

TEXAS STATE BOARD OF NURSE 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 Texas State Board of Nurse 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 seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. 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 Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

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

The need to protect the public health, safety and welfare through the regulation of professional nursing is inextricably tied to the growth and development of hospitals since 1900 and the technological advances in medical science which have required nurses to make a greater number of critical judgments based on a body of scientific knowledge.

Recognition of the need to regulate professional nursing first occurred in 1903. In recognition of this need, the Thirty-first Legislature established the Board of Nurse Examiners in 1909.

The board, composed of six registered nurses, presently regulates 82,840 licensees and accredits sixty educational programs through its licensing, accreditation and enforcement functions. Activities performed by the agency include evaluating educational programs, processing applications for licensure by examination or endorsement and enforcing provisions of the law. Operations of the board are supported entirely from fees collected by the agency. Although agency funds are currently deposited in accounts outside the State Treasury, all funds will be deposited to the "Professional Nurse Registration Fund" in the State Treasury, effective September 1, 1981.

Review of board operations reveals that the regulatory activities of the board generally serve to ensure an adequate level of public protection. The review of board activities indicated that the administration of this agency is generally conducted in an efficient and effective manner.

Review of the licensing process revealed that it functions in a timely and efficient manner; however, several concerns were noted. A statutory change to permit staggered license renewal on a biennial basis could reduce the need for seasonal employees and distribute the agency's workload and cash flow more

evenly. Currently, there is no standard delinquency period stipulated in the statute for late license renewal, as is generally provided for in other licensing statutes. The statute should be amended to permit late renewal for thirty days after the license, upon payment of a penalty.

Review of the examination process showed that offering the exam only in Austin imposes significantly greater costs for seventy-seven percent of the applicants who attended institutions more than 100 miles from Austin. The exam should be administered in other cities, even if the exam fee must be increased. The current inclusion of a specific minimum passing score in the statutes makes it difficult for the board to respond appropriately to anticipated changes in the scoring of the national examination used in Texas and should be removed.

The review also indicated that there are no statutory restrictions or supervisory requirements imposed on candidates for licensure working under temporary permits issued by the board. In addition, the board does not have the authority to establish requirements for nurses who have not actively been employed in nursing seeking to reactivate their licenses. It was also determined that the statutory provision which exempts individuals performing acts done under the control on supervision or at the instruction of licensed physicians negates any protection afforded the public by the regulation of nurses. For those individuals who are licensed by the Board of Nurse Examiners, there is no statutory provision which requires that licensees be clearly identified when providing nursing services to the public. The review indicated that the traditional definition of nursing contained in Texas statutes has not kept pace with changes in the actual health care delivery system, especially regarding the recognition and regulation of areas of specialty practice within professional nursing and authorization for nurses to perform additional functions operating under protocols and standing orders. The

statute should be modified to recognize additional functions which can be performed in certain situations by specially trained nurses.

Review of the board's accreditation activities indicate that the board has established reasonable standards for nursing education programs and a mechanism to enforce these standards effectively.

In the area of enforcement, the workload is substantial and continues to grow. Agency complaint procedures are adequate and complaint files properly maintained. Statutory grounds for refusal to allow an individual to sit for an examination and the grounds for removal of a license should be modified since they are ambiguous, difficult to verify and require the board to apply subjective judgment. A last concern identified in the review relates to the power of the board to probate any order, revoking, or suspending a license. The authority to probate revocations is not consistent with the range of penalties available to regulatory boards and should be removed.

In the review of the agency's compliance with general statutes, it was noted that provisions under the Open Meetings Act and the Open Records Act as well as filing requirements under the conflict-of-interest statutes have been met.

The review also indicated that the board has made efforts to educate the public and its licensees about its operations, however the board's ability to successfully represent the general public could be improved by including public members on the board.

Need to Regulate

As in the case of other regulated activities, regulation of professional nurses should be undertaken by the state only when there is a need to protect the public health, safety, or welfare. The need to regulate the practice of professional nursing is recognized in fifty states and implicitly recognizes the technical nature

of professional nursing and the potential for harm to the public which exists in the practice of professional nursing.

Conditions which exist today indicate a continued need to protect the public because the practice of professional nursing remains a technical profession which should be practiced by skilled individuals and because there continues to be a potential for harm to the public from incompetent practitioners. Without state regulation, there would be no official determination of minimum levels of competency before a person could practice professional nursing. Thus, the public would be subject to an unnecessary risk of harm from incompetent and unsafe practitioners. It can be concluded, therefore, that there is a continuing need to license and regulate the profession from the standpoint of public protection.

Alternatives

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

1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent board to perform licensing and enforcement at no expense to the General Revenue Fund. The review indicated that the following modifications would result in more effective regulation of professional nurses:

- a) provide for the appointment of public members to the board (page 42);
- b) authorize staggered biennial license renewal (page 16);
- c) provide for license renewals with a late renewal penalty within thirty days after license expiration (page 16);
- d) decentralize the examination process to permit the licensure examination to be given in locations outside of Austin (page 17);

- e) statutory references to a specific minimum passing grade on the licensure exam should be deleted (page 19);
- f) modify licensure prerequisites and grounds for disciplinary action to include only those to which the board can apply a clear objective standard (page 28);
- g) mend the statute to permit the board to probate only suspensions (page 28);
- h) require that licensees wishing to reactivate their licenses must meet continuing education requirements established by the board (page 20);
- i) the statutory provision which exempts individuals performing acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners should be modified (page 20);
- j) amend the statute to require that new graduates holding temporary permits be supervised by an R.N. (page 19);
- k) provide statutory authority for the board to recognize and regulate areas of specialty practice within the scope of the practice of professional nursing and authorize fees for specialty certification and renewals to the current fee structure (page 23);
- l) amend the statutes regulating the practice of professional nursing to permit professional nurses to perform acts which otherwise would constitute the practice of medicine, but which are recognized by the nursing and medical professions as proper to be performed by a professional nurse when performed in accordance with rules and regulations jointly promulgated by the Board of Nurse Examiners and the Board of Medical Examiners (page 23);
- m) permit professional nurses with advanced education and training certified by the Board of Nurse Examiners to possess, prescribe, dispense and administer prescription medications contained in a formulary of prescription medications jointly developed and promulgated by the Board of Nurse Examiners, the Board of Medical Examiners and the Board of Pharmacy (page 23);

- n) require all parties to a formal complaint be periodically notified in writing as to status of complaint (page 27); and
- o) amend the statute to require that a licensee clearly be identified through insignia or other means when providing services (page 21).

2. ABOLISH THE BOARD AND TRANSFER ITS CURRENT REGULATORY FUNCTIONS TO A RESTRUCTURED BOARD WHICH WOULD REGULATE BOTH PROFESSIONAL NURSES AND VOCATIONAL NURSES (page 34).

This approach would consolidate the regulation of registered and vocational nurses under one board as is done in forty-four states. Benefits to be derived from consolidation include a more consistent regulation of both professions as well as greater efficiency in the allocation of the state's resources by eliminating duplication of administrative procedures associated with the regulation of both professions.

Effective implementation of this alternative would require certain modifications which include the following:

- a) the composition of the board should include six registered nurses, three licensed vocational nurses, and three public members.
- b) implement the structural and substantive changes contained in the preceding alternative.

II. BACKGROUND

Historical Perspective

The need to protect the public health, safety and welfare through the regulation of professional nursing is inextricably bound up in the growth and development of hospitals since 1900 and the technological advances in medical science which have required nurses to take increasing responsibilities, perform more highly skilled tasks and make a greater number of critical judgements based on a body of scientific knowledge. Nursing now includes not only "traditional" nursing functions--providing supportive and restorative care, and executing the medical regimen under a physician's direction; but also health counseling and teaching, case finding and referral, and collaboration in implementing the total health care system. Nurses, as direct patient care providers, are authorized to perform functions such as administration of medications and treatments prescribed by a physician that can involve serious risks to patient health and safety. The highly technical procedures now included in hospital care make special skills and training particularly necessary to perform competently the functions delegated to nurses. Today nurses often practice under a physician's "standing orders" or in other settings without direct supervision and in these situations nurses have primary responsibility for patient care and as such make many independent judgements which may have serious consequences.

Recognition of the need for regulation of professional nursing first occurred in 1903 when New Jersey, New York, North Carolina and Virginia first licensed professional nurses. Most state licensure laws were enacted between 1905 and 1917. The first regulation of professional nursing in Texas was enacted in 1909. This regulation was in the form of a title act. The Texas Board of Nurse Examiners was created with the authority to examine applicants, and issue and revoke

licenses.

The original scope of the board's authority has been significantly altered since 1909. The role of professional nursing now includes responsibility for functions that were once considered medical rather than nursing functions. Generally, statutory changes related to licensure and educational accreditation occurred first. In 1923, the board's revocation authority was removed. Significant increases in the board's enforcement powers including revocation authority have been enacted since 1967. However, an exemption was added to the statute in 1969 excluding any act done under the control or at the instruction of one licensed by the Texas State Board of Medical Examiners which effectively limits the jurisdiction of the board over the practice of professional nursing. The result is a relatively permissive form of regulation of professional nursing.

Despite the fact that substantive changes in the statutes governing the practice of professional nursing have occurred in the last decade, the traditional definition of nursing which is contained in the Texas statutes does not adequately reflect the significant changes which have occurred in health care delivery and the present scope of nursing practice nor does it recognize the overlap which exists between the medical and nursing professions. As a result there are many areas in the state's health care system where the provision of health and medical services by nurses and physicians is in violation of current Texas laws.

The six-member board administering the agency is composed entirely of registered nurses appointed to staggered terms of two to six years by the Governor. The board employs a staff of 20 full-time employees. Currently 82,840 nurses are registered by the board. Operations of the agency are supported entirely from fees collected by the agency. Although agency funds are currently deposited in accounts outside the State Treasury, a requirement was enacted in 1979 that all

funds be deposited to the "Professional Nurse Registration Fund" in the State Treasury to be expended as specified in the General Appropriations Act effective September 1, 1981. In fiscal year 1979, the board collected \$648,011 in fees and other charges and expended \$598,450.

Comparative Analysis

To determine the pattern of regulation of registered nurses within the United States a survey of the fifty states was conducted.

The need to regulate registered nurses is currently recognized through licensing requirements imposed by all fifty states. In six states, including Texas, the regulation of registered nurses is performed by a board solely responsible for registered nurses. In the remaining states, the regulation of registered nurses is carried out by a board responsible for both registered nurses and licensed vocational nurses. Board members are appointed by the chief executive in forty-three states.

Licensing boards composed entirely of registered nurses administer nursing laws in thirteen states, including Texas. Licensed vocational nurses are included as board members in thirty-four states. In twenty-three states, the regulation of registered nurses is achieved through a board consisting of nurses as well as public members. While fees are collected by all fifty boards, funding patterns vary across the states. Boards in forty-one states, including Texas, are supported by the fees they collect. In two states, not including Texas, nursing boards have advisory functions only.

In all states except Virginia nursing boards conduct investigations in response to consumer complaints. In all states except Iowa, Missouri and West Virginia, nursing boards have responsibility for conducting disciplinary hearings.

In all states, except Virginia, licensure by some form of endorsement or

reciprocity is authorized.

All nursing boards surveyed indicate the need to perform the basic regulatory functions of administration, licensing and enforcement.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose 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 Texas Board of Nursing Examiners has a legislative mandate to regulate all persons who practice professional nursing in this state. The board's stated objectives include the following: 1) prescribe minimum standards, approve curricula and accredit educational programs for professional nurses; 2) examine, license and renew the licenses of qualified applicants; and 3) control the practice of nursing by means of investigation and initiate appropriate legal action.

The board is composed of six members appointed by the governor for six-year overlapping terms. To be qualified for appointment, members must be registered nurses at least twenty-five years of age, of good moral character and graduates of an accredited school of nursing. Three members of the board are required to have at least three years experience teaching nursing. Statutorily-required duties of the board include promulgating rules and regulations, establishing standards of professional conduct, regulating the practice of professional nursing and assisting in the prosecution of all persons violating provisions of the statutes regulating professional nursing.

Staff for the board consists of an executive secretary and nineteen full-time employees. Activities routinely performed by the staff include maintaining agency

records, accounting for board revenues and expenditures, providing clerical and professional support to the board, evaluating educational programs for accreditation, processing applications for licensure by examination or endorsement, issuing temporary permits, processing license renewals, administering the licensure examination, verifying licensees to other states, interpreting the statutes and rules and regulations to licensees, employers and the general public, conducting informal hearings and investigating violations of the Act.

Funding for the board is derived exclusively from fees collected by the agency under the provisions of the Act. All agency funds are currently held in bank accounts outside the Treasury; however, as of September 1, 1981, all funds are to be deposited to the "Professional Nurse Registration Fund" in the State Treasury.

Evaluation of Agency Activities

The operations of the Board of Nurse Examiners can be broken down in to four basic activities: administration, licensing, accreditation and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions; whether these provisions facilitate accomplishment of the objectives; whether agency organization, rules and procedures are structured in a manner that contributes to cost effective accomplishment of the agency's task; and whether procedures provide for fair and unbiased decision-making.

Administration

The general objective of any administration activity is to provide for efficient operation of all agency functions. The review of board activities indicated that the administration of this agency is generally conducted in an

efficient and effective manner. The agency has made effective use of data processing resources to assist in the management of the large number of files maintained by this agency and can document numerous efforts to improve the efficiency of the examination and licensure processes. Although the board has not been subject to the general rider provisions of the appropriations act, the review indicated that the management of this agency generally adheres to the standards established for efficient and accountable state operations. No significant problems or deficiencies in the area of administration were noted during the review.

Licensing

The objective of a licensing board is to ensure that a minimum standard of competency has been achieved by persons authorized to practice professional nursing. To accomplish this purpose, the board is directed by statute to administer an examination to applicants for licensure and issue renewal licenses. Exhibit III-1 provides data on the number of persons licensed by the board during the past four fiscal years.

Exhibit III-1
**LICENSING STATISTICS FOR NURSES
 REGISTERED IN TEXAS
 (1976-1979)**

	Fiscal Years			
	1976	1977	1978	1979
Nurses Registered by Examination	3,665	3,975	4,278	4,123
Nurses Registered by Endorsement	2,536	3,406	4,378	4,200
Nurses Re-Registered	57,530	62,459	67,992	74,517
Total Nurses Registered in Texas	63,731	69,840	76,648	82,840
Total Registered Nurses Verified to Other States	1,385	1,481	1,714	1,896

SOURCE: Agency Annual Reports (1976-1979)

The board is directed by statute to collect certain fees for the licensing services provided. The Act sets the fee for registration at a specific amount, however the board has the discretion to set the level of the fees up to the statutory limit. Exhibit III-2 indicates the range of services for which the board is authorized to charge a fee.

Exhibit III-2
CURRENT FEE STRUCTURE

<u>Type of Fee</u>	<u>Statutory Limit</u>	<u>Current Fee</u>
Accreditation of New Schools and Programs	\$100.00	\$100.00
Admission Fee to Examinations	50.00	30.00
Approval of Visitor Exchange Programs	50.00	50.00
Duplicate or Substitute of Current Certificate	5.00	5.00
Duplicate or Substitute of Permanent Certificate	10.00	10.00
Duplicate Permits	3.00	3.00
For Endorsement with or without Examination	50.00	30.00
Affidavits for Name Change	5.00	5.00
For Proctoring Examinations of Examinees from Another State	75.00	75.00
License Renewal	25.00	4.00
Late Renewal Fee	10.00	10.00
For Verification of Records	5.00	5.00
For Issuance of a Temporary Permit	10.00	5.00
For Reactivating from Inactive Status	20.00	5.00
For Bad Checks	10.00	10.00

In reviewing the licensing process, an assessment was made of the effectiveness of statutory requirements and board action in ensuring a minimum level of competency. Included in the review were the processes related to license and

renewal issuance, the examination of applicants, reciprocity, exceptions from licensing requirements and continuing education requirements.

Board records indicate that during the period under review, the number of licenses renewed grew from 57,823 to 74,517 which represents a twenty-nine percent increase. Review of the licensing process indicates that it functions in a timely and efficient manner. Although the agency has already taken steps to eliminate many of the repetitive, manual tasks associated with license renewal through automation, the annual renewal process still requires a number of activities, including cash receipt processing, opening mail and registering and sorting documents, which could not be significantly improved by additional automation since they involve unavoidable paper handling. The board has requested in its self-evaluation report (p. 61) that Article 4526, V.A.C.S., be revised to allow for staggered re-registration on a biennial basis. It is anticipated that this statutory change could reduce the need for seasonal employees and distribute the agency's workload and cashflow more evenly. Therefore, the statute should be amended to permit staggered re-registration on a biennial basis.

Currently, the Texas statutes regulating professional nursing do not provide for a grace period in which a license renewal may be renewed late. Prior to 1979, there was also no monetary penalty authorized for late renewals. The board's current procedures allow licensees actively practicing professional nursing to renew their licenses within a thirty-day grace period without penalty. Licenses which are delinquent more than thirty days and less than six months will be renewed upon payment of a penalty fee of \$10.00. Practicing nurses whose licenses are delinquent more than six months are called for an informal hearing with agency staff and their license is reinstated by the board with a reprimand upon payment of the appropriate fees. In order to assure comparable treatment for all licensees in

Texas, regardless of their regulated profession, the statute should be amended to provide a standard delinquency period of thirty days with penalties for late renewal during that period which will encourage prompt and timely renewals of licenses.

Candidates for licensure as a registered nurse must take a written examination which is given by the board each year in February and July. The State Board Test Pool Examination which is provided by the National Council of State Boards is used in every state in the United States. Questions for the examination are written by faculty members employed in the various types of educational programs for registered nurses and reviewed by the board prior to each exam for use in Texas. Exhibit III-3 which provides the pass-fail rates for candidates writing the examination between 1976 and 1979 indicate that the test is neither overly restrictive nor overly permissive. The nine-hour examination is given in Austin over a two-day period. Although the agency has investigated the feasibility of offering the examination in cities other than Austin, no decision to decentralize the exam process has been made. Disadvantages of decentralization cited by the agency include the additional costs associated with contracting with a testing service to administer the exam at sites outside of Austin and delays in forwarding the exam for grading. However, a centralized examination process in a state as large as Texas results in significant costs associated with travel, food and lodging for many applicants. Analysis of the 17,561 candidates writing the examination between 1973 and 1978 indicates that twenty-one percent of the candidates attended nursing programs within a 100-mile radius of Austin, fifty-six percent graduated from programs with a 200-mile radius of Austin and twenty-three percent attended institutions more than 200 miles from Austin. Greater equity in the costs incurred by individual applicants could be achieved by offering the exam at several locations within the state with the additional costs associated with a decentralized exam

process allocated among all of the candidates writing the examination through an increased exam fee.

Exhibit III-3

**LICENSING EXAMINATION PASS/FAIL RATES
FISCAL YEARS 1976-1979**

<u>Year</u>	<u>Total Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
<u>1977</u>					
First Time U.S. Candidates	3,823	3,083	81%	740	19%
Repeat U.S. Candidates	1,083	560	52%	523	48%
First Time Foreign Candidates	458	124	27%	334	73%
Repeat Foreign Candidates	921	207	22%	714	78%
<u>1978</u>					
First Time U.S. Candidates	3,946	3,214	81%	732	19%
Repeat U.S. Candidates	1,265	671	53%	594	47%
First Time Foreign Candidates	427	137	32%	290	68%
Repeat Foreign Candidates	911	251	28%	660	72%
<u>1979</u>					
First Time U.S. Candidates	3,743	3,074	82%	669	18%
Repeat U.S. Candidates	1,144	703	61%	441	39%
First Time Foreign Candidates	374	144	39%	230	61%
Repeat Foreign Candidates	504	202	40%	302	60%

SOURCE: Agency Annual Reports (1976-1979), Self-evaluation Report (1979)

In Texas, as in other states, all applicants for licensure as a registered nurse take the same examination, although their educational preparation may range from a two-year associate degree program to the four-year baccalaureate degree program. The six-year overall passing rate for the candidates from the various

types of programs ranges from seventy-four percent for university based associate degree programs to eighty-nine percent for diploma programs associated with hospitals. Effective with the 1977-1978 academic year, the board's rules and regulations require that at least seventy-five percent of the first time candidates from a nursing program must achieve a passing score on the State Board Test Pool Examination. The annual report for fiscal year 1979 indicates that warnings were issued to twelve schools based on the low pass rates of graduates on the State Board Examination.

Article 4518, V.A.C.S. requires candidates for licensure as a registered nurse to make a passing grade of 350 on all subjects in order to be licensed. Texas is currently only one of seven states which mandates a specific passing score in the statutes. All other states specify a passing score "as determined by the board." The State Board Test Pool Examination is currently undergoing revisions which will result in a substantially higher mean score than the one presently used. Deletion of statutory references to a specific minimum passing grade will provide the board with the flexibility to respond appropriately to all such contemplated changes.

Article 4523, V.A.C.S. authorizes the Board of Nurse Examiners to issue a temporary permit to practice professional nursing to graduates of an accredited nursing school in the United States after the application for examination has been approved. Temporary permits may also be issued to graduates of accredited schools in other states coming to Texas before the results of the examination are released. Based on the pass/fail rates on the State Board Examination, approximately twenty percent of the individuals practicing under a temporary permit will not be eligible for licensure. There are currently no statutory restrictions or supervision requirements for these individuals. To be consistent with the intent of a practice act and ensure a greater degree of protection to the public, graduates working under a temporary permit should be required to be supervised by a

registered nurse.

At least 10,000 nurses licensed to practice and living in Texas in 1979 were not employed in nursing. It is not known how many other nurses live in Texas but do not maintain licensure and are unemployed. Surveys suggest that a certain percentage of these nurses may choose to reenter nursing in the future when factors such as family responsibilities, working conditions or wages change. Currently, the board does not have the authority to require that nurses who have not been actively employed in professional nursing meet any additional requirements to ensure continued competency. The fact that all areas of health care, including nursing, are currently experiencing rapid technological changes suggests that protection for the public would be enhanced by requiring that licensees seeking to reactivate their licenses meet educational or other requirements established by the board. Therefore, the statute should be amended to permit the board to establish requirements for reactivation.

Texas currently has a permissive nurse practice act which exempts individuals performing "acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners. The review indicates that this exemption allows unlicensed foreign nurses and other personnel who cannot pass the State Board Examination to work in hospitals in Texas using titles such as "graduate nurse," "staff nurse," and "head nurse" which tend to imply to the public that they are licensed. This exemption negates any protection afforded the public by the regulation of nurses and is inconsistent with the intent of a practice act. In addition, a recent study of conditions associated with registered nurse employment in Texas indicated that both active and inactive nurses cite the lack of mandatory licensure as contributing to job dissatisfaction and compromising patient care. This exemption should be modified to apply only to

employees of licensed physicians. In order to avoid any economic dislocations, this modification should be implemented over a five-year period with the assistance of a joint advisory committee consisting of physicians, registered nurses and hospital administrators.

Whenever licensing statutes regulate the practice of a profession, individuals who hold themselves out to the public as qualified for licensure should be clearly and readily identified as licensed practitioners. The current statute regulating the practice of professional nurses should not only limit the use of the title "R.N." or "Registered Nurse" to individuals licensed by the Board of Nurse Examiners, but it should also require that a licensee be clearly identified by appropriate insignia or other means as a "Registered Nurse" when providing nursing services to the public.

Currently, the Board of Nurse Examiners issues only one license: registration for professional nurses. In the past decade, however, the role of the professional nurse has changed and one result has been the emergence of the nurse practitioner. An advanced nurse practitioner may be defined as a currently licensed registered nurse who has completed a post-basic or advanced educational program which prepares a person for practice in an expanded role to provide primary health care. Since the "traditional" definition of nursing neither reflects the present scope of professional nursing education and practice nor recognizes the overlap which exists between the medical and nursing professions, thirty-two states have modified their nurse practice acts to incorporate the nurse practitioner concept. This generally requires either redefining the practice of nursing as defined in the state's practice act or amending the traditional definition of professional nursing to permit professional nurses to perform specific medical functions under less direct physician supervision. In contrast to a majority of states, Texas has not added an additional acts amendment or totally redefined the statutes regulating professional nursing to expressly recognize the "expanded role" of the nurse practitioner. The

Texas Board of Nurse Examiners is one of three states which must rely on the board's general rulemaking authority to issue regulations to govern the practice of nurse practitioners. The rules and regulations concerning advanced nurse practitioners (388.06.00) most recently adopted in March, 1980 are now in litigation as a result of suits filed by the Texas Medical Association and the Texas Hospital Association alleging that the Board of Nurse Examiners has no "expressed or implied" authority to "create or regulate specialty practice such as advanced nurse practitioners."

Another issue associated with the statutory recognition of advanced nurse practitioners concerns the use of protocols and standing orders as a device through which a physician can supervise professional nurses performing medical functions delegated by a physician. Protocols may be defined as written policies, instructions, orders, rules or regulations or procedures prepared jointly by physicians and nurses for the treatment of non-life threatening or chronic health conditions and for emergency care. These protocols delineate under what set of conditions and circumstances health care should be instituted and the type of action or procedures to be initiated. The health care delivery system in Texas has historically and traditionally functioned with physicians and nurses providing health and medical care utilizing standing orders. However, the legality of these activities was questioned in 1978 in Attorney General Opinion H-1295 which stated that a determination of whether a nurse may legally initiate written protocols and standing orders is dependent upon whether the protocol covers a nursing or medical function, whether the medical function is one which may be delegated, and whether adequate supervision is provided. The opinion also states that the common practice of a nurse providing medications to patients through protocols and general standing orders is illegal. This opinion has placed many nurses who operate under protocols

and standing orders in a quandry as to the legality of their activities.

In addition, because current statutes prohibit nurse practitioners from providing non-complex medical care under protocols and standing orders without the physician physically present, 185 counties in Texas designated by HEW as medically underserved have been unable to qualify for reimbursement as provided for under the Rural Health Clinic Services Act, PL 95-210. This law was designed to increase the availability and accessibility of primary health care and services to residents of rural areas with shortages of medical services and health manpower. Where state laws do not prohibit such delivery, clinics eligible for certification as "rural health clinics" could be staffed by a physician assistant and/or nurse practitioner who would provide non-complex medical care to patients using protocols and standing orders written jointly by the physician assistant and/or nurse practitioner and the physician. The minimum supervision required by federal regulations specifies that the physician be present at least once every two weeks. As a result of the statutory restrictions in Texas, applications for "rural health clinics" have been denied certification due to the lack of continuous on-site physician supervision. As of November 1979, only three of these clinics were in service in Texas. Texas statutes should be amended to authorize nurses to perform additional functions operating under standing orders and protocols in order to 1) protect physicians and nurses providing that health care; 2) increase access to health care, especially in rural areas; and 3) decrease the overall cost of health care.

Accreditation

To be licensed in Texas, a nurse must graduate from a program approved by the board. Institutions considering the establishment of a nursing program are required to submit a proposal to the board providing information concerning the

purpose and type of program, source of potential faculty and staff, anticipated students and availability of physical facilities and clinical resources.

Two other state agencies, responsible for the coordination of post-secondary education statewide are also involved in the initial accreditation process for nursing programs. Universities and public senior colleges seeking to establish an accredited program must also apply to the Coordinating Board since that agency is charged with approving all programs initiated by any institution of higher education in the state, except for public junior colleges. As part of its responsibilities to coordinate higher education statewide, the Coordinating Board has completed two studies of the nursing education needs and resources within the state. The Texas Education Agency, as part of its responsibility for administration of state and federal vocational funds in public community colleges, must also approve all requests for associate degree nursing programs established at public junior colleges. All three agencies report close informal coordination in order to minimize overlap. Any nursing program approval by TEA or the Coordinating Board is contingent on approval by the Board of Nurse Examiners.

Exhibit III-4 indicates that between 1967 and 1979, the total number of nursing programs has grown from thirty-five to sixty and the numbers of students enrolling and graduating has more than tripled. These figures suggest that the board has adopted reasonable standards for accreditation and has not been unduly restrictive in approving new programs.

Exhibit III-4

**STUDENT ENROLLMENT AND GRADUATION FIGURES
FOR SELECTED YEARS
1967-1979**

<u>Academic Year</u>	<u>1966-67</u>	<u>1968-69</u>	<u>1970-71</u>	<u>1974-75</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
<u>Baccalaureate</u>							
No. Programs	7	9	10	12	16	17	17
No. Enrolled*	1,472	2,878	3,408	6,703	8,245	9,079	8,141
No. Graduated**	259	390	471	1,606	1,781	2,098	
<u>Associate Degree</u>							
No. Programs	5	18	20	24	30	30	32***
No. Enrolled*	306	1,313	2,126	3,880	4,516	4,499	4,369
No. Graduated**	85	307	608	1,361	1,658	1,772	
<u>Diploma</u>							
No. Programs	23	19	14	6	6	6	6
No. Enrolled*	1,413	1,845	1,309	1,057	1,200	1,044	946
No. Graduated**	499	500	365	264	306	278	
<u>Baccalaureate for RN's</u>							
No. Programs					2	3	4
No. Enrolled*					146	286	262
No. Graduated**					21	42	
<u>Adv. Nurse Practitioner</u>							
No. Programs							1
No. Enrolled*							15
No. Graduate**							
<u>Total</u>							
No. Programs	35	46	44	42	54	56	60***
No. Enrolled*	3,191	6,036	6,843	11,639	14,107	14,908	
No. Graduated**	843	1,197	1,444	3,231	3,766	4,190	

*Number enrolled at beginning of the academic year**Number of graduates during the academic year.

***Number of AD programs and Total number of programs reflects one new program that has not yet admitted the first class.

SOURCE: Agency annual reports.

The board has promulgated extensive rules and regulations governing faculty qualifications, administration and organization, curriculum, students, educational

facilities, clinical resources and records and reports for accredited programs. Visits are scheduled every three years for each program unless the program falls below certain standards established by the board. Exhibit III-5 indicates the activities of the educational staff between 1976 and 1979. Review of the board's accreditation activities indicates that the board has established reasonable standards for nursing education programs and a mechanism to enforce these standards effectively.

Exhibit III-5

**EDUCATIONAL STAFF ACTIVITIES
(1976-1979)**

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Number of Schools Visited	29	31	32	28
Number of Inspection Days	60	50	65	60
Number of Annual Reports Evaluated Without an Inspection Visit	24	26	22	31
Number of Schools with Less than a 75 Percent Pass Rate on the State Board Exam	13	14	11	13

Enforcement

The basic objective of the enforcement activity is to protect the public by identifying and where necessary, taking appropriate action against persons not complying with statutory provisions or board rules. Evaluation of the enforcement activities of the board included an analysis of the complaint process from receipt to disposition and an assessment of adequacy of enforcement efforts.

The workload associated with enforcement efforts by the board is substantial and continues to grow. The board employs one registered nurse as a full-time investigator. Complaints received by the board have increased from 42 in 1976 to

262 in 1979, an increase of more than 500 percent. Disciplinary hearings have more than doubled during this same period of time. Exhibit III-6 provides a comparison of disciplinary activities for selected years between 1972 and 1979.

Exhibit III-6

A COMPARISON OF DISCIPLINARY ACTIVITIES FOR SELECTED YEARS

<u>Year</u>	<u>1972-73</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
Disciplinary Hearings	2	12	17	25	23	35	64
Revocation	2	7	11	18	16	24	27
Suspension	0	2	2	3	1	2	12
Reprimand	0	2	4	3	5	4	16
Other Action	0	1	0	1	1	5	9
Reinstatement Hearings	0	1	2	5	12	11	12
Granted	0	1	2	3	8	9	12
Denied	0	0	0	2	4	2	0
Warnings	5	5	3	8	5	1	2
Informal Hearings	0	0	0	0	0	47	91
Imposter Warnings Issued	4	5	3	7	8	17	15

SOURCE: Agency annual reports

Review of agency enforcement activities indicated that agency complaint procedures are adequate and complaint files are properly maintained. The agency should, however, implement the across-the-board recommendations of the Sunset Commission with regard to keeping all parties to a complaint periodically informed in writing as to the status of the complaint.

The statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination and the grounds for removal

of a license once issued contains the same confusion of thought and vagueness of terminology found in the statutes of many other licensing agencies. The statute erroneously requires the licensing board in many cases to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no legal basis. To correct this situation and to place the licensing board in an appropriate setting, the statutes dealing with the grounds for disqualification should be restructured in such a way that each of the grounds meet a two-part test. First, the grounds for disqualification should be clear and related to the practice of professional nursing. As a second part of the test, the grounds for disqualification should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of the individual.

As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. Currently, the board is authorized to issue a warning or reprimand, to suspend for a period not to exceed two years or to revoke a license. In addition, a 1979 amendment to the statutes regulating professional nursing authorized the board to probate any order revoking, cancelling, or suspending a license. Under this provision when the board revokes a license and then probates it, a licensee may retain his or her license and continue to work as long as he or she meets the stipulations of the probation. At the end of a successfully completed probationary period, all restrictions on the license are removed automatically. To provide consistency in the types of disciplinary penalties generally available to regulatory boards, the statutes regulating professional nursing should be amended to permit the board to probate only suspensions. Where the offense committed is serious enough to warrant revocation, the licensee should not be able to practice unless he or she shows cause to have the license reinstated.

Summary

The Board of Nurse Examiners is composed of six registered nurses appointed for six-year overlapping terms by the governor. The board is directed by the statute to regulate the practice of professional nursing through accreditation of educational programs for nurses, licensure of all qualified applicants, and the enforcement of statutory provisions.

The operations of the board can be broken down into four activities: administration, licensing, accreditation and enforcement. The review of board activities indicated that the administration of this agency is generally conducted in an efficient and effective manner.

Review of the licensing process indicates that it functions in a timely and efficient manner; however, the statutes should be amended to permit the board to implement a staggered renewal process on a biennial basis. The statutes should also be amended to provide a standard delinquency period of thirty days with penalties for late renewal which will encourage prompt and timely renewals of licenses. Review of the licensing examination indicates that it is neither overly restrictive nor overly permissive, however the examination process should be decentralized to ensure greater equity in the costs incurred by individual applicants writing the exam. Analysis of the candidates writing the exam between 1973 and 1978 indicate that seventy-seven percent of the applicants must travel more than 100 miles to take the exam in Austin. The exam should be administered in other cities, even if an increase in the exam fee is required to cover the cost. The review also indicated that deletion of statutory references to a specific minimum passing grade is needed provide the board with sufficient flexibility to respond appropriately to anticipated changes in the scoring of the State Board Test Pool Examination.

There are currently no statutory restrictions or supervision requirements required for nurses practicing under a temporary permit prior to taking the examination and receiving the test results. To be consistent with the intent of a practice act and to ensure a greater degree of protection to the public, graduates working under a temporary permit should be required to be supervised by a registered nurse.

Currently, the board does not have the authority to require that nurses who have not been actively employed in professional nursing meet any additional requirements to ensure continued competency. The fact that all areas of health care, including nursing, are currently experiencing rapid technological changes suggests that protection to the public would be enhanced by amending the statute to permit the board to establish requirements for nurses seeking to reactivate their licenses.

Texas currently has a permissive nurse practice act which exempts individuals performing acts done under the control or supervision or at the instruction of a licensed physician. This exemption negates any protection afforded the public by the regulation of nurses and is inconsistent with the intent of a practice act. This exemption should be modified to apply only to employees of licensed physicians. In order to minimize the economic impact, this modification should be implemented over a five-year period with the assistance of a joint advisory committee consisting of physicians, registered nurses and hospital administrators.

Whenever licensing statutes regulate the practice of a profession, individuals who hold themselves out to the public as qualified should be clearly and readily identified. Therefore the current statutes should be amended to require that a licensee should be clearly identified by appropriate insignia or other means as a "Registered Nurse" when providing services to the public.

In response to issues identified concerning statutory recognition of advanced nurse practitioners, professional nurses performing medical functions delegated by a physician under protocols or standing orders, and implementation of the Rural Health Clinic Services Act, Texas statutes should be amended to provide statutory authority for the board to license and regulate areas of specialty practice within the scope of professional nursing and to authorize nurses to perform additional functions operating under protocols and standing orders in order to 1) protect physicians and nurses providing health care; 2) increase access to health care, especially in rural areas; and 3) decrease the overall cost of health care.

Review of the board's accreditation activities indicate that the board has established reasonable standards for nursing education programs and a mechanism to enforce these standards effectively.

In the area of enforcement, the workload is substantial and continues to grow. Agency complaint procedures are adequate and complaint files properly maintained. However, the agency should implement the across-the-board recommendations of the Sunset Commission with regard to keeping all parties informed as to the status of a complaint.

Another area of concern relates to the statutory grounds for refusal to allow an individual to sit for an examination and the grounds for removal of a license. Several of the statutory grounds are ambiguous, difficult to verify and require the board to apply its subjective judgment, rather than a clear, objective standard. To correct this situation, the grounds for disqualification should be restructured so that they are clear, related to the practice of professional nursing and stated in terms of a currently existing condition.

A last concern relates to the range of penalties the board is authorized to impose on licensees. A 1979 amendment provided the board with the authority to probate any order revoking, cancelling, or suspending a license. To provide

consistency in the types of disciplinary penalties available to regulatory boards, the statutes regulating professional nursing should be amended to permit the board to probate only suspensions.

IV. ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose 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.

Consolidation Alternatives

Organizational structures in other states were reviewed in order to identify consolidation alternatives with potential use for Texas. The review indicated that all states regulate professional nursing. In eleven states, this regulation is accomplished through an occupational licensing agency and in seven states through a department of health. Regulation of nurses in ten states is assigned to various other administrative agencies including the department of education.

In forty-four states, professional nurses and vocational nurses are licensed by the same board. In six states, including Texas, vocational nurses are licensed by a separate board. However, in four of these states, the separate boards are part of a larger agency responsible for occupational licensing. Only two states, Texas and West Virginia, license vocational nurses through a separate board.

Of the consolidation alternatives identified in other states, neither an occupational licensing agency nor health licensing agency is a feasible option for Texas since these organizational forms do not currently exist in this state. Texas does, however, have a Department of Health and two agencies concerned with post-secondary education (Texas Education Agency and Coordinating Board, Texas

College and University System) which could be considered as possible organizational alternatives. In addition, the state currently has two independent boards concerned with the regulation of nursing. Consolidation of these two boards also may be considered a possible alternative.

To determine the feasibility of these options, each agency was reviewed to determine whether its goals or functions are reasonably compatible with those of the Board of Nurse Examiners. In addition, possible alternatives were considered from the standpoint of whether consolidation of functions would result in identifiable benefits.

Analysis of the organizational alternatives available in Texas indicates that the Board of Vocational Nurse Examiners best satisfies the requirement of closely related operations with identifiable benefits from consolidation. The Board of Nurse Examiners regulates professional nurses, whose practice can encompass every aspect of the practice of vocational nursing. The functions and organizational structure of the two boards are very similar and the professional staff of both boards are registered nurses. In addition, there is considerable geographic overlap in the location of RN and LVN educational programs, and similar procedures and criteria are used in accrediting these programs. The boards handle similar types of complaints and need similar investigative techniques and procedures. Finally, both boards contract with the National Council of State Boards of Nursing for the State Board Test Pool Examination.

Regulatory Alternatives

Regardless of the various types of organizational structures used for the regulation of professional nurses in other states, a single regulatory method is presently in force in all states to protect the public from incompetent nurses. This type of regulation involves licensure of individuals upon successful completion of

an examination and other licensure prerequisites, annual or biennial renewal of licenses and enforcement of statutory provisions.

While not currently used to regulate the practice of professional nursing in any state, two additional regulatory methods are commonly used with respect to other occupational groups. These methods should therefore be considered as possible alternatives for the regulation of professional nurses. The first of these methods is certification. Under this option, the ability to practice nursing would be contingent on an applicant taking and passing a one-time "certifying" examination. The second general method is registration. Under this option, any person wishing to practice professional nursing would be required to be "registered" with the state, without regard to qualification.

Institutional licensure, a third potential regulatory concept, has not yet been fully developed or proven. This form of regulation has not been used in any state. This alternative has arisen in response to the criticisms that the present, fragmented licensing system is not keeping pace with the increasingly complex delivery of health care. However, that institutional licensure would cause improvement in health care has not been demonstrated. A primary criticism of institutional licensure is that it would provide no regulation for the increasing number of advanced nurse practitioners and other nurses practicing outside a hospital setting and thus not under institutional regulation.

Before any of the regulatory alternatives reviewed can be considered as a reasonable alternative to current regulation in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system. With respect to the regulatory alternatives identified above, all are less restrictive than the current regulation, but certification and registration offer less public protection than

currently provided and it has not been adequately demonstrated that institutional licensure will provide improved health care services while offering the same degree of public protection as the methods presently used.

Federal Constraints

While the Board of Nurse Examiners is not directly dependent on federal funds within the area of health care, the federal government has become a regulator through its role as financier of government health programs. Title 42, Subchapters XVIII and XIX (U.S.C.A., 1970 ed.) concerning health insurance for the aged and disabled and grants to states for medical assistance programs refers to or requires the use of registered professional nurses and licensed practical nurses in order to determine the eligibility for federal funds. Since all states license both professional and vocational nurses, there was no instance identified where federal funds were lost due to the absence of licensure and regulation of nurses.

Summary

A review of consolidation alternatives in other states was conducted to determine the potential for combining the regulation of professional nurses with the functions of another agency. All states regulate the practice of professional nursing, with twenty-eight states combining the regulation of professional nursing within other agencies. Of these, eleven states use a department of occupational licensing. In forty-four states, professional and vocational nurses are regulated by the same board. While Texas has no "umbrella" licensing agency, agencies used in other states for the regulation of professional nursing do exist in Texas. These include the Department of Health, the Texas Education Agency, the Coordinating Board, and the Board of Vocational Nurse Examiners.

Of these alternatives, the Board of Vocational Nurse Examiners appears to be

the most reasonable alternative for consolidation. The functions of the two boards regulating nursing are very similar, and the regulation of professional nursing can encompass every aspect of the practice of vocational nursing. The professional staff of both boards are registered nurses, and there is considerable overlap in the locations and accreditation procedures of RN and LVN educational programs.

With regard to regulatory alternatives, all states currently regulate professional nurses through the licensure of individuals. While not currently used in other states to regulate nursing, alternative methods of regulation commonly used by other occupational groups include certification and registration. Regulation through certification would require applicants to exhibit a minimum level of competence prior to examination. Registration would only require that a person desiring to practice professional nursing to register with a designated state agency. Neither certification nor registration would involve an enforcement mechanism to assure continued competency. A third regulatory alternative, institutional licensure, is not fully developed or proven and it does not address the regulation of nurses practicing outside a hospital or other institutional setting. While all of these alternatives are less restrictive forms of regulation than the licensure of individuals, none provide as much public protection as the present licensing system. Therefore, none of these are presently a desirable alternative to continuation of the present method of regulation.

With regard to the loss of federal funds or other federal constraints, it was determined that federal laws dealing with health insurance for the aged and disabled and grants to states for medical assistance programs refer to or require the use of registered professional nurses. However, since all states license professional nurses, no instance was identified where federal funds were lost due to the absence of licensure and regulation of nurses.

V. COMPLIANCE

Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict of interest provisions (Article 6252-9b, V.A.C.S.). A review of the documents filed with the Office of the Secretary of State indicates that both the board members and the executive secretary of the agency have complied with the filing requirements set out in the state's general statute dealing with conflict of interest. In addition to the general statutory provision which requires members to refrain from participating or voting on matters before the board in which they have a personal or private interest, the agency's rules and regulations prohibit a board member from voting or entering into any discussion unless directly questioned on matters concerning his or her school. The agency also reports that it is a policy of the board that if a member has prior knowledge of any disciplinary case pending before the board, the member refrains from entering into the deliberations or voting on a decision. The minutes of board meetings held during fiscal years 1976 through 1979 indicate 28 instances in which board members abstained from discussion and voting on matters before the board.

Open Meetings - Open Records

Meetings and activities conducted by the Board of Nurse Examiners show general compliance with the requirements of the Texas Open Meetings Act and the Texas Open Records Act. As evidenced by the board minutes and publications in the Texas Register, board meetings have been preceded by adequate and timely notice to the public. During the period under review the board met in executive session on twelve occasions. Review of the minutes indicate that in three instances the minutes failed to identify the statutory authority to hold a closed

meeting, as required by law. In another instance the board inappropriately closed a meeting to discuss disciplinary cases with decisions made in open meeting. Present board procedures in these areas comply with the requirements of the Open Meetings Act. The remaining executive sessions, called to discuss personnel matters and review test items for future exams, demonstrate proper procedure relating to executive sessions.

Two types of information appropriately are reported to be considered confidential under the Open Records Act: personnel records and interagency memorandums to members of the board. In addition, examination questions and examinations are appropriately treated as confidential, as provided for in Attorney General's Opinion H-484 (1974).

Employment Policies

The Board of Nurse Examiners currently operates under an Affirmative Action Plan updated January, 1980 and a written formal grievance procedure. The agency has never received a formal complaint in the area of employment practices.

An analysis of the agency's work force at the time of the review indicates that eight of the twenty full-time positions are held by minorities. Of the eight minority employees, six are females employed in clerical positions and two are females employed in professional positions as nurse consultants. One of the full-time positions is held by a male employee with the remaining positions filled by females.

Summary

The board generally complies with the requirements set forth in the Conflict of Interest statute; the Open Meetings Act and the Open Records Act. The agency currently operates under an updated Affirmative Action Plan and written formal

grievance procedures. The agency has not received any formal complaints concerning its employment practices.

VI. PUBLIC PARTICIPATION

Agency Activities

Article 4518 V.A.C.S., governing the accreditation of schools of nursing and educational programs and requirements of registration, specifically directs the Board of Nurse Examiners to hear all protests to complaints from such persons and organizations affected by its rules and regulations or decisions.

Review of agency records indicates that the board proposed ten rule changes between fiscal years 1976 and 1978. The nine rule changes adopted relate to accreditation of nursing programs, establishment of standards of nursing practice, the number of times candidates can retake the licensing exam and restrictions on the use of titles deemed to be misleading to the public. One rule change considered but not adopted concerned faculty requirements for ADN programs. In addition to publication in the Texas Register and the board's newsletter, the agency notified the following groups concerning proposed rule changes: nursing programs accredited by the board, the Texas Education Agency, the Coordinating Board, the Texas Nurses Association, the Texas Hospital Association, the Board of Vocational Nurse Examiners, the Texas Department of Health and the Texas League of Nursing.

With respect to the agency's general efforts to inform the public and its licensees as to its operations, the review showed that the Nurse Practice Act, agency rules and regulations and a list of accredited nursing programs are published annually. These publications are made available to the general public and distributed to all nursing schools, state agencies involved in health education and senior nursing students. The board also publishes an annual roster with monthly updates which is sold to hospitals, nursing homes and other employers of registered

nurses. In addition, a newsletter from the board which reports news related to the board's activities is published three to five times a year and distributed to state agencies, schools of nursing, directors of nursing services, state boards of nursing and legislative committees. A special one page newsletter was mailed to all licensees with the application for licensure in January, 1980. The agency staff presents seminars periodically concerning the requirements of the Nurse Practice Act and rules and regulations of the board.

Public Membership

A review of the statutory composition of the board shows the absence of any members of the general public. The lack of such members eliminates one means by which the point of view of the general public can be represented in the development of rules and deliberations on other matters relating to the regulation of professional nursing. The addition of public members to the board would help ensure that concerns of the general public are identified and acted upon by the agency.

Summary

The Board of Nurse Examiners has made efforts to educate the public and its licensees about its operations through publication of its statutes, rules and regulations, licensee rosters and newsletters as well as by conducting orientation seminars statewide. However, the board's ability to successfully represent the general public could be improved by including public members on the board.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Past Legislative Action

Since the Board of Nurse Examiners was created in 1909, the enabling statutes have been amended eighteen times. While amendments to expand the board's regulation of educational programs occurred as early as 1923, other amendments defining professional nursing, expanding the board's enforcement powers, granting rulemaking authority and increasing fees have occurred since 1967.

The first amendment to the statutes regulating the practice of professional nursing occurred in 1911, when the grandfather provision was extended for three years (Senate Bill No. 334, Thirty-second Legislature). In 1923, the original Act was repealed (Senate Bill No. 40, Thirty-eighth Legislature). Although the revised statutes increased the board's regulation of nursing education, the board's enforcement powers were diminished by a provision that required all complaints to be referred to a court of competent jurisdiction by a unanimous vote. Senate Bill No. 40 also authorized annual renewals, temporary permits and the appointment of an

educational secretary to visit all schools of nursing in the state at least once a year.

In 1925, Article 4521 was amended to increase the fee for registration by endorsement (Senate Bill 426, Thirty-ninth Legislature). Senate Bill No. 305, passed by the Fortieth Legislature in 1927, authorized county commissioners' courts to employ registered nurses to visit area public schools and investigate health and sanitary conditions. The statutory provisions concerning temporary permits were amended in 1927 (Senate Bill No. 75, Forty-first Legislature) to extend temporary permits to students graduating from accredited schools of nursing prior to taking the licensing examination and to registered nurses working the state three months or less. Senate Bill No. 126, passed by the Forty-second Legislature in 1931, authorized an additional board member, increasing the size of the board to six members.

The statute concerning the accreditation of nursing schools was amended in 1935 (House Bill 329, Forty-fourth Legislature) to define what constitutes an accredited school of nursing and to increase the minimum educational requirements from two years in an accredited program to three years. In 1941 (Senate Bill No. 198, Forty-seventh Legislature), the statutes regulating professional nursing were amended to authorize the operation of nursing bureaus as a nonprofit service exempt from any occupation taxes or license fees. Senate Bill No. 48, passed by the Fifty-first Legislature in 1949, increased the annual renewal fee from \$.50 to \$1.00. In addition, Article 4523a was amended to increase the salaries of nurses employed by county commissioners' courts. Statutory provisions concerning the accreditation of schools were amended again in 1959 (Senate Bill No. 88, Fifty-sixth Legislature) to strengthen the board's position in accrediting, denying or withdrawing accreditation and to remove the statutory language concerning

minimum standards of accreditation.

Although the original legislation, passed in 1909, stated the intent to define the practice of professional nursing, this definition was not included in the statute until 1967 when Senate Bill No. 242 defined professional nursing as the performance for compensation of any nursing act 1) in the observation, care and counsel of the ill, injured or infirm; 2) in the maintenance of health or prevention of illness in others; 3) in the administration of medications or treatments prescribed by a licensed physician or dentist; and 4) in the supervision of nursing. House Bill No. 242 also permitted the board to adjudicate all complaints and specified administrative procedures for disciplinary proceedings. In addition, this bill extended the board's enforcement powers to allow the board to refuse to admit persons to its examinations, to refuse to issue or renew a certificate of registration or to suspend or revoke a license for reasons which included convictions of a felony crime or misdemeanor involving moral turpitude, impersonating another individual in a licensing examination, the use of any nursing license, certificate, or diploma obtained fraudulently and intemperate use of alcohol or drugs which endangers the patient.

Statutory changes authorized in 1969 (House Bill No. 358, Sixty-first Legislature) resulted in increases in existing fees and fee ceilings, as well as the establishment of new fee schedules for services previously performed by the board without charge. Services for which new fees were established include accreditation of new schools and programs, duplicate certificates, affidavits for name changes and verification of records. House Bill No. 359, also passed by the Sixty-first Legislature, amended Article 4528, V.A.C.S. to make the regulation of the practice of professional nursing "permissive" by exempting acts done under the control or supervision or at the instruction of one licensed by the Texas State

Board of Medical Examiners from regulation by the Board of Nurse Examiners.

In 1973, the board was given the authority to adopt a system of staggered renewals and to prorate renewal fees (Senate Bill No. 831, Sixty-third Legislature). House Bill No. 627, passed by the Sixty-fourth Legislature in 1975, authorized increases in the fee ceilings for examinations, annual renewals, temporary permits and proctoring the examinations of applicants from other states. Legislation passed by the Sixty-fifth Legislature made the board subject to the provisions of the Sunset Act (Senate Bill No. 54) and specified that nursing programs accredited by the board be at least two academic years in length rather than two calendar years (House Bill 2190).

In 1979, the statutes regulating the practice of professional nursing were extensively revised through the passage of Senate Bill No. 273. Significant changes included the grant of general rulemaking authority and injunctive powers. The definition of professional nursing was amended to include the assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes as well as the administration, supervision and evaluation of nursing practices. Reasons for disciplinary actions were modified to include aiding or abetting any unlicensed person in connection with the unauthorized practice of professional nursing and revocation, suspension or denial of a license in another jurisdiction. Senate Bill No. 273 also provided that a licensee may voluntarily surrender his or her license without the necessity for formal charges or a hearing. In addition, the board was given the authority to probate the revocation or suspension of a license as long as the licensee meets the terms of probation. Under Senate Bill 273, registered nurses not actively engaged in the practice of nursing may request to be placed on an inactive status list rather than continue to pay

annual renewal fees. Finally, this most recent legislation directed that all fees received by the Board of Nurse Examiners be placed in the Professional Nurse Registration Fund in the State Treasury as of September 1, 1981.

Two senate resolutions calling for studies affecting the practice of professional nursing were also enacted by the Sixty-sixth Legislature. Senate Resolution No. 667 directed the Senate Committee on Human Resources to study the provision of health care services by physicians, nurses, and other health care providers through the use of protocols and standing orders and the implications of Texas Attorney General Opinion H-1295. Senate Concurrent Resolution No. 87 requested the Texas Department of Human Resources and the Texas Department of Health conduct a joint study of nursing staff temporary services to determine their impact on available manpower and their effect on the cost of health care delivery.

Proposed Legislative Action

A review of the legislation proposed during the last four legislative sessions indicates that eleven bills were introduced but not enacted by the Sixty-third, Sixty-fifth and Sixty-sixth Legislature.

House Bill 1732, introduced during the Sixty-third Legislature, concerned protection of the rights of medical personnel (including nurses) who refuse to perform or participate in abortion procedures.

House Bill 594, considered by the Sixty-fifth Legislature, proposed an extensive revision of the Nurse Practice Act. This bill proposed amendments to the following: definition of professional nursing, statutory exemptions, organization of the board, use of the title "R.N.", disciplinary proceedings, inactive status, continuing education requirements, and specialty certification. House Bill 1314 proposed that lay midwives in Texas be regulated by the Department of Health Resources. Licensed physicians and specially trained registered nurses were

excluded from the provisions of this Act.

The remaining proposals which were not enacted between 1973 and 1979 were introduced during the Sixty-sixth Legislature. House Bill 649 proposed numerous amendments to the Nurse Practice Act including changes in board member qualifications, rulemaking authority, injunctive powers, grounds for disciplinary action, voluntary surrender of a license, probated sentences, inactive status and fees. Many of these changes were included in Senate Bill 273 which was enacted. House Bill 1933, which addressed continuing education requirements for nurses, proposed that the Board of Nurse Examiners be allowed the discretion to require completion of twelve contact hours in an approved continuing education program as a condition for license renewal.

House Bill 1836 proposed the certification of professional nurses as nurse midwives by the Board of Nurse Examiners. House Bill 2069 proposed the regulation of both nurse practitioners and physician's assistants by the Texas Board of Health. Both of these bills also amended Article 4542 V.A.C.S. to allow nurse midwives or nurse practitioners and physician's assistants to dispense and administer medications. Senate Bill 870 addressed the regulation of lay midwives providing for registration by a Lay Midwifery Board under the Texas Department of Health. Certified nurse midwives were exempted from regulation by this board.

Senate Bill 1062 proposed the creation of a Joint Practice Committee to issue regulations governing the use of standardized medical procedures by physicians and nurses. In addition, the committee would have established which prescription medications a registered professional nurse could possess, prescribe and dispense.

Two bills were introduced which would have affected the Board of Nurse Examiners as well as other state agencies. House Bill 55 which proposed a

reorganization of state government would have transferred the Board of Nurse Examiners to a Department of Regulatory Agencies. House Bill 1533, relating to public membership on a governing board of state agencies, required that two members of the Board of Nurse Examiners represent the general public.

The Board of Nurse Examiners recommends several statutory changes in its self-evaluation report. Among these are the following: 1) the authority to study and implement continuing education requirements; 2) specific authority to certify specialty groups of registered nurses; 3) the authority to receive criminal records from law enforcement agencies; and 4) repeal of the clause that exempts application of the law to those "acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners" (Article 4528).

Summary

Since the enactment of the board's enabling legislation in 1909, the statutes governing professional nursing have been amended eighteen times. Generally, these amendments have attempted to define the practice of professional nursing, expanded the board's regulation of educational programs, made the statute concerning exemptions more permissive, provided the board with general rule-making authority, extended the enforcement powers of the board, increased and extended the fee structure, and placed revenues from fees in the State Treasury.

In addition, eleven bills were introduced but not enacted during the last four legislative sessions. These bills included proposals to regulate lay midwives, nurse midwives, nurse practitioners and physician's assistants, to allow nurse practitioners and physician's assistants to dispense and administer medications, to require continuing education as a condition for licensure renewal and to include public

membership on the Board of Nurse Examiners.

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