

# EXECUTIVE SUMMARY

## *Texas Board of Nursing*

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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.

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*The board unfairly penalizes nurses for conduct unrelated to nursing.*

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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.

