

BOARD OF TUBERCULOSIS NURSES EXAMINERS

Staff Report

to the

Sunset Advisory Commission

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FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Board of Tuberculosis Nurses Examiners, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into three major sections: Summary and Conclusions, Background, and Sunset Evaluation. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Sunset evaluation section contains a detailed review of the operations of the agency and uses the self-evaluation report submitted by the agency as the basis of the review unless noted. The information contained in the self-evaluation report was verified where necessary, and additional data were obtained through interviews, review of agency files and other sources.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

In the early 1900's, the state approached the delivery of health care for tuberculosis patients by establishing state tuberculosis hospitals. Due to the contagious nature and high mortality rate of the disease, the state was often unable to secure staff for the hospitals. In addition to the nature of the disease, the treatment method of the period emphasized isolation of the patient in a warm, dry climate causing the facilities to be placed in remote areas of the state, thus increasing the difficulties in securing staff.

In 1917, the need for trained personnel to provide nursing services at the TB hospitals became acute. Although the state was licensing nurses at the time, there was little incentive for these individuals to serve tuberculosis patients. In order to fill the gap in services and ensure the adequacy of care provided, a training school was established for "TB nurses." Former TB patients enrolled in the school and served as nurses in the hospitals after graduation. The state regulated the quality of TB nursing care through this training and employment qualification method until 1950 when the Board of Tuberculosis Nurses Examiners was created for the purpose of registering TB nurses. Regulation of this nursing category through registration came at a time when another nursing category (vocational nurses) was organizing and protection of the public health through licensure of this category was foreseen.

The training school for Tuberculosis Nurses closed in 1961 and the number of practicing Tuberculosis Nurses has steadily declined since that time due primarily to the availability of other nursing specialties and changes in methods of controlling the disease. Today, only 59 nurses request annual reregistration and it appears that only a few of these are actually practicing under their registration.

Need to Regulate

As in the case of other regulated activities, regulation of TB nurses should be undertaken by the state only when there is a continuing need to protect the public health, safety, or welfare. Circumstances existing at the time regulation was originally imposed indicate that the danger of tuberculosis as a contagious disease created a situation in which "regular nurses" were given little incentive to provide essential nursing services and the state relied heavily on what amounted to the volunteer services of former TB patients. This condition resulted in the state's creation of a specialty category of nursing -- the TB nurse. Without such a category, the state's responsibility to treat and control the spread of the dangerous, infectious disease would have been less effectively addressed. The development of the skills necessary for this category of nursing required the same basic nursing techniques as those required for patients suffering from other serious internal disorders. Due to the life-sustaining and skilled nature of TB nursing procedures, it was appropriate at that time for the state to impose regulation, first through training and then through registration, to insure minimum standards of TB nurse competency, thus protecting the public health and safety.

Conditions existing today both in terms of the nature of the disease and the availability of qualified nurses outside the TB nurse specialty have eliminated the need for the continued existence of the specialty group and its regulation. Evidence of this lack of need may be seen in the fact that TB nurses have not been specially trained since 1961 and the schools for their training have been discontinued. However, a small number of licensees (at least 13) are still employed solely on the basis of their registration. Given the continuing practice of technical nursing skills by these licensees, there is a need for the state to continue to exercise some form of control over their activities. It is not necessary, however,

to maintain a separate board to ensure some form of control over the remaining licensees as the current board has been inactive in the area of enforcement and has received only one complaint in the last 29 years.

It can be concluded, therefore, that there is no longer any need to continue the Board of Tuberculosis Nurses Examiners, or to provide a means by which additional persons can be licensed in this specialty. The state should, however, provide some means to regulate the remaining licensees within the specialty group.

Alternatives

If the legislature determines that the board and/or that the regulatory function should be continued, the following alternatives could be considered:

1. CONTINUE THE BOARD AND ITS FUNCTIONS IN ITS CURRENT FORM.

This approach would allow the state to provide minimal regulation at no cost. Although the board has been inactive for a number of years, it is possible that enforcement procedures could be instituted in the event of a complaint.

2. ABOLISH THE BOARD OF TUBERCULOSIS NURSES EXAMINERS AND TRANSFER THE REGULATORY AUTHORITY OVER THE REMAINING TB NURSES TO THE BOARD OF VOCATIONAL NURSE EXAMINERS. ALL REMAINING TB NURSES WOULD BE PERMANENTLY CERTIFIED TO PRACTICE UNLESS THE PRIVILEGE IS REVOKED.

This approach would eliminate a free standing board which has not functioned in a number of years and offers only minimal protection to the public. Regulation of the remaining TB nurses would be put under an active agency with enforcement capabilities. The one time certification process would provide a means by which the privilege to practice could be denied in the event of prohibited conduct. Costs associated with the one time certification would be negligible and there would be no recurring renewal costs.

3. ABOLISH THE BOARD OF TUBERCULOSIS NURSES EXAMINERS AND ELIMINATE ANY LICENSING STATUS FOR THE REMAINING TB NURSES.

This approach would eliminate a free standing board which has not functioned in a number of years. Three of the remaining TB nurses who are employed hold positions with the state and are classified as medical technicians. Although certification as a TB nurse is currently a requirement of this job description, this could be modified to make experience rather than certification a requirement of the job description. This would allow the state to continue the minimum protection needed through job employment qualifications. However, compliance with this approach in private, local or federal facilities (where at least 10 remaining TB nurses are employed) could not be insured.

II. BACKGROUND

The State of Texas assumed responsibility for the care of tuberculosis patients in 1909, when the legislature provided for the creation of two sanatoriums. The sanatorium at Carlsbad was established in 1912 and became known as the McKnight State TB Hospital. The second site at Fort Clark was never developed as a tuberculosis sanatorium.

Administrative responsibility for the hospitals was originally vested in the Anti-Tuberculosis Commission, but was transferred to the Board of Control in 1920. In 1948, the Board of Hospitals and Special Schools (now the Department of Mental Health and Mental Retardation) was given responsibility for these facilities. At the recommendation of the Committee on Eradication of Tuberculosis in Texas, the remaining tuberculosis hospitals were transferred to the State Board of Health in 1965.

Staffing for the tuberculosis hospitals was problematic in the early years and in most cases, doctors working in the facilities had been patients. Nurses were difficult to recruit due to the general fear of tuberculosis, the geographic isolation of the facilities and the reportedly low pay scale. These difficulties led to the establishment of a separate training school for nurses at the site of the sanatorium at Carlsbad to provide an adequate supply of nursing personnel. The school, established in 1917 became known as the State Tuberculosis Sanatorium School of Nursing which provided a two-year training program for stable patients interested in becoming Tuberculosis Nurses. When the school closed in August of 1961, it had graduated some 501 persons. Another school at the East Texas Tuberculosis Hospital graduated over 100 persons during its operation from 1952 to 1959.

The Board of Tuberculosis Nurses Examiners was established during a special session of the Fifty-first Legislature in 1950. The establishment of the board came a year before the requirement that vocational nurses be licensed and at a time when tuberculosis nurses felt that only legal status in the nursing profession would protect their jobs at the tuberculosis hospitals.

Of the 501 graduates of the Sanatorium School of Nursing, 303 have become Registered Tuberculosis Nurses (RTNs). Fifty-nine of those 303 remain active registrants of the board, and only seven are currently employed at the remaining two Chest Hospitals.

The board, composed of three Registered Tuberculosis Nurses, has never employed a staff. The board has not met since 1974 and presently has no revenue source. Remaining fund balances total \$18.05. The board's only activity is the annual issuance of re-registration certificates to 59 licensees for which no fee is charged.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

Organization and Objectives

The three-member Board of Tuberculosis Nurses Examiners was established in 1950. Members are appointed by the Governor with the advice and consent of the senate and serve six-year overlapping terms. All members must be Registered Tuberculosis Nurses (RTN's). The basic objective of the Board of Tuberculosis Nurses Examiners is to protect the health of the citizens of Texas by assuring the competence of Tuberculosis Nurses. This objective is currently addressed by the board through its annual re-registration function and has, in the past, been addressed by an initial registration and examination process and through a limited enforcement process.

The board has never hired a staff and all functions have been carried out by the board members themselves. The only statutorily authorized funding source for the board are the examination fees. All funds have been deposited in local accounts.

The review of the agency's operations evaluates the performance of the agency in three areas related to the agency's basic objective. These areas are administration, licensing and enforcement.

Administration

The objective of the administrative function for the Board of Tuberculosis Nurses Examiners is to operate the agency efficiently.

Administrative functions have been carried out directly by board members since the creation of the board. The statute did not provide for payment of salaries or travel expenses of the board members or officers. The Secretary-Treasurer of the board carries a \$1,000 bond and is responsible for most board administrative duties.

According to Audit Reports from the State Auditor's Office for the years 1950-1976, the largest end-of-year fund balance for the agency occurred in fiscal year 1957 when the balance reached \$365.32. The fund balance presently totals \$18.05 (as of September 14, 1979) and is on deposit with United Savings of Texas at Cisco, Texas.

Licensing

The objective of the licensing function of the Board of Tuberculosis Nurses Examiners is to assure that the persons who serve as Tuberculosis Nurses are competent. This objective was reviewed to determine if the statute has been reasonably interpreted for the accomplishment of the objective, whether the statute prevents the attainment of the objective and whether the agency has achieved the objective in a realistic and timely fashion.

In its efforts to achieve the licensing objective, the agency did require that registrants complete educational requirements at the Sanatorium School of Nursing and take an examination prescribed by the board. However, the statute also established a "grandfather" system for persons who had graduated from an

approved school prior to March 13, 1950, the effective date of the Act. Of the 303 persons eventually registered by the agency, 105 (34.7%) were registered by examination and 198 (65.3%) were registered under the grandfather clause.

The board charged a \$1.00 fee for initial registration to offset the costs of issuing the documents but has ceased this function due to the fact that there have been no new registrants. Annual re-registrations are issued by the board, although there is no statutory requirement for this activity. The number of re-registrants has decreased from 106 in 1969 to 59 in 1979.

In reviewing the educational requirements of the board it was found that in addition to the Sanatorium School, a school for Tuberculosis Nurses was established in 1952 as part of the East Texas Tuberculosis Hospital in conjunction with Tyler Junior College. The program operated until 1959 and graduated over 100 persons. This program was never approved by the board, therefore its graduates were not eligible for registration with the Board of Tuberculosis Nurses Examiners. However, the graduates of this program filled the need for trained nursing personnel in the early years of the TB hospital in Tyler. The graduates of this program still working are now functioning in general aide and nursing categories at the facility (now known as the University of Texas Health Science Center at Tyler).

Enforcement

The objective of the enforcement function is to protect the public against incompetent registrants or persons practicing without state sanction. This objective was reviewed to determine if the agency had developed and implemented processes which would allow for prompt and impartial response to complaints; reasonable methods to determine and prevent unauthorized acts of individuals not

licensed by the agency; and an impartial forum for the conclusion of complaints brought against licensees or others.

Under Article 4528b, V.A.C.S., the board may initiate a complaint against any registrant believed to exhibit "gross incompetence, malpractice, dishonesty, intemperance or any other act derogatory to the morals and standing of the profession of nursing." The complaint is to be filed in the county court in which the accused resides. An appeal to a district court, whose judgment is final, is also provided for.

Interviews with the Secretary-Treasurer of the board who has been a board member since its inception indicate that only one complaint has come to the board's attention in its 29 years of operation. This complaint involved an RTN mistakenly acting as a Licensed Vocational Nurse. According to the Secretary-Treasurer, once the situation was brought to the attention of the accused, corrective action was taken and no formal proceedings were needed or instituted.

Summary

Both the administrative and enforcement functions of the Board of Tuberculosis Nurse Examiners have involved negligible activity in achieving the agency's basic objective. The board's achievement of the licensing objective is questioned because of the large number of grandfathered registrants and because graduates of an apparently identical training program were practicing without registration.

IV. OTHER ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

For the following reasons, there appears to be no need to continue a specialty category of licensing for nurses who serve tuberculosis patients:

1. There is no training facility for potential applicants; and
2. There are other trained personnel who are willing to serve tuberculosis patients.

However, consideration should be given to those few individuals who are currently employed on the basis of their TB Nurse registration.

Continue the Function Under Another Board

In 1979, 59 persons requested annual re-registration certificates from the board. Of these, seven are still employed in state facilities, of which three are employed in categories dependent upon a specialty registration. A survey was conducted during the review to determine how many registrants are employed in positions dependent on some form of registration. The results of the survey indicate 40 percent of the respondents still practice nursing. Of those, about one-fourth (4) are practicing under another license and about three-fourths (13) indicate that they are still practicing under their TB Nurse certificate.

The least restrictive alternative to permitting the present registrants to continue to hold their present employment prerequisite would be to provide lifetime registration. In order to appropriately protect the public from unscrupulous or incompetent practice of registrants, enforcement powers need to be vested in a functioning board which has similar responsibilities for a similar licensee population.

Eliminate the Licensing Status for TB Nurses

If the Board of Tuberculosis Nurses Examiners were abolished and functions were not transferred to another agency, employment of three persons in state agencies would be affected. These persons had secured employment with the state under the State Classification Plan as Registered Tuberculosis Nurses I and II. Even though this classification was discontinued in 1977, the new job classification required some form of specialty registration. If the specialty were prohibited, some modification to the job classification, through which they are currently employed, should be made to allow experience as a Tuberculosis Nurse to be substituted for the registration requirement.

Summary

There appears to be no reason to continue the TB Nurse category as a specialty requiring licensure. However, consideration should be given to providing continued credentials to the persons who are presently employed using the TB Nurse registration. This can be done either by continuing the regulatory function under another board or through abolition of the function and modification of state job classification requirements.