The BON Human Resources Manual has a section on the requirement to distribute a written ethics policy to new employees and provide training on it. This is accomplished through online training. The Manual also has a section on Conflict of Interest that describes the activities that employees may not engage in that conflicts with their ability to conduct their duties in the public's interest. The elements listed in the HR Manual are consistent with the BON Ethics Policy. The BON requests that employees acknowledge receipt of a copy of the rules with a signed acknowledgment. These are to be maintained in personnel files. The BON will be moving to electronic acknowledgments in September.

While 88% of survey responses agreed that the BON ethics training is helpful, informative, and frequent enough, there was also some interest in additional training to include scenarios or quizzes on ethical issues, dilemmas, or conflict of interest. Suggested topics included

- Sexual Harassment in the Workplace
- Situations that Cause of Hostile Work Environment
- Changes in TBON Statute and Rules and TBON Policies related thereto
- Minor things such as tardiness, personal computer use, visiting during work time

Recommendations:

- Develop a strategy to provide refresher training on the ethics program periodically, to all staff. Follow up on those who do not complete the program.
- Incorporate more examples, scenarios, and quizzes related to ethical issues, dilemmas, or conflicts of interest into the Ethics training materials.

- Ensure stakeholders are aware of the program and can find references on the BON website

4. Structure and Accountability Rating Defined (Level 3)

How effective is the structure for managing the program and enforcing accountability? An immature program would have no formal compliance structure or independent oversight. In a repeatable model, accountability is broadly understood but not formally documented. Compliance risks are generally understood but not formally documented.

At the defined level, a compliance structure has been established, with accountability assigned to risk area officers. Oversight is defined from a senior management and board perspective. There is a focal point for determining who should conduct investigations. Compliance risks and scenarios are documented.

The BON has established a compliance structure with accountability assigned primarily to the Director of Operations. The Prevention and Detection of Fraud Policy designates the Director of Operations as the initial contact for reporting suspicious activity. He is also responsible for making a preliminary determination as to the necessity for an investigation. He reports his determination to the Executive Director and the General Counsel with all facts known regarding the reported fraud or illegal activity. An internal investigation, if needed, would be handled by one of the attorneys and sent on to the Executive Director for a decision. The Executive Director would be responsible for the decision to notify the board.

Recommendations:

To move to the next level, Mature, would involve things like developing a formal investigation protocol outlining appropriate resources to use (internal vs external), documentation requirements, and how investigations are closed.

- Complete a formal compliance risk assessment
- Ensure Internal Audit has a consistent plan for auditing all compliance risks
- Develop, document, and implement a process for periodic reporting that includes the progress or results of ethics-related issues, and to ensure the Executive Director and Board can formally oversee and monitor the Ethics Program and the ethical climate at the BON

5. Process Automation and Integration Rating

Defined (Level 3)

How effectively are compliance controls and processes standardized, integrated, and automated? Repeatable (level 2) would be some compliance controls in place, data on events is difficult to compile. Level 3 (defined) is compliance controls are standardized and documented and an external hotline is in place. Some compliance controls are being integrated with other business processes and automated to the extent systems support it (the electronic acknowledgment of having received the Board Rules is to begin in September).

Additional exposure to staff of these written procedures in the form of refresher training including scenarios, videos, etc.

Compliance controls and procedures at BON are well-documented and available across the organization on the intranet. Employees generally understand that they can contact Legal or Human Resources if they suspect a non-compliance event. There is limited training or testing of the controls and procedures in place. The BON website provides information on how employees or out-siders can report suspected non-compliance events to the BON or to the State Auditor's Office. The SAO has a hotline (an external hotline) that is available for employees to report suspected fraud, waste, or abuse.

The Director of Operations is responsible to investigate allegations of suspected fraud, waste, or abuse and receives and resolves ethics-related issues, dilemmas, or conflicts of interest. He is the initial contact for reporting and makes the initial determination as to necessity to proceed with an investigation. He advises the Executive Director and General Counsel of known facts, and consults with the GC for advice and assistance. Upon completion of the investigation, the DO prepares a report for review by the Executive Director and General Counsel. The Executive Director then determines if fraudulent or unlawful conduct has occurred in relation to the operations of the BON and contacts the appropriate agencies, including the State Auditor's Office with full cooperation. The procedure for Protection and Detection of Fraud should be reviewed with staff periodically to reinforce the process.

In our survey, 90% of respondents agreed they know the appropriate person to contact for guidance or consultation in regard to an ethical issue, dilemma, or conflict of interest, and 92% indicated they would be willing to seek such guidance. 88% said they would be willing to report suspected improprieties, policy violations, fraud, waste, or abuse. And 72% agree that the BON will effectively resolve ethical issues, dilemmas, and conflicts of interest.

The survey results also revealed that 80% of the employees who responded to the survey believe that they will be protected if they report suspected

improprieties policy violations, fraud, waste, or abuse. 70% indicated that they have never perceived unethical behaviors or misconduct from other BON employees or contractors, with 25% disagreeing. While 63% indicated they have never faced an ethical issue, dilemma, or a conflict of interest at BON, another 30% disagreed with that statement. The remainder didn't know. These results indicate areas that invite some enhanced communications and/ or training.

Recommendations:

- Automate the record keeping process for tracking. Processes are manual in nature and not conducive to data collection strategies that could be used for data analysis and reporting purposes.

6. Goals and Metrics Rating

Repeatable (Level 2)

How is success of the compliance program measured? Repeatable (level 2) is when goals and metrics are not formalized, and employees generally understand that the absence of compliance events is indicative of a successful program.

Defined (level 3) is where broad compliance goals are established and communicated, and metrics exist to measure the nature and frequency of compliance events.

BON's ethics-related programs include policies, procedures, training, awareness, and accountability. Goals and metrics are not formalized, but there have been zero instances of compliance events and employees generally understand that this absence of compliance events is indicative of a successful program.

Establishing goals and metrics is critical in determining the contributions of the Ethics program and provide a great tool to properly exercise reporting, monitoring, and oversight responsibilities. The goals establish what the Ethics program is trying to accomplish and the metrics report on the progress of accomplishing the goals and the results obtained. Examples of ethics-related metrics include:

- Percent of employees that took Ethics training
- Number of ethics-related meetings conducted

Survey results show that employees generally understand the ethics-related programs and believe the ethics-related objectives, programs, and activities at the BON are effective (successful in producing the desired or intended result). Staff who responded to the survey indicated that management has effectively communicated their job duties and responsibilities to them. While 76% of staff

indicated management is open to employee suggestions to improve productivity and quality, 19% disagreed with that statement. Similar results were noted in the SEE Survey of 2016 with one of the highest levels of disagreement (18.8%) being that there are sufficient opportunities to give supervisory feedback.

Recommendations:

- Develop, document, and implement goals and metrics for the Ethics program.
- Develop, document, and implement a process for periodic reporting on the goals and metrics, and the results of the periodic assessments or surveys

Management Response:

The BON will develop and ethics refresher course and will have a new automated tracking system of training courses required by state law in place by December 31, 2017.

Staff will review and discuss the ethics maturity model for possible implementation of other recommendations.

Acknowledgements:

The BON staff was cooperative in providing requested information, documents, and responses to inquiries and surveys in a timely manner. We appreciate the input, assistance, and professionalism of staff involved in the engagement.

Report Distribution Page

Texas Board of Nursing

Kathy Shipp, MSN, RN, FNP, Board President

Deborah Bell, CLU, ChFC, Board Liaison for Internal Audit

Katherine Thomas, MN, RN, FAAN, Executive Director

Mr. Mark Majek, Director of Operations

Oversight Agencies

Governor's Office of Budget and Planning, and Policy

Legislative Budget Board

Sunset Advisory Commission

State Auditor's Office