



TEXAS BOARD OF NURSING ANNUAL REPORT 2017

BOARD MEMBERS

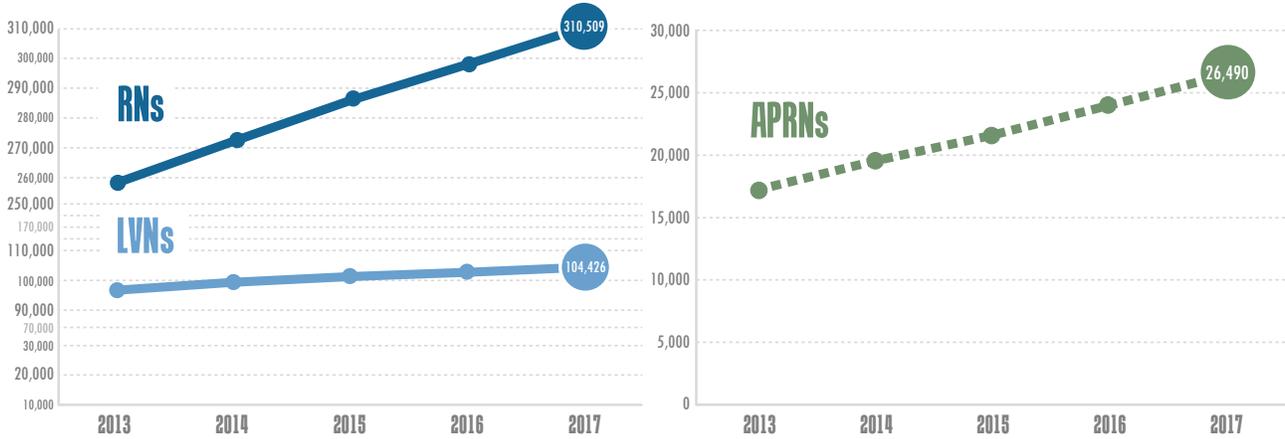
Kathy Shipp, President, MSN, RN, FNP, Representing APRN Practice, Lubbock
Patricia "Patti" Clapp, Vice-President, BA, Consumer Member, Dallas
Nina Almasy, DNP, RN, CNE, Representing LVN Education, Austin
Laura Disque, MN, RN, Representing RN Practice, Edinburg
Allison Porter-Edwards, DrPH, MS, RN, CNE, Representing BSN Education, Bellaire
Diana Flores, MN, RN, Representing RN Practice, Helotes
Doris Jackson, DHA, MSN, RN, Representing ADN Education, Pearland
Mazie M. Jamison, BA, MA, Consumer Member, Dallas
Kathy Leader-Horn, LVN, Representing LVN Practice, Granbury
David Saucedo, II, Consumer Member, El Paso
Melissa D. Schat, LVN, Representing LVN Practice, Granbury
Francis Stokes, BA, Consumer Member, Port Aransas
Kimberly L. "Kim" Wright, LVN, Representing LVN Practice, Big Spring

OPERATIONS

NUMBER OF RNS/LVNS/APRNS IN TEXAS: 2013-2017

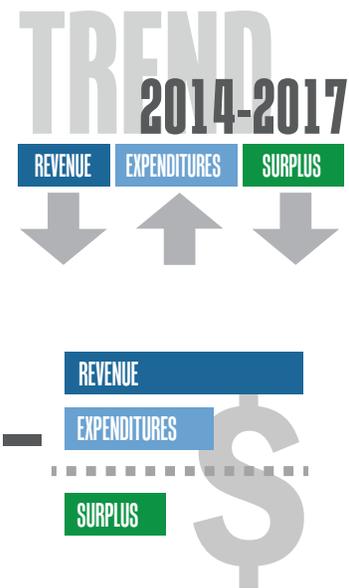
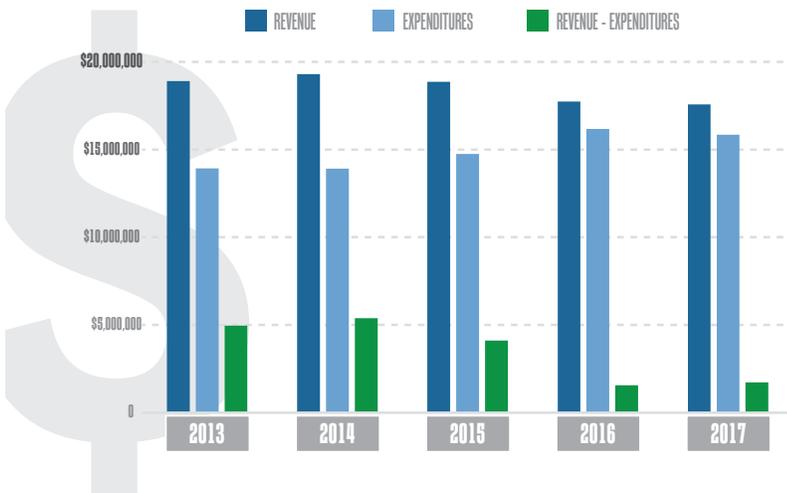
i The growth in current LVN licensure has averaged under 2% per year in the past five fiscal years whereas the average annual growth in RNs and APRNs has been 5% and 10% respectively. During this period there has been a decline in the demand for LVN services in the hospital setting and a decline in the number of approved LVN programs in Texas.

Although there has been steady growth of current RNs, licenses by endorsement from other states have remained flat. The growth of APRNs has been robust as the State is experiencing a shortage of primary care providers.



TEXAS BOARD OF NURSING: REVENUE/ EXPENDITURES 2013-2017 TEXAS BOARD OF NURSING ANNUAL REPORT

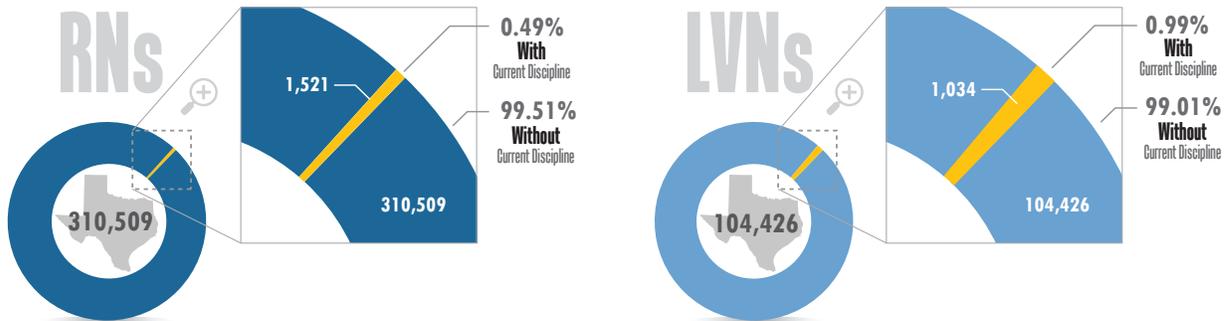
i The growth in licensees in Texas, has resulted in higher revenue from license renewals. The BON attempts to maintain a balance of funds approved by the Texas Legislature but the sustained growth of RNs and APRNs provides additional revenue beyond projections.



ENFORCEMENT

NURSES WITH CURRENT DISCIPLINE PERCENTAGE OF CASES COMPARED TO TOTAL POPULATION OF LICENCEES

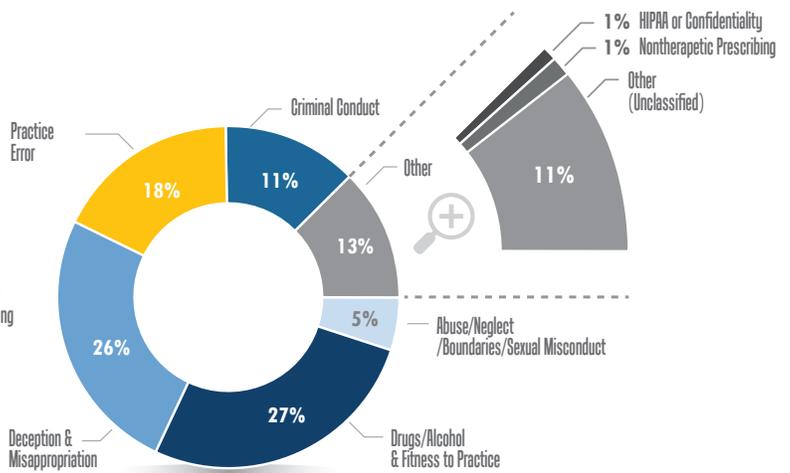
i Current discipline affects a very small population of nurses — only 0.49% of Registered Nurses and 0.99% of Vocational Nurses have current discipline.



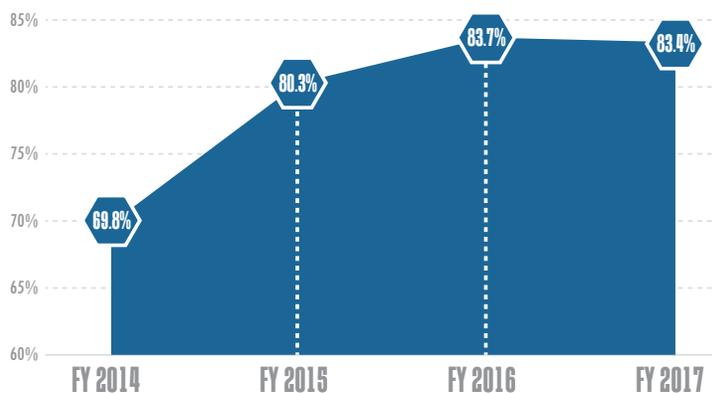
TYPES OF CASES RESULTING IN DISCIPLINE PERCENTAGE OF TOTAL COMPLAINT TOPICS RESULTING IN DISCIPLINE

i The majority (53%) of complaints resulting in discipline included concerns about use of drugs/alcohol, fitness to practice, deception, and misappropriation, while concerns involving nursing practice issues represented less than one fifth (18%) of the complaints.

- 27% Drugs/Alcohol & Fitness to Practice
- 26% Deception & Misappropriation
- 18% Practice Error
- 11% Criminal Conduct
- 5% Abuse/Neglect/Boundaries/Sexual Misconduct
- 13% Other



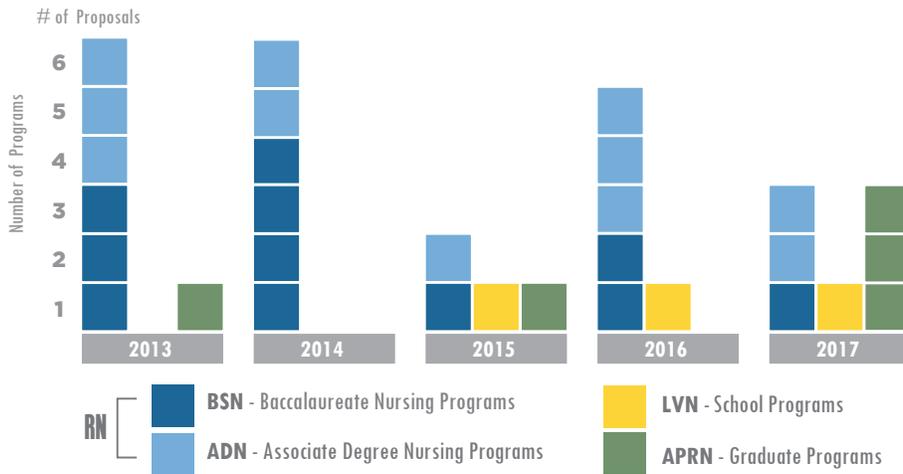
PERCENTAGE OF CASES CLOSED IN SIX MONTHS



i Since implementing defined performance measures, the Board has closed more than 80% of its cases within six months during the past three years.

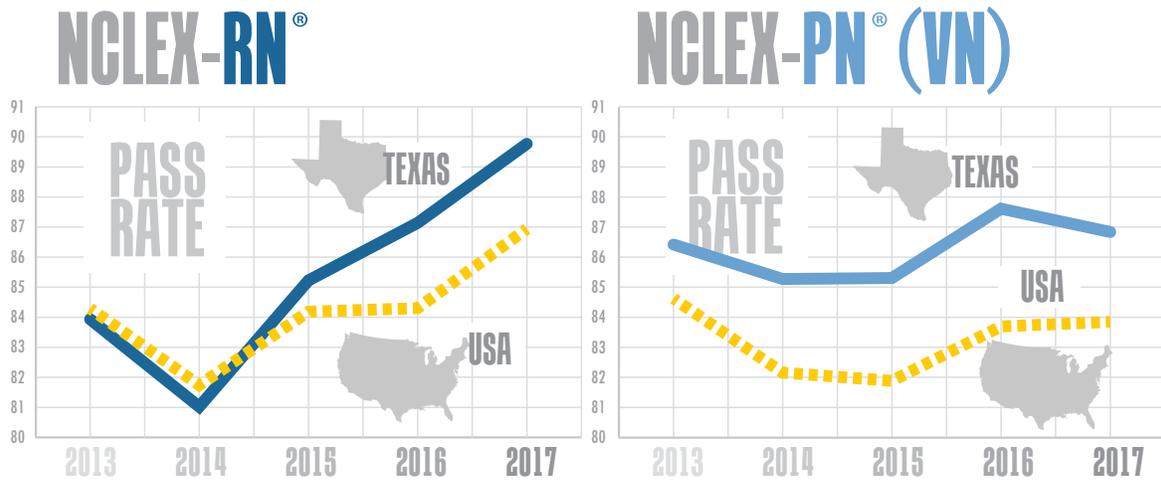
EDUCATION

NUMBER OF PROGRAM PROPOSALS REVIEWED/APPROVED BY THE BON: 2013-2017



i From 2013-2017, the BON approved 30 new nursing education programs. Of the 30 new programs: 11 were associate degree, 11 were baccalaureate degree, 11 vocational certificate, and 5 were APRN education programs. Since 2013, the number of new vocational nursing education programs has decreased.

NCLEX PASS RATES COMPARED TO NATIONAL PASS RATES



i The annual NCLEX-RN® and NCLEX-PN® examination pass rates of first time test-takers from registered nursing and vocational nursing programs in Texas were above the national average from 2013 - 2017 with the exception of the 2014, when the NCLEX-RN® pass rate decreased to 83.93%, just slightly below the national average of 84.29%. This was an expected decrease as the NCLEX-RN® passing standard was increased, effective April 1, 2013.

Throughout 2014, BON Education Consultants worked individually with each affected program as the programs conducted program self-studies to address identified areas for program improvement. Subsequently, the NCLEX-RN® pass rates rebounded in 2015 and remain above the national average to date.

I. Agency Mission and Values of the Texas Board of Nursing

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

Acting in accordance with the highest standards of ethics, accountability, efficiency, effectiveness, and openness, the Texas Board of Nursing approaches its mission with a deep sense of purpose and responsibility and affirms that the regulation of nursing is a public and private trust. The Board assumes a proactive leadership role in regulating nursing practice and nursing education. The Board serves as a catalyst for developing partnerships and promoting collaboration in addressing regulatory issues. The public and nursing community alike can be assured of a balanced and responsible approach to regulation.

II. Outcomes of the 2016 – 2017 Sunset Commission Report

The most recent Sunset review of the Board began in 2015 with the development of a Self-Evaluation Report highlighting the organization and major issues being addressed by the Board. Sunset Staff solicited input from the public, interest groups and professional organizations regarding the agency. Sunset Staff also collected and evaluated information from extensive interviews with the Board Staff, performance reports and research on other states and other sources. Based upon their findings, House Bill 2950, the Texas Board of Nursing Bill was adopted in the 85th Texas Legislature. Consequently, the following changes we made by the Board of Nursing during FY 2017.

Path to Initial Licensure for Graduates of Out-of-State Nursing Programs that are not Substantially Equivalent to Texas Programs

House Bill (HB) 2950 included two requirements related to nursing education:

- Define substantially equivalent education standards for the purpose of ensuring graduates of out-of-state nursing education programs who apply for Texas licensure are educationally prepared
- Adopt rules to provide a clear pathway to initial licensure for graduates of out-of-state programs that the Board determines are not substantially equivalent to the Board standards for Texas Programs.

The revised definitions of substantially equivalent education standards will make it easier for applicants to understand licensure requirements. This definition will also remove the vocational nursing education minimum clinical hours' requirement which is often a barrier for graduates of out-of-state VN programs.

The pathway to licensure for applicants who graduate from an out-of-state program determined not substantially equivalent to Texas programs has led to the development of a new temporary licensure permit process for those applicants. These applicants may complete 500 hours of clinical practice under the direct supervision of an approved preceptor or they may complete a program designed to assess and improve clinical skills within an approved Texas nursing education program.

Unprofessional Conduct

HB 2950 changed the Board's laws related to *Good Professional Character* required for initial licensure and *Unprofessional Conduct* violations that may subject a nurse to licensure discipline. The Sunset Commission findings and recommendations as adopted in HB 2950 will have a direct impact on the Board's processes associated with licensing or disciplining persons with criminal convictions. The Board will likely take less disciplinary actions regarding some crimes and behaviors which may have previously been considered unprofessional conduct or demonstrated a lack of professional character.

Peer Assistance Program Management

The Sunset Commission found that the Texas Peer Assistance Program for Nurses (TPAPN) was not flexible enough to meet the needs of individual nurses and required more robust oversight to gauge the effectiveness of TPAPN's rehabilitation of nurses. Staff has dedicated an agency lawyer to serve as the designated contract manager assigned to the peer assistance program.

HB 2950 established a statutory requirement that the Board adopt a rule that establishes a clear procedure based on meaningful performance goals for evaluating the success of its peer assistance program. The Board contracted with the Citizen Advocacy Center, a nonprofit organization located in Washington, D.C., and a management/performance audit has been completed. This review provided the Board with an in-depth evaluation of the current process and currently the Board is working with the Texas Nurses Foundation to implement changes to the program to promote individualized treatment modalities.

Prescription Monitoring Program

The Texas Prescription Monitoring Program (PMP) collects and monitors prescription data for all Schedule II, III, IV and V controlled substances dispensed by a pharmacy in Texas or to a Texas resident from a pharmacy located in another state. The PMP also provides a venue for monitoring patient prescription histories for practitioners and the ordering of Schedule II Texas Official Prescription Forms. The PMP is managed by the Texas State Board of Pharmacy (TSBP).

The 85th Legislature enacted HB 2561 which mandated that each regulatory agency that issues a license, certification or registration to a prescriber must promulgate specific guidelines for prescribers regulated by that agency for the responsible prescribing of opioids, benzodiazepines, barbiturates, or Carisoprodol. Further, HB 2561 clarified that the Board must require its regulated prescribers to periodically access the information submitted to the PMP.

Board staff is proposing all rules and guidelines necessary to implement HB 2561. Currently, the Board monitors the PMP for patterns that indicate potentially harmful practices and will pursue those cases where non-therapeutic prescribing practices are indicated. Investigations will include evaluating whether the APRN has complied with the required check of the PMP prior to prescribing. The current system will require APRN emails to push notifications to practitioners when certain criteria are met indicating possible non-therapeutic prescribing patterns of practice.

Enhanced Nurse Licensure Compact (eNLC)

HB 2950 enacted the Enhanced Nurse Licensure Compact (eNLC), which currently includes 26 states. The eNLC allows RNs and LVNs to utilize one multi-state license issued by the home state to practice in other states belonging to the compact, without the necessity of obtaining or maintaining separate licenses in each compact state.

A key part of the eNLC is the implementation of the uniform licensure requirements (ULRs) for a nurse's eligibility in obtaining a multi-state license.

The ULRs include the requirements of having:

- graduated from an approved nursing program
- completed a criminal background check
- no felony convictions
- not enrolled in an alternative to discipline program
- a US social security number
- international credentials evaluated by an authorized credential review agency and passing an English proficiency examination if the nursing program was not conducted in English (for internationally educated students)

State Office of Administrative Hearing Authority to Make Final Decisions and Elimination of Costs

HB 2950 changed the Board's laws related to the State Office of Administrative Hearings' (SOAH) ability to make final decisions regarding the findings of fact and conclusions of law and the Board's authority to assess the costs of the hearing against a Respondent.

Staff does not expect any significant impact of the elimination from the Board's authority to modify findings. Nevertheless, the Board may on occasion seek judicial review if the Board believes the ALJ has committed an error making a finding or interpreting the law. The Office of the Attorney General would be requested to represent the Board's interest if this scenario presents itself.

In the past, the Board would routinely assess costs of a hearing if the Respondent were found to be in violation of the NPA. Since recovery of these costs are no longer available, staff will monitor any possible financial impacts. It is not anticipated that the lack of authority to recover these costs will impact the enforcement strategy for those who have violated the NPA and request a SOAH hearing.

III. Legal/Enforcement Highlights

Disciplinary Actions - Number of New Cases

In FY 2017, the Board opened 11,358 new cases. There was no significant difference in the number of new cases opened in FY 2017 as compared to FY 2016, where 11,458 cases were opened. This leveling trend may be attributed to the end of a three-year decline in new cases seen through FY 2016 as the fingerprint criminal background check (CBC) process for all licensees was completed.

Based on recommendations made by the Sunset Commission, the Board was required to re-evaluate its Criminal Conduct Rule and reanalyze how it views crimes that have no direct nexus to the practice of nursing. Utilizing its E&D stakeholder committee, revisions have been made and will most likely result in future decreases in the number of criminal cases the Board reviews, thus decreasing the overall number of open investigations.

SOAH Hearing Settings

The total number of cases set for FY 2017 has not grown dramatically. SOAH has implemented a docketing policy that makes it somewhat more difficult to obtain a hearing date more than 90 days out. Nevertheless, SOAH has offered to increase dates available for ALJ assisted mediations. As a result, Staff has begun requesting that SOAH assign mediators to Staff cases before a formal hearing date is requested and set at SOAH.

Staff anticipates having to set fewer cases for a formal SOAH hearing in the next fiscal year and engage in more mediations. Staff will be monitoring the number of mediations set and successfully settled. Similarly, Staff will continue to track the number of cases docketed, tried, or settled pursuant to the conventional practices of the past.

Practice Breakdown and Remediation (KSTAR)

In October 2013, the Board approved a two-year pilot program with the Texas A&M Rural and Community Health Institute (RCHI) and the College of Nursing (CON) to offer the Knowledge, Skills, Training, Assessment and Research Nursing (KSTAR) Pilot Program as an option to nurses with practice violations that result in a disciplinary sanction of a warning and below. KSTAR is a comprehensive program that utilizes an individualized assessment of a nurse with practice breakdown issues, and designs a personalized remedial education plan aimed at correcting any knowledge deficits that may exist.

At the July 2017 quarterly Board meeting, a summary of the pilot outcomes was presented and the Board approved KSTAR Nursing as a permanent disciplinary option for nurses meeting eligibility criteria as set out in Board Rule 213.35.

The concept of targeted assessment and individualized remediation of practice breakdowns has been shown to be a promising alternative to conventional discipline. KSTAR's success will continue to be monitored as the outcome research is gathered and reported to the Board. Nevertheless, it remains somewhat expensive and cost prohibitive for some nurses compared to traditional discipline.

IV. Licensing Highlights

Disaster Relief Nursing Services and the Need for Flexible Licensing

On August 23, 2017, Governor Abbott issued a State Disaster Declaration for 30 Texas counties in anticipation of Hurricane Harvey making landfall in the Gulf Coast Region. This declaration allowed the Board to implement emergency licensure procedures with notification to the Office of the Governor. The Board requested rule exemptions from the Governor's Office to allow nurses to be screened and approved expeditiously. Fees were waived and licensure processes were expedited. The Board issued approximately 1600 temporary licenses for the duration of the disaster following the disaster declaration. Following approval from the Governor, the Board waived certain licensure requirements for nurses from non-compact states to practice in Texas if they had a clear and current license from their home state.

The Board posted announcements on the Board's website and Facebook explaining the temporary licensure process for out-of-state nurses coming to Texas to provide nursing care in disaster areas. Applications were received from hundreds of nurses seeking to provide assistance. Staff worked nights and weekends approving applications for

more than 600 nurses in the first week following Harvey's arrival in Texas. The Board also developed a software program to generate letters to nurses who received temporary licenses and sent notices to them by email as well as regular mail.

The Board recently surveyed out-of-state nurses and the organizations who employed them to gain an understanding of any issues that arose during placement for disaster relief. A review of the data indicates that 116 nurses responded to the survey and of these, 48.2% did not come to Texas to provide disaster relief primarily because they could not find an organization to place them. Of the 14 organizations that responded to the survey, 85% indicated that there was a need for the Board to issue a temporary license for nurses from non-compact states to provide disaster relief and rated the Board's expediency for issuing a temporary license at 4 on a scale of 5.

In an effort to share the Board's efforts to respond to Hurricane Harvey, an article written by Board staff is being published in the July, 2018 *Journal of Nursing Regulation*.

V. Nursing Education Highlights

Baccalaureate Degree Nursing Programs in Public Junior Colleges

SB 2118 enacted during the 85th Legislature, authorized the Texas Higher Education Coordinating Board (THECB) to approve certain public junior colleges to offer baccalaureate degrees in specified fields of study, including nursing. The bill required nursing baccalaureate program proposals meet all Board of Nursing requirements, regardless of whether the program is a pre-or- post licensure baccalaureate degree program. Board and THECB Staff have developed a proposal application process that avoids duplication, yet assures the required input of the Board's expertise specific to nursing education.

During its April 2018 quarterly meeting, the Board approved Austin Community College as the first community college in Texas to offer a baccalaureate degree nursing program. While several colleges have expressed interest, the stringent eligibility criteria set forth

in statute will likely prevent a large number of programs from applying. Board Staff will monitor this closely and continue to work collaboratively with THECB to ensure a coordinated approval process.

Clinical Education

Clinical education in nursing continues to generate significant discussion focused on the challenge of securing adequate clinical settings for students to meet clinical course objectives. Despite the release of Education Guidelines 3.8.7.a. *Faculty Guide to Promoting Optimal Clinical Instruction* in 2014 and 3.8.6.a. *Simulation in Pre-licensure Nursing Education* in 2015, programs continue to express difficulty with securing and retaining affiliation agreements for clinical placements.

The Board's Education Guideline 3.8.6.a. *Simulation in Pre-Licensure Nursing Education*, allows programs the flexibility to use the evidence based practice of replacing up to 50% of direct patient care clinical hours with simulation, provided the simulation is high fidelity and implemented using best practices. Although the 2016 NEPIS *Characteristics of Nursing Programs Reports* published by the Texas Center of Nursing Workforce Studies did report an increased use of simulation, the increase has not been as significant as anticipated, given the reported difficulty in securing clinical placements for direct patient care clinical learning experiences. For example, the median number of simulation hours reported by all professional nursing education programs only increased from 48 hours in 2011 to 79.8 hours in 2016.

Since there were changes to the Board's rules that eliminated a specified number of required clinical hours for VN education programs, it will be important to monitor for any impact on the challenge of securing clinical settings.

Board Staff will continue to track clinical education trends, including the annual trends in the use of simulation via the Nursing Education Program Information Survey (NEPIS).

Board Rule Chapters 214 and 215 will undergo review in FY 2018. Future possible revisions to rules related to clinical education, including use of preceptors, will be considered as the evaluation data are analyzed from a recent pilot project that increases the number of students a faculty member may supervise using a preceptor model.

VI. Nursing Practice Highlights

Telehealth

Telehealth remained a newsworthy topic throughout FY 2017 and the 85th Legislative Session. Telemedicine rules that required an initial face-to-face visit prior to practicing telemedicine with narrow exceptions in psychiatric practice were proposed then withdrawn by the Texas Medical Board (TMB). With the rules withdrawn, Senate Bill 1107 passed and now defines telemedicine and telehealth more clearly and prohibits a health professional regulatory agency from adopting rules pertaining to telemedicine medical services or telehealth services that would impose a higher standard of care than the standard described by the bill. Additionally, the bill required coordinated rule making by the Board, TMB, Texas Physician Assistant Board, and Texas State Board of Pharmacy to establish determination of a valid prescription in accordance with practitioner-patient relationship that meets statutory criteria. The bill also required jointly developed responses to frequently asked questions (FAQs) on the aforementioned agencies' websites related to the determination of a valid prescription issued while telemedicine medical services are being provided. Board Staff have developed rules and will continue to collaborate with TMB and other agency Staff to work toward meeting the requirements of SB 1107.

Texas Taxonomy of Error Root Cause Analysis of Practice-Responsibility (TERCAP)

Completion of the Board's TERCAP Pilot Project was finalized in August of 2016. The four-year pilot project provided the Board with invaluable information regarding nursing practice breakdown.

Key findings include the;

- identification of trends in nurse, system and practice breakdown factors
- validation of a common language between a board of nursing and the practice environment to review and discuss nursing practice breakdown as well as the system's contribution to the breakdown event
- identification of issues regarding Peer Review Committees' understanding of the Board's mandatory reporting requirements versus internal remediation for nurses with practice breakdown
- importance of the role of an established and functional peer review Committee to ensure a balanced and comprehensive review of nursing practice breakdown

Because of the success of the TERCAP Pilot, a goal is in place to offer the TERCAP methodology to all Texas Nursing Peer Review Committees. Several initiatives are in place for completion of this goal in 2018. First, the TERCAP website has updated to provide general information about TERCAP as well highlighting related links to national and state resources. Second, a summary report and webinar have been developed to share important information that was gleaned from the pilot. Third, the TERCAP Protocol is being revised for appropriate utilization by Peer Review Committees. Lastly, a webinar will be developed to provide guidance on local implementation of the TERCAP methodology.