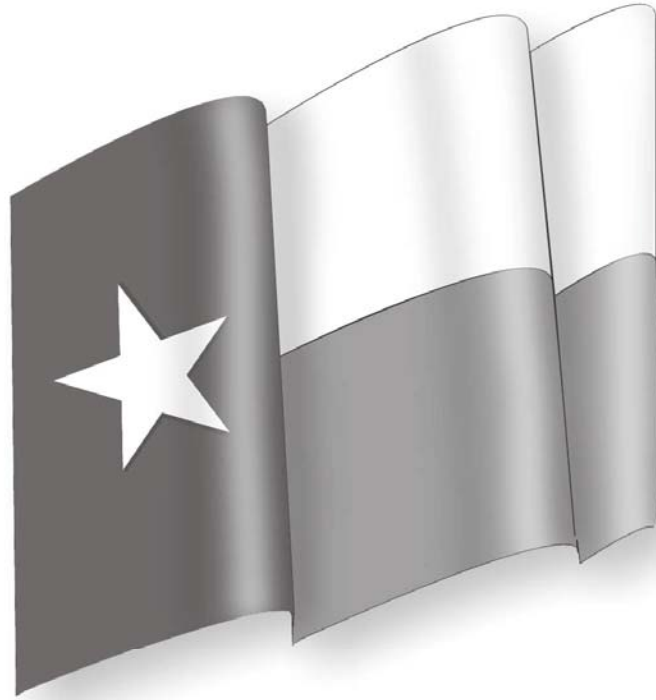


*Summary of Sunset
Commission Recommendations*



Board of Nurse Examiners

February 2007





Board of Nurse Examiners

Agency at a Glance

The mission of the Board of Nurse Examiners for the State of Texas (the Board) 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.



*For additional information,
please contact Joe Walraven
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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 2006, the Board operated with a budget of \$6.5 million. All costs are covered by licensing fees collected from the profession.
- ◆ **Staffing.** The Board had a staff of 79 in 2006, all based in Austin.
- ◆ **Education.** The Board currently has approved 217 nursing education programs in Texas, including 96 for professional nurses, 115 for vocational nurses, and six for advanced practice nurses.
- ◆ **Licensing.** In fiscal year 2006, the Board regulated 274,302 licensees, including 193,764 professional nurses and 80,538 vocational nurses. That same year, the Board issued 18,236 new licenses.
- ◆ **Enforcement.** In fiscal year 2006, the Board received 6,673 jurisdictional complaints and resolved 6,029. Of the resolved complaints, 2,423 resulted in disciplinary action. The Board also took disciplinary action against 504 applicants for licensure because of criminal history.

Board Members (13)

Linda R. Rounds, RN, FNP, President
(Galveston)
George H. Buchenau, Jr., RN, Vice President
(Amarillo)
Deborah H. Bell (Abilene)
Virginia M. Campbell, RN (Mesquite)
Blanca Rosa Garcia, RN (Corpus Christi)
Richard Gibbs, LVN (Mesquite)
Rachel Gomez, LVN (Harlingen)
Brenda Jackson, RN (San Antonio)
Beverley Jean Nutall, LVN (Bryan)
Anita S. Palmer (Olney)
Frank Sandoval, Jr. (San Antonio)
Vacancy (2)

Agency Head

Kathy Thomas, Executive Director
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Recommendations

1. Streamline the Nurse Board's process for approving nursing education programs to remove unnecessary complexity, eliminate duplication, and accommodate changes in the delivery of nursing education.
2. Encourage an innovative approach by the Board for dealing with the nursing shortage.
3. Require the Board to clarify how it will use criminal history and arrest information in licensing and disciplining nurses.
4. Change the way the Board uses advisory committees to ensure objective, independent advice on Board functions and policies.
5. Adopt the Advanced Practice Registered Nurse Multistate Compact to make it easier for these nurses to come to Texas.
6. Improve the Board's ability to deal with impaired nurses who commit practice violations.
7. Strengthen the Board's oversight of targeted continuing education to make the requirements workable for the Board and beneficial for the nurse.
8. Conform key elements of the Board's licensing and enforcement functions to commonly applied licensing practices.
9. Continue the Board of Nurse Examiners for 10 years.

Issue 1

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

Key Findings

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

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

Nationally, the nature of regulation of nursing education programs is changing, presenting challenges to state regulation of these programs. Without a framework for streamlining the Board's process for approving nursing education programs, the State is less prepared to respond to these changes and to ensure consistent standards for education programs in other states, a more coordinated approach to approving these programs, and the elimination of requirements that unnecessarily restrict opportunities for new nursing programs in Texas.

Recommendations

Change in Statute

1.1 Clarify that nursing programs, once accredited by a nursing accreditation 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 licensing examination does not indicate a problem. If a program's pass rate on the 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 nursing 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 nursing 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 nursing accrediting agency, the program would not need to also receive initial approval from the Board to establish a program in Texas. To accomplish this, the Board would determine which accrediting agencies' standards are acceptable and then would allow graduates from any nursing education program approved by those accrediting agencies to be eligible for licensure in Texas.

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

This recommendation would limit the Board to approving only nursing education programs that lead to initial licensure as a professional or vocational nurse. Thus, programs for a registered nurse to get a bachelor of science in nursing, for a nurse to get a master's or doctoral degree, and for nurses to receive advanced practice nursing education, would not be required to obtain Board approval because these programs do not lead to initial licensure as a professional or vocational nurse.

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

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

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

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

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

In doing so, the Board would work with the Coordinating Board and the Workforce Commission to establish guidelines for current program administrators and potential new nursing programs regarding how to receive initial approval of nursing education programs. The guidelines would incorporate the part of the process conducted by the Coordinating Board or the Workforce Commission, to be available in writing and on the Board's website to nursing education programs, and would specify that approval by the Coordinating Board or the Workforce Commission would precede approval by the Board.

1.5 Require hospital-based diploma programs in Texas to be associated with a degree-granting institution by 2015.

With the management action in Recommendation 1.8 below, regarding the process for approving hospital-based diploma programs, the requirement for these programs to be affiliated with a degree-granting institution within eight years will help encourage the development of new programs while improving academic standards of these programs. Ultimately, training with improved academic standards will help ensure the safety of patients.

Management Action

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

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

Delegating decisions regarding initial and ongoing approval of education programs to agency staff, as the Board has done for licensing and disciplinary decisions, would streamline the education program approval process and allow the Board to focus on setting policy and addressing practice concerns. 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. Members of the public who wish to address the Board about a proposed program would still have the opportunity to do so during the public hearing portion of the Board's quarterly meetings.

1.8 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.

1.9 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. For example, the Board could review continuing approval in conjunction with its site visits every six years. The Board retains 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 licensing examination pass rates to allow nursing programs an opportunity for self-correction before submitting to Board review. Under this recommendation, the Board should revise its standard to allow for exemptions for mitigating circumstances before a nursing education program would be subject to automatic Board review for low pass rates on licensing exams, which usually result in such measures as a self-study or change in approval status.

1.10 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 change eliminates a conflict of interest for existing schools of nursing, as well as eliminate potential bias by the Board against schools that lack support from other nursing programs.

1.11 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. Thus, existing waiver qualifications for nurse faculty, allowing nurses with a bachelor's degree in nursing to serve as nurse faculty if they meet current eligibility conditions such as working towards a master's degree or having a certain amount of clinical experience, should become Board rule, and the Board no longer needs to issue waivers. The Board should 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.

Issue 2

A More Innovative Approach by the Board Is Needed to Deal Effectively With the Shortage of Nurses in Texas.

Texas is experiencing a shortage of nurses due to many factors, including a shortage of nursing faculty in the State's nursing education programs. Board policies, such as faculty to student ratios, may also play a role in the nurse shortage by affecting the number of slots available for nursing applicants to obtain the education needed to be licensed as a nurse. The effect is that, in some programs, the number of qualified applicants for nursing education far outpaces the number of available slots in the education program.

Recommendations

Change in Statute

2.1 Require the Board to create innovative models for nursing education that promote increased enrollment in Texas nursing programs.

This recommendation requires the Board, 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 part of a plan to alleviate the nursing

shortage in Texas. The Board must implement a statewide plan for creating these models and must 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.

Management Action

2.2 The Board should report to the Sunset Commission during the 2007 legislative session regarding its efforts in creating innovative models for nursing education.

Under this recommendation, the Board should work in collaboration with nursing education stakeholders and the Texas Higher Education Coordinating Board to create innovative models in nursing education. The Board should report to the Sunset Commission by March 2007 regarding its efforts to create these innovative models so that the Legislature can make needed changes to the agency's appropriation or statute during the 2007 session.

Issue 3

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

Key Findings

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

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

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

Recommendations

Change in Statute

3.1 Require the Board to more clearly identify which crimes relate to the practice of nursing.

This recommendation clarifies 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. Prioritizing these efforts would allow the Board to better allocate its resources to better protect the public, while ensuring that applicants and license holders are treated fairly and consistently. 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.

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

The Board should adopt guidelines, in rule, to ensure that, when considering an applicant’s or nurse’s criminal history, it uses arrest information consistently and fairly and only 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.

Issue 4

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

Key Findings

- ◆ Having Board members serve on agency advisory committees can undermine the advisory purpose of these committees.
- ◆ The Board lacks adequate guidelines regarding the purpose and structure of its advisory committees.

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

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

Recommendation

Change in Statute

4.1 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, including notification requirements.

This recommendation 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.

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. It would also help improve the effectiveness and objectivity of these committees.

Issue 5

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

Key Findings

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

By practicing in an expanded role, advanced practice nurses (APNs) provide valuable access to care in Texas, especially in certain underserved areas of the state. In recent years, Texas has seen an increase in the

number of APNs from other states that come to Texas to practice. However, the process for authorizing APNs licensed in other states to practice in Texas does not facilitate their ease of movement.

Recommendation

Change in Statute

5.1 Adopt the Advanced Practice Registered Nurse Multistate Compact.

Adopting the Advanced Practice Registered Nurse (APRN) Multistate 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.

Issue 6

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

Key Findings

- ◆ The Nursing Practice Act may allow nurses who have violated standards of practice to avoid disciplinary action.
- ◆ The Board does not have adequate guidelines and procedures to ensure it consistently handles and accounts for impaired nurses.

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

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

Recommendations

Change in Statute

6.1 Clarify that third parties required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.

The recommendation would help ensure that the Board is appropriately aware of practice violations by requiring third parties who already have an obligation to report impaired nurses to a peer assistance program to report to the Board when a practice violation occurs as a result of a nurse's chemical dependency or diminished mental capacity. 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 recommendation does not require a sanction to be imposed. The Board would have discretion to impose a sanction and could still decide to allow the nurse to participate in the peer assistance program by referral if no other Board action is taken. 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 third parties are not deterred from seeing that an impaired nurse seeks treatment. Clarifying that third parties aware of practice violations by impaired nurses must be reported to the Board would help ensure impaired nurses receive sufficient treatment while seeing that the public is adequately protected.

6.2 Require the Board to adopt rules clearly outlining its peer assistance program.

Under this recommendation, the Board would develop guidelines, in rule, to improve information sharing and communication between the Board and its peer assistance provider, outlining 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.

Management Action

6.3 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 Texas Peer Assistance Program for Nurses (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.

Issue 7

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

Key Findings

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

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

Because the scope of practice, work setting, and professional requirements for nurses vary greatly, requiring all nurses to take continuing education in certain topics reduces the effectiveness of continuing education. In addition, requiring certain nurses to complete targeted continuing education courses creates an administrative burden for the Board.

Recommendation

Change in Statute

7.1 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.

Issue 8

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

Key Findings

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

Various licensing, enforcement, and administrative processes in the Nursing Practice Act do not match model standards developed from experience gained through more than 90 occupational licensing reviews over the last 29 years. Comparing the Board's statute, rules, and practices to the model licensing standards identified variations that need to be brought in line with the model standards.

Recommendations

Licensing – Change in Statute

8.1 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.

8.2 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 the National Council of State Boards of Nursing's (NCSBN's) testing procedures, including test admission and administration on the Board's website.

8.3 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.

8.4 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 provision 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, the standard renewal provision 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

8.5 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. 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

8.6 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. 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.

8.7 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.

8.8 Authorize staff to dismiss baseless cases.

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.

8.9 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.

8.10 Authorize the Board to require refunds as part of the agreed settlement process.

This recommendation allows the Board 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.

8.11 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

8.12 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.

8.13 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.

Administration and Policy Body – Change in Statute

8.14 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.

Issue 9

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

Key Findings

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

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

Because the tasks nurses perform can pose significant risks, and because nurses practice in settings where patients are vulnerable, the State has an interest in regulating professional, vocational, and advanced practice nurses. In addition, the Board, through its regulatory activities, helps provide Texans with the confidence that nurses practicing in the state are competent, meet established standards, and are held accountable for their actions, and should be continued for another 10 years.

Recommendation

Change in Statute

9.1 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. 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 healthcare regulatory boards, such as the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy.

Fiscal Implication Summary

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

Issue 4 – Prohibiting Board members from serving on advisory committees and specifying that Board members are not required to attend advisory committee meetings, even as liaisons, would eliminate the need for travel reimbursement, resulting in an annual savings of \$2,400.

Issue 8 – Changing the statutory basis for the late renewal penalty would result in lost revenue of approximately \$100,000.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2008	\$100,000	\$2,400	(\$97,600)
2009	\$100,000	\$2,400	(\$97,600)
2010	\$100,000	\$2,400	(\$97,600)
2011	\$100,000	\$2,400	(\$97,600)
2012	\$100,000	\$2,400	(\$97,600)

