SUNSET ADVISORY COMMISSION
STAFF REPORT WITH FINAL RESULTS

Texas Board of Nursing

2016–2017
85TH LEGISLATURE

Sunset Advisory Commission

Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood

TEXAS BOARD OF NURSING

SUNSET STAFF REPORT WITH FINAL RESULTS

2016–2017

85TH LEGISLATURE

How to Read Sunset Reports

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading**.)

1. SUNSET STAFF EVALUATION PHASE

   Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

   FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

   The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

   SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

   The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

   THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

TABLE OF CONTENTS

APPENDICES

FINAL RESULTS

FINAL RESULTS

House Bill 2950 — Sunset Bill

House Bill 2561 — Prescription Monitoring Program

Summary

The Sunset review found that the Texas Board of Nursing is a shining example of a health licensing agency with experienced, capable staff that perform well. However, the board's use of subjective standards to link most any mistake, even off-the-clock conduct, to nursing can result in harsh sanctions for nurses. House Bill 2950 limits these subjective standards and requires the board to demonstrate a connection between a nurse's conduct and the practice of nursing. The bill also continues an exception to licensure requirements for graduates of Excelsior College's nursing program and creates a process similar to in-state programs to improve the program or expire the exception if certain standards are not met.

House Bill 2950 strengthens oversight of the board's peer assistance program, ensures continued nurse mobility, tackles challenging issues related to overprescribing of dangerous drugs, and continues the agency for 12 years. House Bill 2950 also places restrictions on the board's administrative hearing process, reinforces licensees' religious freedom protections, and allows advanced practice registered nurses to sign certifications on certain death certificates.

The following material summarizes results of the Sunset review of the Texas Board of Nursing, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — *Excelsior College Exception*

Recommendation 1.1, Adopted — Remove the December 31, 2017 expiration date for Excelsior's exception. Create a process, similar to steps for an in-state program, for program improvement or expiration of the exception if Excelsior's national exam passage rate falls below the board's standard.

Recommendation 1.2, Adopted — Require the board to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs.

ISSUE 2 — *Enforcement*

Recommendation 2.1, Adopted — Limit the use of subjective standards for licensure decisions by requiring the board to demonstrate a connection between a nurse's conduct and the practice of nursing.

Recommendation 2.2, Adopted — Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing. (Management action – nonstatutory)

ISSUE 3 — *Peer Assistance Program*

Recommendation 3.1, Adopted — Require the board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.

Recommendation 3.2, Adopted — Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.

Recommendation 3.3, Adopted — Require the board to adequately measure the effectiveness of its peer assistance program.

Recommendation 3.4, Adopted — Direct the board to designate a contract manager assigned to the peer assistance program. (Management action – nonstatutory)

Recommendation 3.5, Adopted — Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements. (Management action – nonstatutory)

Issue 4 — *Nurse Licensure Compact*

Recommendation 4.1, Adopted — Adopt the new Nurse Licensure Compact.

Issue 5 — *Prescription Monitoring Program*

Recommendation 5.1, Adopted — Require the board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the board to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)

Issue 6 — *Standard Review Elements*

Recommendation 6.1, Modified — Update the standard Sunset across-the-board requirement related to board member training, including the board's rulemaking authority and anti-trust actions.

Recommendation 6.2, Adopted — Discontinue the board's two reporting requirements and eliminate the specific statutory authority for nurse competency pilot programs.

Issue 7 — *Continue*

Recommendation 7.1, Adopted — Continue the Texas Board of Nursing for 12 years.

New Issue Added by the Sunset Commission

Prescription Monitoring Program requirements, Modified — Beginning September 1, 2019, require advanced practice registered nurses to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exemptions. Require the board to provide licensee information to the Pharmacy Board, and require the Pharmacy Board to use this information to automatically register advanced practice registered nurses to use the Prescription Monitoring Program. (H.B. 2561)

Provisions Added by the Legislature

Remove public disciplinary information — Require the board to remove a nurse's disciplinary action from the board's website and the public coordinated licensure information system if the nurse and action meet certain criteria.

Administrative hearings — Prohibit the board from charging a nurse for the administrative costs of conducting an administrative hearing and changing an administrative law judge's findings of fact or conclusions of law in issuing a disciplinary order.

Religious freedom protections — Prohibit the board from adopting a rule, regulation, or policy that violates a person's religious freedom and allow a person to assert an affirmative defense for such a violation in an administrative hearing or a judicial proceeding.

Certification for death certificates — Allow an advanced practice registered nurse to sign a medical certification for a death certificate if the patient received hospice or palliative care.

Fiscal Implication Summary

House Bill 2950 will not have a significant fiscal impact since most provisions either clarify current practice or change procedures in ways that do not save or require additional resources. Requiring the board to eliminate disciplinary actions from their website and the public portion of the national disciplinary database will result in a one-time cost of about $50,050 in fiscal year 2019. However, since the board is a self-leveling agency, this cost will be offset by increasing fees on licensees.

SUNSET COMMISSION DECISIONS
JANUARY 2017

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Board of Nursing, as well as modifications and a new issue raised during the public hearing.

In most respects, the Texas Board of Nursing is a shining example of a health licensing agency with experienced, capable staff that perform well. However, the board's use of subjective standards to link most any mistake, even off-the-clock conduct, to nursing can result in harsher sanctions for nurses. The Sunset Commission recommends limiting these subjective standards and requiring the board to demonstrate a connection between a nurse's conduct and the practice of nursing.

The Legislature charged the Sunset Commission with evaluating whether to continue an exception to licensure requirements for graduates of Excelsior College's nursing program. At issue is the program's lack of supervised, hands-on experience through clinicals. The commission recommends continuing Excelsior's exception and creating a process similar to in-state programs to improve the program or expire the exception if certain standards are not met. Other recommended changes would strengthen oversight of the board's peer assistance program, ensure continued nurse mobility, tackle challenging issues related to overprescribing of dangerous drugs, and continue the agency for 12 years.

ISSUE 1

Absent Conclusive Evidence Regarding Excelsior's Nursing Program, the Board Is the Most Appropriate Entity to Determine Qualifications for Initial Nurse Licensure.

Recommendation 1.1, Modified — In lieu of staff Recommendation 1.1, the commission decided to remove the December 31, 2017 expiration date for Excelsior's exception. Create a process, similar to steps for an in-state program, for program improvement or expiration of the exception if Excelsior's national exam passage rate falls below the board's standard (80 percent) for consecutive years. (***See Adopted Language, page A5***)

Recommendation 1.2, Adopted — Require the board to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs.

ISSUE 2

Broad and Subjective Standards Extending Beyond the Practice of Nursing Could Lead to Harsher Sanctions for Nurses.

Recommendation 2.1, Adopted — Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing.

Recommendation 2.2, Adopted — Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing. (Management action – nonstatutory)

Issue 3

The Board's Peer Assistance Program Needs Improved Flexibility and Oversight to Most Effectively Rehabilitate Nurses.

Recommendation 3.1, Adopted — Require the board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.

Recommendation 3.2, Adopted — Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.

Recommendation 3.3, Adopted — Require the board to adequately measure the effectiveness of its peer assistance program.

Recommendation 3.4, Adopted — Direct the board to designate a contract manager assigned to the peer assistance program. (Management action – nonstatutory)

Recommendation 3.5, Adopted — Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements. (Management action – nonstatutory)

Issue 4

Texas Must Adopt the New Nurse Licensure Compact to Ensure Continued Mobility Within the Profession.

Recommendation 4.1, Adopted — Adopt the new Nurse Licensure Compact.

Issue 5

Clear Statutory Authority Could Help the Board Better Monitor Improper Prescribing of Controlled Substances.

Recommendation 5.1, Adopted — Clarify statute and provide direction for the board to monitor advanced practice registered nurses' improper prescribing of controlled substances.

Issue 6

The Board's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Recommendation 6.1, Adopted — Update the standard across-the-board requirement related to board member training.

Recommendation 6.2, Adopted — Discontinue the board's two reporting requirements and eliminate the specific statutory authority for nurse competency pilot programs.

ISSUE 7

The State Has a Continuing Need to Regulate Nurses.

Recommendation 7.1, Adopted — Continue the Texas Board of Nursing for 12 years.

ADOPTED NEW ISSUE

Prescription Monitoring Program

Beginning September 1, 2018, require advanced practice registered nurses to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. An advanced practice registered nurse who does not check the database before prescribing these drugs would be subject to disciplinary action by the Nurse Board.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact, since most either clarify current practice or change procedures in ways that do not save or require additional resources.

ADOPTED LANGUAGE

Recommendation 1.1

Modification Language

In lieu of staff Recommendation 1.1, remove the December 31, 2017 expiration date for Excelsior's exception and provide the following.

If Excelsior's national exam passage rates fall below the board's standard (80 percent), the program must take the following steps to maintain the exception.

- **Year One**. If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80 percent) for one year, Excelsior would complete a self-study of its program and submit the study to the board. The self-study should be in compliance with the board's self-study guidelines to evaluate factors that may have contributed to the graduates' performance and describe corrective measures to be implemented. The board would review and provide comment on the self-study.

- **Year Two**. If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80 percent) for two consecutive years, Excelsior would allow the board to evaluate and make recommendations to improve the program through a desk review. The desk review would evaluate the same criteria the board typically evaluates in an onsite visit.

- **Year Three**. If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80 percent) for three consecutive years, Excelsior would provide notice on its website that future students may need to meet additional requirements for initial licensure in Texas because the program's pass rates failed to meet Texas requirements.

- **Year Four**. If Excelsior's pass rate dips below the board's required standard for first-time passage of the national exam (80 percent) for four consecutive years, Excelsior's exception would expire. Students enrolled on or before December 31 of the year in which Excelsior's pass rates fall below the standard for the fourth consecutive year would be grandfathered under the exception and eligible to apply for initial licensure. Excelsior would provide notice to students enrolling in Excelsior after that date that they would be ineligible for licensure under the exception, but would be eligible for licensure by meeting any additional requirements developed through implementation of staff Recommendation 1.2.

If, in years one through three, Excelsior does not complete these steps by May 31 (roughly six months after determination of its pass rates) of the year following a year of low pass rates, Excelsior would no longer meet the exception. Students enrolled on or before December 31 of the year in which Excelsior fails to meet these requirements would be grandfathered under the exception and eligible to apply for initial licensure. Excelsior would provide notice to students enrolling in Excelsior after that date that they would be ineligible for licensure under the exception, but would be eligible for licensure by meeting any additional requirements developed through implementation of staff Recommendation 1.2.

This modification also eliminates the statutory provision restricting the exception to the board's licensure requirements to out-of-state nursing programs whose graduates were approved by the Texas Board of Nursing during a 10-year period preceding January 1, 2007.

SUMMARY OF SUNSET STAFF RECOMMENDATIONS

SUMMARY

In most respects, the Texas Board of Nursing is a shining example of how a health licensing agency should be run. The board is a stable agency with experienced, capable staff that perform well and often help smaller licensing agencies meet their regulatory responsibilities. Not much has changed at the board since its last Sunset review. Most key staff are in the same positions, the board's duties have not changed significantly, and the problems that plagued the nursing profession — such as the nursing shortage — still persist.

In enforcement, the board's approach has also remained the same, in some cases unfairly penalizing nurses for issues that are not directly related to the practice of nursing. With nursing being the most trusted profession, the board maintains high expectations for nurses, who often care for vulnerable patients. However, subjective standards and the board's enforcement culture allow the board to link most any mistake, even off-the-clock conduct, to the practice of nursing. While not admirable qualities, minor issues related to a nurses' trustworthiness or dishonesty in their personal life should not result in burdensome license sanctions, such as work supervision, unless these issues relate to their professional performance. Similarly, the board's strict approach to its peer assistance program, including inflexible timelines and absence of a formal process for re-evaluation, can result in unnecessary or cumbersome requirements for nurses.

The board unfairly penalizes nurses for conduct unrelated to nursing.

In contrast, and likely as a result of Sunset recommendations in 2007, the board has changed its approach to regulation of nurse education programs. While the board previously applied duplicative and unnecessarily restrictive regulations to nurse education programs, Sunset staff found no evidence that the board continues to engage in such practices. In 2009, the Legislature required Sunset, as part of its next review of the board, to evaluate whether an exception to licensure requirements for graduates of Excelsior College's nursing program should continue. At issue is the program's lack of supervised, hands-on experience through clinicals, a board requirement for graduates of all other nursing programs. In the absence of clear conclusions based on objective data, Sunset staff recommends letting the exception expire and for the board, as the state's experts in nursing, to develop a path to licensure for the program's graduates.

Other key issues in the report address needed changes in law to ensure continued nurse mobility and to tackle challenging new issues related to overprescribing of dangerous drugs. Sunset staff also recommends continuing the agency for 12 years. The following material highlights Sunset staff's key recommendations on the Texas Board of Nursing.

Issues and Recommendations

Issue 1

Absent Conclusive Evidence Regarding Excelsior's Nursing Program, the Board Is the Most Appropriate Entity to Determine Qualifications for Initial Nurse Licensure.

The Legislature has charged the board with determining whether applicants are minimally qualified for licensure as a nurse and requires applicants to graduate from a nurse education program meeting certain standards. As part of these standards, the board requires education programs to include clinical learning experiences for students to gain hands-on practice in nursing skills. In 2009, the Legislature created an exception to initial licensure requirements, making graduates of Excelsior College's nursing program, who are not required to complete traditional clinicals, eligible to apply for a Texas registered nurse license. This provision also required the Sunset Commission to weigh in on continuation of Excelsior's exception, and for the review to be informed by an independent study to determine whether Excelsior graduates are as prepared to practice as graduates of traditional programs with clinicals. However, the study was never completed.

Review of other data, such as the program's and graduates' performance, does not provide clear conclusions to support continuation of the statutory exception for Excelsior College. As such, Sunset staff recommend allowing Excelsior's exception to expire and requiring the board, as the legislatively designated experts in nursing, to determine the specific educational qualifications for initial licensure.

Key Recommendations

- Allow Excelsior College's exception to initial licensure requirements to expire.

- Require the board to develop a path to initial licensure for graduates of out-of-state programs, like Excelsior, that are determined not to be substantially equivalent to Texas programs.

Issue 2

Broad and Subjective Standards Extending Beyond the Practice of Nursing Could Lead to Harsher Sanctions for Nurses.

The board's use of subjective standards to inform licensing and enforcement decisions is not consistent with the Legislature's policy to limit enforcement actions to the practice of nursing, potentially resulting in harsher sanctions for nurses. The statutory provision and associated board rules defining "unprofessional conduct" and "good professional character" include broad and subjective language that extend the board's reach beyond the practice of nursing and could be applied inconsistently. Guidelines for criminal conduct, a subset of unprofessional conduct violations, also extend more broadly than the Legislature envisioned, reaching into nurses' off-the-clock behavior to judge trustworthiness and honesty unrelated to professional practice. Limiting application of these standards to the practice of nursing and requiring the board to revise its rules, including guidelines tying criminal conduct to nursing, could help ensure nurses are not unfairly penalized for issues unrelated to their practice as a nurse.

Key Recommendations

- Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing.

- Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing.

Issue 3

The Board's Peer Assistance Program Needs Improved Flexibility and Oversight to Most Effectively Rehabilitate Nurses.

Inflexible program requirements used by the board's contracted peer assistance program, the Texas Peer Assistance Program for Nurses (TPAPN), are not appropriate to meet the needs of nurses with substance use and mental health issues. Minimum program lengths, without consideration of the severity of the disorder or previous treatment, can result in unnecessary extension of burdensome requirements for nurses. The board also lacks a formal process to re-evaluate students who may no longer need TPAPN in situations where significant time has passed between the board's initial order and entry into the program. Additionally, the board should improve its oversight of TPAPN, its largest contract, by comprehensively evaluating whether TPAPN is effectively assisting the rehabilitation of nurses and delivering the services the state pays for.

Key Recommendations

- Require the board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.

- Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.

- Require the board to adequately measure the effectiveness of its peer assistance program.

Issue 4

Texas Must Adopt the New Nurse Licensure Compact to Ensure Continued Mobility Within the Profession.

The Nurse Licensure Compact, adopted in 1999, allows registered and vocational nurses licensed in a compact state to practice across state lines in other compact states without obtaining a separate license. However, the current compact will be replaced by a new compact that will go into full effect when 26 states adopt it or in 2018. If the Legislature does not adopt the new compact, Texas nurses will have to obtain a separate license to practice in each state that adopts the new compact, limiting their mobility. The new compact also includes uniform licensure requirements and more effective compact administration provisions — benefits over the current compact.

Key Recommendation

- Adopt the new Nurse Licensure Compact.

Issue 5

Clear Statutory Authority Could Help the Board Better Monitor Improper Prescribing of Controlled Substances.

The board plays an important role in protecting the public from improper prescribing of controlled substances by advanced practice registered nurses. The board regularly uses the Texas State Board of Pharmacy's Prescription Monitoring Program to proactively monitor these nurses' prescribing patterns and investigate nurses who may engage in improper prescribing, including nontherapeutic prescribing and overprescribing. The addition of clear legal authority to monitor the program and direction to pursue necessary enforcement action would strengthen the board's efforts to address improper prescribing.

Key Recommendation

- Clarify statute and provide direction for the board to monitor advanced practice registered nurses' improper prescribing of controlled substances.

Issue 6

The Board's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Among the standard elements considered in a Sunset review are across-the-board recommendations that reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. The board's statute does not contain updated requirements for board member training, such as a training manual and discussion of the board's rulemaking authority. Additionally, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement imposed on an agency under review. Sunset staff found the board's two reporting requirements and one pilot program are outdated and no longer necessary.

Key Recommendation

- Update the across-the-board requirement related to board member training and discontinue the board's two reporting requirements and a defunct pilot program.

Issue 7

The State Has a Continuing Need to Regulate Nurses.

The Texas Board of Nursing regulates the practice of nursing to ensure each person holding a license as a nurse in the state is competent to practice safely. Nurses perform complex tasks that can pose significant risks to vulnerable patients. Sunset staff found that Texas has a continuing need to regulate the practice of nursing to ensure Texans receive safe and quality nursing care, and that no significant benefits would justify an alternative organization to the current independent agency structure.

Key Recommendation

- Continue the Texas Board of Nursing for 12 years.

Fiscal Implication Summary

Overall, the recommendations in this report would not have a significant fiscal impact, since most either clarify current practice or change procedures in ways that do not require additional resources.

AGENCY AT A GLANCE
OCTOBER 2016
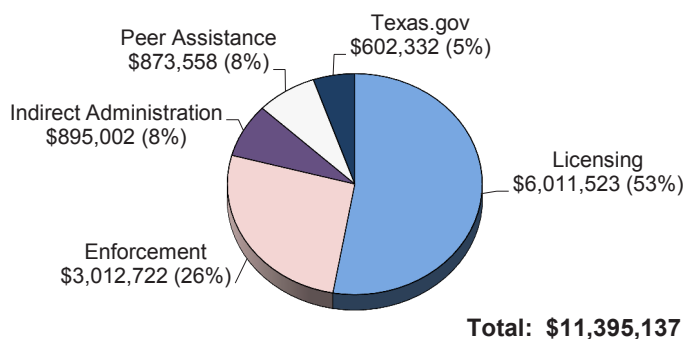
AGENCY AT A GLANCE

In 1909, the Legislature created the Texas Board of Nursing to safeguard public health and safety by regulating nurses and nursing education programs in Texas. To meet its mission of ensuring high quality and safe nursing care, the board

- licenses vocational nurses (LVNs), registered nurses (RNs), and advanced practice registered nurses (APRNs);

- approves and regulates pre-licensure nursing education programs;

- enforces the Nursing Practice Act and board rules by investigating complaints against nurses and taking disciplinary action against violators;

- monitors compliance of disciplined nurses; and

- provides a peer assistance program for nurses who are impaired.

Key Facts

- **Texas Board of Nursing**. The board consists of 13 members: four public members, three LVNs, two RNs, one APRN, one member representing LVN education programs, one member representing bachelor's degree in nursing education programs, and one member representing associate's degree in nursing education programs. The governor appoints all board members to serve six-year terms and appoints the presiding officer. The board uses one three-member subcommittee, the Eligibility and Disciplinary Committee, to help make temporary suspension, eligibility, and default decisions.

- **Funding**. In fiscal year 2015, the board operated on appropriations of about $11.4 million, with nearly 70 percent coming from general revenue generated through fees paid by licensees and the remainder coming from appropriated receipts. The pie chart, *Texas Board of Nursing Expenditures*, shows the board's expenditures in each major program area in fiscal year 2015.

Texas Board of Nursing Expenditures
FY 2015

Peer Assistance
$873,558 (8%)

Indirect Administration
$895,002 (8%)

Texas.gov
$602,332 (5%)

Licensing
$6,011,523 (53%)

Enforcement
$3,012,722 (26%)

Total: $11,395,137

In fiscal year 2016, the board collected fees totaling more than $17.7 million, including $7.3 million in license renewal fees. Historically, the agency has generated revenue through fees in excess of

that needed to cover agency expenditures. As shown in the following chart, *Flow of Texas Board of Nursing Revenue and Expenditures*, the board transferred nearly $1.7 million generated in excess of the agency's appropriation to the General Revenue Fund. Appendix A, *Historically Underutilized Businesses Statistics*, describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2013–2015.

Flow of Texas Board of Nursing Revenue and Expenditures FY 2016

Texas.gov
$549,204

Texas.gov Fees
$549,204

Appropriated Receipts
$3,384,823

Agency Costs
$14,141,763

Licensing and Other Fees
$12,489,554

Employee Benefits, $1,906,835

Penalties
$370,709

Peer Assistance*
$942,716

Peer Assistance
$873,558

Health Professions Council
$71,651

Texas Center for Nursing Workforce Studies
$411,550

General Revenue
$1,689,280

Total: $17,737,006
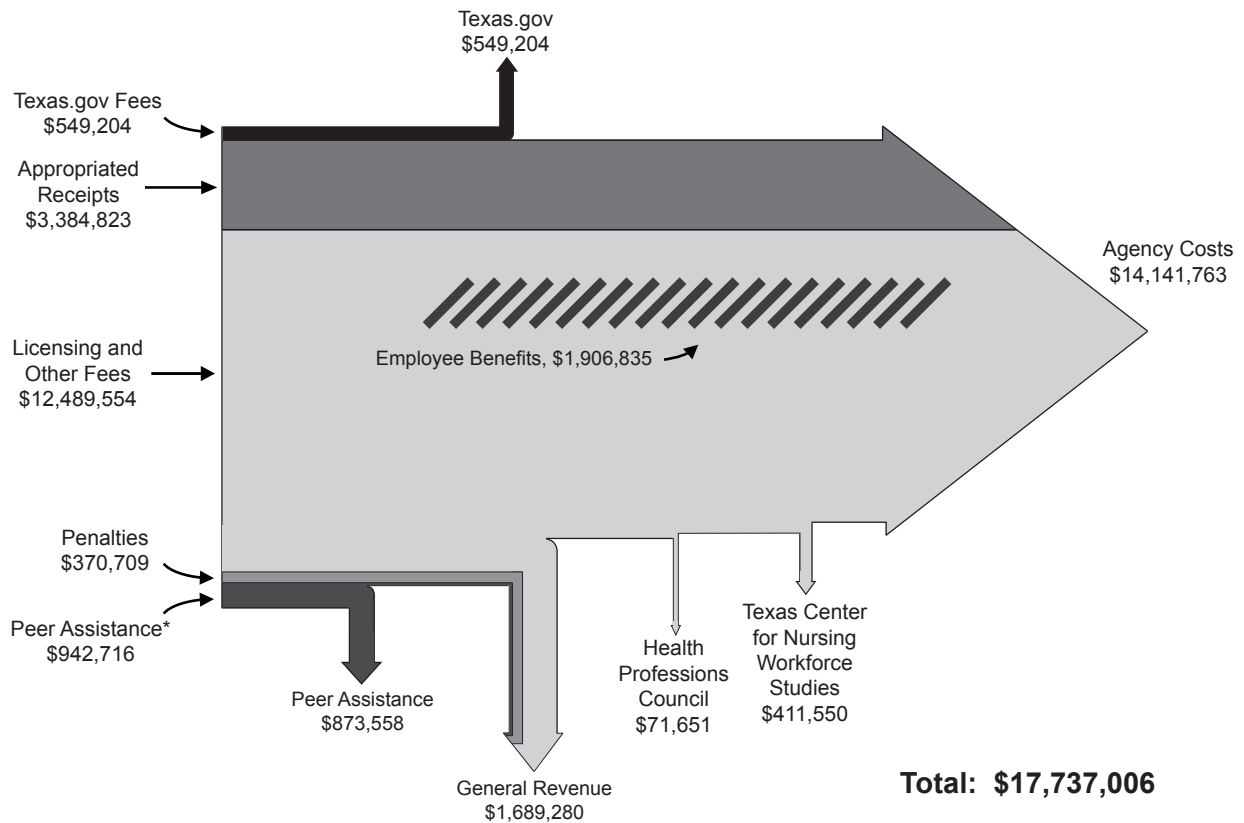
* $69,158 of Peer Assistance revenue goes to General Revenue.

- **Staffing**. The board employed 117 staff in fiscal year 2015. Appendix B, *Equal Employment Opportunity Statistics*, compares the board's workforce composition to the percentage of minorities in the statewide civilian labor force for the past three fiscal years.

- **Health Professions Council**. As a member of the Health Professions Council, the board helps support the council's coordination efforts. Appendix C, *Health Professions Council*, provides more information on the council.

- **Licensing**. The board processes initial applications and renewals for three regulated nursing occupations, described on the following page. The accompanying table shows the number of licensees, by type, at the end of fiscal year 2015. The board outsources responsibility for administering licensing examinations for nurses to the National Council of State Boards of Nursing.

Licensees by Type FY 2015*	
LVN...................101,314	
RN.....................285,945	
APRN..................21,587	

* The totals do not represent individual nurses because some licensees hold multiple licenses. For example, all APRNs are also RNs.

LVN. Licensed vocational nurses work under the direction of an RN, physician, or other healthcare professional to provide basic nursing care, such as taking vital signs, preparing injections, and participating in the development of the nursing care plan. Applicants must complete a board-approved vocational nursing education program, which is typically a one-year certificate program.

RN. Registered — or professional — nurses use clinical judgment and skill to provide nursing care, can assign tasks to an LVN or delegate tasks to unlicensed personnel, and may engage in independent nursing practice. Applicants must complete a board-approved RN program, which is typically an associate or bachelor's degree program.

APRN. An advanced practice registered nurse is a registered nurse with advanced, specialized training as a nurse practitioner, clinical nurse specialist, nurse anesthetist, or nurse midwife. APRNs can also prescribe medications under the delegated authority of a physician if they have prescriptive authority from the board. Applicants must complete a master's-level, nationally accredited or board-approved program and pass a national certification exam in their practice specialty.

- **Nursing education programs**. The board approves and monitors nursing education programs that prepare RNs and LVNs for initial entry into nursing practice. Although the board does not actively regulate advanced practice education programs, it provides a voluntary approval process for new programs that do not hold national nursing accreditation. At the end of fiscal year 2015, Texas had 92 LVN and 117 RN programs.

- **Enforcement**. The board receives and investigates complaints against nurses and takes action against those in violation of board statute or rule. In fiscal year 2015, the board resolved over 16,000 complaints, 4,294 of which were substantiated and resulted in action. The table, *Board Enforcement Data*, details the number of complaints resolved and disposition of those complaints in fiscal year 2015. In the same year, the board took an average of 329 days to resolve a complaint. Staff monitor licensees' compliance with disciplinary and other enforcement actions to ensure they meet the terms and conditions of board orders.

- **Peer assistance**. The board contracts with the Texas Nurses Foundation to provide assistance to nurses with substance use disorder or mental health issues through the Texas Peer Assistance Program for Nurses (TPAPN). In this program, nurses are evaluated to determine whether and under what conditions they are safe to practice and are subject to treatment and monitoring. Over 1,000 nurses participated in TPAPN throughout fiscal year 2015.

Board Enforcement Data – FY 2015

Complaints Resolved*	16,238
LVN	5,840
RN	9,783
APRN	615
Dismissed	11,944
Corrective Action	350
Knowledge, Skills, Training, Assessment and Research Pilot Program (KSTAR)	30
TPAPN-Related	728
Remedial Education	592
Stipulations	247
Warning	721
Reprimand	229
Suspension	233
Voluntary Surrender	358
Revocation	671
Other***	135

*   Does not include non-jurisdictional complaints
**   By highest level of licensure
***   Includes decisions to limit or deny a license

ISSUES

ISSUE 1

Absent Conclusive Evidence Regarding Excelsior's Nursing Program, the Board Is the Most Appropriate Entity to Determine Qualifications for Initial Nurse Licensure.

Background

The Nursing Practice Act directs the Texas Board of Nursing to set minimum standards for nursing education programs in Texas, and to approve programs that prepare nurses for initial licensure and take enforcement action, including program closure, against programs that do not meet those standards.[1] Statute also authorizes the board to recognize out-of-state nursing education programs that are approved by another state's board of nursing and requires the board to develop policies to ensure other states' standards are substantially equivalent to its own.[2]

- **Clinicals**. Board rules require nursing education programs to include clinical learning experiences, which allow students to physically practice what they learn in the classroom. According to board rules, these experiences — or "clinicals"— are faculty planned and guided learning activities designed for students to practice applying their knowledge and skills in providing nursing care to patients of all ages.[3] The textbox, *What are Clinicals?*, describes in more detail how clinicals are conducted.

> **What Are Clinicals?**
>
> Nursing education programs require students to work with actual patients in a variety of healthcare settings, working side-by-side with faculty, experienced nurses, and other healthcare providers. The student obtains supervised practice in nursing skills, such as giving intravenous drugs, checking blood pressure, giving injections, interacting with patients' families, and making clinical judgments. Clinicals may also take place in various simulated settings or skills labs.

- **Excelsior College**. Excelsior College is an accredited, private, nonprofit, distance education college based in Albany, New York that offers programs in nursing, health sciences, business, liberal arts, public service, and technology. Excelsior's nursing program includes one pre-licensure professional — or registered — nurse program that awards an associate's degree in nursing (ADN). Admission to the ADN program is limited to licensed vocational nurses (LVN), paramedics, and military corpsmen.[4] Applicants must have at least 200 hours of employment in a healthcare setting within the calendar year before enrolling. Nearly 4,000 Excelsior-educated registered nurses are licensed to practice in Texas.

   Unlike other nursing programs, Excelsior does not offer traditional clinical learning experiences as part of its program. Instead, at the end of their coursework, students must complete a two-and-a-half day Clinical Performance in Nursing Exam designed to measure a student's ability to demonstrate the expected behaviors and skills of a beginning-level registered nurse.

- **Statutory provisions**. In 2009, the Texas Legislature created an exception to initial nurse licensure requirements by providing that a nursing program meeting certain criteria is considered to have education standards substantially equivalent to the board's, making its graduates eligible to apply for a Texas registered nurse license.[5] These provisions expire December 31, 2017. Excelsior's ADN

program is the only program that meets the statutory criteria, key provisions of which are outlined in the *Select Statutory Requirements* textbox.

- **Legislative study**. The Legislature also required the Texas Center for Nursing Workforce Studies, housed at the Department of State Health Services, to contract for a comprehensive study to determine whether Excelsior graduates are equivalent in terms of clinical judgment and behaviors to graduates of traditional programs with clinicals.[6] The textbox, *Study Objectives*, lists the study's specific objectives.[7] As discussed below, the study was never completed.

> ### *Select Statutory Requirements*
>
> The nursing program must
>
> - hold regional and nursing specialty accreditation;
> - graduate students who pass the national exam at a rate equivalent to the passage rate for students of approved in-state programs;
> - not make any substantial changes to its clinical competency assessment without the board's approval; and
> - remain in good standing with the state board of nursing or other regulatory body in the other state.

> ### *Study Objectives*
>
> The study should identify
>
> - a set of expected student outcomes in terms of clinical judgment and behaviors that professional nursing students should possess at graduation;
> - standardized, reliable, and valid clinical exit evaluation tools that could be used to evaluate the competencies in clinical judgment and behaviors that professional nursing students possess at graduation;
> - any correlation between the success rate of graduates of a professional nursing pre-licensure programs on standardized clinical exit evaluation tools and their educational and experiential background; and
> - any correlation between the required number of hours in supervised clinical learning experiences and expected student outcomes in terms of clinical judgment and behaviors.

- **Sunset's charge**. Before the provisions allowing Excelsior graduates to be eligible for licensure expire, the Legislature directed the Sunset Commission to

1. recommend whether to continue allowing Excelsior graduates to be eligible for licensure; and

2. recommend any changes relating to the eligibility for a license of Excelsior graduates.[8]

Findings

No independent studies evaluating the effectiveness of Excelsior College's nursing program exist to inform Sunset's evaluation.

Because Sunset staff lacks the specific expertise to determine the level and amount of clinical experience required to ensure the competency of a nurse for initial licensure, the Legislature provided for an independent study to inform this issue. The study would have allowed Sunset staff to evaluate how the results would translate into board policies for accepting Excelsior College graduates

for initial licensure. However, despite the efforts of all involved, the study was never completed, as explained further in the *Study Results* textbox.[9]

While some other research exists, no independent studies on the effectiveness of Excelsior's program have been completed.

- The National Council of State Boards of Nursing, just before the Legislature mandated the Excelsior study in Texas, charged its staff with developing a study that would examine the competence of Excelsior graduates. However, the national council reported to its board of directors that it discontinued the study after being informed Excelsior contacted its graduates and requested they not respond to the survey the council sent to collect data. The national council has also studied the importance of clinical experiences in nursing education, but noted limitations in its study, including relying on graduates' self-reported experiences and not evaluating actual patient outcomes.[10]

- Excelsior has studied the competency of its graduates compared to graduates of other nursing education programs.[11] However, these studies may not be unbiased and have their own limitations, such as low response rates from participants.

- Research by other entities focuses on the use of simulated clinical experiences to gain necessary nursing competencies, not on the absence of traditional clinical experiences altogether.

Existing evidence does not provide clear conclusions regarding Excelsior's nontraditional model of nursing education.

The Legislature designed the statute making Excelsior graduates eligible for licensure to be temporary, with a more permanent decision to be based on scientific, independent research. Without a comprehensive study to inform the decision to continue the statute, Sunset looked at available information and data. As discussed below, the existing evidence does not clearly support or dispute Excelsior's nontraditional model of nursing education.

- **Unacceptable NCLEX pass rates**. As part of the authorization for Excelsior to be considered an approved program, statute requires the college to graduate students who pass the National Council Licensure Examination (NCLEX) at a rate equivalent to the pass rate for students of approved in-state programs, which the board requires to be 80 percent. Excelsior's NCLEX pass rates have been below this requirement for each of the last three years, raising questions about whether the program continues to meet

Study Results

- Even though the Board of Nursing offered to contribute $100,000 to assist in the developmental phase of the study, the Texas Center for Nursing Workforce Studies could not identify sufficient funding for the entire study.

- The center received only one qualified response to its request for proposal, which the study selection committee ultimately rejected as inadequate to achieve the study's requirements.

- The National Council of State Boards of Nursing offered to do the research itself, but according to the national council, found no valid and reliable tool to perform quantitative analysis and could not get support from Excelsior to use a more qualitative method because it would be subject to interpretation.

Low pass rates raise questions about whether Excelsior can maintain its statutory exception.

the statutory criteria needed to maintain its exception for its graduates to be eligible for initial licensure.

The table, *NCLEX Pass Rate Percentages*, shows how Excelsior's pass rates compare to the average pass rates of in-state LVN-to-ADN programs, which serve as the best comparison to Excelsior because they are associate degree programs designed specifically to prepare licensed vocational nurses to become registered nurses. The average pass rate for in-state LVN-to-ADN programs has also been below 80 percent, but the poor performing programs that brought down the average are now closed as a result or in lieu of board enforcement action.

NCLEX Pass Rate Percentages

	2011	2012	2013	2014	2015	Q1–Q2 2016
Excelsior College*	81.51	85.71	76.14	74.06	74.45	77.13
All Texas LVN-to-ADN Programs**	78.88	78.06	76.38	66.29	73.12	82.54
Active Programs	78.71	82.76	84.17	80.12	84.87	82.47
Closed Programs	79.27	69.85	64.56	52.44	45.64	100***

*   Based on a January 1 to December 1 year.

**   Based on an October 1 to September 31 year.

*** Represents the pass rate of the only remaining graduate to test following program closures.

- **Conditional accreditation status**. Statute also requires Excelsior to hold nursing specialty accreditation. Although Excelsior is accredited by the Accreditation Commission for Education in Nursing, in August 2016, the accreditor downgraded the program's accreditation status to "continuing accreditation with conditions" for not meeting several curriculum and student outcome standards.[12] Among other concerns, the accreditor specifically cited concerns with Excelsior not being able to demonstrate that its associate degree curriculum incorporates established professional standards, guidelines, and competencies; or that its program evaluation plan emphasizes the ongoing assessment and evaluation of student learning outcomes through all four phases of the college's nursing curriculum, including the Clinical Performance in Nursing Exam.[13]

- **Inconclusive enforcement data**. While the percentage of substantiated complaints appears slightly higher for Excelsior graduates than the respective percentage of their licensee population in four of the last five years, the data set shown in the *LVN-to-ADN Licensee Complaints* table on the following page is not large enough to draw clear conclusions. Further, more robust analysis would be needed to determine whether any direct relationship exists between the education programs nurses attend and enforcement actions taken against them.

Excelsior's accreditation status was recently downgraded.

LVN-to-ADN Licensee Complaints

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Number Licensees (LVN-to-ADN Programs)	6,244	6,769	7,315	8,114	8,766
Percent Excelsior Graduates	56.17%	53.76%	51.32%	47.36%	44.79%
Number Substantiated Complaints Resolved	70	109	102	117	85
Percent Excelsior Graduates	57.14%	59.63%	50.00%	55.56%	55.29%

- **Inconsistent approaches among other states.** Most state boards of nursing allow Excelsior graduates to apply for licensure without meeting any additional requirements. However, as shown in the accompanying table, 15 states either do not allow Excelsior graduates to obtain a license or place conditions on their eligibility for licensure. For example, six states require Excelsior graduates to also complete a preceptorship — a clinical training method, similar to an internship, designed to facilitate the transition from student or recent graduate to qualified nurse.

State Eligibility Requirements for Excelsior Graduates

Eligibility Requirement	Number of States
Endorsement from another state only	6
Preceptorship required	6
Other conditions	2
Not eligible for licensure	1

The Legislature has charged the board with determining educational standards for licensure, but the board's regulatory framework is incomplete.

The Legislature has charged the board with the responsibility to determine whether an applicant is minimally qualified for initial licensure and is competent to safely enter practice as a nurse. Exemptions to state licensing requirements are not the norm, but when present, should have a clear and reasonable basis that does not risk the health, safety, or welfare of the public. Excelsior has the only exemption to the board's established requirements; as the state's nursing experts, the board is authorized to determine the appropriate minimum qualifications for initial licensure as a nurse in all other circumstances.

To be eligible for a nurse license, the Legislature requires an applicant to graduate from a board-approved nursing education program and charges the board with prescribing the specific standards for a course of study.[14] As previously discussed, board rules require education programs to include clinical instruction as part of the course of study. The requirement for clinicals as part of a course of study is fully within the board's delegated authority to determine and could be changed by rule or superseded by law if it were no longer deemed appropriate.

Statutory exemptions to state licensing requirements are not the norm.

To facilitate the board licensing individuals educated outside of Texas, statute also requires the board to develop policies to ensure other states' education standards are substantially equivalent to its own.[15] However, as discussed below, the board's regulatory framework is incomplete, lacking a clear path to initial licensure for graduates of out-of-state programs that are not substantially equivalent.

- **No consistent approach for recognizing out-of-state programs**. The board has not clearly defined what makes an out-of-state nursing education program's standards substantially equivalent to those of in-state programs. The board's informal policy is to recognize out-of-state programs approved by another state's board of nursing or appropriate regulatory entity, but the presence of exceptions has led to inconsistent treatment of programs. For example, the board, like most state boards of nursing, does not accept graduates of a specific, non-degree granting registered nurse program in California because it requires only about half the credit hours of a typical ADN program.

- **No path to initial licensure**. As a result of not establishing guidelines to ensure out-of-state programs are substantially equivalent to Texas programs, the board does not have policies addressing how graduates of programs that are determined not to be equivalent can obtain initial licensure. Excelsior would likely be an example of a program that is not substantially equivalent to Texas programs because it does not require traditional clinicals. Without the current statutory provisions providing Excelsior graduates an avenue to licensure, they would likely not be eligible for initial licensure under current board rules.

In response to changes made during the board's 2007 Sunset review, the board attempted to draft rules that would have completed the regulatory framework. Similar to other states' approaches, the board considered a path to licensure that would have required graduates of out-of-state programs without clinicals, like Excelsior, to obtain clinical hours through a preceptorship. However, the board abandoned its effort once the Legislature's intent to address Excelsior graduates' eligibility for initial licensure became clear.

While the board should not actively regulate other states' nursing education programs, the lack of a clear avenue to licensure for these graduates, who might otherwise be qualified to practice in Texas, means the board could miss opportunities to help fill the state's ongoing nurse shortage. According to recent data from the Texas Center for Nursing Workforce Studies, the state is expected to have an estimated shortage of over 66,000 registered nurses by 2030.[16]

The board has not defined what makes a program equivalent to Texas standards.

Recommendations

The Legislature mandated a study with specific criteria that would have provided the necessary data to evaluate the quality of Excelsior's program compared to traditional in-state programs. Because the study was never performed, the Legislature's intent to make a decision based on independent research and information cannot be met. With a lack of quality data to support a recommendation to continue the statutory exception for Excelsior College, Sunset staff concluded the Board of Nursing, as the state's nursing experts, is the appropriate entity to determine the specific educational qualifications for initial licensure for Excelsior graduates, as it does for all other applicants.

Change in Statute

1.1   Allow Excelsior College's exception to initial licensure requirements to expire.

This recommendation would allow the statutory exception to initial licensure requirements related to Excelsior's nursing education program to expire. However, as outlined in Recommendation 1.2, this recommendation would not automatically prohibit Excelsior graduates from being eligible to apply for initial licensure in Texas. Further, the expiration date for Excelsior's exception would be extended from December 31, 2017 to May 31, 2018 to allow time for the robust rulemaking process recommended below.

1.2   Require the board to develop a path to initial licensure for graduates of out-of-state programs that are determined not to be substantially equivalent to Texas programs.

This recommendation would permit Excelsior or other graduates of out-of-state programs that are not substantially equivalent to Texas programs to apply for initial licensure subject to rules developed by the board. As discussed below, the recommendation would require the board to develop rules, by May 31, 2018, that address both aspects of its incomplete regulatory framework, keeping in mind that educational requirements should be the minimum necessary to ensure competency of an entry-level nurse.

- **Substantial equivalence**. The board would develop rules defining substantially equivalent education standards for the purposes of recognizing out-of-state nursing education programs. This recommendation would not give the board authority to regulate other states' programs, but ensure applicants of those programs are competent to enter practice as a nurse in Texas.

- **Path to licensure**. The board would also develop a process in rule that provides a clear path to initial licensure for graduates of any out-of-state programs the board determines are not substantially equivalent to its own. For example, the board could require graduates of programs whose clinical components are not substantially equivalent to Texas to complete a preceptorship or obtain clinical hours before being eligible to apply for licensure.

In developing its rules, the board should seek public comment and use its existing Advisory Committee on Education to obtain stakeholder input throughout the process. Excelsior graduates holding an existing Texas license or students enrolled in Excelsior on or before May 31, 2018 would be grandfathered under the current requirements. Only individuals who enroll in Excelsior after May 31, 2018 would be required to fulfill any additional licensure requirements the board establishes.

Given the ongoing nurse shortage, this recommendation would statutorily provide the board direction to allow nurses educated outside of Texas to be eligible for licensure. At the same time, the recommendation would preserve the board's authority to establish initial licensure requirements and ensure applicants are qualified to practice safely, in line with the board's mission to protect the public.

Fiscal Implication

The recommendation for the board to develop a path to initial licensure for graduates of out-of-state programs would not have a fiscal impact to the state and could be achieved within existing resources.

…………………………………..

1   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Sections 301.157(a) and (b)(4), Texas Occupations Code.

2   Section 301.157(d-4), Texas Occupations Code.

3   22 T.A.C. Section 215.2(9).

4   Only certain classifications of active duty military, National Guard, or Reserves in a specific military occupation that is equivalent to the scope of practice of a licensed vocational/practical nurse or paramedic are eligible for admittance.

5   Sections 301.157(d-8)–(d-10), Texas Occupations Code.

6   Section 16 (H.B. 3961), Acts of the 81st Texas Legislature, Regular Session, 2009.

7   Ibid.

8   Section 301.157(d-11), Texas Occupations Code.

9   Elizabeth Poster, *Report on the Implementation of HB 3961* (Austin: Texas Center for Nursing Workforce Studies, 2010).

10   Nancy Spector, "Clinical Education and Regulation," in *Clinical Nursing Education: Current Reflections*, ed. Nell Ard and Theresa M. Valiga (National League for Nursing, 2006), 181–198, accessed July 25, 2016, https://www.ncsbn.org/Ch_12001.pdf.

11   Li Gwatkin, Mary P. Hancock, and Harold A. Javitz, *As Well Prepared, and Often Better: Surveying the Work Performance of Excelsior College Associate Degree in Nursing Graduates* (SRI International, 2009); Marjorie Darrah and Roxann Humbert, *Excelsior College Final Evaluation Report* (Fairmont: Pro Evaluators LLC, 2009).

12   "Notification of Commission Action Spring 2016 Accreditation Cycle," Accreditation Commission for Education in Nursing, accessed August 15, 2016, http://www.acenursing.org/acen-commission-actions-spring-2016-accreditation-cycle/.

13   Ibid.

14   Section 301.157(a)(2), Texas Occupations Code.

15   Section 301.157(d-4), Texas Occupations Code.

16   Texas Center for Nursing Workforce Studies, *Nurse Supply and Demand Projections* (Austin: Texas Department of State Health Services, 2016).

ISSUE 2

Broad and Subjective Standards Extending Beyond the Practice of Nursing Could Lead to Harsher Sanctions for Nurses.

Background

The Texas Board of Nursing enforces the Nursing Practice Act and rules related to the practice of nursing by investigating complaints and disciplining individuals who violate law or rule. Among other qualifications, the board considers whether an applicant has good professional character when determining license eligibility.[1] Beyond initial licensure, the board considers the nurse's professional character, along with other mitigating or aggravating factors, when evaluating the level of sanction it should apply. Statute also authorizes the board to take disciplinary action against licensees for unprofessional and dishonorable conduct.[2] When the board finds that a nurse has engaged in unprofessional conduct, the board may choose from a range of disciplinary actions, examples of which are outlined in the textbox, *Disciplinary Actions for Unprofessional Conduct*.[3]

The board is subject to Chapter 53 of the Texas Occupations Code, which requires agencies to adopt guidelines to define which crimes relate to their regulated profession.[4] The Nursing Practice Act also specifically requires the board to revoke or deny a license to nurses committing certain offenses, generally felonies, the Legislature deems related to the practice of nursing.[5]

> **Disciplinary Actions for Unprofessional Conduct**
>
> - Administrative penalties up to $500
> - Remedial education
> - Perform public service
> - Supervised practice
> - Limit specific nursing activities
> - Periodic board review
> - Random drug screens
> - Denial of licensure
> - Suspension
> - Revocation

Findings

Harsh sanctions based on broad and subjective standards that go beyond the practice of nursing unfairly impact nurses.

- **Unprofessional conduct**. The statutory provision and associated board rule defining "unprofessional conduct" include broad and subjective language that extends the board's reach beyond the practice of nursing and could be applied inconsistently. The textbox, *Unprofessional Conduct*, provides the statutory context for this term, which allows the board to subjectively determine what it considers dishonorable and does not limit its application to the practice of nursing. In contrast, the Texas Medical Board's definition of unprofessional conduct applies only "within the meaning of the [Medical Practice] Act," limiting it to the practice of medicine.[6]

> **Unprofessional Conduct**
>
> "A person is subject to denial of license or disciplinary action for…unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public."

The relationships between dishonorable or unprofessional conduct and the practice of nursing are sometimes tenuous, as personal issues, including criminal violations, in a nurse's home life do not necessarily indicate how

The board sometimes pursues discipline that is unnecessarily punitive.

Judges have found the board applies its conduct rules beyond the practice of nursing.

a nurse will act at work. This broad standard and associated rule definition allow the board to call a nurse's off-the-clock conduct into question as a basis for licensure or enforcement action in cases that do not relate to the nurse's conduct in the profession. In other cases, while some level of action may be warranted, the board pursues disciplinary requirements, such as work supervision, that are unnecessarily punitive and can sometimes require nurses to find different jobs or inhibit employment opportunities.

Criminal conduct guidelines. A large number of unprofessional conduct violations relate to criminal conduct, which must be related to the practice of nursing under requirements of Chapter 53. However, the board's guidelines subjectively relate criminal conduct that indicates deception or a lack of trustworthiness to the practice of nursing. Chapter 53 requires that criminal conduct directly relate to the duties and responsibilities of the profession and requires the board to consider the factors laid out in the accompanying textbox.[7] The board's guidelines do not clearly consider these factors or establish a direct relationship between crimes and the practice of nursing in all cases.

Factors in Determining Whether a Conviction Relates to a Profession

"In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation."

Examples. Administrative law judges at the State Office of Administrative Hearings (SOAH) have found the board applying its unprofessional conduct rules beyond the practice of nursing. A review of cases identified examples of the board using the unprofessional conduct standard to pursue unwarranted sanctions against nurses for conduct beyond the practice of nursing in proposals for decision from SOAH, described in the textbox *Examples of the Board's Pursuit of Unwarranted Sanctions and Violations Not Related to the Practice of Nursing*.[8]

Examples of the Board's Pursuit of Unwarranted Sanctions and Violations Not Related to the Practice of Nursing

- The board sought sanctions for unprofessional conduct against a nurse who committed a misdemeanor offense of attaching a faded registration to his vehicle and failing to disclose the misdemeanor conviction and two other criminal charges that were dismissed. The judge found no logical connection between a vehicle registration offense and respondent's practice of nursing because placing a faded registration on a vehicle is not likely to deceive, defraud, or injure anyone.

- The board sought sanctions against a nurse for being placed on a deferred adjudication for a misdemeanor offense related to fighting violently with a member of his household and unprofessional conduct for failing disclose the offense during the renewal process. The board sought to issue a warning; remedial education; a $250 fine; and requirements to present the board order to his employer, have his employer send a form to the board verifying employment, be indirectly supervised, as well as have his employer submit quarterly reports on his work performance. The judge found that the nurse was subject to disciplinary action for being placed on deferred adjudication for a misdemeanor involving moral turpitude but not unprofessional conduct. The judge stated that the conduct was not something that could affect the practice of nursing because it was one incident, and there was no evidence of a pattern of violent behavior, a propensity toward violence, or that the nurse engaged in violent acts while working. The judge found that one violation that was dismissed after successful completion of deferred adjudication did not rise to the level of criminal conduct that could affect the practice of nursing and is not unprofessional conduct under the board's definition.

- The board sought sanctions against a nurse for convictions of driving while intoxicated and boating while intoxicated with a one-year warning with additional requirements. The judge stated the nurse's actions were unprofessional conduct, and the board could sanction the nurse. However, the judge stated that the board's plan to require the nurse to forego any alcohol consumption and to incur the expense of random alcohol screening was unnecessarily punitive and unwarranted since the nurse had already proved she was abstaining from alcohol. Also, since the nurse's work had not been affected by her off-duty consumption, there was no justification to require her to receive indirect supervision at work.

- **Good professional character**. Similar to unprofessional conduct, the board has not defined "good professional character" through objective criteria or limited its application to the practice of nursing. As such, the subjective term can be applied inconsistently, unfairly affecting entry of new nurses into the field. Beyond its subjective nature, the board's broad definition extends well beyond the board's role to determine if a person meets minimum qualifications to become a nurse, allowing it to judge a potential nurse's personal and academic behavior — not just professional behavior — as quoted below.

  > "The board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors which, in the judgment of the board, indicates that an individual is able to consistently conform his/her conduct to the requirements of the Nurse Practice Act, the boards rules and regulations, and generally accepted standards of nursing practice."

  Only one other board, the Texas Medical Board, uses a good professional character standard but limits the standard specifically to violations of the practice of medicine specified in the Medical Practice Act.[9]

The board uses a subjective good character standard to relate crimes to nursing.

> **Examples of**
> **Board License Criteria**
>
> **Objective Criteria**
> - Successfully complete a nursing education program
> - Pass an exam to determine fitness to practice nursing
> - Pass a jurisprudence exam
>
> **Subjective Criteria**
> - Good professional character
>   - Keep promises
>   - Honor obligations
>   - Think and act rationally

The board uses good professional character as an aggravating or mitigating factor to increase or decrease disciplinary action and as rationale for relating certain crimes to the practice of nursing. This subjective standard can lead to unnecessarily harsher sanctions or even impact a nurse's continuing ability to practice. A wide variety of personal issues in a nurse's life could give the board a basis for denying an initial license, adding requirements to a license to become a nurse, or increasing the severity of sanctions, even when the issue does not affect the nurse's professional performance. The textbox, *Examples of Board License Criteria*, shows the difference between the board's objective licensing criteria and the subjective criteria related to good professional character. Because the subjective criteria, which does not directly relate to the practice of nursing, could be interpreted differently by different people, licensees may not receive fair treatment from the board.

The board's enforcement culture is inconsistent with the Legislature's policy to limit disciplinary action to conduct related to the profession.

The policy of the Legislature is to limit occupational licensing board decisions to professional practice. The Legislature designs licensing programs to provide the least restrictive form of regulation to adequately protect the public and requires action based on criminal offenses be related to the regulated practice. The board's broad standards for unprofessional conduct and professional character are not consistent with the Legislature's policy to limit enforcement actions to the practice of nursing, potentially resulting in harsher sanctions.

The board revokes licenses at a higher rate than other health licensing agencies.

The board has a history of pursuing sanctions against nurses for actions unrelated to the practice of nursing. In 2007, the Sunset Commission found the board did not adequately identify the types of crimes that relate to the practice of nursing.[10] Since the last Sunset review, the board created a disciplinary matrix to try to relate sanctions to specific provisions in the Nursing Practice Act and board rules. The board also began using non-disciplinary alternatives to traditional discipline.[11] However, as shown in the examples in this issue, Sunset staff found a culture of over-enforcement still exists at the board. Further, stakeholders report that the board is overly harsh to nurses during the disciplinary process.

Additionally, the board revokes licenses at a higher rate than other comparable health licensing agencies, such as the medical, pharmacy, and dental boards. In fiscal year 2015, the board revoked licenses at twice the rate of the Texas Medical Board, which had the second highest revocation rate out of the four boards — 6 percent at the nurse board compared to 3 percent at the medical board.[12] To carry out its mission to protect the public, the state needs a strong, empowered board to remove nurses who are unfit to practice. However, clear, objective standards must exist to ensure nurses are not unfairly penalized for actions unrelated to their practice.

Recommendations

Change in Statute

2.1   Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing.

This recommendation would add language to the definitions of unprofessional conduct and good professional character to limit application of these terms to the practice of nursing. Statute would require the board to demonstrate a clear and rational connection between character or conduct that would impact a nurse's professional practice.

- **Unprofessional conduct**. Specific to unprofessional conduct, this recommendation would remove the term "dishonorable" from statute as well as language allowing the board to use its opinion to determine unprofessional conduct, as the board instead should clearly define through objective criteria what is and is not unprofessional conduct.

- **Good professional character**. The board's good professional character rules would be limited to violations or actions described in the Nursing Practice Act.

As part of this recommendation, the board should revise its rules in line with changes to the statutory definitions of unprofessional conduct and good professional character to remove any subjective language or requirements not specifically related to the practice of nursing. The board could use the Texas Medical Board's definitions of unprofessional conduct and good professional character in rule as a model.[13] The board should seek stakeholder input to revise the rules and adopt new rules by March 1, 2018.

Management Action

2.2   Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing.

Under this recommendation, the board should review its guidelines defining which crimes relate to the practice of nursing and ensure the guidelines do not expand beyond crimes that affect actual nursing practice. For example, rules should not relate to crimes indicating subjective traits like honesty, trustworthiness, or good professional character if those crimes have not occurred in relation to or reasonably correlate to a nurse's job. The board should also ensure its sanctions are scaled to the nature of the violations. As a result, sanctions relating to work supervision should not be used in cases where the violation does not affect a person's work. The board should seek stakeholder input to revise the rules and adopt new rules by March 1, 2018.

Fiscal Implication

The recommendations for the board to develop new unprofessional conduct and good professional conduct rules and to review criminal conduct guidelines would not have a fiscal impact to the state and could be achieved within existing resources.

……………………………………..

1   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 301.252(a)(1), Texas Occupations Code.

2   Section 301.452(b)(10), Texas Occupations Code.

3   22 T.A.C. Section 213.33(b).

4   22 T.A.C. Section 213.28(d).

5   Section 301.4535, Texas Occupations Code.

6   Section 301.452, Texas Occupations Code.

7   Section 53.022, Texas Occupations Code.

8   State Office of Admin. Hearings, *Texas Board of Nursing v. James Andrews Frasure*, Docket No. 507-15-5241 (Jan. 7, 2016) (proposal for decision); State Office of Admin. Hearings, *Texas Board of Nursing v. Brandy Dawn Blanchard*, Docket No. 507-14-4775 (Dec. 19, 2014) (proposal for decision); State Office of Admin. Hearings, *Texas Board of Nursing v. Ahmad Khosravi-Nejat*, Docket No. 507-14-3701 (Feb. 2, 2015) (proposal for decision).

9   22 T.A.C. Section 163.1(8).

10   Sunset Advisory Commission, *Summary of Sunset Commission Recommendations, Board of Nurse Examiners, February 2007*, accessed September 11, 2016, https://www.sunset.texas.gov/public/uploads/files/reports/Nurse%20 Examiners%20RTL%202007% 2080%20Leg.pdf.

11   22 T.A.C. Section 213.33(b); 22 T.A.C. Section 213.32; 22 T.A.C. Section 213.34; 22 T.A.C. Section 213.35.

12   This figure includes voluntary surrenders of licenses.

13   22 T.A.C. Section 190.8(2); 22 T.A.C. Section 163.1(8).

ISSUE 3

The Board's Peer Assistance Program Needs Improved Flexibility and Oversight to Most Effectively Rehabilitate Nurses.

Background

The Texas Board of Nursing contracts with the Texas Nurses Foundation, a nonprofit organization within the Texas Nurses Association, to provide peer assistance to nurses with substance use disorders or mental health issues through the Texas Peer Assistance Program for Nurses (TPAPN).[1] TPAPN is considered an alternative option to traditional board discipline and assists and monitors licensed vocational nurses (LVNs), registered nurses (RNs), and advanced practice registered nurses (APRNs) with mental health, alcohol, or drug-related problems that affect or could affect their ability to practice nursing.[2] Nurses enter the peer assistance program through a board order, board referral, self-referral, or third-party referral such as an employer, and participation can be confidential or non-confidential, depending on how the person entered the program.

The requirements of the TPAPN program vary depending on nurses' treatment needs but may include psychological evaluations; therapy sessions; random drug and alcohol screenings; mandatory support group meetings; and return-to-work restrictions, including limitations on overtime and narcotics access, and supervisory requirements. Nurses must comply with all TPAPN requirements, demonstrate sobriety from chemical dependency, and show they can practice nursing safely to successfully complete the program. The chart, *TPAPN Program Tracks*, describes the various options for treatment within TPAPN.

TPAPN Program Tracks – FY 2015

Program Track	Description	Number of Participants	Length of Time	Cost For Participant
Standard TPAPN Program	Provides support and monitoring for nurses diagnosed with a substance use disorder or who have a history of substance use disorder and may have an accompanying mental health issue.	Total: 1,040 LVN: 219 RN: 792 APRN: 29	LVN: Three years RN: Three years APRN: Five years	<u>Under Board Order</u> LVN: $350 RN: $350 APRN: $500 <u>Additional Fees</u> • $7 monitoring fee per drug test • $55 on average per drug test
Standard TPAPN Program for Mental Health	Provides support and monitoring of nurses diagnosed or who have a history of a mental health issue.	Total: 92 LVN: 16 RN: 72 APRN: 4	One year, but the program can be extended to meet work requirements	
Extended Evaluation Program	Provides support and treatment centered on drug testing for nurses who have a one-time substance use incident but no evidence of substance use disorder, subject to board approval.	Total: 69 LVN: 19 RN: 50 APRN: 0	One year	No cost <u>Additional Fees</u> • $7 monitoring fee per drug test • $55 on average per drug test

TPAPN Program Tracks – FY 2015 (continued)

Program Track	Description	Number of Participants	Length of Time	Cost For Participant
Mental Health Support Program	Provides support and treatment for nurses who have disclosed mental health issues, are stable, and have no outstanding practice violations or criminal history.	Total: 62 LVN: 15 RN: 46 APRN: 1	One year	No cost

TPAPN is the board's largest contract, valued at $873,558 in fiscal year 2015, representing about 8 percent of the board's expenditures. The board funds TPAPN through a $5 to $10 fee assessed on all nurse license renewals. Program participants under board order also pay an entry fee, and all participants pay the costs of drug monitoring and testing.

Findings

The board's peer assistance program is not flexible enough to best meet nurses' individual needs.

TPAPN will extend treatment but will not shorten program length.

TPAPN's inflexible minimum program length of three or five years is not appropriate for all nurses enrolled in the standard program, sometimes resulting in unnecessary extension of burdensome requirements beyond nurses' needs. This lack of flexibility is especially evident for nurses with substance use disorder. For example, a nurse with a less severe substance use disorder diagnosis or a nurse who may already be in treatment or have documented sobriety may not require a full three or five years of treatment. While TPAPN will accommodate extension of treatment beyond three or five years for severe cases, such flexibility is not allowed to shorten program length. The rigid timeframes are not in line with changes to the Diagnostic and Statistical Manual of Mental Disorders, which directs professional evaluators to diagnose substance use disorder on a spectrum of severity.[3] Further, the board's peer assistance contract specifically requires the peer assistance program to pay special attention to a spectrum of severity, including mild, moderate, and severe substance use diagnoses.[4] Since all participants are required to complete three to five years in the program, TPAPN has not met this requirement, and the board has not required the program to make changes in line with the contract.

The board and TPAPN, like other peer assistance programs that provide services to the medical, pharmacy, dental, optometry, and veterinary board

---

The Texas Physician Health Program allows for program variation depending on the severity of a physician's diagnosis of substance use disorder:

- **Mild** suggested by two or three symptoms

- **Moderate** suggested by four or five symptoms

- **Severe** suggested by six or more symptoms

---

licensees, use approved evaluators to determine if a nurse has a substance use disorder or other mental health diagnosis. However, unlike other programs, which use the evaluator's spectrum-based diagnosis to determine program requirements matching a practitioner's needs for rehabilitation, the board requires nurses to stay in TPAPN for a blanket three or five years. As a comparison, the accompanying textbox describes the program flexibility

afforded by the Texas Physician Health Program at the Texas Medical Board, which match the spectrum required by the board's peer assistance contract.

Additionally, the board lacks a formal process to re-evaluate students in situations where significant time has passed between the board's initial background check and entry into TPAPN. The textbox, *Declaratory Order Process*, describes the background check process nurses must complete at the start of nursing school. As a result of this early screening, the board orders some students who are just beginning school to enter TPAPN upon initial licensure. However, between the early order to TPAPN and when the nurse is initially licensed, several years may pass and peer assistance may no longer be necessary. Specifically, time-related factors, such as documented treatment or sobriety, or the length of time since a criminal conviction, could lead the board to a different decision on the need for TPAPN. The chart, *New Nurses Enrolled in TPAPN*, shows the number of nurses the board has ordered to enter TPAPN upon initial licensure since 2013, when the Legislature required all nursing students to go through the board's declaratory order process. The increase in nurses ordered to TPAPN highlights the need for a formal re-evaluation process.

Declaratory Order Process
• Students must complete a background check with the board at the beginning of nursing school to ensure they meet license eligibility requirements before they embark on one to four years of school.
• If the background check identifies circumstances, such as substance use, that would lead to conditions on a nursing license, the board requires the student to agree in advance to such conditions upon eventual graduation and initial licensure.

New Nurses Enrolled in TPAPN
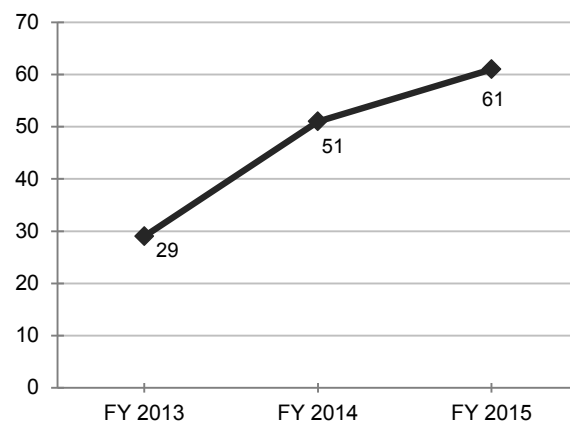
Weak contract oversight and a lack of measures prevent the board from gauging how effectively TPAPN rehabilitates nurses.

• **No measure of program effectiveness**.

No definition of success. TPAPN has not set a definition for success, preventing the board from determining the program's effectiveness. Statute requires the board to establish a procedure for evaluating the success of the peer assistance program.[5] In its rules and contract, the board defers to TPAPN to set its own definition or criteria for program success.[6] Due to a lack of diligent contract oversight by the board, TPAPN has not established measures defining program success.

No program evaluation. Similar to a lack of procedures to evaluate success of the program, neither the board nor TPAPN has performed regular evaluations to comprehensively assess if the program is working as required in board rule.[7] Although the board added oversight provisions to its contract in 2015 and receives annual financial audits of TPAPN, the last time TPAPN received a substantial performance audit was in 2011. While this 2011 audit evaluated whether TPAPN's requirements and practices

were consistent with national guidelines, the board has not since evaluated the program to determine the impact of implementing the guidelines nor comprehensively looked at the effectiveness of TPAPN's various individual programs.

No performance goals. Although TPAPN provides quarterly reports with several data points, such as recidivism and dropout rates, these measures do not have corresponding targets or a set of performance or outcome goals for the program.[8] The board also reports participation goals to the Legislative Budget Board, but these measures only reflect inputs on program enrollment and are not meaningful outcome measures that can reveal problems or gauge the program's success. Without these benchmarks, the board is unable to ensure the program is working to assist nurses in their rehabilitation.

No one person at the board ensures the contractor is delivering the services the state pays for.

- **No centralized contract management**. The board's management of the peer assistance contract is split among multiple staff, creating potential gaps in accountability and preventing comprehensive evaluation of the contractor's performance. Generally, different staff coordinate individual cases, review TPAPN's quarterly reports, sit on the TPAPN Advisory Committee, and develop the TPAPN contract. Board staff regularly communicate with TPAPN, meeting once a week to discuss participation levels and coordinate individual cases. However, no one person at the board is responsible for evaluating the program's overall performance and ensuring the peer assistance contractor is delivering the services for which the state pays.

- **Lack of available information**. Although the board's contract and rules require TPAPN to have a plan to educate nurses, other practitioners, and employers about the program, the available content is not detailed enough for a new participant to fully understand the program.[9] Because TPAPN is an extensive undertaking, if nurses do not know what they are signing up for they could be more likely not to meet the program requirements, drop out of the program, and end up back at the board for discipline — a more costly alternative for the board. While TPAPN has a general information guide and participant handbook on its website, these materials lack adequate information to properly inform the public about the program, its program tracks, and its commitments.[10]

Recommendations

Change in Statute

3.1 Require the board's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.

This recommendation would require the board to provide for the individualization of program requirements within its peer assistance program, specifically program lengths for substance use disorder, to better match a nurse's needs and diagnosis. In implementing this recommendation, the board could individualize

program requirements, including program lengths, for nurses with substance use disorder based on a mild, moderate, or severe diagnosis; differentiate treatment based on dependence or abuse of a substance; or provide for goals, milestones, and certain incentives for a participant to reach to track progress or provide a basis for future re-evaluation. While the board should allow flexibility to meet nurses' needs, the board should balance flexibility with consistency in program requirements to ensure nurses with similar cases receive fair treatment by the board. To accomplish this consistency, the board should develop guidelines to ensure similar types of cases receive similar types of treatment plans and program lengths.

3.2 Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.

This recommendation would require the board to develop a formal process for a student to be re-evaluated upon initial licensure and entry to the peer assistance program. The board should inform students during the declaratory order process and upon initial licensure that they can be re-evaluated. In conducting a requested re-evaluation, the board would, as appropriate

- review criminal history to determine if peer assistance is still warranted based on the length of time since the conviction or end of community supervision;

- require the peer assistance contractor to re-evaluate the student upon entering the peer assistance program to inform whether the treatment plan or program length should be individualized based on the nurse's needs; or

- authorize a waiver of program completion if the student has achieved a satisfactory period of treatment or documented sobriety, as defined by the board.

This recommendation would ensure that, at the time of initial licensure, all nurses receive consistent and fair treatment by the board for participation in peer assistance.

3.3 Require the board to adequately measure the effectiveness of its peer assistance program.

In addition to a procedure for evaluating success, this recommendation would require the board to establish meaningful performance goals and a clear procedure for evaluating the program to ensure the board can judge the effectiveness of its peer assistance program. In implementing this recommendation, the board should consider establishing targets or goals for its current measures of recidivism and dropout rates, as well as other measures to indicate program effectiveness. Establishing well-defined performance goals would allow the board to better quantify concerns about the program and evaluate whether the program effectively assists nurses in their rehabilitation.

As a management action, the board should incorporate any new measures or means to evaluate the program in its next request for proposal and consider amending its current contract with its peer assistance provider.

Management Action

3.4 Direct the board to designate a contract manager assigned to the peer assistance program.

This recommendation would direct the board to assign an existing employee to manage the peer assistance contract. This contract manager would perform typical contract management functions such as ensuring the program provides timely and quality work products or deliverables, managing noncompliance issues,

and collecting input from the various staff that interact with the program to comprehensively evaluate the program's performance in line with the contract. Designating a single point of contact for the peer assistance contract would better promote accountability and consistency in monitoring the program.

3.5   Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements.

To ensure transparency for nurses considering the peer assistance program, the board should require that detailed information about the program be readily accessible to the public. The agency should ensure the program's materials describe the different program tracks within the peer assistance program and the types of requirements the program entails. The materials should also clearly communicate the consequences for failing to successfully complete the program's requirements. By helping nurses understand the extensive program requirements, nurses could be more likely to successfully complete the program and not drop out or be referred back to the board for discipline.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state, as implementation of changes to the peer assistance program can be accomplished within the board's existing resources. Given that the peer assistance contract is the agency's largest and nurses depend on the peer assistance program for rehabilitation, ensuring appropriate management of the contract and program effectiveness is essential and will lead to increased cost effectiveness of the program.

....

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. TPAPN is the peer assistance program authorized by Chapter 467, Texas Health and Safety Code, and referenced in Section 301.4106, Texas Occupations Code.

[2]   Section 301.4106, Texas Occupations Code.

[3]   American Psychiatric Association, *DSM-5's Integrated Approach to Diagnosis and Classifications*, accessed August 1, 2016, https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Integrated-Approach.pdf.

[4]   Texas Board of Nursing, *Peer Assistance Program 507-16-001 TEXAS BOARD OF NURSING*, accessed August 24, 2016, https://www.bon.texas.gov/pdfs/contracts/RFP%20(507-16-001).pdf.

[5]   Section 301.4106(4), Texas Occupations Code.

[6]   Texas Board of Nursing, *Agreement Between TEXAS BOARD OF NURSING And TEXAS NURSE FOUNDATION*, accessed August 24, 2016, https://www.bon.texas.gov/pdfs/contracts/Texas%20Nurses%20Foundation.pdf; Texas Board of Nursing, *Peer Assistance Program 507–16-001 TEXAS BOARD OF NURSING*, accessed August 24, 2016, https://www.bon.texas.gov/pdfs/contracts/RFP%20(507-16-001).pdf.

[7]   22 T.A.C. Section 217.13(d)(2).

[8]   Texas Board of Nursing, *Texas Peer Assistance Program for Nurses FY 2016 3rd Quarter Report to The Texas Board of Nursing*, accessed July 26, 2016, https://www.bon.texas.gov/pdfs/board_meetings_pdfs/2016/July/7-1-1.pdf.

[9]   Texas Board of Nursing, *Peer Assistance Program 507–16-001 TEXAS BOARD OF NURSING Section 3.19*, accessed August 25, 2016, https://www.bon.texas.gov/pdfs/contracts/RFP%20(507-16-001).pdf; Title 22 T.A.C. Section 217.13(c)(5).

[10]   "Welcome to TPAPN," Texas Nurses Association, accessed June 23, 2016, http://www.texasnurses.org/?TPAPN.

ISSUE 4

Texas Must Adopt the New Nurse Licensure Compact to Ensure Continued Mobility Within the Profession.

Background

The Nurse Licensure Compact, administered by the National Council of State Boards of Nursing and adopted by Texas in 1999, allows registered and vocational nurses licensed in a compact state to practice across state lines in other states participating in the compact. Patterned after the interstate compact for driver's licenses, the Nurse Licensure Compact enables nurses to practice under a multistate license without having to obtain a separate license in each state.[1] Texas is one of 25 states participating in the compact, which facilitates interstate practice and provides greater coordination and cooperation in the licensing and regulation of the nursing profession. The vast majority of nurses licensed in Texas — 92 percent — have a compact license.

Nurses with compact licenses must follow the practice standards of the state they are working in and are governed by that state's laws and regulations. A nurse practicing across state lines is also subject to that state's disciplinary processes, with action taken against the person's multistate license. The compact requires member states to report enforcement and disciplinary actions to a coordinated licensure database, which notifies other states of any disciplinary actions taken and enables the nurse's home state to take action against the licensee for violating state laws or regulations.

Findings

The current Nurse Licensure Compact will be replaced with an improved compact.

To attract more states to join the Nurse Licensure Compact and improve the current compact, the National Council of State Boards of Nursing developed an updated version of the compact with changes based on input from both compact and non-compact states. The new compact will go into full effect when 26 states adopt it or December 31, 2018. Since the national council adopted the new compact in May 2015, 15 states have introduced the compact to their legislatures and 10 states have enacted it, including Arizona, Florida, Idaho, New Hampshire, South Dakota, Oklahoma, Tennessee, Virginia, Wyoming, and Missouri.[2]

The compact allows nurses to practice more quickly, simply, and cheaply.

If Texas does not adopt the new compact, nurses will lose the ability to easily move in or out of the state to practice.

If Texas does not adopt the new compact, Texas nurses will have to obtain a separate license to practice in each state that adopts the new compact. The Nurse Licensure Compact gives nurses the ability to practice in member states more quickly, simply, and cheaply instead of having to obtain and renew multiple regular licenses in different states. The nursing compact also eases

the administrative burden on the board associated with separately verifying educational and other prerequisites for authorizing the nurses from other compact states to practice in Texas.

By promoting nurses' mobility, the compact can increase access to health care for Texas communities, especially rural areas, because employers can more easily hire and recruit nurses from compact-participating states to work in Texas. The mobility afforded by the nursing compact is critical, as Texas continues to experience a nursing shortage and demand for nurses will increase as the Texas population ages. Additionally, the compact allows nurses to move quickly from one state to another in times of disasters. Spouses of military personnel also benefit from having a compact license because nurses can both maintain a license in their home state of residence and work in other compact states when they move around the country.

The compact allows employers to more easily hire nurses to work in Texas.

The map, *Nurse Licensure Compact States*, shows the states participating in the current compact that will need to enact legislation to adopt the new compact, and the states that have already adopted the new compact.

Nurse Licensure Compact States*

Legend:
- States with enacted new compact legislation
- States with current compact legislation

* Florida, Oklahoma, and Wyoming are new to the compact having enacted legislation only after the revisions were made and the new compact was adopted in 2015.

The new compact offers additional benefits not available in the current compact.

The new compact will include uniform licensure requirements and provisions for more effective administration, both improvements over the current compact. These issues had previously deterred some states from joining the compact, limiting the benefits of all participating states. Instead of providing uniform licensing requirements for all participating states, the current compact only requires nurses to meet their home state licensing requirements to be granted a multistate license. While Texas requires background checks for all licensees, three states in the current compact do not require fingerprint background checks for all nurses. As such, nurses from other states working in Texas may have criminal backgrounds that would otherwise bar them from being licensed in Texas. The new compact will protect the public by requiring fingerprint background checks for all new nurses obtaining a compact license and banning nurses with felony convictions from obtaining a compact license.

The new compact ensures new nurses receive fingerprint background checks.

The current compact's rulemaking process is also inefficient and presents obstacles to its administration. To adopt a new administrative rule under the current compact, each state must independently adopt the rule, an inefficient process that has taken up to eight years to complete. The current process can also result in states adopting rules or practices that may conflict with the compact. The new compact provides for a governing body authorized to adopt its own rules, limited to administration of the compact. The new compact also provides for dispute resolution and state termination procedures as accountability mechanisms if a state departs from the agreed upon rules of the compact.

Recommendation

Change in Statute

4.1   Adopt the new Nurse Licensure Compact.

This recommendation would add the new Nurse Licensure Compact language to statute and repeal the current compact language after the new compact becomes effective. Adopting the new Nurse Licensure Compact would address limitations of the current compact and would include the following major provisions. The table on page 35 provides additional detail on how the new compact compares to the current one.[3]

- Registered nurses and licensed vocational nurses practicing in Texas under a multistate license must comply with the Texas Nursing Practice Act and board rules.

- Texas would have authority to limit or revoke a compact licensee's ability to practice in Texas.

- Texas would participate in a coordinated licensure information system of all nurses to include licensure and disciplinary data on each compact state.

- The new compact would create and grant rulemaking authority to the Interstate Commission of Nurse Licensure Compact Administrators, the compact's governing body. Statute would include clarifying language to explicitly state that this rulemaking authority is strictly limited to administrative functions of the compact's governing body and would not alter current processes for nurse licensure in any way unrelated to the compact.

- The board's executive director would serve as the administrator of the new compact in Texas, just as with the current Nurse Licensure Compact. The board would also select an administrator to serve on the Interstate Commission of Nurse Licensure Compact Administrators, according to the rules established in the new compact.

- Nurses with certain felony convictions would still be able to apply for a Texas-only license, but would not be eligible for a compact license to practice in another state, unless they already have that ability under the current compact.

Establishing the Interstate Commission of Nurse Licensure Compact Administrators would make rule adoption more efficient and hold states in the compact accountable by subjecting states that are not in compliance with compact requirements to mediation and termination provisions. The governing body would also use its forum to settle interstate disputes and collect direct input from all members to promote effective management of the compact. The new compact would incorporate uniform licensure requirements, including a ban on nurses with felony convictions and a requirement for fingerprint-based background checks, eliminating the patchwork of regulation that exists under the current compact.

Adopting the new Nurse Licensure Compact in state law would not expand the scope of practice for nurses in Texas, as the Legislature would still define the scope of practice through the Nursing Practice Act and other state laws. The new compact would allow qualified nurses from other member states to continue to practice in Texas without having to go through the board's endorsement process. However, if a nurse practicing under a compact license establishes permanent residency in Texas, the nurse would still be required to obtain a license in Texas.

Fiscal Implication

This recommendation would have a positive fiscal impact to the state, resulting from some administrative efficiencies once the new compact becomes more widely implemented by additional states. These savings would result from a reduction in the number of out-of-state applicants the board's staff would need to process, but the amount cannot be estimated for this report. Most importantly, not adopting the new compact would result in additional costs by significantly increasing the number of applications the board would process from out-of-state nurses.

....

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 304.001, Texas Occupations Code.

[2]   Nurse Licensure Compact Update, Katherine Thomas, July 21, 2016, Board of Nursing meeting agenda.

[3]   The Florida Legislature's Office of Program Policy Analysis & Government Accountability, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report*, accessed August 4, 2016, http://floridasnursing.gov/forms/2015-oppaga-research-memo.pdf.

New Compact Provisions	Changes From Current Compact
Findings and Declaration of Purpose, Article I	Substantively the same
Definitions, Article II	Substantively the same
General Provisions and Jurisdiction, Article III	**Criminal records check (federal and state)** **Disqualification based on criminal record** **Graduate of an accredited school** **Fluent in English** **National board exam** **Not currently in an alternative treatment program** **Must self-disclose, if in alternative program** **A valid social security number**
Applications and Licensure in a Party State, Article IV	Substantively the same
Additional Authorities Invested in Party Licensing Boards, Article V	Substantively the same; **adds FBI and state criminal records check**
Coordinated Licensure Information System and Exchange of Information, Article VI	Substantively the same
Interstate Commission of Nursing Licensure Compact Administrators, Article VII	**Creates commission and delineates membership, powers, financing** **Requires council to adopt rules related to: fiscal year, meetings, delegations of function or authority, establishing committees, elections, officers, closing the commission, and personnel policies**
Rulemaking, Article VIII	**Article VIII c. "compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of the compact"** **Process for adopting, amending rules including public notice, public comments, and effective date**
Oversight, Dispute Resolution and Enforcement, Article IX	**Directs each state to enforce the compact** **Defines default and termination, costs** **Defaulting state may appeal the action of the commission to the U.S. District Court** **Provides remedies, not limited to action in the U.S. District Court**
Effective Date, Withdrawal and Amendment, Article X	**Compact becomes effective on the earlier date of when 26 states have enacted the compact or December 31, 2018** **Representatives of non-compact states are invited to participate on a non-voting basis before the compact is adopted by all states**
Construction and Severability, Article XI	Substantively the same

Source: The Florida Legislature's Office of Program Policy Analysis & Government Accountability

ISSUE 5

Clear Statutory Authority Could Help the Board Better Monitor Improper Prescribing of Controlled Substances.

Background

A nationwide epidemic of prescription drug abuse, including drug diversion, has raised awareness of medical professionals improperly prescribing controlled substances with serious consequences to patients and the public, including addiction, overdoses, and the illicit sale of such drugs on the street. The state's primary method for keeping track of prescriptions for these highly addictive medications is the Texas State Board of Pharmacy's Prescription Monitoring Program, a statewide database previously housed at the Department of Public Safety that collects information on every controlled substance dispensed in Texas. Statute allows prescribers, pharmacists, and related regulatory agencies to check the database.[1]

As one of several agencies with licensees authorized to prescribe controlled substances, the Texas Board of Nursing plays an important role in protecting the public from improper prescribing of controlled substances, including nontherapeutic prescribing and overprescribing. Advanced practice registered nurses (APRNs) are professional — or registered — nurses who have completed specialized training and practice in an expanded role of care. APRNs can prescribe medications, including controlled substances, under the delegated authority of a physician if they obtain prescriptive authority from the board. In 2013, the Legislature prohibited APRNs from prescribing the most highly addictive controlled substances, such as hydrocodone and morphine, except in limited circumstances.[2] However, APRNs may still prescribe other controlled substances, some of which can be used in dangerous drug combinations.

Texas has nearly 24,000 APRNs — 75 percent of which have authority to prescribe medications — and based on data provided by Department of Public Safety, are among the top prescribers of controlled substances.

Findings

Clear authority and recent program improvements could strengthen the board's monitoring of APRNs who may improperly prescribe controlled substances.

All agencies should have clear statutory authority to engage in their operations. Because improper prescribing is a more recent problem facing the board, the board lacks clear statutory authority and legislative direction to proactively monitor licensees' prescribing patterns and investigate nurses who may engage in improper prescribing.

Research has shown proactive monitoring of prescribing patterns has a positive effect on curbing prescription drug abuse and misuse.[3] The board actively monitors licensees' prescribing history through the Prescription Monitoring Program by regularly searching the top 100 prescribing APRNs and responding to drug-related complaints against APRNs.

Monitoring of prescribing patterns can curb prescription drug abuse.

As of September 1, 2016, improvements in the program should allow the board to review more detailed trend data and dangerous drug combinations, such as APRNs prescribing benzodiazepines or carisoprodol at the same time a physician is prescribing opioids. Such improvements will strengthen the board's ability to use more targeted searches to investigate and potentially discipline APRNs who improperly prescribe controlled substances.

Recommendation

Change in Statute

5.1 Clarify statute and provide direction for the board to monitor APRNs' improper prescribing of controlled substances.

This recommendation would clarify the board's authority to proactively monitor the Texas State Board of Pharmacy's Prescription Monitoring Program database for improper prescribing of controlled substances by APRNs and pursue necessary enforcement action. The board would conduct any necessary investigations based on a search of the database and take any appropriate action, including notifying the APRN about the potentially dangerous prescribing pattern or pursuing necessary enforcement action. The board, in its monitoring efforts, should consider the overall volume or combinations of prescribing of the four classes of drugs the Legislature recognizes as those most likely to be abused (opioids, benzodiazepines, barbiturates, and carisoprodol), as well as additional dangerous combinations of drugs the board may identify.[4]

Fiscal Implication

This recommendation would not have a fiscal impact to the state as the board already uses the Prescription Monitoring Program to monitor APRNs, and the new program features should make monitoring more efficient and effective.

....

[1] All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 481.076, Texas Health and Safety Code.

[2] S.B. 406, 83rd Texas Legislature, Regular Session, 2013.

[3] Ronald Simeone and Lynn Holland, *An Evaluation of Prescription Drug Monitoring Programs*, accessed September 30, 2016, http://simeoneassociates.com/simeone3.pdf; Research and Policy Analysis Group of Carnevale Associates, LLC, *Prescription Drug Monitoring Information Brief*, accessed September 30, 2016, http://www.carnevaleassociates.com/pdmp_info_brief-_2007.pdf.

[4] Section 168.001(1), Texas Occupations Code.

Issue 6

The Board's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Background

Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to conform the Texas Board of Nursing's statute to Sunset across-the-board recommendations (ATBs) and to address the need for the agency's required reports.

- **Sunset across-the-board provisions**. The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These ATBs reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Reporting requirements**. The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.[1] The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or expiration dates are not included, nor are routine notifications or notices, or posting requirements.

Findings

The board's statute does not reflect updated requirements for board member training.

The board's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain a newer requirement that the agency create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board's rulemaking authority.

A 1923 reporting requirement is no longer necessary.

The board's reporting requirements are outdated and no longer necessary.

Summarized in the chart on the following page, statute requires the board to produce two reports specific to the agency's functions. One of the two requirements directs the board to keep a record of its proceedings and make an annual report to the governor, a provision dating back to 1923 when the

Legislature required it to keep a record of its meetings.[2] The requirement is outdated and no longer necessary as the board keeps regular meeting minutes and publishes information about its enforcement and other actions on its website.

The other reporting requirement directs the board to publish an annual report regarding pilot programs to study innovative ways to verify ongoing nurse competency. However, the board has not received any proposals for pilot programs since the Legislature authorized them in 1999. The reporting requirement is also tied to the board's authority to approve nurse competency pilots, but because the board has broad authority to approve pilot programs, the specific authorization for competency pilots is duplicative and unnecessary.[3]

Texas Board of Nursing Reporting Requirements

Report	Legal Authority	Description	Recipient	Sunset Evaluation
Pilot Program	Section 301.160, Texas Occupations Code	Annual report regarding board-approved pilot programs	Statewide associations of nurses and educators, and employers of nurses that request a copy	Abolish
Annual Proceedings	Section 301.163, Texas Occupations Code	Annual report on the board's proceedings	Governor	Abolish

Recommendations

Change in Statute

6.1 Update the standard across-the-board requirement related to board member training.

This recommendation would require the board to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy and boards have rulemaking authority necessary to implement legislative policy.

6.2 Discontinue the board's two reporting requirements and eliminate the specific statutory authority for nurse competency pilot programs.

Eliminating the board's reporting requirements would remove outdated and unnecessary provisions from the board's statute. Eliminating the specific authority for nurse competency pilot programs should not affect the board's authority to approve such pilots in the future since the board's broader authority to approve pilot programs would remain in statute.

Fiscal Implication

These recommendations would not have a fiscal impact to the state.

....

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

[2]   Section 2, Chapter 183 (S.B. 40), Acts of the 38th Legislature, Regular Session, 1923.

[3]   Section 301.1605(a), Texas Occupations Code.

Issue 7

The State Has a Continuing Need to Regulate Nurses.

Background

The mission of the Texas Board of Nursing 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 is competent to practice safely. The state began regulating the practice of nursing in 1909, when the Texas Legislature passed the Nursing Practice Act creating the Board of Nurse Examiners and setting requirements for licensure. In 1951, the Legislature distinguished between professional — or registered — nurses and vocational nurses by establishing the Board of Vocational Nurse Examiners, and creating a separate licensing act for vocational nurses. In 2003, the Legislature abolished the Board of Vocational Nurse Examiners and transferred its functions to the Board of Nurse Examiners, whose name later changed to the Texas Board of Nursing.

The board seeks to protect public health and safety by issuing licenses; investigating and resolving complaints relating to the practice of nursing or supporting functions; and generally enforcing the Nursing Practice Act. At the end of fiscal year 2015, the board regulated 285,945 registered nurses, 101,314 vocational nurses, and 21,587 advanced practice nurses. The board also regulated 211 nurse education programs, including 117 for registered nurses, 92 for vocational nurses, and two for advanced practice nurses.

Findings

The state has a continuing need to regulate the practice of nursing.

A primary role of the state is to protect the public from harm. To provide this protection, the state seeks to ensure public health and safety through regulating certain professions and taking disciplinary action when practice standards are not met.

- **Potential for harm**. The tasks nurses perform can pose significant risks. Nurses care for vulnerable patients whose mental or cognitive ability is compromised due to illness or injury. The risk is even greater for patients who are aging, children, patients with disabilities, patients with mental health issues, and sedated and anesthetized patients. Nurses can perform a wide array of difficult and risky tasks. For example, registered nurses can give therapeutic treatments and intravenous medications, conduct physical assessments, assist during surgery, and supervise vocational nurses, nurse aides, and other unlicensed assistive personnel. Vocational nurses can take a patient's vital signs, apply dressing and change bandages, give medication, and document a patient's condition and treatment. Advanced practice nurses collaborate with physicians and specialize in areas that allow them to perform such advanced medical tasks as delivering a baby or administering anesthesia. These nurses also perform physical examinations, prescribe medicine, order and read tests, and take patient histories. In some settings,

Nurses perform difficult and sometimes risky tasks.

advanced practice nurses may serve as the primary healthcare provider, as a physician is only present periodically.

- **Qualified practice**. The practice of nursing affects all Texans since nurses play an integral role in providing health care in the state. The board licenses individuals to ensure they can practice nursing safely and competently. Requiring practitioners to meet education, training, and other qualifications and to demonstrate competence by passing an examination is an important way for the state to assure the public that licensed practitioners can perform nursing safely. To protect the public, the board also enforces the Nursing Practice Act and board rules, adopts policies establishing standards for practice, provides an avenue for consumers to lodge a complaint if they receive substandard care, and disciplines nurses who commit violations.[1]

The board ensures nurses are qualified to practice safely.

No substantial benefits would result from transferring the board's functions to another agency at this time.

- **Independent agency structure**. Sunset staff did not find benefits of merging or transferring the regulation of nurses to another agency because no existing licensing agency could absorb the board's regulatory responsibilities without a significant transfer of resources. This structure reflects the common approach for large health licensing agencies in Texas, especially agencies responsible for overseeing complex medical activities that pose a significant and direct risk to public health and safety, such as the pharmacy, medical, and dental boards. The board regulates the largest number of health licensees and has more resources in staff and funding than most health licensing agencies. In fiscal year 2015, the board regulated more than three times as many practitioners as the next largest regulatory program at the Texas State Board of Pharmacy, as illustrated in the table, *Licensed Health Professionals in Texas*.

The board regulates more licensees than any other health licensing agency.

Licensed Health Professionals in Texas — FY 2015

Professional Board	Number of Licensees
Nursing	408,846
Pharmacy	113,806
Medical	85,244
Dental	82,658

As an independent agency, the board is collocated with other health regulatory agencies. This location enables the agency to easily access best practices and learn from shared experiences of neighboring agencies. The board also achieves administrative efficiencies among similar regulatory programs through the Health Professions Council, which provides certain services to all health licensing agencies.

Moreover, the board is generally well-run. The board takes its duty to protect the public seriously, investigating and disciplining thousands of nurses each year. The board also closely adheres to best practices for licensing and enforcement that Sunset staff has identified through its reviews of other health licensing agencies.

- **Umbrella agency structure**. An alternative approach to having an independent agency is the consolidation of needed regulatory programs under an umbrella structure. The state has long regulated various trades under the umbrella of the Texas Department of Licensing and Regulation (TDLR). However, the only comparable effort for health regulatory programs at the Department of State Health Services (DSHS) was ineffective and largely dismantled last session, with numerous programs moved to TDLR or the Texas Medical Board, while others were deregulated. The rationale for this change was to focus DSHS on its important public health mission by freeing it from its health occupations licensing responsibility.

  While this same rationale for moving programs from DSHS does not apply for independent agencies that already focus on licensing, an umbrella structure can still offer advantages in terms of objective, professional regulation. By specializing staff along functional lines, umbrella agencies can provide improved long-term efficiency over smaller agencies that regulate one profession. In addition, larger umbrella agencies can provide more avenues for developing and retaining staff, helping to insulate them against the institutional loss and disruption that can result from the departure of just a few key personnel in smaller agencies. Umbrella agencies can also provide a more objective regulatory approach because their broad responsibilities typically require oversight boards comprising public members that rely on advisory committees of practitioners for expertise about the regulated field. This separation helps promote the broader public interest, minimizing the potential for the regulated community to promote its own interest when it controls these oversight boards.

  Potential benefits of other structures are not great enough to justify organizational change.

  The review considered structural alternatives presumed to provide these benefits but found the potential benefits of organizational change were not great enough to justify such an upheaval.

  Texas Department of Licensing and Regulation. As noted above, through the 2015 Sunset review of DSHS, the Legislature transferred 13 health-related regulatory programs to TDLR over the next three years. While this experience has introduced TDLR to the regulation of health professions, none of the programs transferred require the kind of technical expertise needed to regulate nursing, especially from an enforcement standpoint. In addition, the large expansion of authority may well have brought TDLR to its current capacity to take on a larger, more complex regulatory program with the level of risk associated with nursing.

  Texas Medical Board. While the Texas Medical Board is not a traditional umbrella agency, it regulates a number of health-related programs, including four received through the Sunset review of DSHS. The Medical Board does not fit the traditional umbrella model because it regulates medical providers under a physician-oriented board instead of a structure that accounts for broader regulatory authority. The Medical Board's oversight structure would require significant adjustment to accommodate other healthcare professionals such as nurses.

Most other states regulate nursing through independent or semi-autonomous boards.

All states license nurses and have a licensing agency similar to Texas. Twenty-five states regulate nursing through an independent agency within state government. Twenty-four states regulate nursing through a board within an umbrella state agency. North Carolina is the only state that regulates nursing outside of state government. Three states — California, Louisiana, and West Virginia — regulate professional nurses and vocational nurses through separate agencies.[2] In addition, all states regulate advanced practice nurses, although each state does not recognize the four types of advanced practice nurses that Texas does.

Recommendation

Change in Statute

7.1   Continue the Texas Board of Nursing for 12 years.

This recommendation would continue the board as an independent agency responsible for regulating professional, vocational, and advanced practice nurses in Texas for 12 years, until 2029. The board would continue to implement the Nursing Practice Act and adopt agency rules and policies to ensure that only qualified nurses practice in Texas.

Fiscal Implication

Based on fiscal year 2016 appropriations and employee benefits, continuing the board would require approximately $11.9 million in annual costs associated with the agency. These costs are entirely paid for by the licensing and registration fees the agency collects. The state would also continue to receive approximately $1.7 million collected annually by the board in excess of the agency's costs.

....

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Chapter 301, Texas Occupations Code; 22 T.A.C. Part 11.

[2]   National Council of State Board of Nursing, *Board Structure Member Board Profiles 2015*, accessed August 19, 2016, https://www. ncsbn.org/BoardStructure.pdf.
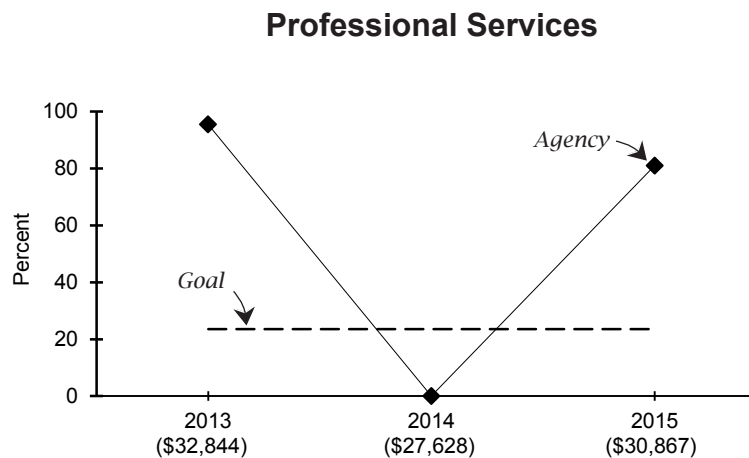
APPENDICES

APPENDIX A

Historically Underutilized Businesses Statistics
2013 to 2015

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Texas Board of Nursing's use of HUBs in purchasing goods and services. The board maintains and reports this information under guidelines in statute.[2] In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of board spending with HUBs in each purchasing category from 2013 to 2015. Finally, the number in parentheses under each year shows the total amount the board spent in each purchasing category.

The board's HUB spending typically exceeds the statewide HUB purchasing goals for professional services and commodities. Although the board fell below the goals for other services in the last three fiscal years, the board has consistently increased its HUB spending in this category. The board does not have any spending in the heavy construction, building construction, or special trade categories.

Professional Services

The board exceeded the state goal for HUB spending for professional services in two of the last three fiscal years.
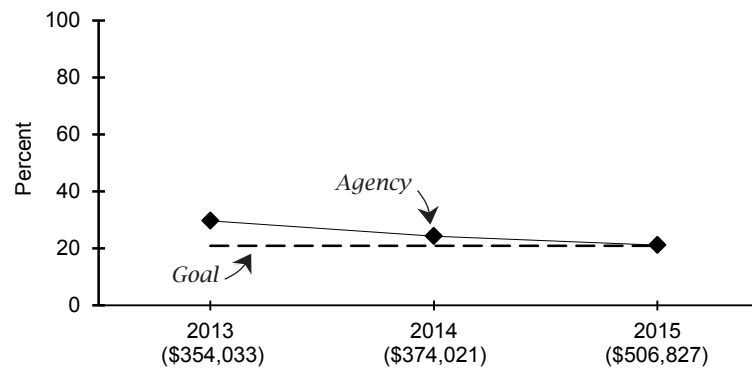
Appendix A

Other Services
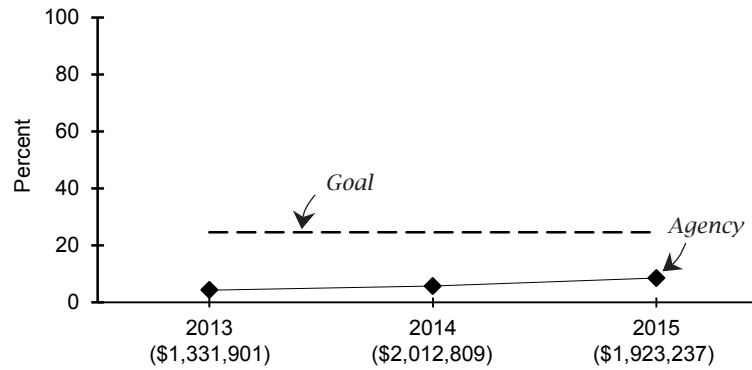
The board fell below the state goal for HUB spending on other services in the last three fiscal years but has been consistently increasing its HUB spending in this category.

Commodities

The board exceeded the state goal for commodities in the last three fiscal years.

....

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 325.011(9)(B), Texas Government Code.

[2]   Chapter 2161, Texas Government Code.

APPENDIX B

## *Equal Employment Opportunity Statistics 2013 to 2015*

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Board of Nursing.[1] The board maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.[3] These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the board's actual employment percentages in each job category from 2013 to 2015. In the categories where the board has the most employees, it consistently exceeds the civilian workforce percentages for females and typically exceeds or is only slightly below the percentages for minorities.

Administration
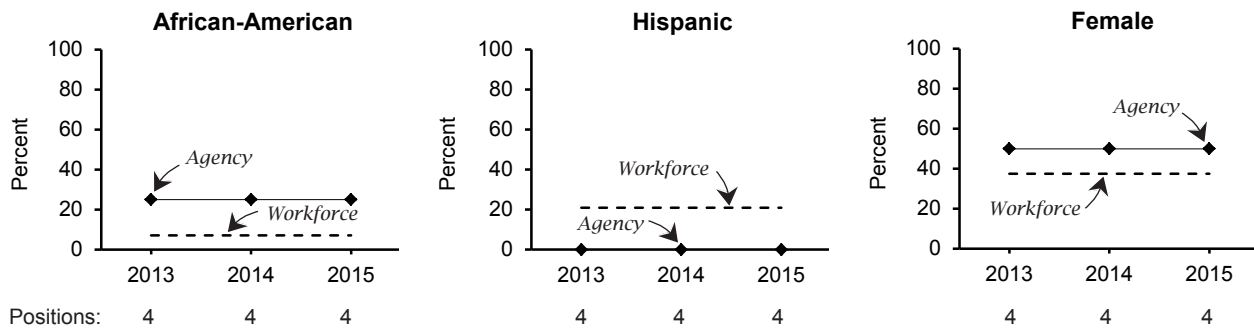
The board exceeded the civilian workforce percentages for African-Americans and females in the last three fiscal years but fell below the percentages for Hispanics. However, the board has few employees in this category.
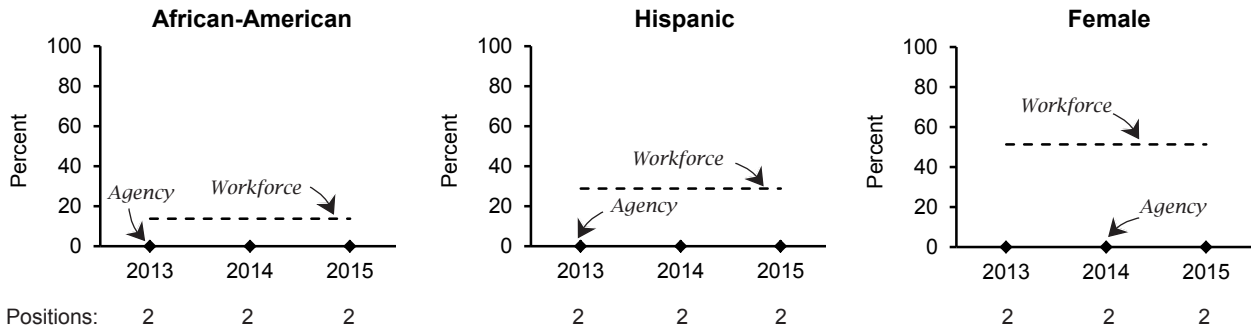
Professional
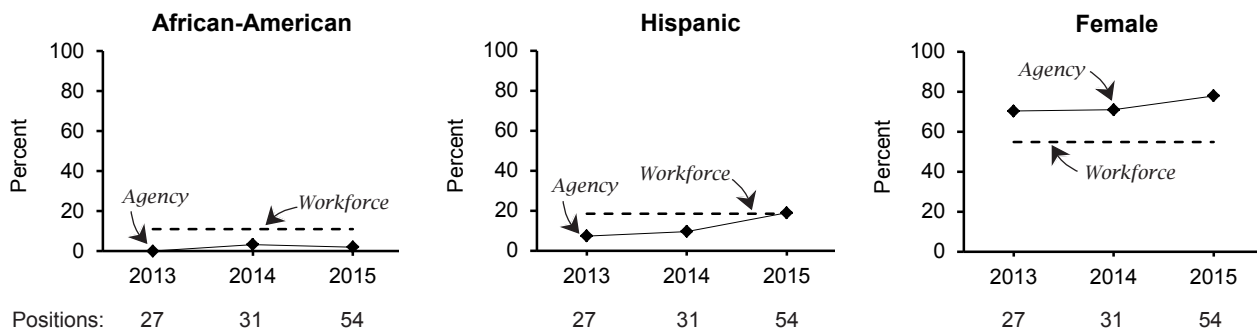
The board exceeded the civilian workforce percentages for females in the last three fiscal years but fell below the percentages for African-Americans. The board has increased its percentage for Hispanics and exceeded the civilian workforce percentage in fiscal year 2015.
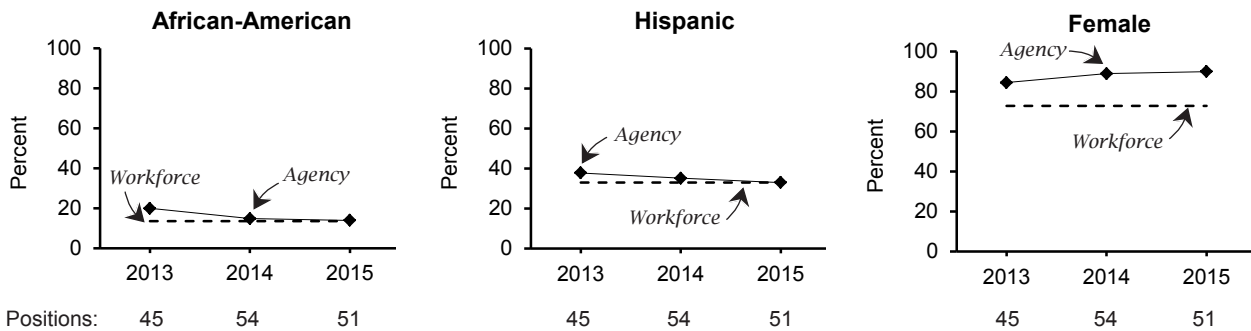
Appendix B

Technical

African-American	Hispanic	Female

Positions: 2   2   2   2   2   2   2   2   2

The board fell below the civilian workforce percentages for minorities and females in the last three fiscal years but has only two employees in this category.
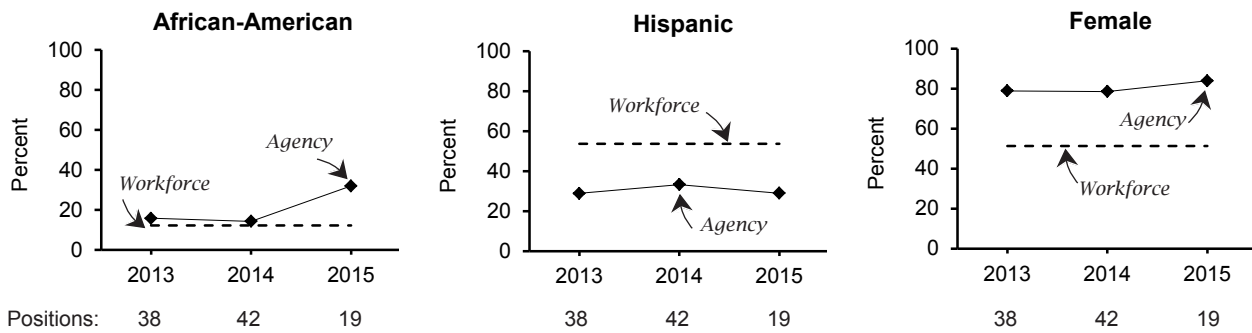
Administrative Support

African-American	Hispanic	Female

Positions: 45   54   51   45   54   51   45   54   51

The board met or exceeded the civilian workforce percentages for minorities and females in the last three fiscal years.

Appendix B

Service/Maintenance

The board exceeded the civilian workforce percentages for African-Americans and females in the last three fiscal years but fell below the percentages for Hispanics.

---

1   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 325.011(9)(A), Texas Government Code.

2   Section 21.501, Texas Labor Code.

3   Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C

Health Professions Council

In 1993, the 73rd Legislature created the Health Professions Council (HPC) to increase efficiency across member agencies by providing administrative support services. The council consists of representatives from 12 independent licensing boards and the Department of State Health Services Professional Licensing and Certification Unit (PLCU), as reflected in the table, *HPC Member Agencies*.

HPC Member Agencies – FY 2016

Agency	Licenses (at start of FY16)	Funds Transferred to HPC in FY16
Texas Board of Chiropractic Examiners	6,537	$20,361
State Board of Dental Examiners	31,280	$257,118
Texas Funeral Service Commission	4,811	$43,845
Texas Medical Board	85,244	$32,378
Texas Board of Nursing	419,685	$71,651
Texas Board of Occupational Therapy Examiners	13,985	$33,527
Texas Board of Physical Therapy Examiners	24,412	
Texas Optometry Board	4,409	$27,715
Texas State Board of Pharmacy	113,806	$331,400
Texas State Board of Podiatric Medical Examiners	1,162	$13,401
Texas State Board of Examiners of Psychologists	9,512	$52,774
Department of State Health Services – PLCU	175,140	$11,846
State Board of Veterinary Medical Examiners	9,770	$31,038
Non-Member Agencies Receiving Limited Services		
Texas Board of Professional Geoscientists receives information technology support services		$13,000
Texas Board of Professional Land Surveying receives database administration and support		$11,808
Texas State Board of Plumbing Examiners receives database administration and support		$130,658
Office of Public Insurance Counsel receives information technology support services		$6,641
Total		**$1,089,161**

- **Funding and staffing**. The council's funding comes from transferred appropriations from member agencies, with each agency paying for services it receives. Council members elect a chair and vice chair to preside over the council for two-year terms. The council has seven employees to perform its main functions and occasionally uses staff from member agencies to carry out specific programs. For

Appendix C

example, an Optometry Board staff member provides added technology support to the eight smallest member agencies, and a Board of Nursing staff member offers new employee Equal Employment Opportunity (EEO) training to all member agencies.

● **Services**. HPC offers the following services to member agencies:

   – Website, information technology, and document imaging software support

   – Shared regulatory database and database administration

   – Purchasing, payroll, and human resources support

   – Trainings relating to state finance, accounting, auditing, and EEO guidelines

   – Shared toll-free telephone line for consumer complaints

Appendix D

Staff Review Activities

During the review of the Texas Board of Nursing, Sunset staff engaged in the following activities that are standard to all sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to the Board of Nursing:

- Observed informal settlement conferences and Eligibility and Disciplinary Committee meetings

- Met with the State Office of Administrative Hearings

- Attended a site visit of a nursing education program

- Observed an Excelsior College Clinical Performance in Nursing Exam

- Attended a Texas Peer Assistance Program for Nurses Advisory Committee meeting

- Surveyed nursing education programs

- Attended an application meeting and orientation for new nursing education programs

- Attended a nursing Education Knowledge Network conference call

Sunset Staff Review of the
Texas Board of Nursing

—— *Report Prepared By* ——

Skylar Wilk, *Project Manager*

Emily Johnson

Jack Lenske

Cee Hartley

Sarah Kirkle, *Project Supervisor*

Ken Levine
Director