Board of Nursing & Regulatory Issues
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The Texas Board of Nursing (BON) is the regulatory body that licenses and disciplines advance practice registered nurses (APRNs), registered nurses (RNs), and licensed vocational nurses (LVNs). Currently, Texas has 16,800 APRNs, 285,945 RNs (an increase of 13,000 since 2014), and 101,314 LVNs (an increase of 2,000 since 2014). However, the Texas Center for Nursing Workforce Studies within DSHS reports that the nursing workforce shortage will quadruple by 2030 — leaving Texas 60,000 licensed nurses short of demand. 1

The BON is currently undergoing Sunset review. The last review was in 2007, when it received nine recommendations from the Sunset Commission and three more from the Legislature. As a result, the BON promoted innovations in nursing education, including concept-based curriculum, active-learning strategies, high-fidelity simulation, and alternative clinical sites to improve education and increase graduation rates. Additionally, the BON clarified the peer assistance program process and completed criminal background checks on all licensees. Finally, the BON implemented a system to resolve minor offenses through corrective action rather than formal orders.

This legislative session, the Sunset Commission will consider a number of issues, including the BON's disciplinary process, a recent antitrust precedent, the revised nursing licensure compact, and educational standards.

Legislative History

HB 2154 (2015)
• Authorized the BON to take informal action on default dismissal from State Office of Administrative Hearings.

SB 1058 (2013)
• Granted confidential status to Board orders requiring an individual to participate in an approved peer assistance program.
• Mandated criminal background check prior to entering a school of nursing rather than prior to taking the nursing examination.

SB 1415 (2009)
• Created a pilot program for deferred adjudication in lieu of formal sanctions, during which the nurse must complete conditions imposed by the Board. Allows the BON to dismiss a complaint if the nurse successfully meets those conditions. The bill requires the Board to appoint an advisory committee to oversee the pilot program and authorizes the Board to contract with a third party for evaluation.
• Added a provision to the BON's “corrective action,” allowing a fine, remedial education, or both, in lieu of a formal board sanction.

HB 2426 (Previous Sunset bill, 2007)
• Streamlined the Board's process for approving nursing education programs by removing unnecessary complexity, eliminating duplication, and changing the delivery of nursing education.
• Encouraged innovation to promote capacity in nursing programs and address the nursing shortage.
• Required the Board to clarify its use of criminal history and arrest information during licensure and discipline.
• Modified the Board's advisory committees to ensure objective, independent advice on functions and policies.
• Recommended adoption of the Advanced Practice Registered Nurse Multistate Compact to make it easier for nurses to practice in Texas.
• Improved the Board's ability to consider impaired practice.
• Strengthened the Board's oversight of continuing education to make it workable for the Board and beneficial for the nurse.
• Conformed key elements of licensing to common licensing practices.
Nurse Licensure Compact/Telehealth

Issue Background
The original Nurse Licensure Compact (NLC) was developed in 1999 to address concerns about the portability of RN and LVN licensure. The Compact enhanced communication among states and established a system of uniform licensure to allow nurses to move freely across state lines. Texas is already a member of the Nurse Licensure Compact, along with 24 other states. But, in an era of instant communication, licensure models must evolve to keep up with the marketplace. The newly updated Compact will need to be considered by the Legislature in 2017.

Details
In an interstate compact, state licensing boards issue multistate licenses that are valid in other compact states. Texas is already a member of 31 interstate compacts including the Driver License Compact, the Texas Low-Level Radioactive Waste Disposal Compact, and the existing NLC. Approval of the new NLC will facilitate telehealth and case management across state lines, and require all states to have these standards for licensees:

1. Graduate from a qualified education program and be proficient in English;
2. Possess a valid social security number;
3. Complete a criminal background check;
4. Have no felony convictions on record.

What It Means For Texas
The NLC may incentivize nurses to relocate to Texas by streamlining the licensing system and allowing nurses to come to Texas to work without the necessity of multiple state licenses. This ability, coupled with telehealth capabilities, will further help Texas address the nursing workforce shortage. NLC will support nursing's continued engagement in telehealth which encompasses telemedicine, telemonitoring, and telenursing. A burgeoning industry, many may not realize that nurses, especially those who work in mental health or criminal justice, already utilize telehealth.

TNA Position
Texas should adopt the new NLC to avoid unnecessary barriers to practice. New market participants lower costs and increase access to care.

Legislative History
HB 1342 (1999)
• The original bill which authorized Texas to adopt the national Nurse Licensure Compact.
**State Action Immunity**

**Issue Background**
A recent Supreme Court case made waves across the country, and the Sunset Commission will undoubtedly consider the issue during agency reviews. In North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S. Ct, 1101; 574 U.S. ____ (2015), the Supreme Court held that an agency violated the Sherman Antitrust Act by restricting the trade of competing professions. The ruling imposes harsh requirements on agencies seeking state immunity from suit, which could infringe on licensing boards’ rulemaking processes.

**Why It Matters to Texas Nurses**
During the Sunset process, the Legislature may try to address this issue. Any attempt to require that public members make up a majority of an agency board, to create legislative or Attorney General oversight, or to create a new oversight agency would create a bottleneck in the rulemaking process and hamper an agency’s ability to quickly respond to new issues.

**TNA Position**
The Texas Nurses Association urges the Sunset Commission and the Legislature to carefully consider the consequences, both intended and unintended, of changing the rulemaking process in Texas. Changes to the process to artificially create immunity from suit for regulatory agencies will likely not only result in a rulemaking bottleneck, but will also prevent legal recourse for consumers against anti-competitive actions taken by an agency. Texans and the regulated community have the right to challenge their government in a court of law if their industry is unduly restricted by market participants, and TNA recommends continuing to allow this fundamental right of recourse.

**APRN Issues**

**Issue Background**
As discussed in the section devoted to advanced practice registered nurses (APRNs), TNA supports full practice authority for all APRNs in Texas. Allowing APRNs to practice to the full extent of their education will provide much-needed access to care across the state as well as tremendous economic benefits.

**Why It Matters to Texas Nurses**
In Texas, diagnosing and prescribing are considered “delegated” functions from the physician to the APRN, so both the Texas Medical Board (TMB) and Board of Nursing (BON) currently provide oversight for APRN practice. However, APRNs practice nursing, not medicine.

There are several nonphysician health care professionals who competently diagnose conditions and determine treatment, including prescribing medications without TMB oversight (e.g. podiatrists and optometrists). This same model should be adopted for APRNs. Dual oversight is duplicative and wasteful. Additionally, eliminating dual oversight will ensure that Texas adheres to Supreme Court precedent regarding anticompetitive behavior by competing market participants.

**TNA Position**
The Board of Nursing must have sole regulatory authority over APRNs in Texas to reduce duplication of state resources and anti-competitive practices.
Board of Nursing
Just Culture

Issue Background
The Board of Nursing (BON) receives over 10,000 complaints per year for the almost 400,000 APRNs, RNs, and LVNs in Texas, with only 19% resulting in discipline to the licensee. As a result of the last BON Sunset review in 2007, the Board began to introduce an approach known as “Just Culture.” The approach is designed to balance the need for a non-punitive learning environment that encourages the reporting of errors with the need to hold licensees accountable for their actions. The Just Culture approach attempts to take the context of each individual situation into account rather than instituting across-the-board penalties regardless of circumstances.

Why It Matters to Texas Nurses
The right to a fair disciplinary process should be weighed equitably with duty of the Board to protect the public from bad actors. The system for investigating and enforcing disciplinary rules with the BON should fairly hold nurses accountable for their actions. However, the BON should also consider systemic factors that contribute to nurse errors.

TNA Position
Inevitably, the Sunset Commission will look at the disciplinary process of the BON during its Sunset review. The Texas Nurses Association supports the BON’s Just Culture approach to disciplinary action and would like to see the approach expanded and implemented in all cases where context and disciplinary history allow. Part of the BON’s Just Culture should also allow for a licensee’s record to remain clear when deferred actions are successfully completed, and TNA would like to see this approach incorporated into the Just Culture at the BON.
**Excelsior College**

**Issue Background**
This legislative session, the Sunset Commission must recommend either continuation or expiration of a grandfather clause that recognizes a single nursing school operating out of New York, Excelsior College. Excelsior’s nursing program is unique in that it provides no supervised clinical learning experiences during the course of instruction. (Texas schools of nursing offering associate nursing degrees average 651 supervised hours of hands-on clinical practice according to a 2014 Board of Nursing survey). Excelsior has failed to achieve Texas standards and does not meet statutory requirements for continuation.

**Why It Matters to Texas Nurses**
Occupations Code Section 301.157(d)(8)-(d)(11) will expire on Dec. 31, 2017, unless reauthorized this session. The section allows graduates of professional prelicensure nursing programs that do not meet Texas standards to sit for the NCLEX-RN licensure exam, provided that the program remains in good standing with the Board of Nursing, and provided that the program participates in a research study.

Excelsior College is the only such program in the United States, and the school has consistently not met Texas standards for nursing education. According to the BON, Excelsior pass rates on the NCLEX-RN average 74% — far below the required 80% for Texas schools. Although mandated by HB 3961 (2009), Excelsior College has not participated in the research study required by Section 105.008, Health and Safety Code. The BON does not have jurisdiction to penalize Excelsior College because they operate out of New York.

If Texas were able to regulate Excelsior as it does Texas programs, the program would be subject to notice and extensive review to ensure that the program prepares its graduates as competent practitioners able to achieve licensure and enter into practice.

**TNA Position**
The Texas Legislature should sunset the grandfather clause that allows Excelsior College, an out-of-state online program, to operate without adhering to nursing education standards in Texas.

**Legislative History**
**HB 3961 (2009)**
- Amended the Nursing Practice Act by adding Section 301.157(d)(8)-(11) and Section 105.008 to the Health and Safety Code.
- Under the added sections, the BON continues to recognize graduates of Excelsior until December 2017 while the study under 105.008, H&S Code was conducted, as long as the program didn't change its curriculum and remained in good standing with the Board of Nursing. The study was not conducted.

**HB 2426 (2007)**
- BON Sunset bill - one of the recommendations was to streamline approval for education programs.
- The BON considered requiring clinical hours prior to licensure, which would have negatively impacted Excelsior, because it offers nursing programs without supervised clinical experiences.

**651**
Average number of supervised hours of hands-on clinical practice offered by Texas schools of nursing (associate nursing degrees)