

TEXAS BOARD OF VOCATIONAL 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 Board of Vocational 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

Over the years, the role of the vocational nurse has changed greatly. Scientific and medical advances, changes in medical practices, greater patient expectations and innovations in the care of patients are all contributing factors. Like that of other professions, the regulation of vocational nurses evolved from the need to protect the public health, safety, and welfare. The first licensing law enacted in the United States was in 1913. Texas began the regulation of vocational nurses in 1951. The current law is a permissive licensing act which prohibits the use of the title "Licensed Vocational Nurse" or "L.V.N." without a license from the board.

The board, composed of six L.V.N.'s, one R.N., one physician, and one hospital administrator, at present regulates 59,389 licensees and 150 training programs through its licensing, enforcement, and accreditation functions. Responsibilities include determining qualifications of applicants for licensure, accrediting new training programs, inspecting training programs annually, and enforcing the provisions of the Act. Operations of the board are supported entirely from fees collected by the board and appropriated for its use from the Vocational Nurse Examiners Fund in the State Treasury.

Review of the board's operations shows that the administrative activities of the board could be more efficient. A study done by the Systems/Administrative Services Division of the State Auditor's Office recommended that 1) the board institute a system of staggered, biennial license renewals; 2) purchase computer services from the State Purchasing and General Services Commission (SPGSC); and 3) microfilm permanent files. The agency is in the process of implementing these recommendations.

Also in reviewing the administrative activities, it was noted that board

members served as proctors for the administration of the national exam. The utilization of board members in this capacity is not a cost-effective procedure and should be discontinued. In addition, the review indicated that the board held a regular meeting on the day before and after the exam. This practice should also be discontinued as it places a heavy burden on the staff to make preparations not only for the examination but for the board meeting as well.

Finally, analysis of the present fee structure shows that presently there is no provision in the statute for charging fees for certain services such as name changes and duplicate licenses, although a considerable amount of staff time and effort is involved. Authorization of a reasonable charge related to the cost of these services should be enacted.

With respect to licensing, the review showed that unlike other states, Texas does not regulate the practice of vocational nursing but only the use of the title. This type of regulation provides the opportunity to unlicensed persons to practice outside the jurisdiction of the state's regulation. Amending the statute to define the practice of vocational nursing would provide for increased protection to the public.

With respect to the issuance of temporary permits, the review indicated the need to amend the statute to require that holders of temporary permits who are recent graduates of an education program be supervised by a registered nurse or a licensed vocational nurse. In addition, the statute does not authorize the board to issue temporary permits to foreign nurses or reciprocity applicants. This practice should be discontinued in both instances. In the case of reciprocity applicants, the staff should be delegated the authority to issue permanent licenses to qualified applicants. In the case of foreign nurses, past high failure rates of these persons on the examination indicate that the public would be better protected if they were required to pass the exam prior to practicing. The review also indicated that the

agency would not encounter any problems by issuing a permanent license instead of a temporary permit to reciprocity applicants once all licensure requirements had been met.

With regard to other licensing activities, the statute should be modified to provide for an "inactive" status for those vocational nurses who no longer wish to practice. If, after a period of time, a nurse wishes to return to the practice, the board should be permitted to specify that certain requirements such as a "refresher" course be met before reinstatement.

In the area of licensing, two concerns were noted. First, licensure prerequisites contained in the statute do not lend themselves to a clear and objective determination. Modification of these to include only those which would require the board to apply a clear, objective standard would increase the agency's ability to screen applicants effectively and appropriately.

Related to licensure prerequisites is the practice of the board to review certain licensure applications on the day before the examination to determine the eligibility of the applicant to take the exam. The board should delegate some of these determinations to the staff in order to allow for more adequate notification to the applicant regarding his eligibility.

The second concern regarding the examination was that it was given in only one location in the state - Austin. In order to provide for easier access to the examination at a more equitable cost, the examination should be administered in various locations throughout the state.

In the area of enforcement, the review indicated that the agency is generally active in following up on complaints. However, because of the increasing workload in the number of cases that must be heard by the board in a formal setting, the agency should be permitted to seek authorization to retain outside legal counsel in

addition to the legal assistance provided by the attorney general. In addition, the agency should provide a standard mechanism whereby parties involved in a complaint are periodically informed as to the status of the complaint.

With regard to the range of sanctions the board may impose for violations of the Act, the review indicated that the range of these is limited. As a general principle, an agency's range of enforcement sanctions should be able to conform to the seriousness of the violations presented to it. The statute, therefore, should be modified to authorize the board to probate license suspensions and issue reprimands. In addition, penalties for unauthorized practice should be provided.

A further concern which arose in regard to the enforcement process is the practice of the board of having the staff present to it complaints for the purpose of determining whether a hearing is warranted. This is done without notification to all parties involved in the case as provided by Article 6252-13a, Section 17, V.A.C.S. This practice should be discontinued and such determinations delegated to the staff.

Finally, some of the statutory grounds for revocation and suspension are vague in definition. The board's enforcement capability could be strengthened by restructuring the statute so that the grounds for revocation or suspension are clear, objective and related to the practice of vocational nursing. This would provide a more appropriate basis on which to base disciplinary action.

The accreditation activities of the board are generally conducted in an efficient and effective manner. However, the annual inspection of training programs as currently required by statute is unnecessary and costly. Therefore, the statute should be modified to provide for board discretion regarding the frequency of these inspection visits.

Other aspects of the review found that the agency has generally complied with statutes relating to conflicts of interest, open meetings, and open records, and equal employment opportunity. However, the potential for a conflict of interest exists where a board member holds a leadership position in a vocational nurse association. Although no problems were noted as a result of the present circumstance, the statute should be amended to prohibit board members from holding leadership positions in the regulated profession's association. Also in regard to the Open Meetings Act, a concern arose over the practice of the board to ask a respondent licensee during a hearing to leave the room voluntarily while it deliberates and acts on the matter. This practice should be discontinued as it can effectively infringe on the person's right to due process.

With respect to public participation, the agency has complied with public notification requirements found in general law. Public participation in the policy process, however, has been minimal, but could be enhanced by the addition of public members to the board.

Need to Regulate

As in the case of other regulated activities, regulation of vocational 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 vocational nursing is recognized in fifty states and implicitly recognizes the technical nature of vocational nursing and the potential for harm to the public which exists in the practice of vocational nursing.

Conditions which exist today indicate a continued need to protect the public because the practice of vocational 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 vocational 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 vocational nurses:

- a) add three public members to the board replacing present LVN members as their terms expire (page 45);
- b) amend the statute to prohibit LVN board members from serving in leadership positions in professional associations (page 40);
- c) amend the statute to provide for an executive administrator who is responsible to the board for all agency activities (page 16);
- d) amend the statute to provide for staggered biennial renewal of licenses (page 15);
- e) amend the statute to authorize the collection of reasonable fees to cover the costs of issuing temporary permits and duplicate licenses, for filing name changes, and for verification of licensees to other states (page 18);
- f) discontinue the use of board members as proctors in the administration of the national exam (page 18);

- g) licensure prerequisites and grounds for disciplinary action should be modified to include those to which the board can apply a clear objective standard (page 22);
- h) the board should delegate additional responsibility in the review of exam applications to the staff. Board review of staff decisions should be only upon appeal by the aggrieved party (page 23);
- i) amend the statute to provide an "inactive" status for LVN's who are not actively or actually engaged in the profession. Prior to re-activation of the license, the person should be required to meet certain educational requirements as specified by the board (page 24);
- j) amend the statute to require that holders of temporary permits be supervised by an R.N. or L.V.N. (page 20);
- k) reciprocity applicants should be issued permanent licenses once they have met all requirements for licensure (page 21);
- l) amend the statute to provide for the regulation of the practice of vocational/practical nursing (page 19);
- m) amend the statute to provide for misdemeanor charges and penalties for unauthorized practice (page 26);
- n) a mechanism should be established for the purpose of periodically informing all parties involved as to the status of a complaint (page 26);
- o) procedures should be initiated to permit the staff to make the determinations concerning the need for disciplinary hearings (page 26);
- p) amend the statute to authorize the board to issue reprimands and probate license suspensions (page 27);
- q) amend the statute to authorize the board to issue subpoenas (page 28);

- r) amend the statute to provide that all appeals prosecuted under the act be subject to the substantial evidence rule (page 28);
- s) amend the statute to provide for board discretion regarding frequency of accreditation/inspection visits of training programs (page 30);
- t) provide for the voluntary surrender of a license without the need for a formal hearing (page 25);
- u) the board should be permitted to seek authorization to retain legal counsel in addition to legal assistance provided by the Attorney General (page 26);
- v) the national exam should be administered at various locations outside of Austin (page 24); and
- w) amend the statute to require that a licensee clearly be identified through insignia or other means when providing services (page 20).

2. ABOLISH THE BOARD AND TRANSFER ITS FUNCTIONS TO A RESTRUCTURED BOARD WHICH WOULD REGULATE BOTH PROFESSIONAL AND VOCATIONAL NURSES (page 36).

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) implementation of the structural and substantive changes contained in the preceding alternative.

II. BACKGROUND

Historical Perspective

The vocational nurse's early role in nursing was confined primarily to the care of the chronically ill, the aged, and the mildly ill patient in private homes and mental institutions. Training was generally acquired on the job. The few training programs available were not associated with hospitals and gave only a few weeks of training which emphasized primarily household duties and cooking.

The need to protect the public health, safety and welfare through the regulation of practical/vocational nursing became most evident after 1940 when the shortage of professional nurses caused by World War II resulted in increasing numbers of practical nurses with little formal nursing education assuming responsibility for tasks formerly performed by registered professional nurses. With increased hospital costs and limited numbers of hospital personnel, the practical nurse has had to assume more duties than ever before. The practice of practical/vocational nursing now includes a wide range of activities--from providing direct patient care in relatively stable nursing situations, to performing nursing functions in semi-complex situations such as hospital recovery and labor rooms to more complex situations such as intensive or coronary care units and emergency rooms; to promoting and carrying out preventive measures in community health facilities such as well-baby clinics, and out-patient clinics and services.

Recognition of the need for regulation of practical/vocational nursing first occurred in Florida in 1913; however, most state legislation was passed between 1943 and 1953. Prior to the creation of the Board of Vocational Nurse Examiners in 1951, the practice of practical/vocational nursing was not regulated in Texas. Since the creation of the board, regulation has been accomplished through a

permissive licensing act which prohibits the use of the title "Licensed Vocational Nurse" or "L.V.N." without a license from the board.

The primary responsibilities of the first board were to hold examinations for qualified applicants for licensure (at least twice a year) and to accredit vocational nursing schools. In addition, the board was granted the authority to revoke a license for gross incompetence, dishonesty, intemperate use of drugs or alcohol, insanity, or conviction of a felony involving moral turpitude. Exempted from the board's regulation were gratuitous nursing by friends or family members, R.N.'s, TB nurses, and persons employed by hospitals as maids, porters, or orderlies. In 1957 the Fifty-fifth Legislature granted the board the power to suspend a license and changed the composition of the board to increase the representation of vocational nurses.

The nine-member Board of Vocational Nurse Examiners is appointed by the governor to staggered six-year terms. Membership of the board presently consists of six licensed vocational nurses, one registered nurse, one physician, and one hospital administrator. The board employs a staff of fifteen full-time employees. Currently 59,389 vocational nurses are licensed by the board. Operations of the agency are supported entirely from fees collected by the agency and appropriated for its use from the Vocational Nurse Examiners Fund No. 266 in the State Treasury. In fiscal year 1979, the board collected \$420,790 in fees and other charges and expended \$362,132.

Comparative Analysis

To determine the pattern of regulation of the occupation of vocational nursing within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of vocational nursing is currently recognized through licensing requirements imposed by all fifty states. In six states, as in Texas, regulation is carried out by a board solely responsible for the regulation of vocational nurses. Boards in Illinois and Vermont serve in an advisory capacity. The remaining states regulate the practice of vocational and registered nurses through one board.

In twenty-three states, the regulation of vocational nursing is achieved through a board possessing public members. In only one state, Georgia, is the board composed entirely of LVN's. The boards in the remaining states include members of other professions. Fees collected by forty-one states totally support the agency's operations.

Thirty-seven state boards indicate that they have the responsibility of investigating consumer complaints. Boards have the responsibility for conducting disciplinary hearings in all states but three. Forty-nine states indicate that they license out-of-state applicants through a policy of endorsement, as does Texas.

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 legislature, through the enactment of the Vocational Nurse Act, mandated the Board of Vocational Nurse Examiners to regulate those persons who practice vocational nursing and call themselves licensed vocational nurses. Exceptions to the licensing requirements include: 1) gratuitous nursing of the sick by friends or family members; 2) nurses licensed by the Board of Nurse Examiners; 3) TB nurses; 4) persons employed by hospitals as maids, porters or orderlies; and 5) persons who do not hold themselves out to the public as being licensed vocational nurses or use the title L.V.N. The regulation mandated by statute is accomplished through the licensure of qualified, competent vocational nurses, the accreditation of vocational nursing programs, and agency enforcement efforts directed at obtaining compliance with the requirements of the law.

The Board of Vocational Nurse Examiners is a nine-member body appointed by the governor with the advice and consent of the senate for six-year terms. The board membership must include six L.V.N.'s, who have been in active practice for three years in this state immediately preceding their appointment; one R.N., who is engaged in a teaching, administrative, or supervisory capacity in a board-accredited school of vocational or professional nursing; one licensed physician who

has been actively engaged in the practice of medicine for five years prior to appointment and who is not a hospital administrator; and finally, one hospital administrator who has been actively engaged as such for five years prior to appointment and who is not licensed by either nursing board nor by any other board which licenses persons to practice the healing arts in this state. Statutorily required duties of the board include promulgating rules and regulations, administering an examination, issuing licenses, accrediting training programs, and conducting hearings.

Staff for the board consists of fifteen full-time employees. Activities generally performed by the staff include processing license and examination applications, administering the examination, processing renewals, maintaining records, investigating violations of the act, and inspecting training programs.

Funding for the board is provided exclusively from fees collected by the agency under the provisions of the act and deposited in the State Treasury to the credit of the Vocational Nurse Examiners Fund (Fund 266). Although all money held in this fund is designated for use by the agency, amounts available for agency expenditure are limited to those specifically appropriated to the board by the legislature. At the end of each fiscal year, any unused portion of revenues in excess of the amount appropriated for the following fiscal year reverts to the General Revenue Fund.

Evaluation of Agency Activities

The operations of the Board of Vocational Nurse Examiners can be broken down into four basic activities: administration, licensing, enforcement, and accreditation of training programs. Below, each of these activities was 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. Most of the agency's administrative functions was reviewed during the current fiscal year by the Administrative Services Division of the State Auditor's Office at the agency's request. The study found: 1) procedures for annual license renewal, though effective, were clerically intensive; 2) the automated system used by the board was cumbersome in that cards had to be keypunched at the agency and then sent to the Department of Water Resources for processing; 3) the current system had no on-line inquiry capability, thereby necessitating searching through voluminous printouts, updated monthly, to answer telephone inquiries; 4) the current method of maintaining files used up a considerable amount of office space; and 5) the various fees being charged were presently set at the maximum allowed by law. The State Auditor's Office recommended that: 1) the board institute a system of staggered biennial license renewals; 2) the present automated system be redesigned with the State Purchasing and General Services Commission (SPGSC) providing computer services; 3) all permanent licensee files be placed on a microfilm roll system; and 4) the board should project its future revenue requirements and work with the Sunset Commission to effect the appropriate changes in the fee structure. The new automated system proposed by the State Auditor's Office, using the SPGSC

computer would simplify current procedures, distribute the workload throughout the year, provide for a more timely deposit of cash receipts and license issuance, expedite the response to inquiries, and place the agency in the position of controlling its own production. It would take the State Purchasing and General Services Commission approximately six months to develop and program the new system. The State Purchasing and General Services Commission currently serves eighteen other licensing agencies with comparable systems and is funded by the legislature to assist licensing agencies in their data processing needs. The State Auditor's Office projects a cost to the board of \$136,000 over the next five years. On April 16, 1980, the Board of Vocational Nurse Examiners voted to accept the new automated system proposed by the State Auditor's Office.

Review of the agency's organization, as depicted in the statute, the agency's organizational chart, and certain job descriptions revealed the lack of a clear designation of a single staff person responsible to the board for staff activities. The statute refers to an "Office Manager or Chief Clerk" and a "Director of Training", both of whom are selected by the board. Present practice is to refer to the "Office Manager" position as Executive Secretary. However, unlike in most state agencies, the agency organization chart shows as parallel positions, the Executive Secretary and Director of Training. A review of the job descriptions for these two positions indicates that both are directly responsible to the board. In addition, the job descriptions call for the Executive Secretary to share the responsibility concerning educational matters with the Director of Training. The statute should be amended to provide for a title change for what is presently the position of the Executive Secretary, and the duties of both positions should be re-defined so that only one individual is entirely responsible to the board for the activities of the agency.

In the area of funding, the board has requested a fee increase in its self-evaluation report. The agency's operations are supported entirely from fees collected. The Act allows board discretion with regard to the level of fees up to a statutory limit. Exhibit III-1 shows the present statutory limit on fees, the fees currently charged, and the board's proposed statutory limit.

Exhibit III-1

FEE STRUCTURE

<u>Type of Fee</u>	<u>Statutory Limit</u>	<u>Current Fee</u>	<u>BVNE Proposed Statutory Limit</u>
Examination (includes initial license)	NTE \$25	\$25	NTE \$ 75
Reexamination	NTE \$25	\$25	NTE \$ 75
Licence Renewal	NTE \$ 5	\$ 5	NTE \$ 25
Late Renewal Penalty	NTE \$ 5	\$ 5	NTE \$ 25
License by Endorsement	NTE \$25	\$25	NTE \$ 75
Accreditation (new training programs)	NTE \$50	\$50	NTE \$200

Analysis of the present fee structure and the revenues and expenditures of the board indicates that the fees which the board charges more than adequately cover the agency's expenditures (see Exhibit III-2).

Exhibit III-2
REVENUES AND EXPENDITURES
1977 - 1985

<u>Fiscal Year</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Fund 266 End of Year Cash Balance</u>
1977	\$ 336,498	\$ 278,492	\$ 288,661
1978	362,035	296,167	354,539
1979	420,790	362,132	413,187
1980	452,000	420,407	444,780
1981	481,380	441,635	484,525
1982	512,670	504,488	493,707
1983	545,994	529,962	509,739
1984	581,484	605,386	485,837
1985	619,280	635,954	469,163

Analysis of the types of services provided and the fee structure revealed the lack of fees for such activities as duplicate licenses, and verification of licensees to other states even though a considerable amount of staff time and effort is involved. Authorization of a reasonable charge related to the cost for these services would allow the board to recover this expense. This analysis also revealed that the present cost per applicant for administering the examination is approximately \$15.00.

Part of the examination cost is attributable to paying proctors. In the case of the Board of Vocational Nurse Examiners, unlike other licensing agencies, board members are in attendance and serve as proctors. The cost for board members to

be present at the exam is approximately \$90.00 per day per board member excluding travel expenses, while the cost of using a proctor for that day is approximately \$26.00. The utilization of board members in the administration of a national exam is not a cost-effective procedure and should be discontinued.

The board presently holds a business meeting before and/or after the day of the exam as an economizing measure. However, on such occasions, the staff must not only make lengthy preparations for administering the exam but must also prepare any material and cases for hearings for the board meeting. Therefore, since there is no need for the board to attend the examination, the scheduling of meetings in conjunction with examinations should be discontinued.

Licensing

The general objective of the licensing activity of the board is to ensure that a minimum standard of competency has been achieved by persons authorized to practice vocational nursing in the state. To accomplish this objective, the board is directed by statute to administer an examination to applicants for licensure. In addition, the statute establishes that applicants meet minimum requirements which include completion of at least two years of high school education, be at least eighteen years of age, be of good moral character, be in good physical and mental health, be a U.S. citizen, and completion of a twelve-month course of study in a school accredited by the board. The board currently licenses 59,389 vocational nurses.

Unlike other states, Texas does not regulate the practice of vocational nursing; the Texas statute is a title act. The board is authorized to regulate only those nurses who identify themselves as licensed vocational nurses; the practice of vocational nursing is not defined. Limitations of the current statute provide the

opportunity for unlicensed persons to practice outside the jurisdiction of the Act. Currently only two states, including Texas, employ a title statute for the regulation of practical nursing. The statute should be amended to define the practice of vocational nursing, thus increasing the protection to the public provided by the state in this area.

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 statute regulating the practice of vocational nurses should not only limit the use of the title "L.V.N." or "Licensed Vocational Nurse" to individuals licensed by the board, but should also require that a licensee be clearly identified by appropriate insignia or other means as a "Licensed Vocational Nurse" when providing nursing services to the public.

In addition to the board's authority to issue licenses, the board's statute provides for the issuance of temporary permits to graduates of vocational nurse training programs in the U.S. These permits are valid until the next exam is given. The permits are currently issued to: 1) graduates of vocational nurse training programs who are eligible to take the exam; 2) nurses educated in schools outside the United States; and 3) reciprocity applicants, although no specific statutory authority exists for the latter two categories. Permittees, in essence, can practice for a period of time without ever having passed the exam and are under no requirement to be supervised by a licensed practitioner. Because of the potential harm to the public, the statute should be amended to require that holders of temporary permits be supervised by a registered nurse or a licensed vocational nurse.

With regard to reciprocity applicants, the board has adopted a procedure whereby it reviews requests for reciprocity twice a year. Reciprocity applicants are issued temporary permits to allow them to work in the state as L.V.N.s during the interim. The review did not reveal any problems the agency might encounter by issuing a permanent license instead of a temporary permit to reciprocity applicants once they have met all licensure requirements. In addition, the review of reciprocity applicants could be delegated to the staff, thus saving meeting time for the board for other matters. Therefore, the issuance of temporary permits to reciprocity applicants should be discontinued and reciprocity applicants should be issued permanent licenses upon meeting requirements for licensure.

With regard to foreign nurses, experience has shown that their performance on the examination is significantly worse than average. Therefore, foreign nurses should be required to take the exam and no temporary permit should be issued in this category.

The review of the licensing process indicates that a national examination (National State Board Test Pool Examination) is used by the board. This examination is given in Austin in April and October of each year. Applicants from a vocational nursing program who fail the exam are allowed four opportunities to take the exam within two years of the first time they become eligible. Those who do not pass the examination within the two-year period must repeat the required twelve-month course before becoming eligible to take the exam again. Professional nursing graduates and foreign professional graduates who are no longer eligible to take the R.N. exam, and undergraduate students in a school of professional nursing are allowed two opportunities to take the exam.

The pass/fail rates shown in Exhibit III-3 indicate that the test is neither overly restrictive nor overly permissive. In 1978, the mean score for persons

taking the April exam in Texas was 473.4 (passing score is 350) and was ranked sixth from the lowest when compared to other states; the national mean was 505.2.

Exhibit III-3
LICENSING EXAMINATION PASS/FAIL RATES
FY 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>
1976	4,196	3,268	78%	928	22%
1977	4,511	3,670	81%	841	19%
1978	4,158	3,343	80%	815	20%
1979	4,262	3,452	81%	810	19%

In reviewing the licensing process, a concern arose regarding the practice of the board to review certain licensure applications on the day before the exam to determine whether the applicant will be eligible to take the exam the next day. This concern stems from 1) the fact that the review occurs the day before the exam, and 2) the criteria used for qualification.

Review of the prerequisites to licensure specified in the statute revealed several aspects which could be improved. The first of these areas deals with the requirement in the board statute that applicants be U.S. citizens. The courts and the Attorney General's Office have stated in several opinions that such a requirement for licensure is unconstitutional under the equal protection clause of the 14th Amendment to the U.S. Constitution. While this citizenship provision has not been applied by the agency since the issuance of these opinions, the unconstitutional language should be removed.

As a second general area of concern, 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 section dealing with the grounds for disqualification should be structured in such a manner that each of the grounds meet a two-part test. First, the grounds for disqualification should be clear and related to the practice of the profession. 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.

Review of the grounds for disqualification to sit for examination set out in the board's statute and in its rules and regulations shows that these fail to meet the test stated above. For example, the applicant is required to be of "good moral character" to be licensed. In addition, the board may refuse to issue a license or may revoke or suspend a license for: gross immorality; a felony which involves moral turpitude; intemperate use of habit forming drugs or alcohol; insanity; gross incompetence, dishonesty, or malpractice; or false or deceptive representations in obtaining a license. The statute should be restructured so that such provisions comply with the two criteria.

The board should adopt guidelines so that most of the determinations concerning eligibility for the exam can be done by the staff within a reasonable

period of time to allow for adequate notification to the applicant. These guidelines should be clearly stated and relate to the practice of vocational nursing to avoid subjective decisions by the staff. Board review of staff decisions should be only upon appeal by the aggrieved person.

A second concern regarding the examination process is that the examination is given in only one location in the state--Austin. A breakdown by geographic location of the persons taking the most recent examinations (April and October 1979) showed that only twenty-two percent (22%) graduated from schools within a 100-mile radius of the Austin area.

The cost to a person coming from outside the Austin area to take the examination varies. Excluding the examination fee (\$25), the cost to a person from Texarkana, for example, would be approximately \$256 for airfare and lodgings; to a person from Lubbock, \$200; while the cost to a person from San Antonio would be only \$20. While the cost for administering the exam will inevitably increase, given the number of people coming from outside of the Austin area (78%), the size of the state, and increasing travel costs, the administration of the examination should be decentralized to provide easier access to persons throughout the state at a more equitable cost.

With regard to other licensing activities, the statute currently does not contain any continuing education requirements. In 1973 the board adopted a resolution endorsing voluntary continuing education. Mandatory continuing education would involve a major undertaking for the agency because of the large number of licensees and educational programs. However, many L.V.N.'s interrupt their practice for extended periods during their careers. Three effects result from this phenomenon: 1) the licensee files are maintained as active in the agency, resulting

in an overstatement of the practicing population and extra file maintenance costs; 2) the licensee must annually renew the license at a cost to both the agency and licensee; and 3) the licensee loses contact with developments in the technology and practice. Therefore, the statute should be amended to provide an "inactive" status for those licensees who wish to discontinue practicing for a period of time. If, after a period of time, a nurse wishes to return to practice, then the board could specify that certain requirements be met. Among these could be a requirement that the nurse complete a "refresher" course before being reinstated.

Enforcement

The general objective of the enforcement activity is to protect the public by identifying and, where necessary, taking appropriate action against persons not complying with the provisions of the Act. To accomplish this objective, the board employs one full-time investigator (as of September 1, 1979). In addition, another employee spends approximately sixty percent (60%) of her time on enforcement functions. The board's primary enforcement efforts are directed at possible violations by licensees and by those persons practicing with an invalid license or falsely claiming to be licensed.

The great majority of the complaints received by the agency are from employers of licensed vocational nurses--hospital and nursing home administrators, directors of nursing and nurse registries. Most complaints from these sources are drug related. In fiscal year 1979, the agency investigated 333 complaints; the board revoked twenty-one licenses, suspended nine, and issued twenty-two reprimands. The workload could be reduced somewhat if the agency were empowered to accept voluntary surrender of a license without a hearing. However, because of the increasing workload in the number of cases that must be prepared for board

hearings, the agency should be allowed to seek outside legal counsel in addition to the legal assistance provided by the attorney general.

While the number of complaints concerning persons practicing with an invalid (stolen, forged, etc.) license is not large, the agency is hampered by the limited range of sanctions it can impose. The board's only statutory sanction available is an injunction against the person. A review of other statutes of licensing agencies shows that the practice of the occupation without a valid license generally constitutes a misdemeanor. Modification of the Vocational Nurse Act in this manner would bring the statute in line with those of other professions and make enforcement in this area more effective. This modification will become especially critical to the agency's enforcement capability if the recommendation to regulate the practice becomes effective.

Several concerns, in general, arose during the review of the agency's overall enforcement activities. The first concern regards the agency's notification procedures on complaints. The agency does not provide a standard mechanism concerning formal complaints, whereby parties involved are periodically informed in writing as to the status of the complaint. The agency should adopt the across-the-board recommendation of the Sunset Commission with regard to this procedure.

The second concern arose over the practice adopted by the board of having the staff present complaints for the purpose of deciding whether a hearing is warranted or whether the complaint can be dismissed. Agency staff presents cases on an anonymous basis, i.e., the facts of the case are presented without mentioning the names of the people or places involved. The board then makes the determination of whether a violation of the law has been committed and a hearing should be scheduled.

Article 6252-13a, Section 17, V.A.C.S. prohibits communication between the board which renders the decision in a contested case and the staff which conducts the investigation unless adequate notification and opportunity to participate is given to all parties concerned. The board currently does not provide this notification. In order to comply with the statute, the determinations the board currently makes should be done at the staff level under board-adopted guidelines. This approach would not only be in compliance with statutory requirements, but would also greatly reduce the amount of meeting time the board spends on such matters as well as dispose of cases in a more efficient and equitable manner.

A final concern regarding the board's enforcement activities is its use of reprimands as a sanction for violations of the Act and the probation of a license revocation or suspension without specific statutory authority. Since fiscal year 1976, the board has issued sixty-three reprimands. During this same period, eighteen license revocations or suspensions were probated. The latter sanction was discontinued as a result of Attorney General Opinion Number H-1199 (1978) which stated that the absence of any expressed authority in a board or agency's enabling statute indicates legislative intent that a specific enforcement sanction is not an alternative available for use by a board or agency.

As a general principle, an agency's range of enforcement sanctions should be able to conform to the seriousness of the violations presented to it. The review indicated that situations arise in which the use of reprimands or probation of suspension is appropriate. These sanctions should be applied in cases which the board determines that the public would not be endangered by the continued practice of a person found to have violated the Act. The board's enforcement powers should, therefore, be expanded by statute to authorize the issuance of reprimands as well as the probation of license suspensions.

With regard to other enforcement activities, while the board has not experienced difficulties with the statutory stipulation which provides for judicial review since there has been no appeal of a board decision, this provision could cause potential difficulties in the future. Board decisions suspending or revoking a license can be appealed to district court; however, all appeals prosecuted pursuant to the provisions of the Vocational Nurse Act are statutorily mandated to be trial de novo rather than subject to the substantial evidence rule used in the Administrative Procedure and Texas Register Act (A.P.T.R.A.). The effect of the trial de novo requirement is to nullify any administrative actions taken when such an appeal is filed. This could result in dismissal of charges or delays in the imposition of disciplinary sanctions. Such a requirement diminishes the authority and effectiveness of the board to enforce the provisions of the Act. The statute should be modified to apply the substantial evidence rule to appeals. The board should, if this recommendation is adopted, review carefully its procedures in the conduct of disciplinary actions and the writing of the findings of fact and conclusions of law, so that both the board and the licensee are assured that procedural or factual errors do not occur.

Finally unlike other regulatory boards, the Board of Vocational Nurse Examiners is not specifically authorized to issue subpoenas to require witnesses to testify at board hearings. The board, in turn, must issue subpoenas through local sheriffs' offices (as provided by A.P.T.R.A.) which is a slow process. Modification of the statute authorizing the board to issue subpoenas could allow the board to have better control over its enforcement activities and be more effective in this area.

Accreditation

The general objective of the accreditation activity is to ensure that training programs adequately prepare the vocational nurse in the principles of nursing to become a competent member of the health team. Minimum educational standards have been established by the board for schools of vocational nursing. These include faculty requirements, curriculum content, teaching facility requirements, and class size.

The agency's Division of Education is headed by the Director of Training, a position specifically required by statute to be filled by an R.N. or an L.V.N. with at least five years teaching experience in nursing. Currently, a professional staff of three R.N.'s (the director and two associate directors) annually inspects the 150 vocational nursing schools accredited by the board.

The board has established three categories to describe the accreditation status of education programs. Initial accreditation is extended to a new program beginning with the date of first enrollment of students and is extended until licensing examination results of its first graduates are evaluated by the board (usually one year). If seventy-five percent (75%) of the program's students pass the exam and all other board requirements have been met, the board grants the - program full accreditation. Conditional accreditation is given to existing programs which fail to meet and maintain the board's standards. The status of conditional accreditation continues for one year after which time the board reevaluates the program. Accreditation may be withdrawn by the board if a program consistently fails to meet the accreditation standards. As of March 1980, nine programs were on initial accreditation, three were on conditional accreditation, and 136 were on full accreditation. The accreditation of one program was withdrawn for failure to have a seventy-five percent (75%) pass rate on the licensing examination for three successive graduating classes.

Generally, the accreditation activities of the board are conducted in an efficient and effective manner. However, because the statute requires annual inspection of all 150 training programs, the cost directly associated with this activity is relatively higher than that of any of the agency's other activities (administration, licensing, enforcement). This is due primarily to the high travel expenses of the three staff members of this division. The review indicated that no significant harm to the public would result if the school inspections were made on a less frequent basis. Rather, it is likely that the effectiveness of the accreditation process could be improved. The statute should be amended to permit the board to establish its own cycle and schedule for accreditation visits. This approach would allow the board to schedule inspections on a two- or three-year cycle and require reports during the interim. The costs associated with this activity could be significantly reduced.

Summary

The Board of Vocational Nurse Examiners is a nine-member board appointed by the governor with the advice and consent of the senate for six-year terms. The board is authorized by statute to regulate those persons holding themselves out to the public as licensed vocational nurses, or L.V.N.s.

Board operations can be categorized in four activities: administration, licensing, enforcement, and accreditation. With regard to administration, the review of the board's operations shows that the administrative activities of the board could be more efficient. A study done by the Systems/Administrative Services Division of the State Auditor's Office, resulted in recommendations that: 1) the board institute a system of staggered, biennial license renewal; 2) purchase computer services from the State Purchasing and General Services Commission;

and 3) microfilm permanent files. The latter two are estimated to cost the agency \$136,000 over the next five years. The agency is in the process of implementing these recommendations.

Other problems noted during the review were the utilization of board members as proctors for the examination. This procedure is not cost-effective and should be discontinued. In addition, it was noted that the board scheduled a regular meeting on the day before and on the day after the exam. This practice should also be discontinued as it places an unusually heavy burden on agency staff to not only make preparations for the administration of the exam, but also for board meetings.

Finally, analysis of the present fee structure revealed that there is no statutory authorization for charging fees for temporary permits, name changes, duplicate licenses, and verification of licensees to other states. Since a considerable amount of staff time and effort is involved, authorization of a reasonable charge related to the cost for these services would allow the board to recover this expense.

With respect to licensing, the review indicated that only two states, including Texas, do not regulate the practice of vocational nursing. The board is only authorized to regulate those nurses who identify themselves as licensed vocational nurses. This type of regulation allows persons to practice outside the jurisdiction of the Act. The statute should be amended to define and provide for the regulation of the practice of vocational nursing.

Another problem with the licensing activities of the agency centers around the issuance of temporary permits. The review indicated the need to amend the statute to require that holders of temporary permits who are recent graduates of a vocational nurse training program be supervised by a licensed vocational nurse or a registered nurse. In addition, although the agency issues temporary permits to

foreign nurses and reciprocity applicants, the statute does not specifically authorize this practice and it should be discontinued. In the case of reciprocity applicants, temporary permits are issued because the board reviews requests for reciprocity only twice a year. This review should be delegated to the staff and a permanent license issued once all licensure requirements have been met. In the case of foreign nurses, high failure rates on the exam in the past indicate that the public would be better protected if they were required to pass the exam before being allowed to practice.

With regard to other licensing activities, the statute should be modified to provide for an "inactive" status for those nurses who no longer wish to practice. This would provide a mechanism for the board to establish certain educational requirements, such as a "refresher" course, prior to reinstatement.

During the review, a concern was noted regarding the licensure prerequisites contained in the statute. Several of these are ambiguous, difficult to verify, and require the board to apply subjective judgment rather than a clear, objective standard. A related concern involves the practice of the board to review certain licensure applications on the day before the exam to determine the eligibility of the applicant to take the exam. Clearer and less ambiguous licensure prerequisites would allow the board to delegate more of these determinations to the staff. The staff could review these applications at an earlier date than the board is currently doing, thus providing for more adequate notification to the applicant regarding his eligibility to take the examination.

A final concern regarding the board's licensing activities is that the examination is given in only one location in the state--Austin. Given the number of people that must travel to Austin from outside the general area and increasing travel costs, the examination should be administered at various locations throughout the

state to provide for easier access at a more equitable cost.

Review of the agency's enforcement activities indicated that the agency is generally active in pursuing complaints. However, the review revealed several areas that hamper the effectiveness of enforcement activities. The first area relates to the increasing number of complaints that must be heard by the board. Because of the heavy caseload, the agency should be authorized to seek permission to retain outside legal counsel in addition to the legal assistance provided by the Attorney General.

Also in the area of complaints, a concern arose regarding the agency's notification procedures. The agency should provide a standard mechanism whereby all parties concerned are periodically informed as to the status of a complaint.

A second area relates to the range of sanctions the board may impose for violations of the Act. A review of the statute shows that the board is only authorized to suspend or revoke a license. During the period of review, however, the board also issued reprimands and probated license suspensions. Since situations do arise where the use of these sanctions is appropriate, the statute should be modified to authorize the board to impose these. In addition, to bring the statute in line with those of other professions, it should be modified to provide for: 1) penalties for unauthorized practice; 2) appeals to board decisions be subject to the substantial evidence rule; and 3) authority for the board to issue subpoenas.

A further area of concern in regard to the enforcement process is the practice of the board of having the staff present to it complaints for the purpose of determining whether a hearing is warranted or not. This is done without notification to all the parties involved in the case as provided by Article 6252-13a, Section 17, V.A.C.S. This practice should be discontinued and such determinations delegated to the staff.

A final area of concern relates to the grounds for revocation or suspension of a license. A review of the board's authority indicates that the statute requires the board to act essentially as a court of competent jurisdiction and apply terms of vague definition. The statute should be restructured so that more objective standards are used.

The review of the accreditation process shows that it generally functions efficiently and effectively. However, the annual inspection of vocational nurse training programs as currently required by statute is unnecessary and costly. The statute should be modified to provide for board discretion regarding the frequency of these inspection visits.

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 vocational nursing. In eleven states, this regulation is accomplished through an occupational licensing agency and in seven states through a department of health. Regulation of vocational 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 with a separate, independent board. The title of "practical nurse" is used in all but two states, California and Texas, where the title of "vocational nurse" is used.

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 an agency concerned with vocational/technical education (Texas Education Agency) 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 Vocational 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 Nurse Examiners best satisfies the requirement of closely related operations with identifiable benefits from consolidation. The functions and organizational structures of the two boards are very similar; the professional staff of both boards are registered nurses. In addition, there is considerable geographic overlap in the location of RN and LVN education 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. Opposition to this organizational alternative centers upon a fear that vocational nursing would be unfavorably regulated by a combined board and that the result would be a decline in the quality of health care services.

Regulatory Alternatives

Regardless of the various types of organizational structures used for the regulation of vocational 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 vocational 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 vocational nurses. The first of these methods is certification. Under this option, the ability to practice vocational 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 vocational 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 nurses practicing outside a hospital setting and thus not under institutional regulation.

Before any 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 Vocational 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 vocational nurses with the functions of another agency. All states regulate the practice of vocational nursing, with twenty-eight states combining the regulation of vocational 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 vocational nursing do exist in Texas. These include the Department of Health, the Texas Education Agency, and the Board of Nurse Examiners.

Of these alternatives, the Board of Nurse Examiners appears to be the most reasonable alternative for consolidation. The functions of the two boards regulating nursing are very similar, 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. A combined regulation of vocational and professional nurses could, however, result in greater domination of nursing practices by professional nurses.

With regard to regulatory alternatives, all states currently regulate vocational 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 vocational nursing 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 licensed vocational nurses. However, since all states license vocational nurses, no instance was identified where federal funds were lost due to the absence of licensure and regulation of nurses.

V. COMPLIANCE

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 to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Conflict of Interest

Article 6252-9b, V.A.C.S., relates to the conduct of certain state officers who have private interests that may conflict with those of their office and requires that certain disclosure statements be filed with the Office of the Secretary of State if a state officer has substantial business interests which are regulated by a state agency. Five of the nine board members have filed affidavits and the executive secretary has taken steps to determine the applicability of the filing requirements to the members and assure compliance. The executive secretary of the agency has complied with the filing requirements regarding executive heads of state agencies. The current president of the board is also chairman of the Board of Trustees of the Texas League of Vocational Nurses, one of two associations active

in this state. While no problems resulting from this overlapping membership were identified in the review, the possibility of conflicts between the goals of persons involved in regulating a profession and the goals of promoting and preserving a profession exist within such a relationship. A statutory prohibition against board members holding positions of leadership in the regulated profession's association should be enacted to prevent the potential for conflict. This approach has been adopted by the Sunset Commission on an across-the-board basis for all regulatory agencies. Presently, board rules prohibit the executive secretary and staff from serving on advisory councils or committees of any licensed vocational nurse organization.

Disclosures entered into the minutes of board meetings demonstrate board members' adherence to the 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.

Open Meetings - Open Records

As evidenced by publications in the Texas Register, board meetings have been preceded by adequate and timely notice to the public. The current practice of the board when holding a disciplinary hearing is to ask the respondent licensee to leave the room voluntarily while the board deliberates and acts. A review of the minutes for the period under review showed that from FY 1976 to FY 1978 the board held executive sessions for these deliberations. This practice was interpreted to be in violation of the Open Meetings Act and replaced by the current one. However, the current practice effectively closes the meeting to the respondent licensee and should also be discontinued.

Also in the area of open meetings, the board technically has not followed procedures for closed meetings outlined in Article 6252-17, V.A.C.S. The Act

requires that the presiding officer must announce that a closed meeting will be held and must identify the section of the Act authorizing such a meeting. The Act also states that any final action on subjects discussed in a closed meeting be made in an open meeting. The board has not been consistent in following these procedures. The executive secretary has been informed of the proper procedures and has indicated the agency's willingness to comply with statutory requirements.

With respect to the release of information under the Open Records Act, records considered confidential are examination questions, certain information in personnel files, and certain information on cases under investigation. The board has not had a formal request for information during the period under review.

Employment Policies

The board submitted an Affirmative Action Plan in 1974 and updated this plan in February 1980. The board currently has formal written grievance procedures, but has never received a formal complaint in the case of employment practices.

An analysis of the board's work force at the time of the review indicates that of the fifteen full-time positions, two are filled by males and thirteen by females; five positions are held by minorities. Of the five minority employees, three females and one male are employed in clerical positions while one male is employed as the investigator for the agency. Job openings are posted with the Texas Employment Commission and the Equal Employment Opportunity Office.

Summary

The board generally complies with the requirements set forth in general conflict-of-interest statutes, the Open Meetings Act and the Open Records Act. However, one board member holds a leadership position in one of the professional

associations. The statute should be amended to prohibit board members from serving in leadership positions in professional associations to avoid the possibility of conflicts between the goals of the regulating body and the persons regulated. With regard to equal employment practices, the board has an updated Affirmative Action Plan and has never received a formal complaint concerning its employment practices.

VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Agency Activities

Since fiscal year 1976, thirty-five rule changes or additions were adopted by the board relating primarily to board procedures and licensing. In addition, in fiscal year 1979 the rules concerning the minimum standards for educational requirements of vocational nursing were amended. The primary change was the increase in the number of class hours in a training program from 550 to 600 and the reduction of clinical hours from 1,250 to 1,100, therefore, reducing the total program hours from 1,800 to 1,700. This change was made in response to the difficulty experienced by the junior college programs which are on a semester hour basis to meet the clinical hour requirements. In deliberating these modifications, the board has complied with notification requirements found in general state law. All proposed changes are published in the board's semiannual newsletter and on one occasion a seminar was held for the purpose of discussing the proposed changes.

With respect to the agency's efforts to inform the public and its licensees as to its operations, the review showed that the board publishes the Vocational Nurse Act, the rules and regulations of the board, and a manual containing the educational requirements for vocational nursing programs. The publications are made available to vocational nursing schools and first-time licensees, and upon request to the general public. The board publishes an annual directory of licensed vocational nurses which is sold to hospitals, nursing homes, and other employers of licensed vocational nurses. In addition, the board publishes a semiannual newsletter containing general information from board meetings; disciplinary actions taken against licensees; amended, proposed, or adopted rules; and other items of interest relative to vocational nursing. The newsletter is distributed free of charge to all schools of vocational nursing, boards of nursing in other states, hospitals, nursing homes, registries, and by request to interested individuals.

Public Membership

A review of the statutory composition of the board shows the absence of any members from the general public, although representatives from related professions are included--a registered nurse, a physician, and a hospital administrator. The lack of public members eliminates one means by which the point of view of the general public in the development of rules and the deliberation of other matters can be represented. 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

While the board has complied with public notification requirements, public participation in the policy process has been minimal. The board's efforts to inform the public through publication of its statute, rules, and newsletter have been

primarily directed at licensees, employers of licensees, and the educational institutions. 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 enactment of the legislation which originally established the Board of Vocational Nurse Examiners in 1951, the Act has been amended nine times. In 1954, legislation increased the annual renewal fee from \$1 to \$2 and provided that the unused fund balance at the end of a fiscal year in excess of the amount appropriated for the following fiscal year be transferred to the general revenue fund (House Bill No. 56, Fifty-third Legislature, First Called Session). In 1957, although the number of board members was not changed, the composition of the board was altered to increase representation of licensed vocational nurses (from three to six). In addition, a provision was added permitting the board to accept applicants for examination who were residents of this state and had completed the required training from a school accredited by a similar board or agency of another state. Other changes included increasing the penalty for late renewal from \$1 to \$2 and extending the board's enforcement capabilities by including the power to suspend licenses (House Bill No. 99 and House Bill No 463, Fifty-fifth Legislature).

Board member per diem was increased from \$10 to \$20 in 1963 (House Bill No. 537, Fifty-eighth Legislature). In 1967 the application and examination fee was increased from \$10 to \$15 (House Bill No. 1238, Sixtieth Legislature). Legislation passed in 1971 allowed the board discretion with regard to the level of all fees up to a statutory limit and authorized the board to delegate the power to hold the examination (Senate Bill No. 543 and Senate Bill No. 928, Sixty-second Legislature). In 1973 the board was given the authority to adopt a system of staggered renewals (Senate Bill No. 831, Sixty-third Legislature). The legislature in 1977 made the board subject to the provisions of the Sunset Act (Senate Bill No. 54, Sixty-fifth Legislature).

Proposed Legislative Action

Apart from the successful legislation mentioned above, several other bills concerning the board's operations were unsuccessfully proposed in the past four legislative sessions. House Bill No. 553 (Sixty-third Legislature, 1973) and House Bill No. 373 (Sixty-fourth Legislature, 1975) provided for the licensing and regulation of nurse's aides by the Board of Vocational Nurse Examiners. Regulation would have been expanded to include nurse technicians, nurse assistants, and orderlies by House Bill No. 596 (Sixty-fifth Legislature, 1977) and House Bill No. 310 (Sixty-sixth Legislature, 1979). Bills introduced during the Sixty-sixth legislative session (1979) would have placed the board along with several others under a new department of regulatory agencies (House Bill No. 55) and would have changed the composition of the board to include public members (House Bill No. 1533 and House Bill No. 1652).

The board recommends several statutory changes in its self-evaluation report. Among these are 1) reduction of the term of office for the physician and hospital administrator board members from six to three years; 2) an increase in board members' per diem (amount not specified); 3) biennial license renewal instead of annual; 4) new fee structure; 5) practicing without a valid license should constitute a misdemeanor; and 6) the authority to receive criminal records or reports of applicants or licensees from any law enforcement agency.

Summary

Since the enactment of the board's enabling legislation in 1951, the Act has been amended nine times. Generally, these amendments changed the composition of the board, gave the board the authority to increase fees and stagger the collection of renewal fees, allowed the board to accept for the examination applicants trained in schools accredited by similar boards of other states, and increased the enforcement powers of the board. In addition, several bills failing enactment were introduced in the last four legislative sessions. Proposals were made to extend regulation by the board to include nurse's aides, nurse technicians, nurse assistants, and orderlies. Other proposals would have put the board under an umbrella agency and included public members on the board. In its self-evaluation report, the board recommends that several changes be made to the statute some of which include shorter terms of office for certain board members, increased board member per diem, biennial license renewal, misdemeanor charges for persons practicing without a valid license, and the authority to receive criminal records from law enforcement agencies.