

CALIFORNIA BOARD OF REGISTERED NURSING

SUNSET REVIEW REPORT

2010

**Submitted to the Senate Committee on Business, Professions and
Economic Development and the Assembly Committee
on Business, Professions and Consumer Protection**



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EXECUTIVE SUMMARY

The practice of registered nursing has been regulated to protect the public for over a century in California. Technological advances and the increasing complexity of nursing care and healthcare delivery systems today make regulation even more critical. The Board of Registered Nursing (BRN) is the state regulatory agency charged with the regulation of the practice of registered nurses through the implementation, interpretation, and enforcement of the Nursing Practice Act.

As stated in the BRN mission statement, the BRN is to protect the health and safety of consumers by promoting quality registered nursing care in the state of California. The BRN implements its programs and performs a variety of activities to achieve this mission including:

- Setting educational standards for prelicensure and advanced practice nursing programs.
- Implementing licensure requirements that ensure individuals possess the knowledge and qualifications necessary to competently and safely practice as a registered nurse.
- Issuing and renewing registered nurse licenses and advanced practice certificates.
- Implementing an Enforcement Program that takes disciplinary action against registered nurses' licenses for violations of the Nursing Practice Act.
- Managing a Diversion Program to intervene with registered nurses whose practice may be impaired due to chemical dependency or mental illness.
- Promulgating regulations, when necessary, to provide additional tools to allow the BRN to continue to meet the mission of public protection.
- Monitoring and providing input on legislation that impacts the practice of registered nursing.

The BRN continuously seeks to improve the effectiveness and efficiencies of all programs to better respond to California consumers. Since the last Sunset Report in 2002, the BRN has added a variety of online services for registered nurses (RNs) and the public to the BRN Web site, including temporary license and interim permit verification; direct routing to the appropriate unit for online correspondence; e-mail subscription service; disciplinary information; disaster response information; Committee and Board meeting materials; and the *BRN Report* newsletter. In addition, the BRN continues to query licensed RNs and nursing students to collect current and future workforce data, review trends and provide data to employers, educators, nurses, researchers, the Legislature, and the general public.

The BRN assumes a proactive role in the identification of issues that impact the education, licensing, and disciplining of registered nurses. As a result of its ongoing research, evaluation of services and programs, and active involvement with consumer, professional and other governmental agencies, several significant issues and recommendations have been identified to enhance public protection.

2010 ISSUES AND BOARD RECOMMENDATIONS

BRN Enforcement Division

Ongoing funding and staffing issues at the BRN and other enforcement-related agencies on which the BRN depends, as well as outdated technology, have created challenges for the BRN's Enforcement Division. Many of these issues have been the source of media attention over the past two years. The main focus of the BRN Enforcement Division recently has been to work towards the Department of Consumer Affairs (DCA) Consumer Protection Enforcement Initiative goal to improve discipline case processing timeframes so that a case is completed on average in 12 to 18 months. Through the Budget Change Proposal (BCP) process, the BRN Enforcement Division was recently approved for 37 new positions, including 17 investigators, to be phased in over the next two fiscal years. The increase in staff will assist the BRN in meeting the case processing timeframes; however, the Board has also identified seven other issues related to enforcement that it believes will enable it to better protect the public:

Recommendation related to Case Management Timeframes: The BRN and DCA assist and support the Division of Investigations (DOI), Attorney General's (AG's) Office, and Office of Administrative Hearing (OAH) in the development and implementation of strategies and procedures to expedite cases referred by the BRN including supporting additional funding and resources necessary to increase staff and implement the proper procedures at these agencies.

Recommendation related to Investigations: The Senate Committee on Business, Professions and Economic Development introduced legislation (SB 1111) to grant the BRN additional authority to compel cooperation in providing documents during interviews when completing an investigation; however, at this time the bill is inactive. Language similar to that written in SB 1111 should continue to be pursued. Also, research the possibility of having counties make their criminal proceedings available via the Internet as well as developing a method to validate the information provided.

Recommendation related to Arrest/Conviction Information from FBI: DCA and the BRN work with the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to investigate California's participation in the FBI "rap back" program in order to receive subsequent arrest/conviction information from the FBI.

Recommendation related to Enforcement Expenditures: An audit be conducted of DOI, AG's Office and OAH expenditures and procedures to both determine the efficiency and effectiveness of each of the agencies and to establish a consistent and detailed electronic billing mechanism to allow the BRN to more effectively monitor costs. In addition, an ongoing funding mechanism be established to permit the BRN flexibility in spending for DOI, AG's Office, and OAH to account for hourly fee increases, increases in disciplinary cases, and movement of cases through the process.

Recommendation related to Mandatory Reporting: The BRN and other health-care-related agencies work collaboratively with the Senate Committee on Business, Professions and Economic Development to develop or modify legislation in some Business and Professions Code Sections (159.5, 160, 802.1, 803, 803.5 and 803.6(a)) and Penal Code Section (830.3) that would mandate reporting requirements, specifically between state agencies and, in certain

circumstances, from employers as well as grant the BRN additional authority when completing investigations as discussed in a previous recommendation.

Recommendation related to Continuing Education Audits: The BRN investigate submission of a BCP to obtain staff dedicated to conducting RN and Continuing Education Provider (CEP) random audits. The BRN review and evaluate national continued competence research and make recommendations for changes, as appropriate.

Recommendation related to Enforcement Computer System: BRN staff (subject matter experts) work collaboratively with DCA's Office of Information Services project staff, as well as any vendor, to assist in creating an efficient and user-friendly integrated computer system, "the BreEZe Project," for planned roll out to the BRN in 2012/13.

Nursing Shortage

The shortage of RNs continues to be one of the most critical issues affecting nursing. The nursing shortage appears to be temporarily abated due to the current economic recession, making it difficult for new RN graduates to find employment. However, as the economy improves and nurses putting off retirement do retire and nurses temporarily working more shifts return to their regular schedules, graduates will be needed to fill these RN jobs. While great strides have been made over the past ten years in legislation, funding and education to build the RN workforce in California, it is reported that California faces a shortage of 30,276 full time equivalent (FTE) RNs at this time. California is not expected to reach the current national average of 854 RN FTEs per 100,000 population until 2025. California currently ranks 48th in RN-to-population ratio with 638 FTEs per 100,000 population. The Board has identified four issues related to the nursing shortage:

Recommendation related to Continuation of Current Graduation Rates: The BRN continues to work with the Chancellors of the California Community Colleges and California State University, the President of the University of California and the President of the Association of Independent Colleges to reform the educational system and address continued improvements in more timely matriculation, more access to nursing programs, and alleviating course repetition through standardized course requirements. The BRN also continues to support all funding sources for RN education in California.

Recommendation related to Keeping New RN Graduates in the Profession: The BRN continues to work closely with the California Institute of Nursing & Health Care (CINHC), nursing programs, clinical agencies, other state agencies, and professional organizations to address the current problem of new RN graduates having difficulty finding employment. The BRN also supports funding and legislation for RN transition or residency programs. These include partnerships between nursing programs and employers, that provide post-licensure experience and education to increase the RNs' skills and keep them engaged in the nursing profession.

Recommendation related to Feasibility Studies and Site Visits for New RN Programs: The BRN investigate charging a fee for proposed prelicensure nursing programs submitting documents for initial RN education program approval to assist in off-setting BRN costs for reviewing documents, consulting with the program, and conducting site visits.

Recommendation related to Clinical Space and Access for RN Students/Proliferation of New Nursing Programs: The BRN continue to collect information on the issue of educational programs losing clinical sites, which deny students needed resources and experiences while completing their clinical education. The BRN continue working with nursing programs, employers, the Board of Pharmacy, and other agencies to resolve the access issue so RN students can obtain the necessary clinical experiences to ensure competence in clinical areas upon entry into the profession as new graduates. The BRN also maintain vigilance in the review of prospective nursing programs as well as awareness and action if unaccredited programs are identified.

Nursing Practice

The Board has also identified two issues related to nursing practice:

Recommendation related to Furnishing v. Prescriptive Authority: The Board continues to support amending the Nursing Practice Act to change the term “furnishing” to “prescriptive authority” related to nurse practitioners and nurse-midwives.

Recommendation related to Medical Spas and RN Scope of Practice: The BRN and Medical Board continue to coordinate enforcement efforts to ensure safe patient care at all medical practice sites.

PART I

BACKGROUND INFORMATION

AND

**OVERVIEW OF THE CURRENT
REGULATORY PROGRAM**

SECTION 1: BACKGROUND AND DESCRIPTION OF THE BOARD AND THE REGISTERED NURSING PROFESSION

BOARD MISSION

The Board of Registered Nursing (BRN) was established in 1905 to protect the public by regulating the practice of registered nurses. The BRN is responsible for implementation and enforcement of the Nursing Practice Act: the laws and regulations related to nursing education, licensure, practice, and discipline. The following is the current BRN mission statement:

The mission of the Board of Registered Nursing is to protect the health and safety of consumers by promoting quality registered nursing care in the State of California. (BRN Strategic Plan, 2006)

The BRN implements regulatory programs and performs a variety of activities to protect consumers. These programs and activities include: setting registered nurse educational standards for prelicensure and advanced practice nursing programs; approving California registered nursing programs; issuing and renewing registered nurse licenses; issuing certificates for advanced practice nurses and public health nurses; taking disciplinary action for violation of the Nursing Practice Act; and managing a Diversion Program for registered nurses whose practice may be impaired due to chemical dependency or mental illness.

Recognizing that registered nursing is an integral component of the health care delivery system, the BRN affects public policy by collaborating and interacting with legislators, consumers, health care providers, health care insurers, professional organizations, and other state agencies. The BRN takes a proactive role in structuring health care and evaluating nursing trends in order to make sound policy decisions. This enhances the Board's ability to interpret the Nursing Practice Act and establish policies for its regulatory programs and activities, which are then implemented by BRN staff.

CREATION OF THE BOARD AND THE NURSING PRACTICE ACT

Regulation of registered nurses first began in 1905. In 1939, the Nursing Practice Act (NPA) was established describing the practice of nursing and moving from registration to licensure with a defined scope of practice. The title "registered nurse" (RN) has continued over the years, although regulation is now at the licensure level rather than the registration level. In 1975, significant modifications to the NPA were enacted. Business and Professions Code Section 2725, which defines the scope of RN practice, was amended for the first time since 1939. The amendment provided a more current description of RN practice and allowed for expansion of practice that reflects health care technology and scientific knowledge advancements. The legislative intent in amending the Section was to:

- Provide clear legal authority for functions and procedures that had common acceptance and usage as nursing functions.
- Recognize the existence of overlapping functions between physicians and RNs.
- Permit additional sharing of functions within organized health care systems.

Legislation in 1974 also added the certification of RNs in specialty practice areas as a BRN function. The legislation was enacted to provide title protection, standardize the educational requirements, and define the scope of practice for certain specialty RN categories. The BRN currently issues certificates to RNs in the following specialty areas:

- Nurse-midwives (1974); nurse-midwife furnishing number (1991)
- Nurse practitioners (1977); nurse practitioner furnishing number (1986)
- Nurse anesthetists (1983)
- Public health nurses (1992)
- Clinical nurse specialists (1997)

The BRN also maintains a statutorily mandated list of Psychiatric/mental health nurses (1984).

Other statutorily authorized programs that further enhance consumer protection have been enacted by the BRN and include:

- The BRN's Continuing Education Program was established to implement the 1976 statute mandating continuing education for renewal of RN licenses.
- The BRN's Diversion Program, established in 1985, is a voluntary alternative to traditional discipline for RNs whose practice might be impaired due to chemical dependency or mental illness.
- In 1996, the BRN implemented a Citation and Fine Program to address minor/technical violations of the NPA in lieu of the traditional disciplinary process.

In 1990, California became the first state in the nation to require fingerprints for RN applicants. In October 2008, emergency regulations were enacted requiring fingerprinting of **all** licensed RNs who were not previously fingerprinted by the BRN. The regulation requires submittal of fingerprints upon licensure renewal. The change also requires nurses to disclose any convictions when renewing their RN license. The regulations received final approval in June 2009 (Sections 1419, 1419.1 and 1419.3-License Renewal). This new requirement ensures that all licensed California RNs, if not previously fingerprinted, will be within two years of enactment. The vast majority of RNs are safe and competent practitioners who have not had any criminal or disciplinary actions taken against their license. However, obtaining fingerprints allows the BRN to review any prior convictions a nurse may have and also provides for notification of any subsequent arrests.

BOARD COMPOSITION

Pursuant to Section 2702 of the Business and Professions Code, the Board is composed of nine members. Seven of the members are appointed by the Governor, one by the Senate President Pro Tempore, and one by the Assembly Speaker. As a result of the 2002 Sunset Report, the composition of the Board was changed by statute in 2003. The physician member was replaced with an additional public member, and a requirement was added that one of the registered nurse members be an advanced practice nurse. The current Board composition includes four public members, two registered nurses in direct patient care practice, an advanced practice registered nurse, a registered nurse educator, and a registered nurse administrator. The current size and composition of the Board has proven to be effective. Nine members provide a reasonable size for full participation, constructive interaction, and diverse viewpoints. The Board as a whole

generally meets at least four times throughout the year to address work completed by various committees and hear discipline cases. A listing of current Board members is provided in the following chart:

Name	Category	Appointed	Term Expires	Vacancy Period	Appointing Authority
Nancy L. Beecham	RN Administrator	12/06	6/10*	None	Governor
Judy L. Corless	RN Direct Care	7/09	6/11	6/1/07 - 7/13/09	Governor
Jeannine Graves, Vice President	RN Direct Care	7/09	6/11	6/1/07 - 7/13/09	Governor
Dian Harrison, Chair, Legislative Committee	Public Member	10/08	6/12	6/1/06 - 10/28/08	Senate
Erin Niemela	Public Member	7/09	6/12	6/1/09 -7/23/09	Assembly
Richard L. Rice, Chair, Diversion/Discipline Committee	Public Member	7/09	6/13	None	Governor
Dr. Catherine M. Todero, Chair, Education/Licensing Committee	RN Educator	7/09	6/13	None	Governor
Kathrine M. Ware, Chair, Nursing Practice Committee	Advanced Practice	7/09	6/13	None	Governor
Vacant	Public Member			9/10 to present	Governor

*Remaining on Board for statutorily authorized one-year grace period.

BOARD COMMITTEES

The Board members work effectively through a structure of five Board committees, which conduct public meetings, assess issues, and make recommendations to the full Board to set policy and make enforcement decisions. To maximize effectiveness and enhance communication, each committee develops program-specific goals and objectives on a two-year cycle. The entire Board reviews and adopts each set of committee goals and objectives. The committees report annually on progress in the achievement of the goals and objectives to the full Board. Each committee is comprised of two or more Board members and meets at least four times a year. The committees and functions are as follows:

Administrative Committee---Considers and advises the Board on matters related to Board organization and administration, including contracts, budgets, and personnel. The Committee is comprised of the Board President, Vice President, and BRN Executive Officer.

Diversion/Discipline Committee---Advises the Board on matters related to laws and regulations pertaining to the Diversion Program and Enforcement Division.

Education/Licensing Committee---Advises the Board on matters relating to: nursing education, including approval of prelicensure and advanced practice nursing programs; the National Council Licensure Examination for Registered Nurses (NCLEX-RN); and continuing education and competence.

Nursing Practice Committee---Advises the Board on matters relating to nursing practice, including common nursing practice issues and advanced practice issues related to nurse-midwife, nurse anesthetist, clinical nurse specialist, and nurse practitioner practice. The Committee also reviews staff responses to proposed regulation changes that may affect nursing practice.

Legislative Committee---Advises and makes recommendations to the Board and Committees of the Board on matters relating to legislation affecting RNs.

In addition to these five committees, the NPA authorizes appointment of a Nurse-Midwifery Advisory Committee and Diversion Evaluation Committees. The Board is also authorized under B&P Section 2710.5 to appoint advisory committees, with permission of the Director of the Department of Consumer Affairs (DCA), as needed, to advise the Board on matters related to implementation of the NPA. The advisory committees are convened on an as-needed basis. Following are the committees and their functions:

Nurse-Midwifery Advisory Committee (NMAC)---The NMAC advises the Board on nurse-midwife practice and education issues, and evaluates equivalency applications for certification. The members may serve as expert witnesses in the evaluation of complaints against nurse-midwives. The first NMAC was appointed in 1984. The Committee is composed of at least one nurse-midwife knowledgeable about nurse-midwifery practice and education, one physician who practices obstetrics, one RN familiar with nurse-midwifery practice, and one public member. This Committee is authorized under B&P Section 2746.2.

Diversion Evaluation Committees (DECs)---The Board is authorized to establish Diversion Evaluation Committees (B&P Section 2770.2). Each DEC is comprised of three RNs, a public member, and a physician who each have expertise in chemical dependency or mental illness. The responsibilities of the DECs were revised slightly in January 2009 (Section 2770.8 of the NPA). The responsibilities of the DECs are to: evaluate and make recommendations to the Board whether or not an RN should be admitted to the Diversion Program; recommend a rehabilitation program and approve treatment programs for participants; and advise the Board on Diversion Program policies. Currently there are 14 DECs throughout California that meet with Diversion Program participants on a regular basis.

Nurse Practitioner Advisory Committee (NPAC)---The NPAC advises the Board on nurse practitioner (NP) education and practice issues. The first NPAC was formed in 1995. The Committee consists of NPs representing NP educational programs, RNs familiar with NP practice and education, and representatives of NP organizations.

Education Advisory Committee (EAC)---In April 2002, the Board approved appointment of this Committee to support the goals of the Governor's Nurse Workforce Initiative. The Committee has provided expert input on educational issues related to reforming nursing education to assist in alleviating the nursing shortage. The Committee meets annually to review the Annual School Survey, which is completed by all approved nursing programs to obtain enrollment, graduation, student and faculty demographic data, and other information related to nursing programs and students. The Committee has representation from different educational degree programs (i.e, ADN, BSN, MSN, public, private), nursing organizations, and other state agencies with work related to nursing.

Nursing Workforce Advisory Committee---In November 2001, the Board approved formation of a nine member advisory committee to: provide guidance to the Board on the content of surveys regarding RN workforce issues; recommend strategies to address disparities in workforce projections; and identify factors in the workplace that positively and negatively affect the health and safety of consumers and nursing staff. The Committee includes members from nursing education, nursing associations, and other state agencies.

Clinical Nurse Specialist Task Force (CNS Task Force)---The CNS Task Force was created and charged with establishing categories of CNSs, developing regulations that set standards and educational requirements for each category, and providing consultation to the Board on matters related to CNSs. The CNS Task Force met in 2002 and 2006 and provided recommendations to the Board. The CNS Task Force includes representatives from education and different clinical areas of CNS practice.

Attachment 1 is the BRN's organization chart.

WHAT THE BOARD REGULATES

The BRN is responsible for regulating the practice of RNs in California. Currently, there are almost 380,000 licensed RNs in California, with over 23,000 new licenses issued annually, and more than 170,000 licenses renewed annually. The BRN also regulates interim permittees, i.e., applicants who are pending licensure by examination, and temporary licensees, i.e., out-of-state applicants who are pending licensure by endorsement. The interim permit allows the applicant to practice while under the supervision of an RN while awaiting examination results. Similarly, the temporary license enables the applicant to practice registered nursing pending a final decision on the licensure application.

The BRN issues certificates to:

- Clinical Nurse Specialists
- Nurse Anesthetists
- Nurse Practitioners
- Nurse-Midwives
- Public Health Nurses

These titles are those most commonly used by California RNs and use of the titles is protected under the Business and Professions Code. The BRN also issues furnishing numbers to nurse practitioners and nurse-midwives and lists psychiatric/mental health nurses. In addition to its licensing and certification functions, the BRN also regulates and approves the following entities:

- California Prelicensure Registered Nursing Programs
- Nurse-Midwifery Programs
- Nurse Practitioner Programs
- Registered Nursing Continuing Education Providers

BRN CHANGES

Following is a summary of major changes and enhancements made by the BRN since the last Sunset Review in 2002. The summaries are addressed in categories related to Internet Services and Computer Technology, Strategic Planning, Legislation, and Regulations. Changes in the Licensing, Enforcement, and Diversion Program areas will be discussed in the sections of the report related to those program areas as well as in Part 2 of this report.

Internet Services and Computer Technology: The BRN continues with many online services such as RN license and advanced practice certificate renewal, license verification, change of address, and request for duplicate licenses. Over the last eight years, the BRN has made many enhancements and additions to the Internet-based services provided to the public and licensees:

BRN Web Page---The BRN Web page, www.rn.ca.gov, continues to be an effective and helpful source of information to the public with an average of 72,000 visitors per day. The most frequently visited pages are those for the endorsement application, permanent license verifications, and list of approved RN programs. The online license verification for RNs and Continuing Education Providers continues to assist the public with a total of 2,597,015 hits for license look-up/verification from January through June 2010.

Online License Verification for Temporary Licenses and Interim Permits---In December 2004, the BRN established an online license verification for temporary licenses and interim permits that are issued to endorsement and examination applicants awaiting permanent licensure. Employers have found the online license verification feature especially valuable. Before license information was posted online, employers had to talk directly with BRN staff during business hours to verify temporary licenses and interim permits.

Online Annual School Survey---In October 2005, the BRN converted the previous paper and pencil school survey to an online survey. The survey collects data from prelicensure nursing education programs on an annual basis. Since the online implementation, the survey has been expanded to include post-licensure programs, and reports are available on the BRN's Web site. Also available on the BRN Web site is an interactive database that can be used by the public to obtain aggregate student and faculty information by region, degree type, and public or private program type. This interactive database was first introduced in spring of 2007.

Direct Routing of Online Requests---Questions and requests are sent directly to the appropriate unit via the Webmaster e-mail address. The five areas where questions can be directed are Renewals, Licensing, Diversion, Nursing Education, and Enforcement. This feature was implemented in January 2006.

Online Subscription Service---In August 2006, an online subscription service was created that allows subscribers to be notified by e-mail when new material is added to the Web site.

Disciplinary Information---In December 2006, a feature was added to the Web site that allows the public access to information on formal disciplinary actions taken against RN licenses when using the BRN Online Verification System. A monthly listing of all formal disciplinary actions taken against an RN's license was also added in November 2007.

Updated Disaster Response Information---In November 2007, BRN staff worked in conjunction with the Emergency Medical Services Authority (EMSA) to update information on the BRN Web site regarding the statewide registration of California Medical Volunteers, the California Medical Assistance Teams (CalMATs), and Disaster Medical Assistance teams (DMAT). The information can be found under Disaster Response on the BRN Web site and is now being reviewed by BRN staff for currency.

Committee and Board Meeting Materials---Since June 2009, all Committee and Board meeting materials became available for review and download from the BRN Web site.

NURSYS-National Discipline and License Verification System---The BRN continues to participate in the National Council of State Boards of Nursing (NCSBN) computerized discipline information exchange system by providing data on RNs disciplined in California. NCSBN is the Board's agent to supply disciplinary information to two national databases, the Healthcare Integrity and Protection Data Bank (HIPDB) and the National Practitioners Data Bank (NPDB).

At its Annual Delegate Assembly meeting in August 2010, NCSBN introduced and adopted a modified process to share licensing information among all boards of nursing. Beginning some time in the fall of 2010, any board of nursing who is not a full participating member can electronically transmit licensing data on a daily basis to NURSYS. By electronically transmitting licensing information, the NURSYS system will be able to timely notify all states of a disciplinary action occurring which involves a current licensee. States will not be required to participate in license verification and will not lose necessary revenue. Each board choosing to participate will pay a fee of \$10,000 per year. At its September 23, 2010 Board meeting the BRN Board members voted to have the California BRN participate in the modified NURSYS process.

Online BRN Report Newsletter---In November 2009, the *BRN Report* was published as an online newsletter for the first time on the BRN Web site. It included up-to-date information on the Board members, BRN fingerprint requirements, the NPA, legislation and other BRN programs. It also included many direct Web links to information and services on the BRN and other Web sites.

Participation in Computer System Planning---BRN staff continue to work with DCA on the BreEZe automation system planning. This project would implement a department-wide integrated licensing and enforcement technology solution that would replace DCA's current outdated legacy systems. BRN staff also participate in on-going meetings and trainings for the Applicant Tracking System (ATS) and Consumer Affairs System (CAS) Ad Hoc reporting system as well as ATS Users Group meetings. The Ad Hoc reporting system allows the BRN to access applicant and licensee data elements directly from the database and run various reports, as needed, without having to submit formal requests to DCA.

Strategic Planning : The BRN's most current Strategic Plan was updated in June 2006. The BRN managers met in 2007 and 2008 to review the plan. They determined it was still current and effective, and that the BRN was meeting its strategic plan goals and objectives. The BRN plans to work on a Strategic Plan update in 2011.

A copy of the current BRN Strategic Plan will be submitted with the Sunset Review Report.

Legislation: Since 2002, the BRN has observed a steady increase in the number of bills that have an impact on registered nursing. This increase has a direct correlation with legislative efforts to address the rapidly changing health care environment. As health care changes, it has an impact on healing arts professionals, including registered nurses.

The BRN's involvement in the legislative arena includes tracking approximately 30 to 35 bills per year, testifying at hearings at the request of the Legislature, and implementing NPA-related legislation that becomes law. In addition to the statutory changes detailed in the Enforcement Division and Diversion sections of this report, a summary of additional key legislation that has been enacted since 2002 that directly impacts the BRN is provided in Attachment 2.

Regulations: In addition to the regulatory changes detailed in the Enforcement Division sections of this Report, the Board made the following regulatory change since 2002:

Section 1491-Public Health Nurse Certification---The regulations pertaining to the qualifications and requirements for a public health nurse certificate were amended to ensure that applicants for the certificate received sufficient theoretical content and supervised clinical experience to safely and competently provide public health nursing services. (6/05)

The Board has also promulgated regulations to amend the following Sections:

Section 1417 – Fees---The proposed amendment increases specified fees effective January 1, 2011, and is necessary for the Board to maintain fiscal stability.

Section 1420 et seq. – Schools of Nursing---This proposed amendment has been approved and will become effective October 1, 2010. It amends prelicensure nursing education program regulations to:

- Reflect changes in nursing education and practice, technology and health care delivery systems that have occurred since the regulations were last amended.
- Provide direction and guidance for proposed education programs.
- Codify existing BRN policies and procedures.

MAJOR BOARD STUDIES AND REPORTS

The BRN has conducted several studies and surveys to assist in the analysis of identified problems and issues and in the development or revision of BRN activities, policies, and procedures. Many of these studies and reports discussed below are made available to the public on the BRN Web site. Copies of the studies and reports will be submitted with the BRN Sunset Review Report.

Demographic Survey of RNs---The BRN directs a statutorily required (B&P Section 2717) biennial workforce study of California RNs. In total, the BRN has released six of these reports (1990, 1993, 1997, 2004, 2006 and 2008). Currently, analysis is being conducted for the 2010 report, which will be released in spring of 2011. The studies provide demographic information about working nurses, and data is compared with results from previous surveys. The reports provide employers, educators, nurses, and the Legislature with sound data for planning and trend analysis. Since 2004, after the release of each survey, data from the report and other

sources is used to develop a report titled *Forecasts of RN Workforce in California*, which outlines the supply and demand of the RN workforce in California. These reports, as well as an interactive database with key findings, are available on the BRN Web site. Key findings of the 2008 survey included:

- 24% of RNs in 2008 whose initial education was an associate degree had obtained additional degrees, compared to 13% in 1990.
- 54% of working RNs have a baccalaureate or higher degree, compared to 39% in 1990.
- The average age of RNs was 47, which is five years older than in 1990 but has leveled off at this age since 2004.
- 87% of RNs with active California licenses are employed in nursing.
- 59% of RNs were direct patient care providers.
- 64% of RNs worked in acute care hospitals.
- Average income increased 55% since 1997, from \$45,073 to \$81,428.

Annual Survey of RN Programs---This survey collects both programmatic and demographic data from BRN-approved prelicensure and advanced practice RN programs as well as some post-licensure programs in California. The annual surveys provide aggregate information on student enrollments, completions, and characteristics of the student population and faculty. Reports of the prelicensure programs, post-licensure programs, regional reports, and an interactive database are available on the BRN Web site for data collected since 2000/2001. Nursing educators and administrators, professional organizations, private and public agencies, and researchers seek this information. Key findings from the 2008-2009 report include:

- 138 BRN-approved prelicensure RN programs provided data in 2008-2009, compared to 101 in 2002-2003, which represents a 37% increase in programs.
- New student enrollment increased by 88% since 2002-2003, with 13,988 new students enrolled in 2008-2009.
- Student completions also showed a significant increase, from 5,623 in 2002-2003 to 10,570 in 2008-2009, an 88% increase.
- Retention rates increased 6.7% since 2002-2003.
- There was a slight decline in the number of faculty vacancies from 5.9% in 2003 to 4.7% in 2009.

The Movement of RNs into and out of California---In 2007, the BRN commissioned a study to find out more information about RNs endorsing into and out of California. Between August 2007 and January 2008, a survey was sent to 1,200 RNs endorsing out of California and 1,200 RNs endorsing into California. Some of the findings included:

- More RNs endorsed their license into (n=4,905) than out of California (n=4,539).
- 49% of RNs endorsing into California have moved or plan to move to California to practice nursing while 55% who endorsed out of California plan to return to California in the next five years to work as a RN.
- Good job opportunity and higher pay were the most frequent reasons reported for endorsing into California while high cost of living and being closer to family and friends were the most frequent reasons for endorsing out of California.
- The majority of RNs endorsing into (89%) and out of (92%) California thought that the BRN handled their endorsement request in a timely and effective manner.

RN Employer Survey---In December 2004, the BRN released a report that reviewed survey data of RN employers. The key purposes of the survey were to identify difficulties in recruiting and retaining RNs, best practices that had resulted in reduction of nurse workforce issues, recommendations for changes needed to resolve nursing workforce issues, and current conditions and issues. The nursing shortage was identified as a major deterrent to recruitment of RNs, and all employer groups identified expansion of nursing education programs as well as an increase in the number of programs as critical to assuring recruitment and retention of an appropriate nursing workforce.

Recidivism Study for RNs Beginning or Extending Probation in 2004 or 2005 (In Progress)---In the fall of 2009, BRN staff collected data on 282 RNs who either began or extended probation in 2004 or 2005. This study is based on one published in March 2009 in the *American Journal of Nursing* that explored and evaluated what factors might affect the outcomes of remediation, including the likelihood of recidivism. Data analysis is currently being completed and a report will be available in November or December 2010. This study will provide information to Board members and BRN staff as they evaluate enforcement policies and procedures when dealing with disciplined RN cases.

LICENSING DATA

Information about licensees is readily available to the public on a continuous 7 day a week/24 hour a day basis via the BRN Web site, www.rn.ca.gov, and a toll-free license verification system (1-800-838-6828). From these sources, the public can learn if:

- A person has a permanent California RN license, the issuance and expiration dates, county of address of record for the licensee, and license status.
- The nurse has any BRN-issued certificates, e.g. nurse practitioner, nurse-midwife, etc.
- There is any disciplinary action or pending accusation against the license, and can see copies of accusations, stipulated settlements, etc.
- A person has an interim permit or temporary license and the issuance/expiration dates.

The above information about licensees can also be obtained from BRN staff during the business day, i.e., Monday through Friday from 8 to 5 or by writing to the BRN.

There are over a third of a million California-licensed RNs. In the past two years there has been a significant decline in the number of applications received by the BRN. The decline has been from endorsement applications and non-U.S. educated examination applicants. Issues that may be contributing to this decrease include the downturn in the economy in California and the difficulty that potential applicants from outside of the U.S. may be having in getting into the U.S. The decline in non-U.S. educated applicants is a national trend. These declines have been considered when projecting the BRN fund condition and the pending fee increase which will be discussed later in this report. The following table provides licensing data for the past four years:

LICENSING DATA FOR REGISTERED NURSES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Licensed	343,495	356,817	368,418	377,177
California	273,971	284,141	294,856	304,121
Out-of-State	49,067	52,513	53,736	51,938
Applications Received	55,524	63,147	50,504	44,516
Applications Denied	26	23	21	36
Licenses Issued	23,720	23,382	23,624	23,357
Renewals Issued	155,739	163,979	167,520	174,521
Statement of Issues Filed	22	16	14	13
Statement of Issues Withdrawn	1	0	0	0
Licenses Denied	7	6	6	9
Licenses Granted on Probation	15	10	4	7

The BRN issues interim permits (IP) to eligible examination applicants. An IP allows a first time NCLEX-RN candidate to work under the direct supervision of a licensed RN pending examination results. IPs are issued only once and are not renewable. The IP can be issued once the fingerprint background clearances have been received by the BRN from the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

Applicants applying for licensure by endorsement may apply for a temporary license (TL). The BRN may issue a TL to practice nursing for a six-month period once the BRN has received verification from another jurisdiction of an active, current and clear license and the fingerprint background checks have been received. This allows the applicant to work as an RN pending issuance of a permanent license. The TL can be re-issued twice, for a total of 18 months, if necessary.

Similar to the decline over the past two years in overall applications, the BRN has also seen a decline in the number of TLs and IPs issued. The decline in the non-U.S. educated applicants is most likely impacting the number of IPs being issued. The causes for the decline in the number of TLs being issued include the decline in endorsement applications as well as the requirement for fingerprint clearance prior to a TL being issued which was implemented in August 2009. This change has significantly decreased the number of TLs issued at the public counter.

LICENSING DATA FOR REGISTERED NURSES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Temporary Licenses	8,678	9,966	7,073	2,821
Interim Permits	8,230	9,580	8,070	7,062

The BRN also issues certificates for the advanced practice categories of clinical nurse specialist, certified nurse-midwife, nurse practitioner, and nurse anesthetist, and maintains a list of psychiatric/mental health nurses as directed in the Health and Safety Code, Article 5, Section 1373(h)(2) and is referenced in the Insurance Code, Article 4, Section 10176.

Nurse practitioners and nurse-midwives may obtain “furnishing authority” and the BRN issues the furnishing numbers. Certification of public health nurses was transferred from the Department of Public Health to the BRN in 1992. The following table provides data for these specialty categories for the past four years.

CERTIFICATION CATEGORIES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Clinical Nurse Specialist--Total	2,521	2,691	2,855	2,982
Certificates Issued	232	219	216	204
Certificates Renewed	1,090	1,187	1,247	1,352
Nurse-Midwife (NM)--Total	1,164	1,177	1,199	1,208
Certificates Issued	46	38	45	38
Certificates Renewed	599	542	589	562
NM/Furnishing Number--Total	699	719	746	764
Number Issued	27	39	35	32
Number Renewed	332	323	356	348
Nurse Practitioner (NP)--Total	14,298	14,998	15,503	15,999
Certificates Issued *	793	881	804	854
NP Furnishing Number--Total	9,825	10,319	10,819	11,214
Certificates Issued	686	704	680	598
Certificates Renewed	4,363	4,860	4,858	5,171
Nurse Anesthetist --Total	1,901	1,970	2,016	2,052
Certificates Issued	127	143	129	124
Certificates Renewed	819	882	862	957
Psychiatric/Mental Health--Total	409	403	401	390
New Listings	6	6	6	4
Public Health Nurses--Total	47,290	48,330	49,583	50,794
Certificates Issued *	1,596	1,665	1,997	2,373

* Nurse Practitioner and Public Health Nurse certificates do not require renewal.

In addition, the BRN sends certificates, free of charge, to RNs who notify the BRN of their retirement. The certificate is issued to recognize RNs who retire from the practice of nursing.

SECTION 2: BUDGET AND STAFF

CURRENT FEE SCHEDULE AND RANGE

The Board of Registered Nursing (BRN) is a self-supporting, special fund agency that obtains its revenues from licensing fees. The fees are currently set at the minimum level of the range established in statute. The registered nurse (RN) license and all specialty certificates, except nurse practitioner and public health nurse, are renewable biennially. The primary source of revenues is renewal fees. The BRN's fees have remained at the same level for 19 years; however, a fee increase is necessary in order for the BRN to remain financially stable. The BRN has a regulatory package in process to amend CCR Section 1417 to increase specified fees effective January 1, 2011. The proposed new fees are included in the table below.

Fee Schedule	Current Fee	Proposed Fee Effective 1/11	Statutory Limit
RN Application Fee (Exam)	\$75	\$150	\$150
RN Application Fee (Endorsement)	\$50	\$100	\$100
RN Renewal Fee	\$75	\$130	\$150
Interim Permit	\$30	\$50	\$50
Temporary RN License	\$30	\$50	\$50
Clinical Nurse Specialist (CNS)	\$75	\$75	\$150
CNS Renewal	\$50	\$75	\$100
Nurse-Midwife (NM)	\$75	\$75	\$150
NM Renewal	\$50	\$75	\$100
NM Furnishing Number	\$50	\$50	\$50
NM Furnishing Number Renewal	\$30	\$30	\$30
Nurse Practitioner (NP)	\$75	\$75	\$150
NP Furnishing Number	\$50	\$50	\$50
NP Furnishing Number Renewal	\$30	\$30	\$30
Nurse Anesthetist (NA)	\$75	\$75	\$150
NA Renewal	\$50	\$75	\$100
Public Health Nurse	\$75	\$75	\$150
Psychiatric/Mental Health Nurse	No Fee		

The application, certification, and renewal fees cover all administrative costs, as well as the cost for the original license/certificate. An outside vendor administers the RN licensure examination and the applicant pays the vendor directly. There is no BRN-administered examination for other licensure or certification.

REVENUE AND EXPENDITURE HISTORY

The BRN carefully monitors its revenues and expenditures to ensure fiscal stability. Fee levels have remained constant at minimum statutory levels; however, expenditures have exceeded revenue since fiscal year (FY) 2007/08. The following tables provide a comparison of revenues and expenditures:

REVENUES	ACTUAL				PROJECTED*	
	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Licensing Fees	\$18,333,000	\$19,330,000	\$18,775,000	\$18,381,000	\$18,038,000	\$18,038,000
Fines & Penalties**	\$278,000	\$282,000	\$267,000	\$267,000	\$267,000	\$267,000
General Fund Loan	\$0	\$0	-\$2,000,000	\$0	\$0	\$0
Other (GF Return)	\$6,200,000	\$0	\$0	\$0	\$2,000,000	\$0
Interest	\$1,619,000	\$928,000	\$428,000	\$130,000	\$73,000	\$126,000
TOTALS	\$26,430,000	\$20,540,000	\$17,470,000	\$18,778,000	\$20,378,000	\$18,431,000
EXPENDITURES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Personnel Services	\$5,989,000	\$5,957,000	\$6,236,000	\$8,030,000	\$8,546,000	\$8,546,000
Operating Expenses	\$14,610,000	\$16,174,000	\$15,816,000	\$15,775,000	\$22,747,000	\$22,395,000
(-) Reimbursements***	-\$1,027,000	-\$1,365,000	-\$1,416,000	-\$1,416,000	-\$1,416,000	-\$1,416,000
Other (-) +	\$12,000	\$16,000	\$8,000	\$15,000	\$51,000	\$33,000
(-) Distributed Costs	\$0	\$0	\$0	\$0	\$0	\$0
TOTALS	\$19,584,000	\$20,782,000	\$20,644,000	\$22,404,000	\$29,928,000	\$29,558,000

* Projected revenues do not include the proposed fee increase.

** Includes only the penalty fee for delinquent renewals.

*** Includes cost recovery and Cite & Fine.

EXPENDITURES BY PROGRAM COMPONENT

During the past four years, the BRN spent over 75% of its budget on enforcement and diversion-related activities. This emphasis meets its primary objective of providing patient protection by removing unsafe RNs from the workplace or restricting their practice. To maintain its enforcement activities, the BRN submitted four enforcement-related Budget Change Proposals (BCPs) from FY 2005/06 through FY 2009/10. The BCPs are:

- **2005/06---**Ongoing augmentations to fund the costs for the Attorney General's Office and evidence witness fees.
- **2007/08---**Authorization for one permanent position for the Enforcement Division to address the increased workload in the Citation and Fine Program.
- **2008/09 through 2009/10---**One BCP over two fiscal years to authorize a total of 6.5 permanent and 4.5 temporary positions for the Enforcement Division to address the workload associated with the fingerprint regulation that became effective June 2, 2009,

along with ongoing augmentations to fund the costs for the Attorney General's Office, Office of Administrative Hearings, and Division of Investigation.

- **2009/10**---Authorization for one permanent position for the Enforcement Division to address the increased workload for support staff.

The Department of Finance and the Legislative Fiscal Committees have approved the four BCPs. In addition, the BRN has been approved for 37 positions for the Enforcement Division beginning July 1, 2010, and phased in over the next two years, through a BCP completed by the Department of Consumer Affairs (DCA) for health care-related boards.

EXPENDITURES BY PROGRAM COMPONENT	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	Total	Average Spent by Program
Enforcement	\$13,468,740	\$14,508,569	\$14,494,132	\$15,407,160	\$57,878,601	64%
Diversion	\$2,656,459	\$2,848,447	\$2,934,693	\$1,956,050	\$10,395,649	12%
Examination	\$2,359,072	\$2,832,096	\$2,847,815	\$2,536,231	\$10,575,214	12%
Licensing	\$2,824,333	\$2,889,222	\$2,847,554	\$2,494,762	\$11,055,871	12%
Administrative*						
TOTALS	\$21,308,604	\$23,078,334	\$23,124,194	\$22,394,203	\$89,905,335	100%

* Costs of administering programs are incorporated in each component.

FUND CONDITION

The statutory reserve fund limit for the BRN is 24 months (B&P Code Section 128.5). The BRN has maintained a prudent reserve to meet future potential cost increases, address unforeseen contingencies, and bridge the gap between expenditures and unexpected declines in revenues. However, it is projected that the current fund reserve (6.0 months) will dramatically decline by fiscal year 2011/12 without a fee increase. The analysis below represents the BRN fund condition projected through FY 2011/12 both with and without the fee increase.

ANALYSIS OF FUND CONDITION	FY 2007/08	FY 2008/09	FY 2009/10 Budget Year	FY 2010/11 (Projected) WITHOUT fee increase	FY 2011/12 (Projected) WITHOUT fee increase	FY 2010/11 (Projected) WITH fee increase	FY 2011/12 (Projected) WITH fee increase
Total Reserves, July 1*	\$21,342,000	\$21,297,000	\$18,123,000	\$14,497,000	\$4,947,000	\$14,497,000	\$11,265,000
Total Rev. & Transfers	\$20,540,000	\$17,470,000	\$18,778,000	\$20,378,000	\$18,431,000	\$26,696,000	\$31,066,000
Total Resources	\$41,882,000	\$38,767,000	\$36,901,000	\$34,875,000	\$23,252,000	\$41,193,000	\$42,331,000
Total Expenditures	-\$20,782,000	-\$20,644,000	-\$22,404,000	-\$29,928,000	-\$29,558,000	-\$29,928,000	-\$29,558,000
Reserve, June 30	\$21,100,000	\$18,123,000	\$14,497,000	\$4,947,000	-\$6,306,000	\$11,265,000	\$12,773,000
MONTHS IN RESERVE	10.9	9.7	5.8	2.0	-2.5	4.6	5.0

* Total reserves may include prior year adjustments not reflected in the table.

SECTION 3: LICENSURE REQUIREMENTS

The Board of Registered Nursing Licensing Program is responsible for initial registered nurse (RN) licensure by examination and endorsement and for issuance of Board of Registered Nursing (BRN) specialty certificates. This section first outlines changes in the Licensing Program since 2002, then follows with requirements for RN licensure and certification requirements for each advanced practice specialty area.

CHANGES IN LICENSING PROGRAM SINCE THE 2002 SUNSET REPORT

Electronic Transfer of Fingerprint Data---On April 1, 2009, the culmination of an on-going project with the Department of Consumer Affairs (DCA) Office of Information Services (OIS), the Department of Justice (DOJ) and the BRN, was implemented that allows the electronic transfer of fingerprint data between the agencies. The new process ends the manual entry of fingerprint information into individual applicant records and allows for automatic generation of letters to the applicant when fingerprints have been rejected. The electronic transfer results in timelier issuance of licenses. Some issues have been identified since implementation regarding the consistency of the data received. DCA is currently working with DOJ to address these issues and concerns.

Out-of-State Endorsements---Since the last Sunset Report, the BRN reinstated the requirement that U.S.-educated RNs seeking licensure in California submit transcripts. This reinstatement occurred when research showed that while a commonality for nursing education exists across the United States, not all applicants have completed required coursework in communication and related natural, behavioral, and social sciences coursework as specified in the NPA (B&P Code Section 2736 and CCR Section 1426).

Addressing Application Backlogs---In spring of 2004, the BRN, along with three other boards, participated in DCA's "A-Team" effort. Through the hiring of additional temporary staff, the BRN was able to process thousands of backlogged license applications. As a result, the application backlog was reduced and the BRN was able to issue licenses to enable many RNs to practice and enter the workforce more quickly.

In March 2010, upon direction from the Governor, DCA developed the "Job Creation Initiative" with a goal to reduce any backlogs in Licensing Units of Healing Arts Boards to assist with timely licensure. This allows newly licensed health care professionals to seek employment or open businesses that could provide jobs. This project provided the BRN with the opportunity to review and streamline existing application processes; allowed staff to self-direct furloughs on a voluntary basis; and provided overtime for Licensing, Mailroom and Cashiering staff. The BRN's efforts reduced the licensing backlog and allowed staff to keep pace with the influx of applications from the spring graduates from the over 140 RN nursing programs. The BRN issued 10,869 RN licenses from January 27, 2010 to June 30, 2010. Currently, there are no application backlogs.

EDUCATION, EXPERIENCE, AND EXAMINATION REQUIREMENTS FOR RN LICENSURE

Examination Requirements: The primary objective of the BRN's licensure requirements is to ensure consumer protection by determining that individuals possess the knowledge and qualifications necessary to competently and safely practice as an RN. The licensure requirements for applicants are:

- Successful completion of specified RN educational requirements.
- Passage of a national examination for registered nurse licensure.
- Clearance through a background check for conviction of any crime, discipline of another California license, or out-of-state license discipline that might make the applicant ineligible for licensure.

The educational requirements for RN licensure are delineated in the Nursing Practice Act (NPA), (B&P Section 2736; CCR Sections 1420-1429) and set a minimum number of units in specified areas. The areas include the art and science of nursing (both theory and clinical practice); communication; and related natural, behavioral, and social sciences. Content in cultural diversity is also required.

Validation of Applicant Licensure Information: All applicants for licensure by examination must provide evidence, i.e., official school transcripts, of meeting the curriculum requirements (CCR Section 1426). An additional method for validating an applicant's education is to request a copy of the nursing program curriculum completed by the applicant. This documentation enables the BRN to evaluate the contents of the nursing program to ensure that all curriculum requirements are met.

Since 1990, all applicants taking the examination for licensure in California must submit fingerprints for a DOJ criminal background check. Beginning in June 2008, all applicants must also submit fingerprints for a Federal Bureau of Investigation (FBI) criminal background check. Applicants must also report prior convictions, other than minor traffic violations, and any conviction or disciplinary action that occurs between the date the application was filed and the date of issuance of the California RN license. DOJ automatically reports any subsequent arrests for applicants and licensees to the BRN.

Applicants for licensure by examination are not required to complete additional experience unless the clinical experience obtained during the prelicensure nursing education program did not meet the regulatory requirement. They may apply for an Interim Permit (IP), which allows them to work under the direct supervision of an RN pending results of the first examination. The IP can be issued once the BRN has received the fingerprint clearance from DOJ and FBI.

Licensure Examination: In California and throughout the United States and its four territories, eligible applicants seeking RN licensure for the first time must successfully pass the National Council Licensing Examination for Registered Nurses (NCLEX-RN). The examination is developed by the National Council of State Boards of Nursing (NCSBN) and administered by the approved test vendor, Pearson VUE. Since April 1994, the NCLEX-RN has been administered via computer using Computer Adaptive Testing (CAT) methodology. The NCLEX-RN is administered at test centers throughout the U.S. and worldwide. There are

currently a total of 227 testing centers offering the NCLEX-RN, 209 of which are located in the U.S. California has 16 test centers statewide, three of which were added in 2009-2010.

The NCLEX-RN is constructed to measure entry-level RN skills, knowledge, and abilities. A practice analysis is completed by NCSBN every three years in which a survey is sent to a random sample of practicing RNs nationwide to obtain current information about nursing practice. The most recent practice analysis was completed in 2008, and the next scheduled analysis will occur in 2011. The results of the practice analysis serve as the basis for the development of the Test Plan which is used as the blueprint to develop the NCLEX-RN. As the results of the practice analysis warrant, the Test Plan is revised and, if necessary, the examination passing standard as well. The most recent revision to the test plan and passing standard occurred in April 2010. NCLEX-RN information is readily available at the NCSBN Web site at www.ncsbn.org.

National and California Pass Rates: As of May 2010, there are 148 BRN approved pre-licensure nursing education programs in California, with most currently having graduates eligible to take the NCLEX-RN. California’s pass rates for the last four fiscal years have been at or slightly higher than the national pass rates as shown in the table below:

NCLEX-RN First Time U.S. Educated Candidates Pass Rates*				
YEARS	NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
FY 2006/07	114,762	87.61%	8,330	88.21%
FY 2007/08	123,133	85.51%	9,151	85.93%
FY 2008/09	133,778	87.42%	10,499	87.90%
FY 2009/10	143,702	88.8%	11,141	88.8%

***Source:** NCSBN Exam Statistics Reports; figures do not include repeat candidates or exam candidates educated outside the United States or United States territories.

California’s success in maintaining high annual pass rates can be attributed to widespread and consistent implementation of many of the strategies and recommendations outlined in the BRN’s *1999-2000 NCLEX-RN Task Force Report: The Problem and the Plan*, and were discussed in the 2002 Sunset Review Report. Some ongoing procedures and changes since 2002 include:

- More testing via the computer during the nursing program to better prepare students for the computer adaptive NCLEX-RN.
- Nursing programs encouraging students to attend NCLEX-RN review courses and to take the examination within three months of graduation.
- Nursing programs implementing the use of NCLEX-RN preparation materials and standardized predictive exams to clearly pinpoint areas of needed nursing content review and remediation.

- Close monitoring of each nursing program's pass rate by BRN staff, and the requirement that programs maintain annual rates at or above 70%.
- Collaboration between BRN staff and the nursing programs that have a lower than 70% pass rate, and a BRN requirement that the program develop an action plan to improve the pass rate.
- Current proposed revisions to the BRN nursing education regulations would require programs to maintain an NCLEX-RN annual pass rate of 75% or higher for first time test takers.

NCLEX-RN Pass Rates for Non-U.S. Educated First Time Examination Candidates---

Overall, first time non-U.S. educated NCLEX-RN pass rates have improved since the 2002 Sunset Report, but continue to vary from year to year. For the last four fiscal years (2006/07 through 2009/10), national pass rates ranged from about 41% to 58% and in California from about 37% to 47%. Differences in pass rates for U.S.-educated and non-U.S.-educated candidates can be attributed to differences in the educational systems/nursing curriculum, nursing practice regulations, roles and scope of practice, medical and health care delivery systems and technology advancements, as well as English language proficiency.

Application Processing Time: The average application processing time has decreased approximately 14 days over the last four years from 99 to 85 days. This reduction is due primarily to a decrease in the “application to examination” phase of the process, which is the time from when the applicant is deemed eligible to take the examination to when the applicant takes the examination. This phase, which is determined by the applicant, has decreased from 131 to 96 days.

This decrease may also be partially attributed to the RN educational programs advising new graduates to take the examination as soon as possible after graduation. This recommendation is based on research that shows a higher success rate for early test takers compared with those who wait to test. Another factor for this decrease may be a result of NCSBN establishing international test sites. These test sites enable applicants residing outside of the United States to test sooner rather than having to wait to travel to the United States to test.

In fiscal year 2007/08, there was an increase in the “application to eligibility” phase of the application process. This was due to a decrease in the number of BRN licensing staff. Once new staff were hired and trained, processing times for this phase decreased through fiscal year 2009/10. The modification of internal processes and the ability to communicate with international schools via the Internet has also contributed to the decrease.

The “examination to issuance” phase remained constant with a very slight decrease over the last four years. This decrease is attributed to technological improvements and the change in the NCSBN testing vendor, which is providing services via the Internet.

AVERAGE DAYS TO RECEIVE LICENSE	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Application to Eligibility	63	92	48	45
Application to Examination	131	129	112	96
Examination to Issuance	7	5	5	6
Total Average Days	99	95	94	85

COMITY/RECIPROCITY WITH OTHER STATES

Applicants who are already permanently licensed in another state or U.S. territory are eligible for licensure by endorsement if they meet the following requirements:

- Passed the NCLEX-RN or its predecessor the State Board Test Pool Examination (SBTPE).
- Possess an active, current and clear RN license in another state or U.S. territory. This is validated through NCSBN's NURSYS database or directly from the state where the applicant holds the license.
- Successfully completed specified RN educational requirements, which are verified through official school transcripts and/or the review of nursing program curriculum.
- Fingerprint background clearance from DOJ and FBI. The BRN can access information regarding discipline of a RN license in another state or U.S. territory through NCSBN's NURSYS database.

Applicants licensed in other countries who have not passed the NCLEX-RN or SBTPE are not eligible for endorsement and may become licensed through the examination process. Applicants for licensure by endorsement are not required to complete additional experience unless there was insufficient theoretical and/or clinical experience obtained during prelicensure education. Once the BRN has received validation of an active, current and clear license and the DOJ and FBI fingerprint clearance has been received, endorsement applicants are eligible for a Temporary License (TL) which allows them to work while awaiting permanent licensure.

Application Processing Time: The average processing time for endorsement applications has decreased 11 days over the past four years from 59 to 48 days. Factors contributing to this shorter time period include consistent staffing levels over the four years and the availability of NCSBN's NURSYS database. In addition, beginning in April of 2009, the BRN began receiving fingerprint data electronically from DOJ. In the majority of cases, the fingerprint information is automatically updated in the applicant record.

AVERAGE DAYS TO RECEIVE LICENSE FOR APPLICATION BY ENDORSEMENT	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Average Days from Application to Issuance	59	57	55	48

CERTIFICATION REQUIREMENTS FOR ADVANCED PRACTICE RNs

Certification Requirements: The primary objective of certification requirements is to ensure consumer protection by determining that RNs possess the knowledge and qualifications necessary to competently practice in the specialty category. The BRN certifies public health nurses and advanced practice nurses. Advanced practice nurses include nurse practitioners, nurse-midwives, clinical nurse specialists, and nurse anesthetists. Pursuant to the Health and Safety and Insurance Codes, the BRN also maintains a listing of psychiatric/mental health nurses. In each of these categories, the individual must have an active California RN license prior to obtaining the certificate.

Nurse anesthetists, nurse-midwives, nurse practitioners, and public health nurses may apply for a temporary certificate permitting the use of the title for up to six months. The temporary certificate is issued when all required documentation has been received and the BRN has received the fingerprint clearance. Discussion of the certification requirements for each of these specialty categories follows; only those elements that differ from the basic license requirements will be mentioned.

Clinical Nurse Specialist---Clinical nurse specialists are RNs with advanced education who participate in expert clinical practice, education, research, consultation, and clinical leadership as the major components of his or her role (B&P Code Sections 2838 through 2838.4). BRN certification may be obtained by successful completion of a master's program in a clinical field of nursing or a clinical field related to nursing with coursework in the areas mentioned above. There is an equivalency method for applicants who have successfully completed a master's program in a field other than nursing and have participated in all five areas. Applicants applying for the equivalency method must meet the same educational standards as graduates of an approved master's program.

Nurse Anesthetist---Nurse anesthetists are RNs who provide anesthesia services at the direction of a physician, dentist, or podiatrist (B&P Code, Sections 2826 & 2827). To be considered for BRN certification, the applicant must provide evidence of certification by the Council on Certification of Nurse Anesthetists and Council on Recertification of Nurse Anesthetists. The Council has developed standards for certification as well as core competencies for nurse anesthetists, which are used nationally as well as by the California BRN. To satisfy these national standards, the applicant must have graduated from a nationally accredited program in nurse anesthesia and passed the national certifying examination. There is no equivalency method for certification as a nurse anesthetist. The national standards for nurse anesthetists have been in place since 1945; therefore, an equivalency route was deemed unnecessary.

Nurse-Midwife---Nurse-midwives are RNs who are authorized, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and provide prenatal, intrapartum and postpartum care, including family planning care, for the mother and immediate care for the newborn (B&P Code, Section 2746.5). BRN certification may be obtained by successful completion of a BRN-approved nurse-midwifery program or certification as a nurse-midwife by the American Midwifery Certification Board (AMCB). There is an equivalency method for applicants who completed a non-BRN-approved midwifery program and who are not nationally certified. These applicants must provide evidence that deficiencies have been

corrected in a BRN-approved nurse-midwifery program or through successful completion of specific courses approved by the BRN.

Nurse-midwives in California may also apply for a nurse-midwife furnishing number, enabling them to write a medication order to a pharmacy to fill and thereby furnish a drug to a patient. To obtain a furnishing number, the nurse-midwife must satisfactorily complete at least six months of physician and surgeon supervised experience in the furnishing or ordering of drugs or devices. The nurse-midwife must also have completed an advanced pharmacology course.

Nurse-midwives have the ability to furnish or order drugs and devices that include Schedule II drugs. The nurse-midwife must complete a BRN approved continuing education course that includes Schedule II drug content. Upon completion of the course and notification to the BRN, the nurse-midwife then applies to the Drug Enforcement Administration (DEA) to obtain a DEA number.

Nurse Practitioner---Nurse practitioners are RNs who possess additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care (CCR Section 1480). BRN certification can be obtained by successful completion of a program which meets BRN standards or by certification through a national organization whose standards are equivalent to those of the BRN. Beginning on or after January 1, 2008, an applicant for initial certification as a nurse practitioner, who has not been qualified or certified as a nurse practitioner in California or any other state, must possess a master's or other graduate degree in nursing, or in a clinical field related to nursing (B&P Code Section 2835.5).

There is an equivalency method for RNs who have completed a nurse practitioner program that does not meet BRN standards. These applicants must submit verification of clinical competence and experience verified by a certified nurse practitioner or physician. In addition, documentation of remediation of any areas of deficiency in the required course content or clinical experience is required.

Nurse practitioners in California may also separately apply for a nurse practitioner furnishing number, enabling the nurse practitioner to write a medication order for a pharmacy to fill and thereby furnish a drug to a patient. To obtain a furnishing number, the nurse practitioner must satisfactorily complete at least six months of physician-supervised experience in the furnishing of drugs or devices, preceded by an advanced pharmacology course.

Beginning January 1, 2004, nurse practitioners have the ability to furnish or order drugs and devices that include Schedule II drugs. The nurse practitioner must complete a BRN approved continuing education course that includes Schedule II drug content. Upon completion of the course and notification to the BRN, the nurse practitioner then applies to the DEA to obtain a DEA number.

Public Health Nurse---Public health nurses are an integral part of the public health community. They provide direct patient care as well as services related to maintaining the public/community's health and safety (B&P Code Section 2818). BRN certification can be obtained by possession of a baccalaureate or entry-level master's degree in nursing from a school accredited by a BRN approved accrediting body such as the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing

Education (CCNE). The program must have included course work in public health nursing, including a supervised clinical experience in a public health setting.

Equivalency methods are provided for individuals whose baccalaureate or entry-level master's degree in nursing is from a non-NLNAC or CCNE accredited school and for those who have a baccalaureate degree in a field other than nursing.

Psychiatric/Mental Health Nurse---Pursuant to the Health and Safety Code Section 1373(h)(2) and the Insurance Code Section 10176, the BRN maintains a listing of RNs who possess a master's degree in psychiatric/mental health nursing and two years of supervised experience as a psychiatric/mental health nurse. To be eligible for the listing, RNs must complete an application and submit verification of required education and experience to the BRN. This voluntary listing enables the psychiatric/mental health nurse to receive direct reimbursement from insurance carriers for counseling services.

The BRN also accepts American Nurses Credentialing Center certification as a clinical specialist in psychiatric/mental health nursing for placement on the list because the requirements for national certification are the same as the requirements in the Insurance Code. Legislative acknowledgment of the psychiatric/mental health nurse function occurred in 1992 (AB 3035) when psychiatric/mental health nurses were added to the definition of psychotherapist in Health and Safety Code Section 1010, regarding patient-psychotherapist evidentiary privilege.

CONTINUING EDUCATION/COMPETENCE REQUIREMENTS

Initial entry into practice and continued competence measurements for RNs and advanced practice nurses are essential to ensure public safety and protection. Mandatory continuing education (CE) is the primary method used by the BRN as an indicator of on-going competence for RNs with active licenses. Since 1978, the BRN has required RNs to complete a total of 30 contact hours of continuing education biennially to renew their licenses in the active status. The primary route for completion of the hours is to take course(s) offered by one of the over 3,300 BRN-approved Continuing Education Providers (CEPs).

The number of audits of RNs for compliance with statutory and regulatory requirements has significantly declined since 2002 due to lack of staffing in this area. During the past four fiscal years, an average of approximately 350 RNs per year have been audited, compared to an average of 2,700 per year in the prior Sunset Report. The majority of audited RNs provide documentation of acceptable course content and CE contact hours. Those in noncompliance are referred to the Enforcement Division. Since 1996, the BRN has issued citations and fines to RNs who knowingly violate the CE requirements. From 2006/07 through 2009/10, 110 citation/fines were issued for violation of CE requirements. Serious violations are referred to the Attorney General's Office for disciplinary action.

CEP audits have not been completed since January 2001 due to unavailability of staff. However, any complaints that are received are investigated. The BRN investigates complaints filed against CEPs and has authority to withdraw a CEP's provider number under specified circumstances. Ten CEP provider complaints were received and seven were investigated by the Enforcement Division from 2006/07 through 2009/10.

Lack of staffing to consistently audit RNs for CE and to conduct CEP audits has been an ongoing issue prior to 2002. This issue is addressed in the 2010 Issues and Board Recommendations Section in Part 2 of this Report.

CATEGORY	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
RN Licensee Audits	0	292	1,341	59
Closed Compliance	0	285	1,295	58
Referred to Enforcement	0	7	36	1
CE Provider Audits	0	0	0	0
Provider Complaints	2	1	2	5
Referred to Enforcement	2	1	2	2

Assessing continued competence is a difficult and complex national issue facing all professional healing arts licensing boards. The American Nurses Association’s *Code of Ethics for Nurses* and the National Council of State Boards of Nursing’s (NCSBN) *Guiding Principles for Continued Competence* incorporate support for nurses’ efforts in lifelong learning, especially those efforts made toward acquisition of new knowledge and skills.

A BRN staff member served as chair and participated on the NCSBN’s Continued Competence Committee. The committee focused on the RNs acquisition of new knowledge and skills as well as the appropriate and safe application of knowledge and skills. The Committee developed the following five research questions for boards of nursing and NCSBN to review. The research questions are based on the assumption that continued competence of nurses improves the quality and safety of patient care.

1. What methods are other disciplines and high-risk industry regulators currently using to determine competence?
2. Which methods are most effective in determining nurse continued competence?
3. Which method(s) should nurse regulators use?
4. What are the demographics/descriptions of competent versus incompetent nurses in the core areas of continued competence?
5. What set of variables or combination of variables contributes to the measurement of competence?

It was recommended that NCSBN use the questions to further study the issue of continued competence. The BRN will review the resultant evidence-based approaches that emerge from the research and discussions and evaluate the approaches related to continuing education that are appropriate.

SECTION 4: ENFORCEMENT ACTIVITIES

The Board of Registered Nursing Enforcement Division is responsible for complaint intake and investigation, disciplinary actions, citations and fines, and probation monitoring. Ongoing funding and staffing issues at the Board of Registered Nursing (BRN), as well as other enforcement-related agencies on which the BRN depends, and out-of-date technology affecting data entry and retrieval have created challenges to the BRN providing enforcement services effectively and efficiently. The BRN and the Enforcement Division specifically have been under close public scrutiny recently and the BRN has been working closely with other state agencies, the Department of Consumer Affairs (DCA), the Legislature, and the Governor's office to improve the enforcement activities.

This section first outlines changes in the Enforcement Division since 2002, and follows with enforcement data and activities.

CHANGES IN ENFORCEMENT DIVISION SINCE THE 2002 SUNSET REPORT

Operational and Staff Changes---The main focus of the Enforcement Division has been to improve case processing timeframes so that cases are completed in an average 12 to 18 months. This timeframe is a goal that is outlined in DCA's Consumer Protection Enforcement Initiative (CPEI). Following are steps that have been implemented to begin work toward this goal:

- In 2009, the BRN was approved, through the Budget Change Proposal (BCP) process, for 11 (6.5 permanent full time and 4.5 limited term) new enforcement positions to handle the immediate increase in workload related to the new fingerprint and conviction reporting requirements. In 2010, again through the BCP process, the BRN was approved for 37 new enforcement positions beginning July 1, 2010. The BRN was also loaned staff from the Bureau of Automotive Repair, and five retired annuitant investigators were hired.
- In 2009, BRN staff met regularly with Division of Investigation (DOI) staff to review all investigations over one year old to determine if the investigation should continue. Criteria were established to efficiently determine how to proceed with these cases as well as to review and develop plans for handling cases less than one year old.
- Staff has been working diligently with the Attorney General's (AG's) Office to improve timelines for drafting pleadings and completing disciplinary cases.
- Since October 1, 2009, BRN staff has been serving all accusations and petitions to revoke probation. Accusations are now being served the same day they are signed or within three days if over a weekend. This process could previously have taken anywhere from 7 to 90 days when documents were sent via US mail to the assigned Deputy Attorney General (DAG) for service.
- Staff was also preparing all default decisions until July 27, 2010, when the AG's Office mandated that the BRN stop this processing and return the activity to their office. This mandate was based on a Superior Court Judge's statement that the AG's Office has not been including evidence packets to support the license revocation.
- Improvements have been made to better capture data. A code was created to capture conviction complaint information in 2007, and, in January 2010, a report was created to more accurately track complaint processing timeframes.

- In July 2009 through July 2010, the Enforcement Division Manager participated on the National Council of State Boards of Nursing (NCSBN) NURSYS Committee which made recommendations to the NCSBN Board of Directors on program improvements. In July 2010, the Enforcement Division Manager was selected to participate on the NCSBN Disciplinary Resources Committee which has the charge of developing recommendations and/or guidelines on issues pertinent to enforcement.

Statutory Changes---In September 2008, SB 1441 was chaptered. It requires a committee comprised of the Director of DCA and executive officers from the healing arts boards to formulate uniform and specific standards for dealing with substance abusing licensees. BRN staff is currently serving on this committee which met most recently in April 2010. SB 1111 was recently introduced which would assist the BRN in more efficient and timely handling of disciplinary cases; however, currently this bill is no longer active.

Regulation Changes---The following regulatory amendments have been completed since the Sunset Report in 2002:

Section 1435-Citations and Fines---The amendment authorizes the BRN Executive Officer to issue citations and fines and to modify the contested citation process. A subsection was adopted specifying the requirements for public disclosure, record retention, and purging. (1/03)

Section 1435.2-Citations and Fines---This regulation increased the maximum fine amount that the BRN may impose from \$2500 to \$5000 and set forth the circumstances under which the higher fine amount could be imposed. (4/08)

Section 1444.5-Disciplinary Guidelines---This section was amended to incorporate by reference the most recent version of the BRN disciplinary guidelines, "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," which were revised in December 2001. (5/03)

In addition, in an effort to provide BRN staff with additional tools to meet the goal of completing a case within an average of 12 to 18 months, the BRN is currently working on a regulatory proposal to:

Section 1403-Delegation of Certain Functions (Amend)---Allow the Board to delegate authority to the Executive Officer to approve settlement agreements for revocation, surrender, or interim suspension of a license.

Section 1444.5-Disciplinary Guidelines (Amend)---Require an Administrative Law Judge to revoke a license, without a stay order, if the licensee is found to have violated B&P Code Section 729(c) or Education Code Section 44010 related to inappropriate sexual contact or offense.

Section 1410-Application (Amend)---Require an applicant to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental and/or physical illness. The Board is required to pay for the examination.

Section 1443.6-Required Actions Against Registered Sex Offenders (New)---Sets forth criteria to deny or revoke a license if an individual is required to register as a sex offender pursuant to Penal Code Section 290.

Section 1441-Unprofessional Conduct (New)---Sets forth definitions for “unprofessional conduct” which includes, but is not limited to: no gag clauses in civil settlement agreements; licensees who do not provide requested records pursuant to an investigation; licensees who do not cooperate and participate in a pending investigation; failure of a licensee to notify the board within 30 days of felony charges or indictment, arrest, conviction, disciplinary action by another licensing entity, or to comply with a court ordered subpoena.

Following is a summary of enforcement data from Fiscal Year 2006/07 through 2009/10:

ENFORCEMENT DATA		FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Complaints Received (Source)	Total:	3,361	3,900	5,794	7,483
Public		348	438	389	518
Licensee/Professional Groups		556	631	756	873
Government Agencies		203	220	212	199
B&P Code, Section 800		47	61	66	82
Other/Internal		2,207	2,550	4,371	5,811
Complaints Filed (by type) *	Total:	3,361	3,900	5,794	7,483
Competence/Negligence		350	307	352	374
Unprofessional Conduct		606	686	501	549
Fraud		15	37	157	78
Unlicensed/Unregistered Activity		35	77	56	41
Personal/Sexual Conduct		28	36	16	33
Unsafe/Unsanitary Conditions		0	2	7	5
Criminal Charges/Convictions		685	1,004	3,992	5,293
Substance Abuse/Drug Related Offenses		1,405	1,457	437	451
Disciplined by Another State		135	210	193	459
Non-Jurisdictional		23	32	47	141
Other		79	52	36	59
Complaints Closed w/o investigation *	Total:	2,793	2,907	1,808	713
Investigations Commenced **	Total:	563	1,204	3,462	8,407
Compliance Actions	Total:	401	377	537	815
ISOs Issued/PC 23		3	1	10	14
Citations and Fines		17	35	115	181
Public Letter of Reprimand		9	3	8	12
Cease & Desist/Warning ***		0	0	0	0
Referred for Diversion		367	332	400	604
Compel Examination		5	6	4	4
Referred for Criminal Action	Total:	7	23	22	35
Referred to AG’s Office	Total:	314	436	515	766
Accusation Activity	Total:	429	530	455	833
Accusations Filed		380	478	418	787
Accusations Withdrawn		22	32	15	21
Accusations Dismissed		3	2	4	3
Accusations Declined by AG’s Office		24	18	18	22
Stipulated Settlements (Licensees)	Total:	182	195	203	264

ENFORCEMENT DATA (Cont.)		FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Disciplinary Actions	Total:	309	345	359	519
Revocation		101	121	131	243
Voluntary Surrender		67	73	79	92
Suspension Only		0	0	0	0
Probation with Suspension		6	10	6	1
Probation		120	131	139	176
Probationary License Issued		15	10	4	7
Probation Violations	Total:	36	60	75	118
Suspension or Probation		2	8	14	11
Revocation or Surrender		34	52	61	107

* Beginning 2007, a new coding method was implemented which may account for some differences in data.

** Complaints received in one fiscal year may not be investigated until the next fiscal year.

*** Alternative methods used in lieu of cease and desist letters.

ENFORCEMENT DIVISION OVERVIEW

The purpose of the BRN's Enforcement Division is to protect consumers by disciplining licensees who violate the Nursing Practice Act (NPA), monitoring registered nurses' (RN) practice while on probation to ensure safe patient care, denying licenses to applicants who are unsafe to practice, and seeking prosecution for the unlicensed practice of registered nursing. The BRN places high priority on protecting the public through an effective Enforcement Division. This is evidenced by the expenditure of almost 65% of the BRN budget on enforcement-related activities as well as the increasing number of complaints that are investigated, the number of cases referred to the AG's Office, and the disciplinary actions imposed. Additionally, the Enforcement Division staff has implemented operational and organizational changes and has worked with both the AG's Office and DOI to increase the effectiveness and efficiency of the Enforcement Division. The operational and organizational changes since 2002 are summarized earlier in this section of the report. More detailed information regarding allocation and projection of resources, workload, and activities with the AG's Office and DOI are summarized in Attachment 3.

Complaints Received (by Source): Complaints are received from a variety of sources. The largest source of complaints to the Enforcement Division, by far, is from subsequent arrest notifications, which is captured as part of the "other" category in the table above. This category comprises approximately 55% of all complaints received. The number of complaints has increased significantly since 2002, with 1,541 complaints received in fiscal year 2001/02 and has more than doubled over the past four years, from 3,361 in fiscal year 2006/07 to 7,483 in fiscal year 2009/10. The fingerprint requirement for all RNs and the NCSBN NURSYS database comparison, which is detailed later in this section, are the main reasons for the increase.

Unique Reporting Requirements: There is no mandatory reporting required of RNs or from other health care practitioners against RNs. Nursing homes participating in the Medicare/Medi-Cal Programs are required to report resident abuse and neglect to the BRN. Under B&P Code Section 801, settlement or arbitration awards exceeding \$3,000 must be reported to the BRN if related to death or personal injury due to an RN's negligence, error, or omission in practice.

The BRN regularly refers complaints to other allied health boards within DCA, the Department of Social Services, the Department of Mental Health, the Department of Public Health (DPH), and other state agencies when there are issues in the complaint that may apply to those agencies. The BRN also receives complaint information from these agencies when they relate to an RN. These cross reporting procedures are not mandated or formalized at this time. In 2010, BRN enforcement staff met with, on separate occasions, staff from DPH, the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), and the California Office of Health Information Integrity to discuss and establish protocol for referrals and how to best share information. The BRN also reports disciplinary actions to NCSBN which acts as our agent to report mandated information to federal agencies and databanks. If the BRN is aware that a RN holds a license in another state, a copy of the disciplinary action is sent to that state when the decision becomes effective.

The lack of mandatory reporting by other agencies and employers leaves the public at risk because the BRN is unable to investigate potential violations. In order to mandate reporting requirements, as well as grant the BRN additional authority when completing investigations, the BRN is recommending being included in some specific Business and Professions Code Sections (159.5, 160, 802.1, 803, 803.5 and 803.6(a)) and Penal Code Section 830.3. These issues are addressed under the 2010 Issues and Board Recommendations in Part 2 of this report.

Problems Receiving Relevant Complaint or Investigative Information: The problems that continue in the investigative process pertain to: obtaining consents for release of medical records; accessing personnel records; interviewing the subject of the complaint and witnesses; and obtaining other relevant records regarding an incident from the health care facility. To address these problems, BRN investigators need to be able to inspect and copy any documents related to an investigation of a licensee or applicant, and licensees or applicants need to be compelled to cooperate during an investigation.

According to the DOI, the vast amount of time spent during a BRN investigation is waiting for facilities to provide records pertaining to active investigations. These records include, but are not limited to, patient medical records (physician order sheet and discharge summary, medication administration records, vital sign sheets, nursing notes, related narcotic count or automated drug dispensing systems such as Pyxis records), patient assignment or staffing records, standardized procedures, policy/procedures related to the incident, employment/personnel records, etc. DPH has the authority to inspect and copy any records necessary to conduct an investigation in any facility licensed per Welfare and Institutions Code Title 22. The BRN is requesting similar authority to obtain necessary investigative records.

The BRN also has difficulty obtaining court and arrest records from a variety of local jurisdictions throughout California. This difficulty may arise from not being able to determine the proper jurisdiction of record to charging for the reproduction of records. Many superior courts have information on the Internet to monitor criminal proceedings, but this is not consistent across all counties in California. A method also needs to be established to verify the information.

Another problem relates to the Federal Bureau of Investigations (FBI) conviction information. The conviction information the FBI provides is only valid at the time the fingerprints are initially submitted. Some other states have agreements with the FBI to participate in the “rap back” program, which provides subsequent arrest/conviction information. It would be

beneficial for the BRN to obtain this information as indicated by the fact that over 2,600 subsequent arrest notifications were received in fiscal year 2009/10 from DOJ.

In March 2010, BRN staff contracted with NCSBN to complete a NURSYS Discipline Data Comparison (“scrub”) where the BRN files were compared against the NURSYS database, which includes discipline data from other participating states. A report was received from NCSBN, which showed a total of 3,463 actions taken in other states against licensees in California; 50% (1,743) of these are currently active licensees in California. BRN staff are currently working on reconciling data to determine the following:

- Was the BRN already aware of the action taken by the other state?
- Is the licensee’s offense actionable in California?
- Are actions against one licensee counted more than once since they may be disciplined in more than one state?
- Action of the other state (i.e., reprimand, probation, revocation, etc.).
- Date of the action by another state (e.g., approximately 40% of all actions were taken prior to 2000).

BRN staff has met with DCA executive staff, AG’s Office staff, and the Office of Administrative Hearings (OAH) staff to discuss how best to handle the additional workload generated from this project.

At its Annual Delegate Assembly meeting in August 2010, NCSBN introduced and adopted a modified process to share licensing information among all boards of nursing. Beginning some time in the fall of 2010, any board of nursing who is not a full participating member can electronically transmit licensing data on a daily basis to NURSYS. By electronically transmitting licensing information, the NURSYS system will be able to timely notify all states of a disciplinary action occurring which involves a current licensee. States will not be required to participate in license verification and will not lose necessary revenue. Each board choosing to participate will pay a fee of \$10,000 per year. At its September 23, 2010 Board meeting the BRN Board members voted to have the California BRN participate in the modified NURSYS process and eliminating the need for future NURSYS data comparisons.

Largest Number of Complaints Filed (by Type): In an effort to better capture complaint data, some internal changes were made to the coding system. In 2007, a code was created to more accurately capture conviction complaint information, which is why the numbers in this category have increased significantly over the last three years. Also in 2007, informal BRN staff investigations began to be captured under the Investigations Commenced category. However, by implementing this, it has erroneously skewed the length of time taken to investigate a case for DOI as well as the actual number of investigations for FY 07/08 and 08/09. This was corrected in January 2010 when DCA created a report to more accurately capture investigations separated by formal or sworn (DOI) and informal or non-sworn (BRN staff) which is reflected in a table appearing later in this section.

The largest number and type of complaints filed are related to convictions against both applicants and licensees (71% in FY 2009/10) with DUI convictions being the most frequent. The coding changes made to the computer system in 2007 account for the fluctuation of numbers between the criminal charges/convictions and substance abuse categories. Since

2007, if substance abuse is related to criminal charges or a conviction, then it is counted as the latter. In 2009/10 there has been an increase in the categories “Disciplined by another state” and Non-jurisdictional” which is likely the result of the NURSYS database comparison conducted in March 2010.

Types of Cases Stipulated for Settlement: Cases considered for stipulated settlement include those involving the passage of a significant amount of time since the incident occurred without any additional incidents, significant rehabilitation and mitigation, positive work performance evaluations, cases which have issues with witness appearance and/or weak evidence. The types of cases considered for stipulated settlements has not changed but the percentage of stipulated settlements to cases referred to the AGs Office has slowly declined over the past four years from 58% of the cases referred in FY 2006/07 to 34% in FY 2009/10. If the applicant or licensee cannot provide enough significant mitigation documentation, then cases are set for hearing.

The number of probation violations leading to the actions of extended probation, revocation, or surrender over the past four years has increased from 36 to 118. This is a result of the BRN being able to hire a full-time Probation Program Manager and additional staff to augment the Probation Program in March 2009. This addition of staff was provided by the BCP in fiscal year 2008/09 that augmented staff due to the new fingerprint requirement. The manager and staff have been able to actively develop standards and protocol to more effectively monitor probation violations and to audit and track probationers who have moved out of California. The BRN staff has also been serving all petitions to revoke probation, which has allowed for timely filing.

Complaints Referred for Investigation: Complaints within BRN jurisdiction are referred for either formal or informal investigation. Formal investigations are conducted by sworn peace officers employed by DOI. BRN staff conducts informal investigations. Enforcement Division staff investigate criminal conviction complaints for licensees and applicants for licensure or certification. Some complaints, such as those involving convictions of serious crimes substantially related to the practice of nursing or including a comprehensive investigation by another regulatory agency, may not require referral for investigation before being transmitted to the AG’s Office.

An average of 64% of the complaints received were investigated over the past four fiscal years, which is a decrease from the previous Sunset Report in 2002 which indicated approximately 75%. During the past four fiscal years, 20,538 complaints were received and 13,092 were investigated. A much higher percentage of complaints were investigated in FY 2009/10 in which more complaints were referred for investigation than complaints received (105%). This is due to the overlap of data between fiscal years, i.e., complaints received in the prior fiscal year were referred for investigation in the following fiscal year. In addition, the changes made to the coding to include informal investigations also impact the increase in the numbers.

Complaints Referred to AG’s Office for Accusation and Disciplinary Actions: The number of cases referred to the AG’s Office has steadily increased over the past four years and more than doubled from 314 in 2006/07 to 766 in 2009/10. While there has been a significant increase in the number of overall cases referred to the AG’s Office, the percentage of cases referred out of the number of investigations opened has fluctuated over the past four years with a high of 56% in 2006/07 to a low of 10% in 2009/10. This is due to the inclusion of BRN staff

informal investigations being included in the total number of investigations beginning in 2007/08 as well as the overlap of data between fiscal years. Many of the investigations opened in 2009/10 may not be referred to the AG's Office until 2010/11.

In the 2002 Sunset Report, approximately 12% of cases were transmitted to the AG's Office so there was a very slight decline to 10% in the most recent fiscal year. Over the past four years, an average of 97% of transmitted cases resulted in an accusation, which is higher than the 70% reported in the previous Sunset Report. The percentage of accusations filed reflects the quality of investigations and evidence substantiating the violations as well as the informal investigations by BRN staff acting as a screen prior to sending a case for formal investigation or to the AG's Office.

Disciplinary actions have also increased from 309 in 2006/07 to 519 in 2009/10. The number of cases referred for disciplinary action will continue to increase as evidenced by the increase in the number of complaints filed and the high percentage of conviction/arrest complaints.

NUMBER AND PERCENTAGE OF COMPLAINTS CLOSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION					
COMPLAINTS RECEIVED	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	TOTAL
	3,361	3,900	5,794	7,483	20,538
Complaints Closed	2,793	2,907	1,808	713	8,221
Referred for:					
Investigation	563	1,204	3,462	8,407	13,636
Formal (DOI)**	N/A	N/A	N/A	484	N/A
Informal (BRN staff)**	N/A	N/A	N/A	7,923	N/A
Percent cases investigated*	17%	31%	60%	112%	66%
Accusation Filed	380	478	418	787	2,063
Disciplinary Action	309	345	359	519	1,549

* Complaints received in one fiscal year may not be investigated until the next; therefore, the statistics include complaints received prior to fiscal year 2006/07 and complaints received in 2009/10 may not be investigated until fiscal year 2010/11.

** The breakdown of this data is not available prior to the 2009/10 fiscal year.

CASE AGING DATA

In the past data compilation for the system has been tedious, time consuming and riddled with data entry errors. In January 2010, DCA implemented a reporting tool to more accurately capture the data. However, the length of time it takes from the day a complaint is filed until disciplinary action occurs is too long. The average number of days from receipt of complaint to final disposition of the case decreased from 1,121 in fiscal year 2007/08 to 1,006 in fiscal year 2009/10. This is a noteworthy reduction considering the BRN has received limited resources to date and shows we are moving in the right direction.

Of the four components determining the number of days to process and prosecute a case, the BRN has total control only over the complaint processing. The average time to complete this phase has been lowered drastically since the previous Sunset Report in 2002. In 2001/02, it was an average of 157 days, in 2006/2007 it was down to 100 days and in 2009/10 it has been cut in half to an average of 44 days. These reductions are a result of many procedural changes, consistent staffing, and staff resolving many complaints as a result of convictions being found from fingerprinting. Additional strategies to decrease this component of the disciplinary process are being explored by the BRN Enforcement Division.

There has also been a significant decrease in the average time for investigations. This timeframe increased since the 2002 Sunset Report to a high of 644 average days to process an investigation in 2006/07. Since then, it sharply declined in 2008/09 to 173 days and 191 in 2009/10. The sharp decline is partially a result of the staff performing more investigations related to convictions received from fingerprinting. In addition, since early 2009, BRN staff has had regular meetings with DOI staff to review and set up criteria to resolve cases over one year old and to develop plans for dealing with cases less than one year old. Improvements in tracking of cases sent to DOI and within the BRN have also been implemented. In addition, the BRN is moving forward with regulations to provide additional authority to more quickly move some cases through the system. The BRN is also recommending some statute changes to be enacted that would provide the BRN investigators with more authority when gathering evidence. This is discussed in more detail in the 2010 Issues and Board Recommendations in Part 2 of this report.

Both the pre- and post-accusation timeframes have decreased over the past four years, from 335 to 84 days and from 247 to 186 days, respectively; however, the total average number of days from complaint receipt to final completion is still well over the goal of an average of 12 to 18 months for case completion. The BRN is hopeful that the additional staffing and resources from the BCPs will reduce the average amount of time it takes to complete a case and that the BRN will be able to work towards and eventually meet the goal of 12 to 18 months average to complete a case. However, the amount of staff requested by the BRN was reduced from the original request of 63 to 37 staff. The BRN was also required to convert four limited term positions into four of the new positions, effectively reducing the number of new positions to 33 overall. It is unknown if the number of new positions will reduce the time frame to meet the goal, but the BRN will study the data and revisit the BCP process if needed.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Complaint Processing	100	102	75	44
Investigations	644	637	173	191
Pre-Accusation*	335	218	155	84
Post-Accusation**	247	273	265	186
TOTAL AVERAGE DAYS***	1,026	1,121	1,100	1,006

* From completed investigation to formal charges being filed.

** From formal charges filed to conclusion of disciplinary case.

*** From date complaint received to date of final disposition of disciplinary case.

Time Frames for Closing Investigations and AG Cases: Timeframes for closing investigations for fiscal years 2008/09 and 2009/10 include informal investigations completed by BRN staff for conviction cases, which take significantly less time than formal investigations by DOI. In 2009/10, the average number of days to close a desk investigation was 119; a non-sworn investigation, 301 days and a formal (DOI) investigation, 742 days. Approximately 76% of cases had investigations closed within one year compared to 47% in the 2002 Sunset Report. However, there is a significant increase in the number of cases taking three years or more compared to the previous Sunset Report in 2002. Over the past four years, there were a total of 1,483 (11.6%) cases where investigations took three years or more, compared to 489 (12.9%) over the six years included in the previous Sunset Report. Even though the percentage of total cases is higher during the 2002 time period, the actual number of cases was significantly lower at that time. In 2009/10, there was a significant increase in the number of cases closed in two years. This may be reflective of many new procedures put in place at both the BRN and DOI and increased communication between the staff.

In March 2009, management level staff of BRN and DOI began meeting regularly to focus on the review of cases over one year old. It was determined that DOI would only investigate cases which could result in criminal charges and were within the statute of limitations for criminal filing. Cases that did not meet these criteria were returned to the BRN for future investigative staff to complete or were closed. Additional meetings took place in September 2009 to develop a plan to review cases that were one year old or less to determine minimum investigative plans. It was determined that approximately 60% of all cases referred to DOI were not related to criminal charges and thus returned to the BRN for investigation. Additional staff was lent to the BRN and five retired annuitant investigators were hired to begin working on these cases. There are currently over 500 cases pending investigation by BRN investigators.

Since the last report, there has been an increase in the number of cases closed from the AG's Office; however, there has been an increase in the time to close the cases. The percentage of cases closed within one year was 26.4% during fiscal years 2006/07 through 2009/10, and 31.7% for the previous report. There has been an increase in the percentage of cases closing in three or more years from 23.1% in the previous report to 33.8% in the current time period. During fiscal years 2006/07 through 2009/10, the average number of cases closed by the AG's Office was 439. This compares to 257 for the previous report, covering fiscal years 1996/97 through 2001/02. Over the two most recent fiscal years, there has been an increase in the number of cases pending and this is expected to continue to increase as the number of complaints has significantly increased.

Since July 2009, BRN and AG's Office staff has been working diligently to improve timelines for drafting pleadings and completing disciplinary cases. The AG's Office has developed and/or improved BRN Case Movement Guidelines for various steps in the process. The most significant change is preparing pleadings within 90-120 days. The AG's Office has made great strides in an effort to reduce the time frames, but it is becoming increasingly difficult with the limited amount of staff available at the AG's Office. Some pleadings are unable to be completed in the 120 days and in some cases hearing dates are not being requested within the 14-30 days as outlined in the Guidelines. It has become apparent that the AG's Office needs more attorneys to handle the increasing case load in order to meet or exceed the CPEI goal of completing cases in an average of 12-18 months. BRN staff has taken on the following additional tasks in an effort to decrease time frames:

- Since October 1, 2009, serves all accusations and petitions to revoke probation. This has resulted in accusations being served the same day signed or within three days if over a weekend, instead of 7 to 90 days when the documents were sent via US mail to be assigned to a Deputy Attorney General (DAG) for service.
- Staff was also preparing all default decisions until July 27, 2010, when the AG's Office mandated that the BRN stop this processing and return the activity to their office. This mandate was based on a Superior Court Judge's statement that the AG's Office has not been including evidence packets to support the license revocation.
- Strict adherence to the statutory requirement of Government Code Section 11506 which requires a Notice of Defense be filed within 15 days after service of an accusation. This has dramatically reduced the time until a default decision is processed as well as increased the number of default decisions prepared.

As cases have begun to move more quickly through the AG's Office, the workload has dramatically increased at the OAH. Hearing dates are now being scheduled between 6 to 8 months out, instead of within 90 to 120 days. In addition, Administrative Law Judges continue to approve case continuance requests which can add another 6 to 8 months to the initial scheduled date. OAH has also had increased workload demands from other departments and has a need for additional Judges to handle the increased workload.

INVESTIGATIONS CLOSED WITHIN:	FY 2006/07	FY 2007/08	FY 2008/09*	FY 2009/10*	TOTAL	AVERAGE % CASES CLOSED
90 Days	10	58	1,973	4,235	6,276	49.1%
180 Days	8	46	279	1,441	1,774	13.9%
1 Year	64	93	346	1,172	1,675	13.1%
2 Years	168	266	335	795	1,564	12.3%
3 Years	114	229	208	343	894	7.0%
Over 3 Years	123	201	106	159	589	4.6%
Total Cases Closed	487	893	3,247	8,145	12,772	
AG CASES CLOSED WITHIN:	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10	TOTAL	AVERAGE % CASES CLOSED
1 Year	153	124	153	33	463	26.4%
2 Years	182	218	163	136	699	39.8%
3 Years	51	76	90	102	319	18.2%
4 Years	13	17	25	87	142	8.1%
Over 4 Years	11	9	10	102	132	7.5%
Total Cases Closed	410	444	441	460	1,755	
Disciplinary Cases Pending	604	599	692	822	N/A	

* For FY 2008/09 and 2009/10 the investigations closed data includes informal investigations by BRN staff for conviction cases which take significantly less time than a formal investigation.

CITE AND FINE PROGRAM

The BRN Cite and Fine Program regulations became effective in August 1996, and the Program was implemented in January 1997. Since July 1, 2002, the Program has issued 375 citations and fines. Citations and fines are used for relatively minor violations that do not warrant revocation or probation. The BRN will begin issuing citations for non-compliance with address change notification and use citations more extensively for continuing education audit violations. The BRN staff is exploring other areas previously not utilized for citations and fines.

The BRN has authority to cite, fine, and issue an order of abatement for the unlicensed practice of registered nursing. While criminal charges may also be filed in some instances for such unlicensed practice, district attorneys do not generally pursue these cases unless they are egregious. One of the benefits of the Cite and Fine Program is the ability to take action against a person for the unlicensed practice of registered nursing and provide this information to the public on the BRN Web site.

Since the last Sunset Report, CCR Section 1435 was amended and now authorizes the BRN Executive Officer to issue citations and fines and to modify the contested citation process. A subsection was also adopted specifying the requirements for public disclosure, record retention, and purging. In April 2008, Section 1435.2 was amended increasing the maximum fine amount that the BRN may impose from \$2,500 to \$5,000 and included the following circumstances under which the higher fine amount could be imposed:

- A violation that has an immediate relationship to the health and safety of another person.
- The cited person has a history of two or more prior citations of the same or similar violations.
- Multiple violations that demonstrate a willful disregard for the law.
- A violation(s) perpetrated against a senior citizen or person with a disability.

BRN staff working in the Citation and Fine Program began actively enforcing payment of citation fines in April 2009. Enforcement includes placing a hold on a license renewal until the citation fine is paid. BRN staff are also in the process of collecting any unpaid fines and will make referrals to the Franchise Tax Board for noncompliance. These procedures have significantly increased the amount collected by the BRN as shown in the following table:

CITATIONS AND FINES	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Citations	17	35	115	181
Total Citations With Fines	17	35	114	177
Amount Assessed	\$26,750	\$69,750	\$185,750	\$229,000
Reduced, Withdrawn, Dismissed*	0	0	0	- \$22,775
Amount Collected	\$7,950	\$9,800	\$33,650	\$224,875

* This includes fines that have been reduced, withdrawn or dismissed based upon mitigating circumstances or additional information received by the BRN.

DIVERSION PROGRAM

The BRN Diversion Program was created in 1985 as an alternative to disciplinary action for RNs whose practice may be impaired due to chemical dependency or mental illness. It was added as another tool to assist the Board in intervening into the practice of those RNs whose substance abuse or substance use disorder has not risen to the threshold of actual harm to the public. This section first outlines the changes in the Program since 2002 and then provides a current Program overview.

CHANGES IN DIVERSION PROGRAM SINCE THE 2002 SUNSET REPORT

Statutory Changes---B&P Code Sections 2770.7 and 2770.8 were amended in January 2009 as a result of SB 1441, which added additional criteria for acceptance, denial, or termination of RNs in the BRN Diversion Program. Additions were also made related to the investigations and disciplinary actions for RNs in the Program. SB 1441 also established the Substance Abuse Coordination Committee within DCA to formulate uniform and specific standards that each healing arts board would then be required to use in dealing with substance-abusing licensees. The BRN Diversion Program Manager was a part of the working group for the subcommittee in 2009.

Contractor---Based on a competitive bidding process, Maximus was awarded the most recent contract for Diversion Program services. The new contract began on January 1, 2010, and expires on December 31, 2012, with two one-year renewal options. Maximus has been the Diversion Program contractor since July 1, 2003. On July 15, 2010, the BRN received a copy

of the results of a mandated audit of Maximus that reviewed more than two years of information. The results of the audit confirm that the BRN Diversion Program is successful and concluded that Maximus is effectively and efficiently monitoring BRN Diversion Program applicants and participants and meeting contract requirements.

National Committee Participation---The BRN Diversion Program Manager serves on the NCSBN Substance Use Disorder Committee and regularly attends meetings. The committee includes representatives from various states and is brought together to review discipline and alternative programs and provide recommendations for regulatory practices for licensees with substance abuse disorders.

DIVERSION PROGRAM OVERVIEW

The BRN Diversion Program fulfills two major purposes: first, it protects the public by protecting the health and welfare of patients by providing immediate intervention in the practice of the impaired RN. This is done by immediately removing the RN, who may have substance use and abuse disorders or mental illness, from the work place and placing the license on inactive status so the nurse does not work while focusing on recovery. Second, it provides a comprehensive program which requires immediate evaluation, treatment, close monitoring, support, and recovery of the RN to prevent future problems. This enables the RN to eventually be returned to practice in a manner that assures patient safety or to assist in the permanent removal of the RN from practice if he or she is no longer suitable for the nursing profession.

The Diversion Program has proven to be a successful alternative to the lengthier and costlier disciplinary process. It is a voluntary program that provides public protection by including the BRN, the Contractor, Diversion Evaluation Committee (DEC) members, Nurse Support Groups, Drug Testing Laboratories, Evaluators, and Work Site Monitors, all working together as a team to provide comprehensive evaluations and monitoring of RNs in the Program. It requires immediate intervention and removal from practice for all RNs entering the Program within ten days of the initial evaluation for entry. Participants join the Diversion Program either by self- or BRN referral. Since 1985, there has been over 4,000 RNs who have entered the Program, the majority (over 2,600) by self-referral. BRN referrals include those who are offered the program as an alternative to the discipline process. Over half of the RNs offered this alternative accept the Program.

Over 1,400 RNs have successfully completed the Diversion Program, resulting in the return of safe, rehabilitated nurses to the workforce. Several factors contribute to its success:

- Early and immediate intervention, in lieu of the lengthier time for disciplinary cases.
- Use of strict eligibility criteria to ensure only appropriate applicants are admitted to the program. Eligibility criteria include: no patient harm, no sales of drugs, no sex offenders, no prior discipline for the same type of offense in California, and no prior termination from a diversion program.
- Prohibiting the RN from resuming practice until deemed safe by a panel of experts.
- Development of an individualized rehabilitation plan that becomes a contract between the participant and the Diversion Program. The plan is developed by a DEC, which is comprised of experts in the field of chemical dependency and mental illness, and

approved by the Diversion Program Manager. The Diversion Program added another DEC in August 2010. There are currently 14 DEC's throughout California.

- Close monitoring of participants for compliance with their rehabilitation plan.
- Requirement to have a worksite monitor prior to job approval.
- Participants' involvement in Nurse Support Groups.
- Stringent criteria for determining successful completion. Two criteria are that the participant must demonstrate a change in lifestyle that supports continuing recovery and have a minimum of 24 consecutive months of clean body-fluid tests. A participant with a history of mental illness must demonstrate the ability to identify the symptoms or triggers of the disease and be able to take immediate action to prevent an escalation of the disease.

One measure of a diversion program's success is the number of successful graduates. Another indicator is the relapse or recidivism rate. The files of RNs are purged upon successful completion of the Program and the graduates are not tracked; however, data is available based on "self-reporting." Prior participants are generally very forthcoming with acknowledging program participation as it is favorable to them by showing they have taken steps for recovery and it is used as mitigating evidence when pleading current cases. Since the Program began in 1985, there are 40 known instances of relapse or a 4.9% recidivism rate.

Records of participants who are terminated from the Program and are deemed to present a threat to the public or his or her own health and safety are no longer confidential (B&P Section 2770.11). A copy of all Diversion Program records for the RN is forwarded to the BRN's Enforcement Division. The Board may use any of the records it receives in any disciplinary proceeding. The amended law also specifies that an RN waives any laws and regulations relating to confidentiality of records if the RN:

- Presents information relative to his or her participation in the Diversion Program during any Board investigation.
- Files a lawsuit against the BRN relating to any aspect of the Diversion Program.
- Claims in defense to a disciplinary action that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation (B&P Section 2770.12).

The administrative costs for the Diversion Program are borne mainly by the BRN. The cost to participate in the Diversion Program, when considering all costs, including staffing, has consistently proven to be approximately one-third less expensive than the cost to discipline the RN through the Enforcement Division. Diversion Program participants pay \$25 per month to help offset Program costs to the BRN. A participant may request that the payment be deferred based on financial hardship. Participants are responsible for the cost of random body fluid tests as well as any treatment that is mandated. Statistics related to participant outcomes and overall costs of the program are detailed in the following table:

DIVERSION PROGRAM STATISTICS	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Program Costs*	\$1,064,962	\$1,033,839	\$1,253,930	\$1,436,324
Total Participants	448	445	502	492
Successful Completions	71	93	74	90
Unsuccessful Completions	97	96	55	92

* Monies to contractor.

Diversion Program Audit Summary: On several occasions in the past, the BRN in conjunction with several other health care related boards, requested that DCA audit the Diversion Program. This was an attempt to proceed toward greater accountability and transparency of the program. In addition, the audit could verify that the contractor was following the core requirements outlined in the contract and could provide mandatory protection to the public by effectively monitoring the RNs and assisting them in their recovery. The audit may also produce recommendations to strengthen the program.

As a result of SB 1441, an audit was mandated pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code. The audit required DCA to “conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by DCA to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.”

The audit was to test the period of July 1, 2007, through June 30, 2009. However, the actual testing period extended several years before and after the test cases due to the multiple year nature of the program. The audit was performed in accordance with the Standards for the Professional Practice of Internal Audits, and was completed and released on July 15, 2010 to the BRN. The audit confirmed that the Diversion Program is successful. It concluded the contractor, Maximus, is complying with the mandates of the contract and substantiates that they are fulfilling contract requirements. There were no extensive systematic problems or non-compliance throughout the program. Maximus is adequately meeting all of the requirements outlined in SB 1441.

CONSUMER SATISFACTION

The BRN mailed a Consumer Satisfaction Survey to a random sample of complainants whose complaints were closed during fiscal year 2006/07. Surveys were later mailed to complainants whose cases were closed from July 1, 2007, to December 31, 2007. An additional 399 surveys were recently sent and are currently being completed by complainants whose cases were closed between January 1, 2008, and June 30, 2010. The complaints were filed by the public or the nursing industry, e.g., employers, co-workers, and included cases closed with or without disciplinary action.

It should be noted that findings reported here are from significantly smaller sample sizes than those reported in the previous Sunset Report. Findings from fiscal year 2006/07 disclosed that overall, and regardless of the outcome of the complaint, complainants were satisfied with knowing where to file the complaint, the way the complaint was initially handled, and how BRN staff treated them. Satisfaction ratings were equal or slightly higher in all areas except knowing where to file a complaint and being kept informed of the status of the complaint compared to the data reported in the 2002 Sunset Report. Overall, there was a higher level of satisfaction when disciplinary action was taken. Regardless of outcome, complainants were generally dissatisfied with the length of time taken to settle the case and the way they were kept informed about the status of the case. Findings from the July 1, 2007, to December 31, 2007, surveys indicate lower ratings in some areas and should be considered. However, these results should be viewed with caution due to the small sample size of this group. Comprehensive findings of the survey are detailed in the table on the following page. The information below summarizes the findings:

Fiscal Year 2006/07:

- 76% were satisfied in knowing where to file a complaint.
- 74% were satisfied with the way they were treated and how the complaint was handled.
- 55% were satisfied with the information and advice given on the handling of the complaint.
- 34% were satisfied with the way the BRN kept them informed of the status of their complaint.
- 34% were satisfied with the time it took to process their complaint.
- 42% were satisfied with the outcome.
- 50% were satisfied with the overall service provided by the BRN.

Of the 115 surveys mailed, 17 were undeliverable and 38 responses were returned. Of the 38 responses returned, 13 involved complaints that resulted in disciplinary action and 25 involved complaints closed with or without merit. The response rate for complaints with disciplinary action was 33% and the response rate for complaints closed without discipline was 42%. The overall response rate was 39%.

7/1/07-12/31/07:

- 85% were satisfied in knowing where to file a complaint.
- 58% were satisfied with the way they were treated and how the complaint was handled.
- 46% were satisfied with the information and advice given on the handling of the complaint.
- 27% were satisfied with the way the BRN kept them informed of the status of their complaint.
- 23% were satisfied with the time it took to process their complaint.
- 42% were satisfied with the outcome.
- 31% were satisfied with the overall service provided by the BRN.

Of the 61 complaint surveys mailed, 6 were undeliverable and 26 responses were returned. Of the 26 responses, 9 involved complaints that resulted in disciplinary action and 17 involved complaints closed with or without merit. The response rate for complaints with disciplinary action was 50% and the response rate for complaints closed without discipline was 46%. The overall response rate was 47%.

Complaint processing information, including Frequently Asked Questions (FAQs) and an online complaint submission option, are available on the BRN Web site. A FAQs document is also mailed with the complaint acknowledgement letter. The document describes the steps, procedures, and time frames from receipt of complaint to final disposition.

CONSUMER SATISFACTION SURVEY RESULTS											
Questions	2006/07					July 1, 2007-December 31, 2007					
	45					70					
	13					25					
	Surveys Mailed:					24					
Surveys Returned:					9						
		Closed w/ Discipline					Closed w/out Discipline				
		Satisfied	Dissatisfied		Satisfied	Dissatisfied		Satisfied	Dissatisfied		
1. Were you satisfied with knowing where to file a complaint and whom to contact?	100%	0%		64%	32%		100%	0%	76%	24%	
2. When you initially contacted the BRN, were you satisfied with the way you were treated and how your complaint was handled?	92%	8%		64%	28%		78%	22%	47%	53%	
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the BRN would take?	69%	15%		48%	48%		67%	11%	35%	65%	
4. Were you satisfied with the way the BRN kept you informed about the status of your complaint?	31%	62%		36%	56%		67%	33%	6%	94%	
5. Were you satisfied with the time it took to process your complaint and to investigate, settle or prosecute your case?	23%	69%		40%	60%		44%	56%	12%	88%	
6. Were you satisfied with the final outcome of your case?	54%	31%		36%	64%		89%	11%	18%	76%	
7. Were you satisfied with the overall service provided by the BRN?	62%	23%		44%	48%		67%	33%	12%	88%	

The items may not equal 100% because not all respondents may have answered each item.

SECTION 5: ENFORCEMENT EXPENDITURES AND COST RECOVERY

AVERAGE COSTS FOR DISCIPLINARY CASES

The table below shows the average costs of the investigation and prosecution per case. The average cost per case has dropped significantly since fiscal year 2006/07. This drop in costs is mostly attributed to including the number of informal investigations, which is the majority that are handled by Board of Registered Nursing (BRN) staff and not sent to Division of Investigation (DOI) for formal investigation. It may also partially be attributed to the full utilization of vacant positions at DOI. Costs for both investigation and prosecution are increasing as the number of cases referred for action increases and the emphasis on timeliness of completion increases.

The current cost for investigation is \$192 per hour. The BRN DOI budget is \$4.7 million. The BRN does not receive consistent and detailed billing from DOI, and requests an audit of DOI accounting practices to improve our ability to control investigative costs. On August 19, 2010, DOI did begin sending individual cost per case data. The BRN questions whether some of the investigations require the use of sworn investigators. While approximately 40% of the BRN cases involve drug diversion, which could result in criminal charges, the cases are administrative and do not require a criminal filing to prove. The BRN is required to pay not only for administrative case preparation but also for any criminal investigation needed to file a case. There has been at least one case which resulted in a six figure bill against an unlicensed person which the BRN paid but could not recoup any cost recovery due to the person's unlicensed status. There have been other cases where criminal investigations were conducted but did not result in a local district attorney filing criminal charges.

The current Attorney General's (AG's) Office fees are \$170 per hour for attorneys and \$120 per hour for paralegals. The BRN 2009/10 budget for the AG's Office is \$3.6 million. Periodically, the BRN receives stacks of paper receipts for each case assigned to the AG's Office, and sporadically receive a quarterly electronic report which only includes specific date benchmarks and not individual billing information. Due to the volume of cases at the AG's Office, the BRN is not able to convert the paper receipts/bills into a meaningful report to verify accurate billings. BRN enforcement staff do attempt to monitor costs on a monthly basis to ensure sufficient funding throughout the course of the fiscal year. While the BRN does not reduce the number of cases sent to the AG's Office, at times, cases may be prioritized and BRN staff is in regular contact with the AG's Office to monitor the costs and ensure that the BRN does not exceed the spending authority. Beginning August 2010, the AG's Office promised the BRN electronic billing information; however, to date no electronic information has been received. At this time, the BRN requests an audit of the AG's Office expenditures to improve our ability to monitor and control costs. The BRN is also requesting a mechanism to increase expenditure authority for the AG's Office and Office of Administrative Hearing (OAH) to enable a continuous flow of work throughout each fiscal year. The BRN exceeded the budget line item for OAH in fiscal years 2006/07, 2008/09, and 2009/10.

These issues are discussed in more detail in the 2010 Board Issues and Recommendations Section in Part 2 of this report.

AVERAGE COST PER CASE INVESTIGATED	FY 2006-07	FY 2007/08	FY 2008/09	FY 2009/10
Cost of Investigation	\$3,925,686	\$4,242,547	\$4,668,851	\$4,003,035
Cost of Expert Witnesses	\$138,658	\$106,000	\$129,730	\$171,475
Number of Cases Closed*	490	902	3,263	8,145
AVERAGE COST PER CASE**	\$8,295	\$4,821	\$1,471	\$513
AVERAGE COST PER CASE REFERRED TO AG	FY 2006-07	FY 2007/08	FY 2008/09	FY 2009/10
Cost of Prosecution	\$2,960,229	\$2,969,788	\$2,973,750	\$4,184,463
Cost of Admin. Hearings	\$517,159	\$377,616	\$443,936	\$550,250
Number of Cases Referred	410	444	441	460
Average Cost Per Case	\$8,481	\$7,539	\$7,750	\$10,293
AVERAGE COST PER DISCIPLINARY CASE	\$16,776	\$12,360	\$9,221	\$10,806

* Beginning FY 2008/09, the number of closed investigations includes BRN staff desk investigations.

** Average cost per case for investigations does not include BRN staff time.

COST RECOVERY EFFORTS

In the past four fiscal years, a total of \$1,390,604 has been collected in cost recovery by the BRN, which is 50% of the total cost recovery amount ordered. This is an increase from the previous report in which 32% of the amount ordered was collected over six fiscal years.

Beginning in March 2009, the BRN Probation Unit staff began more consistently and actively pursuing the creation of cost recovery plans during initial meetings with probationers. Once the plan is agreed upon by the probationer, the probation monitoring staff are more actively ensuring compliance or following protocol for probation violations.

COST RECOVERY DATA	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Total Enforcement Expenditures	\$7,541,732	\$7,695,951	\$8,216,578	\$8,969,006
# Potential Cases for Recovery*	605	635	670	984
# Cases Recovery Ordered	126	138	144	182
Amount of Cost Recovery Ordered	\$619,543	\$650,547	\$647,310	\$870,743
AMOUNT COLLECTED	\$316,903	\$277,161	\$386,228	\$410,312

* The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation(s) of the NPA and includes accusations filed and pre-accusations pending at the AG's Office.

SECTION 6: RESTITUTION PROVIDED TO CONSUMERS

The Board does not have authority to order restitution to consumers.

SECTION 7: COMPLAINT DISCLOSURE POLICY

The Board of Registered Nursing (BRN) Complaint Disclosure Policy (Attachment 4) was last revised and adopted by the Board on September 7, 2001. Pursuant to the policy, the BRN releases complaint information once an accusation is prepared by the Attorney General’s (AG’s) Office and filed by the BRN. The Board members’ vote adopting a final decision (outcome of the accusation) is also public information. In the following situations, complaint information is disclosed in lieu of or prior to the filing of an accusation:

- Citations, fines, and orders of abatement are subject to public disclosure once they become final.
- Interim suspension orders are disclosed to the public after an administrative hearing ordering the suspension.
- Suspensions or practice restrictions imposed pursuant to Penal Code Section 23 are disclosed after a judge has issued an order.

A summary of a complaint may be provided to the subject of the complaint or the subject’s attorney under Section 800(c) of the Business and Professions Code. The BRN may elect not to disclose investigative files under Section 6254(f) of the Public Records Act; Section 6254(c) exempts disclosure of certain personal information. The BRN has based its disclosure policy on legal advice and concerns about consumer protection, investigative integrity, and basic privacy issues pursuant to:

1. Public Records Act (Government Code Section 6250 et seq.)
2. Information Practices Act (Civil Code Section 1798 et seq.)
3. California Constitutional Right to Privacy (California Constitution, Article I, Section I)

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		✘
Citation	✘	
Fine	✘	
Letter of Reprimand *	✘	
Pending Investigation		✘
Investigation Completed		✘
Arbitration Decision		✘
Referred to AG: Pre-Accusation		✘
Referred to AG: Post-Accusation (Accusation Filed)	✘	
Settlement Decision**	✘	
Disciplinary Action Taken	✘	
Civil Judgment***	✘	
Malpractice Decision	N/A	
Criminal Violation:		
Felony***	✘	
Misdemeanor***	✘	

* A public reprimand is considered disciplinary action.
 ** This is considered disciplinary action.
 *** If resulting in accusation or disciplinary action.

SECTION 8: CONSUMER OUTREACH, EDUCATION, AND USE OF THE INTERNET

Consumer Outreach and Education

- **BRN Web site, www.rn.ca.gov**---The Web site has been operational since 1999 and currently has over two million hits per month. The BRN continues to update and improve its Web site on a daily basis so it is responsive to the public's needs.
- **The BRN Report**---The BRN's official newsletter is available to the public online at the BRN Web site. The most current issue was posted in November 2009, and back issues are also available.
- **Webcast of Board Meetings**---In 2009, the BRN began regularly providing access to Board meetings through a live webcast. Previous webcasts can be viewed on the BRN Web site along with agendas and meeting minutes.
- **Presentations**---Board members and staff regularly give presentations to consumers, RNs, student nurses, governmental agencies, and professional organizations.
- **Educational Conferences and Nursing Summits for Targeted Groups**---The BRN sponsors or co-sponsors educational conferences that are generally geared to meet nursing practice, education, or discipline-related needs. For example, on November 7, 2005, in southern California and January 31, 2006, in northern California, the BRN hosted a two-day Investigator Training for Division of Investigation (DOI) staff that provided a comprehensive review of complaints against registered nurses (RNs), the most important types of Nursing Practice Act (NPA) violations, and the standard of evidence used in administrative hearings. In May 2010, BRN staff conducted an Expert Witness workshop. In March 2004, the BRN held the Spring 2004 "Magic in Teaching" conference, and continues to co-sponsor the event twice a year. The conference focuses on teaching strategies for nursing faculty. In August 2002, the BRN co-hosted the National Council of State Boards of Nursing (NCSBN) annual meeting where national RN licensure examination issues and policies were decided.

The public is invited to conferences and summits that focus on more global issues such as the nursing shortage. For example, the Board co-hosted its fourth Nursing Summit in September 2002 to address the nursing shortage. More than 600 professionals from various health care organizations attended. Consumer organizations such as the American Association of Retired Persons (AARP) were invited, as well as the media.
- **Public Inquiries**---The BRN responds to questions about nursing practice, BRN programs, and related issues from consumers who reach the BRN via telephone, mail, e-mail, and the webmaster.

Online Consumer Services

The BRN's Web site is continually updated and contains the following information: all public meeting dates, agendas and minutes; applications for licensure; the renewal process; how to file a complaint about a licensee or the Board; disciplinary actions; policies and advisory statements; newsletters; the NPA; and online license verifications for RNs with permanent or temporary licenses or interim permits and for Continuing Education Providers. The public can verify the status of a license 24 hours a day, 7 days a week, including viewing disciplinary information. If additional information is needed, the requestor is able to contact the office during regular business hours. The information related to licensees is updated every business day to reflect any status changes and is available the following day. Real-time updates are not possible at this time due to the current limitations of the legacy system.

Online Services for Registered Nurses

The BRN offers the following online services to RNs:

- License renewal
- Advanced practice certificate renewal
- Duplicate license request
- Address changes
- Licensure by endorsement and examination applications and information
- Form request for application packets and fingerprint forms
- Direct routing of online requests
- BRN-approved nursing program information
- Complaint form and information

BRN staff routinely corresponds with applicants, licensees, nursing programs, consumers and the general public via e-mail communications, which assists in a timely response to the public's needs and concerns. E-mails sent to the webmaster address are directly routed within the BRN to the appropriate unit: Renewals, Licensing, Diversion, Nursing Education, or Enforcement.

Online Testing/Examination Services for Initial Licensure and Renewal

The National Council Licensing Examination for Registered Nurses (NCLEX-RN) has been administered via computer-adaptive test since 1994. Since October 2002, Pearson VUE Testing Service has been the vendor for the NCLEX-RN and provides online services to applicants to register and make appointments to test. There is no examination for license renewal.

Internet Enhancements

In addition to enhancements that have been discussed above, in August 2006, the BRN created an online subscription service, which allows subscribers to be notified by e-mail when new material is added to the BRN Web site. Individuals can subscribe by simply connecting to the link from the BRN home page and entering their e-mail address. The BRN is continually reviewing processes to determine ways to improve services to the public via the Internet as is apparent in the number of enhancements described throughout this report.

Registered Nursing Practice Outside the Traditional “Marketplaces”

RNs and advanced practice nurses practice in a variety of specialty areas and settings, and the NPA is written to enable expansion of practice. According to B&P Section 2725, the RN and advanced practice nurse are authorized to work in an organized health care system, which include, but are not limited to, health facilities licensed pursuant to Chapter 2, Section 1250 of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians’ offices, and public or community health services. Recently, the BRN has become aware of nurses practicing in aesthetic medical practices, i.e., “Med Spas.” This subject is discussed in more detail under the 2010 Issues and Board Recommendations Section in Part 2 of this report.

Online Advice “practice without presence” Challenges

Telenursing is a subset of telehealth that focuses on the delivery, management, and coordination of nursing care and services using telecommunications technology. Telehealth nurses use the nursing process to provide care for individual patients or defined patient populations over a telecommunication device. The nursing process (assessing patient needs and symptoms, prioritizing the urgency of patient needs, collaborating and developing a plan of care and evaluating outcomes) is the same in telenursing as in traditional nursing practice.

Telehealth/telenursing are common practice at this time. RNs engaging in this area of nursing are required to follow the NPA in the same manner as RNs providing care in other settings. Any RN providing telehealth/telenursing services to a patient in California must hold an active California license. At this time, the BRN is not aware of any issues related to this area of nursing.

Regulation of Registered Nurse Internet Practice

The BRN has not identified any RN Internet practice that requires regulation.

Current Issues Related to Registered Nurses in California

Included in Part 2 of this report, under the 2010 Issues and Board Recommendations and in Attachment 5, is information and current issues related to the ongoing nursing shortage and current nursing practice. This information was not specifically addressed in the information requested in Part 1, so it is detailed in Part 2.

PART 2

RESPONSE TO ISSUES IDENTIFIED AND FORMER RECOMMENDATIONS MADE BY THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND DEPARTMENT OF CONSUMER AFFAIRS

2002 BOARD RECOMMENDATIONS

2010 ISSUES & BOARD RECOMMENDATIONS

PART 2.

BOARD OF REGISTERED NURSING

BOARD'S RESPONSE TO ISSUES IDENTIFIED AT PRIOR SUNSET REVIEW

During the previous Sunset Review, the Joint Legislative Sunset Review Committee (JLSRC) raised 29 issues initially and then an additional seven later in the process for a total of 36. The Department of Consumer Affairs (DCA) raised nine issues, and the Board of Registered Nursing (BRN) identified five issues and developed a set of recommendations to address the issues. A summary of these issues and the status, including the Board's current recommendation, if appropriate, is detailed in this section. To minimize repetition, similar issues, questions, and recommendations from the previous Sunset Review have been grouped together with one response. For this reason, they are not in numerical order. The JLSRC, DCA, and Board issues, questions, comments, and recommendations in the original numerical order are in Attachment 6. Current trends and issues related to registered nursing and the Board's 2010 Issues and Recommendations are also included at the end of this section.

BOARD CONTINUATION

DCA Issue 1: Should the licensing and regulation of the nursing profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

DCA Recommendation: *The Department recommends that the nursing profession should continue to be regulated through the BRN in order to protect the interests of consumers and be reviewed once again in four years.*

2010 Board Response/Recommendation: The Department's recommendation was implemented with enactment of SB 358, which continued the Board of Registered Nursing subject to periodic legislative review via the sunset review process.

BOARD COMPOSITION

JLSRC and DCA Issue 3: The current composition of the Board is a 2 to 1 majority of professional members versus public members, with 5 nurses, 1 physician and 3 public members. Almost all health related-consumer boards have no more than a simple majority of professional members.

JLSRC Question 3: *Would restructuring the composition of the board to achieve greater public representation by adding two public members affect the Board's mission in any way? Would the Board support legislative efforts to increase public membership?*

DCA Recommendation 3: *The Department recommends replacing the physician member with a public member.*

JLSRC Issue 4: The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

JLSRC Question 4: *Why would the Board not seek a statutory change to assure that at least one of the registered nurse members of the Board will include at least one direct-practice registered nurse who is an advanced practice nurse, so that it can continue to receive this level of expertise in the future?*

DCA Issue 4: The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

DCA Recommendation 4: *The Department recommends that one of the professional members of the BRN be required to be an advanced practice nurse.*

2010 Board Response/Recommendation: The preceding issues and recommendations were addressed in legislation (SB 358) in 2003, which replaced the physician member of the Board with a public member and required one of the Registered Nurse (RN) members be an advanced practice nurse. The Board is currently composed of 5 registered nurses and 4 public members; the professional members have a simple majority.

DATA COLLECTION

BRN 2002 Recommendation 1: There be a statutory mandate that the BRN conduct research related to nursing demographics, workforce, and education at least every three years with funding appropriated from the BRN special fund.

DCA Issue 5: The BRN is involved in the collection of information regarding the practice of registered nursing as required by Section 2786 of the Business and Professions Code. The JLSRC questioned whether the Board should continue to be responsible for collecting this information and the extent to which it should collect this data.

DCA Recommendation 5: *The Department recommends that the BRN continue to perform its analysis and survey of the registered nursing practice.*

JLSRC Issue 10: It is unclear why the Board should still be involved in the collection of information regarding the practice of registered nursing, as required by Section 2786 of the Business and Professions Code, and how extensive this data collection be.

JLSRC Question 10: *Does the Board believe that it should still be mandated to collect information regarding the practice of nursing in California and that the current statutory mandate lacks some specifics in what data should be collected and how would a new statutory mandate resolve the funding problem with performing this survey? Does the Board currently collect information upon licensure (or upon renewal of a license) about the active status of the licensee and what area of nursing they practice or are employed?*

2010 Board Response/Recommendation: Both the Board and Department recognize that the collection of valid reliable data regarding the RN population in California is vital for trend analysis and strategic planning. In 2002, B&P Code Section 2717 was added to the B&P Code that requires the BRN to collect and analyze workforce data for its licensees for future workforce planning, at a minimum, on a biennial basis, and outlines the minimum data elements to be collected. The BRN was given authorization to expend \$145,000 annually for this survey on an ongoing basis.

The BRN contracts with a reputable research institution to collect and analyze specified data from a scientifically selected random sample. By doing a sample survey instead of collecting data at the time of renewal, the BRN is able to conduct a more comprehensive survey, obtain a higher response rate, collect data for a point in time instead of across a longer time period, and allows for anonymity of respondents. Since 2004, after the release of each survey, data from the report and other sources is used by the contractor to develop a report titled *Forecasts of RN Workforce in California*, which outlines the most current supply and demand data. Current reports and an interactive data summary are available on the BRN Web site. Many organizations and government entities rely on the BRN to produce this information, which provides reliable and sound data for planning and trend analysis.

BOARD FUND

JLSRC Issue 6 and Additional Recommendation 12: The Board projects that it will incur a deficit in its budget by fiscal year 2004/05 unless the Board begins to receive part of the payment on the loan made to the general fund.

JLSRC Question 6: *Does the Board have any indication of when the loan to the General Fund will be paid back and what the terms or time frame may be? At what time will the Board have to consider an increase in fees to assure that it can avoid a deficit and continue the level of funding necessary for its enforcement program? When was the last fee increase made by the Board?*

JLSRC Recommendation 12: *The Board should work in conjunction with the Department of Consumer Affairs Budget Office and the Department of Finance to assure that its fund condition will be sufficient to reconcile any deficit that may be created by the loan to the General Fund.*

2010 Board Response/Recommendation: In July 2003, the BRN loaned \$12 million to the General Fund; the loan was repaid in total, including interest, by January 2007. In 2008, the BRN loaned the General Fund \$2 million and it is anticipated that the loan will be repaid on or before January 1, 2011.

The Board projected that it would be operating at a deficit by FY 10/11 without an increase in fees; therefore, the Board has promulgated regulations increasing specified fees effective January 1, 2011. Existing fees became effective July 1, 1991, and are set at the minimum level authorized by statute. The proposed fee increase is the first one requested by the BRN in over 19 years, and it will support the enforcement reform of the Consumer Protection Enforcement Initiative (CPEI) taking place in conjunction with DCA. The Governor's proposed budget for fiscal year 2010/11 includes repayment of the BRN general fund loan. The regulatory proposal will be submitted to the Office of Administrative Law by late September.

INTERNET

INTERNET CAPABILITIES

JLSRC Issue 28: Are there other improvements the Board can make to enhance their Internet capabilities?

JLSRC Question 28: *What has the Board done to enhance its Internet capabilities so as to provide improved services and better information to consumers and licensees? What other improvements does the Board expect to make in the future?*

2010 Board Response/Recommendation: Improving and adding information to the Web site is an ongoing project. The BRN Web site is updated on a daily basis with BRN activities, services and information for consumers and licensees. In November 2007, the Web site was reorganized and streamlined to become ADA compliant. At this time, a second Web site (nurse.ca.gov) the BRN was maintaining was integrated into the existing BRN Web site (rn.ca.gov). Information related to the following is included on the BRN Web site:

- Public meetings
- Agendas, meeting minutes, and previously recorded webcasted board meetings
- Applications for licensure
- Disciplinary actions monthly listings
- Disciplinary action document links through on-line license look-up
- Practice information
- Nursing Practice Act and regulations
- BRN e-newsletter and archived prior newsletters
- Fingerprinting information for licensees and applicants
- Direct e-mail addresses for units within the BRN

Since July 2002, the BRN has provided online license verifications for RNs and Continuing Education Providers (CEPs). In October 2004, access to verify temporary RN licenses and interim permits was added. In 2006, links to access disciplinary documents were added as part of the online RN license verification system. These systems allow the public to verify the status of a license 24 hours a day, 7 days a week. The verification system updates daily to provide the most current information available. The BRN offers the following online services to RNs:

- E-mail subscription service
- Licensure by endorsement
- License renewal
- Advanced Practice certificate renewal
- Duplicate license request
- Name and address changes

BRN WEB SITE HOUSED AT DEPARTMENT OF GENERAL SERVICES

JLSRC Issue 29: The Board currently has a Web site housed at the Department of General Services.

JLSRC Question 29: *When will the Web site be transferred to the Board to maintain and update?*

2010 Board Response/Recommendation: This has been completed. The previous BRN Web site, nurse.ca.gov, was housed at the Department of General Services and was relocated to DCA in 2003. In November 2007, the BRN integrated the information located on the nurse.ca.gov Web site into the BRN Web site www.rn.ca.gov. All of the information from the previous Web site is located by selecting the tab titled “Careers in Nursing” in the “Information About” section on the home page of the BRN Web site.

NURSING SHORTAGE

JLSRC Issue 8: California is experiencing and will continue to experience a critical shortage of registered nurses.

JLSRC Question 8: *What specific efforts is the Board making to deal with this public health care crisis and what recommendations does the Board have to resolve the current, and prevent the future shortages of nurses in California?*

2010 Board Response/Recommendation: The nursing shortage still remains a significant ongoing issue; however, great strides have been made over the past eight years to increase the number of RNs entering the workforce in California. Activities representative of the BRN’s efforts to address the RN workforce shortage since 2002 include:

- The BRN has approved 42 new nursing programs from fiscal years 2002/03 through 2009/10, with the majority being approved within the past four fiscal years. As of May 2010, there are 148 BRN approved prelicensure RN programs in California.
- Since fiscal year 2006/07, the BRN has received 85 Letters of Intent from programs interested in offering an RN prelicensure nursing program. It has approved 35 feasibility studies. The average length from the time of the institution’s submission of the initial letter of intent to start a program to receiving the Board’s initial program approval is about 18 months.
- The BRN continues to support the Health Professions Education Foundation scholarship and loan repayment programs for RNs. The assessment fee collected from licensees upon license renewal is deposited into the RN Education Fund. This biennial fee was increased from \$5.00 to \$10.00 in 2003 (SB 358).
- The BRN continues to support legislation and regulatory changes related to RN education that facilitates licensure of safe and competent RNs in California and eliminates redundancy in educational requirements.
- BRN staff continues to work closely with the Legislature, nursing organizations, nursing programs, professional organizations, and clinical agencies to address issues related to nursing and health care by serving on a variety of committees that address these issues.

This issue is discussed in greater detail in Attachment 5, which addresses the current RN workforce, and in the 2010 Issues and Board Recommendations.

LICENSING

APPLICATIONS

JLSRC Issue 19: There are a substantial number of applications for licensure each year, but only about two thirds of those actually receive a license.

JLSRC Question 19: *Please explain why out of 32,400 applications received only about two-thirds of those who apply become licensed and only about 5,000 sit for the examination?*

2010 Board Response/Recommendation: This was explained in the 2002 Sunset Review Report. The primary reasons provided then (i.e., some applicants fail the examination; some applicants do not complete their application process; and some endorsement applicants only wish to have a temporary license) are still true in 2010. In addition, some applicants may not be eligible for licensure because their nursing education does not meet BRN requirements.

TEMPORARY LICENSES AND INTERIM PERMITS

JLSRC Issue 21: There has been a dramatic increase in the number of temporary licenses (out-of-state licensees) and interim permits (examination candidates) issued by the Board over the past five years.

JLSRC Question 21: *What are the reasons for this significant increase in both temporary licensees and interim permits issued and what portion of these prelicensure candidates successfully complete all requirements for licensure?*

2010 Board Response/Recommendation: In the last four fiscal years, there has been a steady **decline** in the number of temporary licenses (TLs) issued, going from 8,678 to 2,821. The most dramatic decline was from 2008/09 to 2009/10, decreasing from 7,073 to 2,821. The number of interim permits (IPs) issued has also slightly declined recently from 8,230 in 2006/07 to 7,062 in 2009/10. The primary reasons for these declines are twofold: 1) a decline in the overall number of TL and IP applications received, and 2) a change in Board procedure effective August 10, 2009, of no longer issuing TLs or IPs prior to receiving fingerprint clearances from both the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). Prior to implementation of the new policy, IP and TL applicants could potentially receive the permit or license the same day if they came to the Board office or within a short period of time if the application was submitted by mail. The fingerprint clearance requirement can delay the process anywhere from a few days to months if there are problems.

BACKLOGS

JLSRC Issue 7: The Board is developing backlogs in the licensing of nurses, in conducting school approval reviews, as well as in other program areas because of lack of staffing.

JLSRC Question 7: *What sort of backlogs are now occurring in the Board's licensing and nursing program approval services and what action does the Board believe is necessary to assure that both these services can be provided on a timely basis?*

JLSRC Issue 20: The Board is experiencing an increase in the amount of time it takes to process applications for examination.

JLSRC Question 20: *Why will it now take longer for the Board to process the candidate's application and does the Board have any recommendations on the way this process could be more streamlined?*

2010 Board Response/Recommendation: Currently, there are no licensing applications or school approval visit backlogs. The licensing application process and the school approval process for nursing programs are evaluated on an ongoing basis to determine if the processes can be accomplished in a more effective and expeditious manner.

In fiscal year 2001/02 the total average processing time for an examination applicant from application to licensure was 169 days. In fiscal year 2009/10, it was 85 days. Factors contributing to the decrease in processing time include: consistent staffing; decrease in applications (12% decrease in 2009/10); and modification of internal processes and procedures. When delays in processing occur, they are generally due to incomplete/missing information from the applicant, educational institution, DOJ, or FBI.

In spite of the significant increase in proposed new programs and already approved programs as well as other responsibilities, the Nursing Education Consultants (NECs) have kept current in performing both the initial and ongoing prelicensure nursing program reviews. On average, NECs visit 15 to 16 schools per semester, including visits to new programs preparing for Board approval, recently approved, and continuing programs. Since fiscal year 2002/03, 42 new program approval visits have been conducted.

PRELICENSURE NURSING PROGRAMS

STUDENT ACCESS, COMPLETION TIME FRAME, AND STANDARDIZED CURRICULUM

BRN 2002 Recommendation 2: The BRN should continue to work with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges to reform the educational system to increase student access and shorten the time for completion of nursing programs. Prerequisite and co-requisite courses should be standardized and course requirements for nursing curricula should be aligned.

JLSRC Additional Issue 13: California is experiencing and will continue to experience a critical shortage of registered nurses.

JLSRC Additional Recommendation 13: *The BRN should continue to work with the Chancellor of the California Community College, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges to reform the educational system to increase student access and shorten the time for completion of nursing programs. Prerequisite and co-requisite courses should be standardized and course requirements for nursing curricula should be aligned. (AB 2314 (Thomson) Chapter 1093, Statutes 2002) requires nursing education reform that should result in students completing their education in a more efficient manner and reasonable timeframe. The BRN should be actively involved in the implementation of the statute.*

JLSRC Issue 14: Does the current education system for the nursing profession need to be reformed to increase student access and allow for timely completion of the nursing program?

JLSRC Question 14: *What specific reforms are necessary to the educational system and nursing programs and what are the best ways to bring this about?*

2010 Board Response/Recommendation: The BRN continues to address this issue. There have been significant improvements in nursing education since 2002. In response to AB 2314 and related legislation enacted later, task forces, work groups, committees, legislation and funding enhancements have all been implemented to increase student access and allow for timely completion of nursing programs. Activities that have occurred include:

- The Board promulgated a regulatory proposal amending the prelicensure nursing program regulations. The primary purpose of the regulatory proposal is to ensure that Board-approved prelicensure programs meet minimum educational standards and prepare students who have the requisite knowledge, skills, and abilities to practice safely and competently at the entry level upon completion of the program. The proposal has been approved and the regulations will become effective October 21, 2010.
- The Governor's Nursing Education Task Force led a \$165 million dollar initiative to build educational capacity over the last 10 years.
- From 2000 to 2006, the Intersegmental Major Preparation Articulated Curriculum (IMPAC) project worked to improve student transfer in California. The project was funded by a grant that enabled faculty from California Community Colleges (CCCs), California State Universities (CSUs), and the University of California (UCs) to meet and discuss issues, concerns, and academic procedures related to major preparation and transfer. These discussions uncovered a number of barriers to student transfer and provided faculty a means to address them. The IMPAC project also worked to develop a model curriculum for the nursing programs that facilitates transfer and program completion without repetition of courses.
- The *2005-2006 IMPAC Annual Report of Science Cluster II: Nursing* reported that the Chancellor's Office approved the enrollment criteria and prerequisite courses for the CCC nursing programs, thus establishing consistent prerequisite courses for admission.
- Legislation was enacted to promote transfers between CCCs, CSUs, and UCs (AB 2839 in 2004 and AB 1295 in 2009). AB 2839 required the BRN to establish a workgroup, or use an existing committee, to encourage and facilitate efficient transfer agreements between associate degree nursing programs and baccalaureate degree nursing programs. The BRN's Education Advisory Committee has worked on this issue. Some CCCs have developed dual enrollment or collaborative programs with CSUs and UCs.
- SB 1245 (2004) established the Entry-Level Master's Nursing Programs Act allowing eligible programs to receive supplemental funds until January 1, 2014, for establishing entry-level master's programs.
- SB 139 (2007) and SB 1393 (2008) prohibit a CSU or CCC program from requiring a nursing student who has a prior baccalaureate or higher degree from a regionally accredited college to complete additional general education units or coursework other than what is unique and exclusively required to earn a degree in nursing.

- AB 1241 (2003), AB 702 (2005) and SB 1309 (2006) all relate to funding resources (i.e., grants, scholarships, loan assumptions, etc.) to increase access to RN education or assist in recruiting and retaining RN students.
- Several associate degree-nursing programs have adopted the *Statewide Associate Degree Nursing Curriculum Model (2005)* developed by the CCC Chancellor's Office.

The BRN continues to work with the CCC Chancellor's Office, the Chancellor of the CSU, the President of the UC, and the President of the Association of Independent Colleges to reform the education system and facilitate student admission and completion of nursing programs. The Board has made continuation of this collaborative effort a 2010 recommendation. BRN staff currently serves on the AB 1295 Implementation Group, a committee with educators and nursing stakeholders, to focus on promoting transfer, pathways, and consistent course requirements between schools to eliminate students having to re-take coursework when transferring between schools.

DECLINING NUMBER OF APPLICANTS

JLSRC Issue 16: The number of applicants to prelicensure nursing programs is declining and some programs are unable to accommodate the number of students who have applied.

JLSRC Question 16: *Does the Board have any recommendations about how admissions could be increased for prelicensure programs and how the number of students graduating from nursing programs could be significantly increased? How many impacted programs are there where there are more applicants than slots available for students?*

2010 Board Response/Recommendation: Improvements have been made in this area, but it continues to be an ongoing issue. The 2008/09 Annual School Survey data showed that there were 25,285 students enrolled on October 15, 2009, compared to 13,401 on October 15, 2002, an 87% increase in student enrollments. Enrollments have increased every year since 2001. Admission spaces and new student enrollments have also increased every year, with 12,812 spaces available in 2008/09 filled with 13,988 students. Nursing programs may enroll more students than spaces initially identified to account for student attrition, or additional funding may be found to expand student enrollment, thus the higher numbers filling spaces than spaces reported available.

Despite the increase in available admission spaces, all of the nursing programs received more applicants than could be accommodated. In 2008/09, 62% (n=22,523) of qualified applicants to California nursing education programs were not accepted for admission. Since this data represent applications, and an individual can apply to multiple nursing programs, the number of applications is likely greater than the number of individuals applying for admission to nursing programs in California.

Student completion from RN programs has almost doubled since 2002/03, with 10,570 graduates in 2008-2009, compared to 5,623 in 2002/03. In addition, there has been a 9% increase in the student retention rate in the last nine years from 66% to 75%. Through the CCC Chancellor's Office grants for Student Success and Retention, schools instituted remediation programs and hired retention specialist counselors which had a positive impact on the graduation and retention rates. With many of the grants ending in the near future, these

numbers could reverse. Continued funding is essential for schools to continue to successfully educate the existing number of RN students to help alleviate the nursing shortage.

The BRN continues to support and be involved in the implementation of other strategies that have been developed with the goal of increasing both the number of students admitted to and graduating from RN programs. These include:

- Collaborative programs between baccalaureate degree programs, associate degree programs, and the community.
- Programs that educate clinical faculty in order to increase their availability.
- Clinical programs (i.e., RN Transition or residency Programs with CINHC through the University of San Francisco, Samuel Merritt University, and others) to help new RNs develop and maintain nursing competence and stay engaged in the nursing profession.
- Scholarship and loan repayment for prelicensure and graduate nursing education.

APPROVAL PROCESS

JLSRC Issue 15: Are there ways in which the Board could improve its approval process for prelicensure nursing programs and thereby facilitate the approval of more programs?

JLSRC Question 15: *How many prelicensure programs are rejected by the Board, and for those rejected, how many have received voluntary accreditation by the National League for Nursing (NLN) or the Commission on Collegiate Nursing Education (CCNE)? Are there reasons why accreditation by the NLN or the CCNE is not sufficient for purposes of approving a prelicensure nursing program? What barriers do agencies generally face in attempting to implement a nursing program? Are there other strategies the Board could use to facilitate the approval process and expand the current number of nursing programs? Has the Board considered “provisional accreditation” for programs applying to the Board for approval, so they have time to meet all the requirements for full approval?*

JLSRC Additional Issue 16: There is some potential for improving BRN’s approval process for prelicensure nursing programs and thereby streamlining and facilitating the approval of programs.

JLSRC Additional Recommendation #16: *The BRN should continue looking for ways to identify strategies to enhance or streamline the nursing program approval process. Also, the BRN’s Education Advisory Committee should explore acceptance of the National League for Nursing (NLN) or Commission on Collegiate Nursing Education (CCNE) accreditation and determine if this accreditation could substitute for BRN approval.*

2010 Board Response/Recommendation: As previously noted, the BRN evaluates the approval process for nursing programs on an ongoing basis to determine if it can be accomplished in a more effective and expeditious manner. Significant changes resulting from this evaluative process include: 1) increasing the continuing approval visit time period from every five years to eight years; 2) promulgation of regulations further clarifying the nursing program approval criteria and requirements; and 3) developing and making available on the BRN Web site a document, *Instructions for Institutions Seeking Approval of New Prelicensure Registered Nursing Program*, which describes in detail the steps involved in starting a nursing

program. The document has been modified and is incorporated into regulations in the Board's prelicensure nursing program regulatory proposal.

The average length of time from beginning to completing the initial BRN approval process is about 18 months. The BRN staff make every effort to expedite the initial approval process by timely reviewing of studies and assisting interested programs to prepare and meet BRN requirements for Board review. The Board approved 42 new nursing programs from fiscal year 2002/03 through 2009/10, with the majority (28) being approved within the past four fiscal years. In this same time period, the BRN received 85 Letters of Intent from programs interested in starting an RN prelicensure nursing program and approved 35 feasibility studies. The Board has not rejected any proposed programs; however, it has "deferred action" on feasibility studies to enable the program to correct deficiencies. The BRN is recommending in the 2010 Issues and Board Recommendations Section of this report an investigation of the possibility of charging a fee to academic institutions that want to start a prelicensure nursing program when they submit feasibility studies in order to pay for staff costs in reviewing and conducting site visits for new RN programs.

The Board's responses to other issues/questions raised in Question 15 remain unchanged and are summarized below:

- The most commonly reported barriers identified by organizations interested in starting a new program and existing programs continue to be: cost (nursing programs are expensive to operate); clinical placements for students; and availability of qualified directors and faculty.
- The Board has determined that accreditation is not a viable alternative to Board approval. Eighty-five programs (57%) currently have NLN or CCNE accreditation. Standards used by NLN and CCNE share global similarities with the BRN rules and regulations; however, the BRN program regulations mandate a more comprehensive and detailed process to evaluate program compliance. Furthermore, the BRN approval process evaluates statutory and regulatory requirements that are unique to California. The cost of voluntary accreditation by NLN or CCNE would pose a barrier for some programs.
- Provisional accreditation is not possible because the regulations set forth the minimum requirements, thus necessitating that each requirement be met at time of program approval.

NATIONAL LICENSING EXAMINATION (NCLEX-RN) PASS RATES

OVERALL DECLINING PASS RATE

DCA Issue 7 and JLSRC Issue 17: The Board has been experiencing declining pass rates on its national licensing examination (NCLEX-RN) for candidates applying for licensure.

DCA Recommendation 7: *The Department recommends that the BRN include the Chief of the Department's Office of Examination Resources on the NCLEX-RN Task Force, should the Task Force be reconvened.*

JLSRC Question 17: *What does the Board believe the problems are related to the declining pass rates for nursing candidates who sit for the NCLEX-RN and what recommendations does the Board have to assist both candidates and nursing programs to improve their pass rates?*

2010 Board Response/Recommendation: This is no longer an issue. In academic year 2000/01, California nursing programs began implementing needed actions to improve California's NCLEX-RN pass rates, including the series of recommendations outlined in the *2000 BRN NCLEX-RN Task Force Report: The Problem and the Plan*. In 2000/01, when the BRN staff observed the widespread implementation of the Task Force recommendations/actions by the nursing programs throughout California, the BRN made the deliberative decision not to reconvene the BRN NCLEX-RN Task Force for a second phase of research. Instead, the BRN chose to use available resources to ensure large numbers of nursing education faculty throughout the state were well informed about the National Council of State Boards of Nursing's (NCSBN) periodic practice analyses and detailed NCLEX-RN Test Plan derived from the practice analyses and used to develop the examination. Trended pass rate data shows California has improved statewide pass rates over the past several years. For the past four years (2006/07 through 2009/10), California has maintained average pass rates at or slightly higher than the national pass rates, ranging from 86% to 89%.

The BRN's NECs closely monitor each program's quarterly and annual pass rate and contact programs whose annual pass rates decline below the 70% Board standard. These programs are required to make timely assessments and improvements. Additionally, on a quarterly basis, the BRN sends each approved nursing program its pass rate report so the program can closely monitor, track, and trend its students' exam performance and ensure that the report reflects only its students. The proposed revisions to the BRN nursing education regulations require programs to maintain an NCLEX-RN annual pass rate of 75% or higher for first time test takers.

INTERNATIONAL APPLICANTS PASS RATE

JLSRC Issue 18: The overall pass rate for international graduates in fiscal year 2000/01 was only 30.3%.

JLSRC Question 18: *Explain the reason for such a low pass rate for international graduates and what direction are these applicants given to improve their chances of passing the NCLEX-RN exam.*

2010 Board Response/Recommendation: This issue continues to be addressed. Some improvements have been made since the 2002 Sunset Review Report where the annual pass rate for the internationally educated first time candidates in 2000/01 was reported in the low 30% range both nationally and in California. For the last four fiscal years (2006/07 through 2009/10), national pass rates have ranged from 41% to 58%. In California, the range was about 37% to 47%. The same key factors identified in 2002 that may contribute to lower pass rates for internationally educated candidates are still relevant in 2010. These factors include English being a second language for many international candidates, as well as differences in international nursing education, practice, medical treatment options, and technology as compared with the United States.

Factors serving to improve the pass rate of international applicants include:

- Proliferation of numerous online resources, such as the NCSBN Web site, which makes a wealth of NCLEX-RN exam related resources readily available to prospective exam candidates around the world.
- NCLEX-RN review companies have designed review sessions and materials to address the English as a second language issue, differences in educational and medical/health care systems, as well as nursing practice and role preparation.
- NCLEX-RN testing centers are now available in 11 countries so candidates no longer have to travel to the U.S. to test.
- BRN staff periodically speak (by invitation) to nurse recruiting groups about the application process including required educational requirements, current exam statistics, and successful examination strategies.
- The BRN encourages California's Board-approved prelicensure nursing education programs to offer space available enrollment in their nursing courses so international candidates can correct identified educational requirement deficiencies without going out of state or having to return to the country where their basic nursing educational program for licensure was completed.
- BRN staff has met with a number of interagency and legislative staff and international business and nursing education representatives from around the world to facilitate successful California licensure for the internationally educated licensure applicants.

RN SCHOLARSHIP AND LOAN REPAYMENT PROGRAM

JLSRC Issue 9: It is unclear how well the Board's scholarship and loan repayment program is functioning and whether it may be under-funded.

JLSRC Question 9: *Please explain the current operation of this program and whether the \$5.00 assessment on license renewal fees is adequate.*

JLSRC Additional Issue 14: Funding for the BRN's scholarship and loan repayment program could possibly be increased and broadened to include funding of nursing educational programs where lack of funding exists.

JLSRC Additional Recommendation 14: *The Board should work with the JLSRC and the Department to consider increasing the assessment for the scholarship and loan repayment program by \$5.00 and to also allow expenditure of those funds for expansion of pre-licensure nursing programs where needed.*

2010 Board Response/Recommendation: The scholarship and loan repayment program (Program) is not underfunded; effective January 2004, the assessment fee was increased from \$5 to \$10. In fiscal year (FY) 2003/04, \$579,410 was transferred to the Health Education Foundation/Office of Statewide Health Planning and Development (OSHPD); in FY 2009/10 the amount more than doubled to \$1,474,975. SB 358 (2003), which raised the assessment, did not redirect funds for expansion of nursing programs.

RN licensees pay an assessment fee at the time of their biennial license renewal to support the Program. The money is transferred to OSHPD, which is the agency responsible for administering the Program. The BRN currently has two representatives on the Health

Education Foundation's Nurse Advisory Committee, which makes recommendations on Program policy and scholarship/loan repayment awards to the Foundation's Board of Directors.

CONTINUING EDUCATION

CONTINUING EDUCATION AUDITS

DCA Issue 8 and JLSRC Issue 22: Not all nurses are audited for compliance with continuing education (CE) requirements, however for those audited and found in non-compliance, they could be required to stop practicing until they fulfill the CE requirement.

DCA Recommendation 8: *The Department recommends that the registered nurses not be required to stop practicing due solely to the failure to meet continuing education requirements.*

JLSRC Question 22: *How are nurses chosen to be audited and approximately how many licensed nurses per year do not meet their continuing education requirements and are directed to stop practicing? Under what circumstances would the nurse be cited and fined for not complying with the continuing education requirements? Are there other alternatives that could be used rather than requiring a nurse to stop practicing?*

2010 Board Response/Recommendation: RNs who have not met the continuing education (CE) requirements for license renewal at the time of the CE audit are no longer directed to stop practicing until the CE requirements are met. RNs are randomly selected for audit. They are referred to the BRN Enforcement Division for review when: contact hours are submitted for a date(s) outside the renewal period being audited; the RN is unable to show proof of continuing education; or the certificates submitted by the RN look suspicious (possibly forged), and the Continuing Education Provider (CEP) is unable to verify attendance. A citation and fine may be issued if the RN failed to comply with the CE requirements. The Board refers repeat or egregious violations, such as knowingly and willfully submitting false documents, to the Attorney General's Office.

Due to staffing issues, the BRN has not been able to maintain a consistent number of RN or CEP audits. The Board considers this to be an outstanding issue, and it is addressed in more detail in the 2010 Issues and Board Recommendations Section.

CE Program Improvements

JLSRC Issue 23: Are there improvements that could be made to the current continuing education program for nurses?

JLSRC Question 23: *Are there new approaches the Board is considering for the continuing education of nurses?*

2010 Board Response/Recommendation: The Board is not currently considering any changes to the CE requirements. Continuing education, particularly as an indicator of continued competence, is a state and national issue. A BRN staff member served as chair and participated on the NCSBN's Continued Competence Committee. The Committee developed five research questions, and it was recommended that NCSBN use the questions to further study the issue of continued competence. The BRN will review the resultant evidence-based

approaches that emerge from the research and discussions, and evaluate the approaches related to CE that may be appropriate for California.

ADVANCED PRACTICE NURSE

JLSRC Issue 12: Should a separate statutory definition for “advanced practice nurse” be created?

JLSRC Question 12: *Why does the Board want to create a statutory definition for term “advanced practice nurse?” Will this possibly cause confusion regarding their particular special expertise and knowledge in one of the currently titled categories of practice?*

JLSRC Additional Issue 15: Should a separate statutory definition for “advanced practice nurse” be created?

JLSRC Additional Recommendation 15: *A separate statutory definition for “advanced practice nurse” should be created.*

2010 Board Response/Recommendation: This issue has been addressed with the addition of B&P Code Section 2725.5 in 2003 defining nurse practitioners, nurse anesthetists, nurse-midwives, and clinical nurse specialists as advanced practice nurses.

PRACTICE

REGULATIONS

JLSRC Issue 2: It is unclear when and if the Board believes that regulations will be necessary to deal with scope of practice issues for registered nurses.

JLSRC Question 2: *If questions arise regarding the practice of nurses or those certified in an advanced nursing field, how does the Board respond to these inquiries? At what point in time would regulations be appropriate to clarify or interpret a particular area of practice for nurses?*

JLSRC Additional Issue 10: There may be situations in which the BRN should adopt regulations to more clearly define the scope of practice for nurses and to clarify that it is the BRN that has sole responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.

JLSRC Additional Recommendation 10: *The BRN should assure that any “advisory opinions” or statements issued by the Board regarding the scope of practice for nurses would not be considered as underground rulemaking, and should consider adopting regulations when there is serious controversy regarding any opinions or statements issued by the BRN regarding the scope of practice for nurses. Also, it should be clarified that no other agency other than the BRN should have responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.*

2010 Board Response/Recommendation: This issue was addressed. The BRN no longer issues advisory opinions or statements and promulgates regulations when issues arise that

require such action. In 2003, SB 358 was enacted amending B&P Code Section 2725 and provides that no state agency, other than the BRN, may define or interpret the practice of registered nursing unless authorized by the NPA or specifically required under state or federal statute.

SCHOOL HEALTH

BRN 2002 Recommendation 5: The CDE, in collaboration with the BRN and other interested organizations, should develop and implement strategies, including possible legislative remedies, to resolve the increasing number and complexity of school health related-issues and to ensure that pupils receive safe and appropriate care.

DCA Issue 6 and JLSRC Issue 11: The Board is concerned that school personnel may be providing nursing services that in other settings would not be permitted.

DCA Recommendation 6: *The Department recommends that the BRN continue its efforts to ensure that the health and safety of pupils are not placed at risk due to receiving health care services by unlicensed school personnel.*

JLSRC Question 11: *What recommendations does the Board have to resolve the increasing number and complexity of school health-related issues and to ensure that pupils receive safe and appropriate care?*

2010 Board Response/Recommendation: In both its 1996 and 2002 Sunset Review Reports, the BRN identified problems and issues related to school health services and expressed concerns related to students being placed at risk due to the use of unlicensed school personnel to provide nursing care. The BRN has continued to address the issues as they relate to consumer protection, student health and safety, the NPA, and the practice of nursing; however, the problems have worsened with time. The Children’s Advocacy Institute at the University San Diego, School of Law, stated in a February 2009 report titled *The Health of California’s School Children: A Case of State Malpractice*, “While the educational setting is the one place where almost all California children come together, the vast majority of California’s schools do not provide health care services that are sufficient to meet their pupils’ needs.”

Failure of schools to provide pupils with health care services, specifically prescribed medications, to which they are legally entitled has been the basis of: public comments from parents, school nurses and administrators, voluntary health organizations, nursing organizations, and attorneys at both Board and Committee meetings; newspaper articles and television reports; and legislative action. The most recent controversies have revolved around administration of insulin to students with diabetes and diastat for students having seizures. A lawsuit against the California Department of Education (K.C. et al. v. Jack O’Connell, et al.), was resolved by a settlement agreement in which the California Department of Education (CDE) issued a legal advisory stating, in pertinent part, that under specified circumstances and pursuant to federal law, unlicensed personnel could administer insulin to students with diabetes. In June 2010, the 3rd District Court of Appeals upheld a Sacramento Superior Court decision that unlicensed school personnel may not administer insulin to students with diabetes as stated in the CDE legal advisory issued pursuant to the K.C. settlement agreement.

The Board has consistently affirmed its position that students should receive all health care services to which they are entitled and which are necessary for them to receive maximum benefit from their educational program. However, such services must be provided by individuals legally authorized to provide the services. B&P Code Section 2725(b)(2) defines medication administration as a nursing function, which cannot be performed by unlicensed persons without express statutory authority. With the exception of glucagon and epinephrine, there is no statutory authority for unlicensed school personnel to administer medications.

Thus far, the approach to resolving student health-related issues has been on an issue by issue, medication by medication basis. Hence the Education Code has been amended to permit unlicensed personnel to administer glucagon and epinephrine, and to permit students with asthma to carry inhalers at school. Legislation has been introduced, but failed passage or was vetoed, to permit unlicensed personnel to administer insulin and diastat. The Board believes that such a fragmented approach to school health services is not in the best interests of students, and fails to ensure that each district/school maintains health care services at a level that ensures every student receives safe and appropriate care.

The Board continues to work with consumers, CDE, school nurses, and nursing organizations as well as with other stakeholders to address school health-related issues as they relate to registered nursing practice.

PRESCRIPTIVE AUTHORITY

JLSRC Issue 13: Should the current terms “furnishing or ordering drugs or devices,” as authorized by Section 2746.51 of the Business and Professions Code for certified nurse-midwives and Section 2836.1 for nurse practitioners, be changed to “prescribing drugs or devices,” clarifying in effect the prescriptive authority for these advanced practice nurses?

JLSRC Question 13: *Why does the Board believe such changes in terms are necessary? What are the distinctions, if any, between the furnishing or ordering of drugs and prescribing of drugs and devices?*

2010 Board Response/Recommendation: The BRN still considers this to be an issue and continues to recommend that the NPA be amended to change the term “furnishing” to “prescriptive authority.” More detailed information on the recommendation is included in the 2010 Issues and Board Recommendations Section.

ENFORCEMENT

CONSUMER SATISFACTION

JLSRC Issue 1: The strategic plan for the Board may need to be updated to focus on the low level of satisfaction regarding consumer complaint handling.

Question #1 for the Board: *Based on the results of the Consumer Satisfaction Survey, does the Board believe that it is meeting the goals and objectives of their strategic plan? How does the Board annually update their strategic plan and does the Board believe that another in-depth strategic plan is now necessary based on the results of this survey? What immediate*

actions can the Board take to deal with this low level of consumer satisfaction regarding the handling of their complaints?

2010 Board Response/Recommendation: The low level of satisfaction regarding consumer complaint handling is still an issue being addressed. Consumer satisfaction survey results received for complaints that were closed in fiscal year 2006/07 reports satisfaction rates equal or slightly higher in all areas except knowing where to file a complaint and being kept informed of the status of the complaint than the data reported in the 2002 Sunset Report. Complainants continued to be dissatisfied with the length of time it takes to settle cases and information provided about the status of the cases. The excessive delays are currently being addressed in multiple venues by the BRN, Division of Investigation (DOI), the Attorney General's (AG's) Office, DCA, and the legislature as described in detail throughout Part 1 of this report and presented in more detail in the 2010 Issues and Board Recommendations. Complaint processing information, including Frequently Asked Questions (FAQs), and an online complaint submission option are available on the BRN Web site. In addition, a FAQ fact sheet that describes the steps, procedures, and time frames of the enforcement process is mailed to complainants with their complaint acknowledgement letter. These FAQs are currently being updated to reflect recent changes in the Enforcement Division.

Regarding the Strategic Plan, the BRN updated its Strategic Plan in 2006. Managers met in 2007 and 2008 to review the plan and determined it was still current and effective and that the BRN was meeting its strategic plan goals and objectives. The BRN plans to work on a Strategic Plan update in 2011.

BUDGET SHORTFALLS

JLSRC Issue 5 and Additional Issue 11: The Board had to suspend actions on disciplinary cases in fiscal year 2000/01 and again in January 2002 because of budget shortfalls.

JLSRC Question 5: *What actions did the Board take to resume appropriate funding levels for its enforcement program? What recommendations does the Board have to assure that action to be taken by the AG's Office on cases will not be suspended in the future? Are there currently any backlog of cases?*

JLSRC Recommendation 11: *A funding mechanism should be developed to permit the delegation to the Department of Finance of one-time, current year augmentation for a BRN's Attorney General's Office (AG) line item. Examples of such mechanisms can be found in the current budget act (Chapter 379, Statutes of 2002) in Budget Control Section 4.40 and 28.50. The BRN would be required to substantiate the public protection need for funding, and show that the funding shortfall was not foreseeable and could not be addressed through the regular budget process. A cap could be placed on the maximum allowable one-time augmentation and requests above the cap would require notification of the Legislature. Such an emergency mechanism could avoid restrictions on AG work due to an unforeseeable budget shortfall. It would provide oversight by a control agency and would be limited in duration and amount.*

2010 Board Response/Recommendation: Since January 2002, the BRN has not suspended any disciplinary actions. BRN staff and the AG's Office monitor expenditures very closely, and if there is any concern with potential overspending, management at the AG's Office and the BRN meet to prioritize cases. If appropriate, the BRN seeks additional funding via the BCP

process. As a follow-up to the 2002 Sunset Review, the BRN received a two-year limited term funding for enforcement and the AG's Office costs for fiscal year 2002/03 and 2003/04. In fiscal year 2005/06, the BRN sought augmentation for the AG's Office and expert witness costs and was approved a reduced amount of that requested. In fiscal year 2007/08, the BRN was approved for one additional personnel year (PY) in the Enforcement Division; however, the BRN did not receive any funding for the appropriation.

As of June 30, 2010, there were 822 cases pending at the AG's Office. While this is the highest number ever, the BRN referred 766 cases and filed 709 accusations/petitions to revoke probation/statements of issue, which are also the highest in BRN history. The agreed upon time frame to complete a pleading is between 90-120 days. While many new cases are processed within this time frame, there continues to be delays which may be attributed to insufficient AG's Office staffing.

The issues of funding and case backlogs are ongoing problems, which are addressed in detail in Part 1 and in the 2010 Issues and Board Recommendations.

BACKLOG

BRN 2002 Recommendation 3: DCA should assist the Division of Investigation in the development of strategies to expedite cases referred by the BRN.

DCA Issue 2 and JLSRC Issue 24: It is taking on average about three years from the time the complaint is filed till final disciplinary action is taken against the licensee.

DCA Recommendation 2: *The Department recommends the BRN develop a plan to reduce the time it takes to process complaints.*

JLSRC Question 24: *Please explain why it is taking on average about three years to complete disciplinary action against a licensee and why the time frame for investigation of complaints has increased to almost 500 days on average and why it is taking an average 200 days from the completed investigation till formal charges are filed by the Attorney General? What is the current backlog of cases at the Attorney General's Office and how does the Board intend to address this backlog?*

2010 Board Response/Recommendation: This is still an issue that is being addressed. The BRN has taken many steps, both internally within the available resources, as well as working with DCA, towards reducing the time it takes to process complaints. The BRN has worked with DCA to request additional positions and re-structured the enforcement process through the creation of a Complaint Intake Unit, Investigations Unit with informal (non-sworn) nurse investigators, Probation Unit, and Discipline Unit. Once the hiring process for the additional 33 new staff members is complete, it is hoped they will be trained and working proficiently by July 2012. At this time, it is unknown how much of an improvement will be achieved with the addition of these staff; however, the BRN will continue to track cases and gather data to determine where additional improvements can be made as well as determine if the BRN has sufficient staff to complete cases within an average of 12 to 18 months, as established by DCA's CPEI.

While additional staff has been added, the BRN is still under the constraint of utilizing outside agencies to complete the investigative and discipline process for applicants and licensees.

While it has always been the goal of the BRN to closely monitor cases at DOI, AG's Office and OAH, it was not able to be done on a regular and consistent basis. Reasons for this include antiquated computer systems, lack of electronic data from DOI and AG's Office to monitor cases, and lack of authority to require outside agencies to complete investigations, pleadings or hearings within a strict timeframe. Currently, enforcement staff regularly meet to discuss follow-up protocols with DOI and AG's Office staff. The BRN continues to monitor case movement through DOI, AG's Office, and OAH

In 2009, the BRN case management analysts began formally tracking all assigned cases throughout the process. Review by the enforcement manager requires time consuming and tedious review of up to seven spreadsheets with approximately 2,000 cases on a quarterly basis. It is anticipated that BCP 1B, which provides for the BreEZe Project, will provide DCA with the resources to create and provide an integrated computer data system sometime in 2012/13, which will improve many aspects, including more efficient tracking of enforcement cases.

Additional information on the backlog and Board recommendations are detailed in the 2010 Issues and Recommendations Section.

COST RECOVERY

DCA Issue 9 and JLSRC Issue 25: The Board still has difficulty in collecting cost recovery.

JLSRC Question 25: *What are the problems with collecting the amount of cost recovery ordered and does the Board have any recommendations how collection could be improved?*

DCA Recommendation 9: *The Department recommends that the BRN improve the collection of cost recovery awards.*

2010 Board Response/Recommendation: This issue is currently being addressed. In March 2009, the BRN was able to hire a full time Probation Manager to augment the Probation Unit staffing. The Probation Manger and staff have been able to review all pending cases and determine the issues surrounding payment of cost recovery during the probation process. The BRN is now enforcing its authority under B&P Code Section 125.3(g)(1) to withhold license renewal or reinstatement until all cost recovery has been paid. Payment plans are now being set-up at the initial meeting with all probationers who are required to pay cost recovery, and they are being monitored more closely. If cost recovery is not completely paid at the end of the probation period, the BRN can extend the probation period for one extra year to recover all costs. If only a minimal amount is owed, the probationer is allowed to complete probation but must pay off the balance of the cost recovery prior to the next license renewal or a hold is placed on the renewal.

Similar changes have also been made to the BRN Citation and Fine Program. The BRN now provides the opportunity for the RN to set up a payment plan to pay fines. If the RN does not pay the fine, BRN staff follows up with written communications. If fines are still not paid, the license renewal will be held until the fine is paid in full. The BRN is still in the process of implementing the program to refer unpaid fines to the Franchise Tax Board for collection.

BOARD COMPLAINT DISCLOSURE POLICY

JLSRC Issue 27: The Board’s Complaint Disclosure Policy may need to be updated because of the Department’s recently issued “Recommended Minimum Standards for Consumer Complaint Disclosure.”

JLSRC Question 27: *Has the Board considered re-reviewing its Disclosure Policy in light of the Department’s recently issued disclosure policy? When is disciplinary action taken by the Board finally disclosed to the public?*

2010 Board Response/Recommendation: This issue was answered in the 2002 Sunset Review Report. The same information applies in 2010. The BRN posts citations for unlicensed activity, accusations, statements of issue, petitions to revoke probation, petitions for interim suspension orders, criminal court orders pursuant to Penal Code Section 23, license suspensions, and final decisions which result in a Board order for public reprimand, probation, suspension, voluntary surrender, and/or license revocation. It is still the opinion of the Board that a complaint which has been filed against a licensee or applicant constitutes unproven allegations and should not be considered public information until fully investigated, reviewed and a determination made regarding substantiation of the allegations. More information is provided in Part 1, Section 7, and the Complaint Disclosure Policy is included in Attachment 4.

DCA ENFORCEMENT TRACKING SYSTEM

BRN 2002 Recommendation 4: DCA should continue to make improvements and enhancements in the existing enforcement tracking system while working on the development and implementation of an integrated department-wide licensing and enforcement computer system.

2010 BRN Response and Recommendation: DCA has continued to work on and improve the enforcement tracking system and is also working on an integrated system (the BreEZe project) projected to be implemented in 2012/13. Until there is a more accurate and efficient system implemented, this continues to be an issue and is addressed further in 2010 Issues and Board Recommendations.

DIVERSION PROGRAM

JLSRC Issue 26: It is unclear how the Board monitors nurses who are participating in its Diversion Program to assure they are in compliance with their rehabilitation plan and what follow-up is done after they leave the program.

JLSRC Question 26: *How does the Board monitor nurses both participating in the diversion program and once they return to the workplace?*

2010 Board Response/Recommendation: This issue was answered in the 2002 Sunset Report. The same information still applies in 2010. On July 15, 2010, the BRN received the results of a legislatively mandated audit of the vendor chosen by DCA to monitor BRN Diversion Program participants. The audit confirmed that the BRN Diversion Program contractor, Maximus, is complying with the mandates of the contract, including the work-related requirements established in the rehabilitation plan.

2010 ISSUES AND BOARD RECOMMENDATIONS

The issues identified and reported in the following section are derived from the Board of Registered Nursing's (BRN) ongoing evaluation of its services and programs; active involvement with consumer, professional, and other governmental agencies; and research conducted by BRN staff and advisory committees. The issues are related and presented in three main categories: BRN Enforcement Division; Nursing Shortage; and Nursing Practice. Additional information regarding the Enforcement Division and current nursing workforce issues are included in attachments.

BRN ENFORCEMENT DIVISION

The BRN recognizes the importance of its enforcement mandate and places high priority on protecting consumers by the appropriate and timely disciplining of RNs' licenses. As previously noted, over 65% of the BRN's budget is spent on enforcement-related activities, and the BRN continuously seeks and implements strategies to maximize the Enforcement Division's effectiveness and efficiency. Some indicators of the Enforcement Division's workload and effectiveness include:

- 64% of complaints are referred for investigation to either BRN staff or the Division of Investigation.
- Decrease in BRN complaint processing time from 100 days in fiscal year 2006/07 to 44 days in fiscal year 2009/10.
- Increase in referrals to AG's Office from 314 to 766 cases and an increase in number of accusations filed from 380 to 787 between fiscal years 2006/07 to 2009/10.
- Increase in stipulated settlements from 182 to 264 from fiscal year 2006/07 to 2009/10. Stipulated settlements are a more expeditious and less costly method of case resolution.
- Increase in disciplinary actions from 309 to 519 in the last four years.

Despite many efforts and the BRN reporting this as an issue in the 2002 Sunset Report, there is still an unacceptably lengthy time period from initial filing of a complaint to resolution. While the total average days has decreased from 1,191 in 2001/02 to 1,006 in 2009/10, the decrease has not been significant. The BRN has been working diligently with the Department of Consumer of Affairs (DCA), the Division of Investigation (DOI), the Attorney General's (AG's) Office, and the Office of Administrative Hearings (OAH) to decrease the timeframes at every step of the process in an attempt to meet DCA's Consumer Protection Enforcement Initiative (CPEI) goal of completing disciplinary cases in an average of 12 to 18 months. Following are recommendations from the BRN for resources necessary to assist in achieving this goal and measures to better protect the public:

Case Management Timeframes---While the average length of time for closing investigations (from 644 to 191 days), preparing accusations (335 to 84 days), and reaching final disposition after the accusation has been filed (247 to 186 days) have all decreased over the past four years, there was still a significant increase in cases taking three or more years to complete compared to the previous Sunset Report in 2002 (1,483 cases reported over four years versus 489 reported over six years). As the BRN implements new procedures that identify additional complaints

(i.e., mandatory fingerprinting, possible mandatory reporting, etc.), the workload and backlog will continue to increase if staffing and resources are not provided.

Recommendation: The BRN and DCA assist and support DOI, AG's Office and OAH in the development and implementation of strategies and procedures to expedite cases referred by the BRN including supporting additional funding and resources necessary to increase staff and implement the proper procedures at these agencies.

Investigations---The DOI and BRN continue to have problems during the investigative process in: obtaining consents for release of medical records; accessing personnel records; interviewing the subject of the complaint and witnesses; and obtaining other relevant records regarding an incident from the health care facility. DOI and BRN investigators need to be able to inspect and copy any documents related to an investigation of an applicant or licensee. The subject and witnesses need to be compelled to cooperate during an investigation. Per Title 22, the Department of Public Health has the authority to inspect and copy any records necessary to conduct an investigation; the BRN is in need of similar authority to obtain necessary investigative records. The BRN also has difficulty obtaining court and arrest records from a variety of jurisdictions throughout California. SB 1111, which was introduced and has since become inactive, addressed some of these issues. The BRN is moving forward with a regulatory proposal to assist in these activities but still requires additional legislative authority to complete investigations more efficiently.

Recommendation: The Senate Committee on Business, Professions and Economic Development introduced legislation (SB 1111) to grant the BRN additional authority to compel cooperation in providing documents during interviews when completing an investigation; however, at this time the bill is inactive. Language similar to that written in SB 1111 should continue to be pursued. Also, research the possibility of having counties make their criminal proceedings available via the Internet as well as developing a method to validate the information provided.

Arrest/Conviction Information from the FBI---The conviction information provided by the Federal Bureau of Investigation (FBI) from fingerprinted applicants or licensees is only valid at the time the fingerprints are initially submitted. Some other states have agreements with the FBI to participate in a "rap back" program, which provides subsequent arrest/conviction information. The California Department of Justice (DOJ) does provide subsequent information from their fingerprint information. The BRN received over 2,600 subsequent arrest notifications from DOJ in fiscal year 2009/10.

Recommendation: The BRN and DCA work with DOJ and FBI to investigate California's participation in the FBI "rap back" program in order to receive subsequent arrest/conviction information from the FBI.

Enforcement Expenditures---Since January 2002, the BRN has not suspended any actions at the AG's Office due to budget shortfalls. Expenditures are monitored very closely by the AG's Office as well as by BRN staff. If there is any concern with overspending, discussions are held with management at the AG's Office and the BRN to prioritize cases. As a follow-up to the 2002 Sunset Review, the BRN received a two-year limited term funding for enforcement and

AG's Office costs through a Budget Change Proposal (BCP) for fiscal year 2002/03 and 2003/04. This was to support the backlog of disciplinary cases that were at the AG's Office; however, this increase had a minor affect on the disciplinary case workload in 2002/03 as a hiring freeze was executed and the AG's Office reverted 32% of their budget authority. The BRN expressed the critical need to utilize the AG's Office budget in order to reduce the backlog of cases to the AG's Office and during fiscal year 2003/04 they expended 91% of the limited term budget augmentation. The BRN found that there was a 41% increase in the number of accusations filed by the AG's Office the second year.

In fiscal year 2005/06, the BRN sought augmentation for the AG's Office and expert witness costs and was approved a reduced amount of that requested. In fiscal year 2007/08, the BRN was approved for one additional position in the Enforcement Division; however, the BRN did not receive any additional funding for the appropriation.

DCA worked in conjunction with all of the healing arts boards to develop a comprehensive BCP for fiscal year 2008/09 and ongoing in response to the requirement that all licensees be fingerprinted and any outstanding criminal history revealed be addressed through the administrative disciplinary process at the AG's Office. This BCP requested a special fund augmentation for 11 (5.5 permanent full-time and 4.5 limited term) positions in the BRN Enforcement Division as well as increased the DOI, AG's Office and OAH budget. The cost of the program was identified at \$594,000 for fiscal year 2008/09; \$2.4 million for fiscal year 2010/11; and ongoing of \$2.3 million. The BRN absorbed the start-up costs associated with the new requirement the first fiscal year and was required to absorb \$500,000 of the total cost each subsequent fiscal year.

To continue to fulfill the statutory responsibility to protect and serve California consumers, DCA, in conjunction with the healing arts boards, requested funding through BCP 1A to support the CPEI. The CPEI is proposing to streamline and standardize the complaint intake/analysis processes, reorganize investigative resources, and decrease the average processing time for complaint intake, investigation, and prosecution from the current three years to 18 months.

The Board was allocated 29.8 positions and a special fund augmentation of \$4.1 million in fiscal year 2010/11 and an additional seven positions in fiscal year 2011/12 with the \$4.1 million on-going. It includes a provision, that if the BRN exceeds the budgeted line item for the AG's Office by more than 20%, a mechanism exists to obtain additional spending authority if funds are available. This provision is in effect for fiscal year 2010/11 with a request made for an extension through fiscal year 2011/12.

Executive Order S-01-10 was issued on January 8, 2010, requiring that the Board take immediate steps to cap the workforce by achieving an additional five percent salary savings by July 1, 2010. The plan submitted by the Board did not rely upon Enforcement Division personnel, but rather on staff from other areas in the BRN, such as Licensing, Nursing Education Consultants, and the Executive Officer position that has been vacant since July 2009.

DOI, the AG's Office, and OAH charge the BRN for their staffs' services. The current cost for investigation at DOI is \$192 per hour. The BRN questions whether some of the investigations

require the use of sworn investigators. Since 2004, the AG's Office's hourly billing rate has increased multiple times, from \$120 in 2004 to the current cost of \$170 per hour, and paralegal fees have increased from \$53 to the current \$120 per hour. The BRN also uses the services of OAH to hear and rule on disciplinary cases. The BRN does not receive consistent, comprehensive or meaningful billing information from any of the three agencies, making it more difficult to track, monitor and plan expenditures as well as assess the effectiveness and efficiency of the work being done.

Each time there are rate increases, the BRN is required to fund fewer hours, either on each case or prioritize and fund less cases, until an augmentation can be requested and approved, thus putting the public at greater risk. The BRN continues to monitor the AG's Office bills on a monthly basis due to the large influx of cases from the fingerprint requirement and a data comparison ("scrub") that was done on a national registered nurse database during March 2010. As of June 30, 2010, there were 822 cases pending at the AG's Office.

Recommendation: An audit be conducted of DOI, AG's Office, and OAH expenditures and procedures to determine the efficiency and effectiveness of each of the agencies, and establish a consistent and detailed electronic billing mechanism to allow the BRN to more effectively monitor costs. In addition, an ongoing funding mechanism be established to permit the BRN flexibility in spending for DOI, AG's Office, and OAH to account for hourly fee increases, increases in disciplinary cases, and movement of cases through the process.

Mandatory Reporting---There is currently no mandatory reporting required by RNs, health care practitioners, or other state agencies against RNs. Some cross reporting is done among state agencies, but they are not mandated or formalized at this time. BRN enforcement staff have met with various agencies at different times to facilitate this reporting and to discuss and establish protocols for referrals and how best to share information. This lack of mandatory reporting by other agencies and employers leaves the public at risk because the BRN is not able to investigate allegations and potential violations of the NPA.

Recommendation: The BRN and other health care-related agencies work collaboratively with the Senate Committee on Business, Professions and Economic Development to develop or modify legislation in some Business and Professions Code Sections (159.5, 160, 802.1, 803, 803.5 and 803.6(a)) and Penal Code Section (830.3) that would mandate reporting requirements, specifically between state agencies and, in certain circumstances, from employers, as well as grant the BRN additional authority when completing investigations as discussed in a previous recommendation.

Continuing Education Audits---The BRN requires RNs to complete a total of 30 contact hours of continuing education (CE) biennially in order to renew their RN licenses in the active status. The BRN conducts random audits of RNs to check for CE compliance. The BRN also approves and conducts random audits of Continuing Education Providers (CEPs). In the past, the BRN completed an average of 2,700 RN and 282 CEP random audits per year. However, due to unavailability of staff because of other workload demands, random CEP audits have not been completed since January 2001, and RN random audits have been reduced to approximately 350 per year in the past four years.

Assessment of continued competence is a national issue facing all professional healing arts licensing boards. A BRN staff member served as chair and participated on the National Council of State Boards of Nursing's (NCSBN) Continued Competence Committee. The Committee developed research questions related to the study of continued competence.

Recommendations: The BRN investigate submission of a Budget Change Proposal (BCP) to obtain staff dedicated to conducting RN and CEP random audits. The BRN review and evaluate national continued competence research and make recommendations for changes, as appropriate.

Enforcement Computer System---DCA maintains an enforcement tracking system for all boards and bureaus. In the 2002 Sunset Report, the BRN recommended that DCA continue to make improvements and enhancements in the existing enforcement tracking system while working on the development and implementation of an integrated department-wide licensing and enforcement system.

DCA has continued to work on improvements and enhancements to the existing Consumer Affairs System (CAS); however, CAS does not adequately provide a consolidated tracking mechanism for all enforcement cases. As a result, the Manager has developed Excel spreadsheets to track cases. The ad hoc reporting tool was introduced to provide improved reporting mechanisms unavailable in CAS; however, it is not a user-friendly system, and thus very few staff are trained and proficient in use of the system. In 2010, DCA developed a reporting tool in CAS to capture data and time measures for complaint intake, desk investigations, sworn and non-sworn investigations, as well as information related to disciplinary actions. This new reporting tool has required significant data clean-up in order to capture accurate data.

Most recently, BCP 1B for fiscal year 2010/11 was introduced by DCA and approved by the Legislature. It will provide the ability and resources for DCA to create or adapt an integrated computer data system, known as the BreEZe Project, sometime in 2012/13. The goal for the system is to handle online licensing applications and renewals, electronic document handling, enforcement data, cashiering, and a variety of other department-wide processes. BRN staff have been recruited as subject matter experts in many areas. If the computer system provides all that is planned, it should be an efficient, user-friendly tool that can be customized for each board and bureau's use. It is anticipated that the BRN will have the ability to create reports and gather data much easier, faster, and with more reliability than with the antiquated legacy systems known as CAS and ATS.

Recommendation: BRN staff (subject matter experts) work collaboratively with DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system, "the BreEZe Project," for planned roll out to the BRN in 2012/13.

NURSING SHORTAGE

While temporarily abated due to the economic downturn, the shortage of RNs in the nurse workforce is still one of the most critical issues affecting nursing, both from a regulatory and

professional perspective. The shortage adversely impacts consumers and the health care delivery system. Although nursing shortages have been cyclical, the present one is unique in its cause, pervasiveness, expected duration and current distortion due to the recession. The issue is in the public domain and is well publicized. There have been numerous newspaper articles, press releases, and television programs about the subject because this is not only a shortage of RNs but extends to many health-related occupations. The current status of the RN workforce in California includes:

- California ranks 48th in registered nurse-to-population ratio with 638 working registered nurses per 100,000 population. The national U.S. average is 854.
- Approximately 13% of registered nurses with active California licenses and living in California are currently not working in nursing jobs.
- Students graduating from California prelicensure nursing programs have increased by 88% since 2002-2003, from 5,623 graduates in 2002/03 to 10,570 in 2008/09. However, there are still more qualified applications being received by nursing programs than spaces where students can be accommodated. In 2008/09, 61.7% (n=22,523) of qualified applications to California prelicensure nursing programs were not accepted for admission.
- The average age of registered nurses in California is 47 years, which has remained consistent since 2004.
- In 2008, the average age at time of graduation from prelicensure RN education was 27, compared to 25 in 1990.
- Nursing income increased significantly from \$45,073 in 1997 to \$81,428 in 2008.
- Job satisfaction in almost every area has increased since 2002. Nurses continue to be most satisfied with their interaction with patients and their meaningful work. They continue to be most dissatisfied with the amount of paperwork, performance of non-nursing tasks, and lack of involvement in policy decisions.

Attachment 5 provides more detailed information about workforce issues including the nursing shortage.

The BRN has worked diligently, within the constraints of available resources, and has been actively involved with other agencies and organizations in the development and implementation of strategies to clarify and ameliorate the nursing shortage. Activities representative of BRN's efforts to address the RN workforce shortage include:

1. Issuing interim permits, once fingerprint clearances are received, so eligible examination applicants can work while waiting to take the examination and receive their test results. Licenses are issued within two weeks of applicants passing the exam.
2. Updating the BRN Web site, www.rn.ca.gov, which provides many online services and up-to-date information to applicants and interested parties about becoming a nurse, applications and forms, BRN-approved nursing programs, and links to other government and professional associations that provide nursing information.
3. Approved 42 new nursing programs from 2002/03 through 2009/10.
4. In February 2009, made available on the BRN Web site a document titled *Instructions for Institutions Seeking Approval of New Prelicensure Registered Nursing Program* to clarify requirements and assist in the multi-step nursing program approval process.

5. Supporting existing BRN-approved nursing programs in developing innovative options to shorten or accelerate nursing education programs, eliminate unnecessary coursework repetition, and develop transfer pathways and seamless articulation between programs while maintaining the critical components to ensure all nursing requirements are met.
6. Supporting education, practice, and funding legislation that works to provide more nurses to California's workforce.
7. BRN staff serve on various committees, along with members from other state agencies, education, nursing organizations and employers, that provide recommendations and information related to current nursing workforce and education issues.
8. Supporting the Health Professions Education Foundation scholarship and loan repayment programs by collecting the assessment fee from RNs upon biennial renewal. This fund exists to assist in educating RNs who will then work in nursing education and underserved areas in California. Two BRN representatives serve on the Advisory Committee, which makes recommendations on Program policy and scholarship/loan repayment awards to the Foundation's Board of Directors.
9. The BRN Nursing Workforce Advisory Committee met in 2003 and 2004 to review the work of the Governor's Workforce Initiative. An Employer Survey was completed in December 2004 which identified issues in the workforce; and recommended an increase in nursing education programs as critical to assuring recruitment and retention of an appropriate nursing workforce.
10. The BRN Education Advisory Committee continues to meet on an annual basis to review and edit the Annual School Survey. The survey is sent to RN nursing programs each year to collect enrollment, graduation, and faculty data from each BRN-approved nursing program. The Committee also advises on educational issues that need to be surveyed and/or addressed (i.e., clinical simulation, faculty shortage, barriers to students' education).
11. Continue the biennial workforce study which provides employers, educators, and nurses with sound data on the current California RN workforce for planning and trend analysis. In addition, since 2004, data from the report and other sources is used to develop a report, *Forecasts of RN Workforce in California*, which outlines the supply and demand of the RN workforce in California.

The activities described above demonstrate that the nursing shortage in the workforce is still recognized. State policy makers, regulatory agencies, nursing educators, stakeholders, and employers continue to make a concerted effort to address current and future nursing workforce issues and to provide more California-educated RNs to meet the health care needs of California residents. The BRN is committed to assisting in resolution of the current shortage in the nurse workforce and planning for future needs; however, there are three major challenges. The challenges and Board recommendations are detailed below.

Continuation of Current Graduation Rates---Colleges and universities play a critical role in the amelioration of the nursing shortage by preparing new nursing graduates to enter the workforce. While much work has been done on increasing the number of RN graduates, reforming the system for more timely matriculation, increasing access to nursing programs, and alleviating course repetition through standardized course requirements, work needs to continue in this area.

Recommendation: The BRN continues to work with the Chancellors of the California Community Colleges and California State University, the President of the University of California, and the President of the Association of Independent Colleges to reform the educational system to address these issues. The BRN also continues to support all funding for RN education in California.

Keeping New RN Graduates in the Profession---The current economic recession is making it difficult for new RN graduates to find employment. Efforts need to be made to keep these graduates in California and in the nursing profession so that when the economy recovers, and nurses putting off retirement do retire and nurses temporarily working more shifts return to their regular schedules, these graduates will be there to fill the RN jobs.

Recommendation: The BRN continues to work closely with the California Institute of Nursing & Health Care, nursing programs, clinical agencies, other state agencies, and professional organizations to address the current problem of new RN graduates having difficulty finding employment. The BRN also supports funding and legislation for RN transition or residency programs. These include partnerships between nursing programs and employers, that provide post-licensure experience and education to increase the RNs' skills and keep them engaged in the nursing profession.

Feasibility Studies and Site Visits for New RN Programs---With the increasing need and interest in educating additional RNs, the BRN has experienced a significant increase in the number of letters of intent, feasibility studies, and initial site visits, which must be conducted as part of the required approval process for proposed new prelicensure RN educational programs. From 2006/07 through 2009/10, the BRN has received 85 Letters of Intent and 35 Feasibility Studies. BRN Nursing Education Consultants (NECs) work closely with interested new RN programs for an average of 18 months while they complete the process of seeking BRN approval for the program. This is time consuming for the NECs and takes resources from the BRN.

Recommendation: The BRN investigate charging a fee for proposed prelicensure nursing programs submitting documents for initial RN education program approval to assist in off-setting BRN costs for reviewing documents, consulting with the program, and conducting site visits.

Clinical Space and Access for RN Students/Proliferation of New Nursing Programs---The BRN is aware there have been instances where RN educational programs have had difficulty obtaining clinical placements or have been terminated or replaced at clinical sites where their students complete clinical experiences as part of their nursing education. In addition, there have been reports of RN students being denied access to medication administration systems, equipment, or other required duties while completing their clinical experiences. B&P Code Section 2729 gives student nurses the authority to provide nursing services when enrolled in a Board-approved prelicensure program or school of nursing. The BRN is beginning to obtain data on the frequency and extent of this issue by including questions related to this issue in the 2009/10 Annual School Survey.

In addition, there is a concern regarding the BRN's ability to ensure the credibility of programs and the identification of potential unaccredited programs.

Recommendation: The BRN continue to collect information on this issue, and to work with nursing programs, employers, the Board of Pharmacy and other agencies to resolve the access issue so RN students can obtain the necessary clinical experiences to ensure clinical competence upon entry into the profession as new graduates. The BRN also maintain vigilance in the review of prospective nursing programs as well as awareness and action if unaccredited programs are identified.

NURSING PRACTICE

Furnishing v. Prescriptive Authority---In both its 1996 and 2002 Sunset Reports, the BRN identified the problem related to nurse practitioners and nurse-midwives using the term "furnishing/ordering" rather than "prescribing drugs and devices." The terms can be confusing to the public, health care providers and organizations, and policy makers. It has been a barrier to care in some instances with some pharmacist or pharmacy drug stores refusing to fill furnishing transmittal orders because they are not considered prescriptions. Prescriptive authority is an independent function, and does not require supervision.

Nurse practitioners and nurse-midwives, who have been issued a furnishing number by the BRN, have statutory authority to furnish or order drugs and devices under specific circumstances, including controlled substances classified in Schedule II, III, IV or V under the California Uniform Controlled Substance Act of the Health and Safety Code. Nurse practitioners and nurse-midwives furnishing controlled substances are required to obtain a Drug Enforcement Agency (DEA) registration number to furnish controlled substances. All drugs and devices furnished by nurse practitioners and nurse-midwives are in accordance with approved standardized procedures or protocols. The furnishing or ordering must occur under physician supervision; however, the physician is not required to be physically present at the time the medication is furnished/ordered.

In addition, with impending national health care reform and the projected shortage of primary care doctors, nurse practitioners, nurse mid-wives and other advanced practice nurses will be looked to as primary care providers. Advanced Health Manpower Pilot Projects in the 1980's clearly demonstrated that nurse practitioners and nurse-midwives could safely prescribe medications. Furthermore, nurse practitioners and nurse-midwives have general authority to prescribe in some form in all of the states.

Recommendation: The Board continues to support amending the NPA to change the term "furnishing" to "prescriptive authority."

Medical Spas and RN Scope of Practice---It has come to the attention of the BRN that there may be some issues related to RN practice in medical settings known as Med Spas. As outlined in B&P Code Section 2725, the RN and advanced practice nurses in an organized health care system, which include, but are not limited to, health facilities licensed pursuant to Chapter 2, Section 1250 of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services, can implement a physician-

directed medical patient order or implement those identified medical functions, treatments, and procedures approved in standardized procedures in the medical practice. B&P Code Sections 2725 through 2742 define the authority for RN practice; licensed RN practice does not require direct supervision. General requirements do include:

- Medical treatments and procedures are performed in a medical practice setting, and appropriate medical supervision is provided by a physician who possesses specific experience and expertise in the patient treatment and procedures to be performed.
- Written policies and procedures and/or standardized procedures are maintained.
- Adherence to all local, state, and federal laws and regulations for physician and nursing practice.
- The nurse's initial and continuing competence is documented by written evidence for specific treatments and procedures maintained in the medical practice, Med Spa.
- Documentation of satisfactory completion of appropriate instruction, supervised clinical practice, and evidence of current competence on file in the medical practice, Med Spa.
- Indication and contraindications for the medical treatments and procedures is maintained.
- Policies and procedures for untoward events and/or emergencies are in evidence with appropriate referral for continuing medical treatment.

Standardized procedures are authorized in B&P Code Section 2725 and mean:

- Policies and protocols developed by a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.
- Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, in an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of the Health and Safety Code.

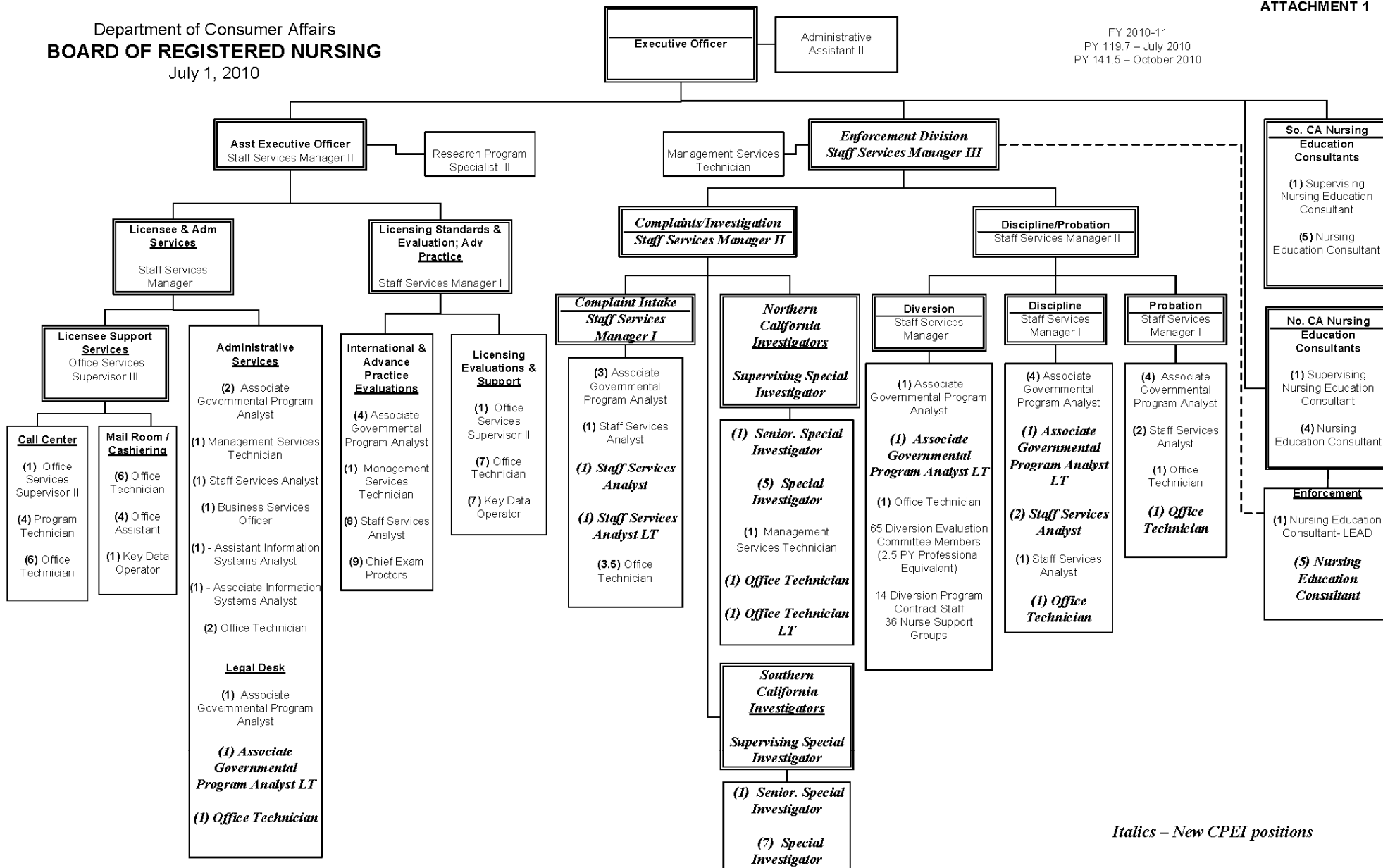
RNs must only perform their licensed functions in Medical Spas that meet the requirements as outlined above for a medical practice site.

Recommendation: The BRN and Medical Board continue to coordinate enforcement efforts to ensure safe patient care at all medical practice sites.

ATTACHMENTS

Department of Consumer Affairs
BOARD OF REGISTERED NURSING
 July 1, 2010

FY 2010-11
 PY 119.7 – July 2010
 PY 141.5 – October 2010



Italics – New CPEI positions

**LEGISLATION IMPACTING REGISTERED NURSING
ENACTED 2003 TO 2009**

The Board of Registered Nursing (BRN) tracks approximately 30-35 bills annually, a number of which become law. Following is a summary of key legislation that has been enacted since 2002 that directly impacts the BRN. The summaries are addressed in categories related to advanced practice nurses, nursing education, nursing practice, and BRN.

Advanced Practice Nurses: Most legislation since 2002 that related to advanced practice nurses focused on expanding duties and scope of practice:

AB 1196 – Nurse Practitioner: Prescriptions (Stats. 2003, c. 748)---Expands the current nurse practitioner (NP) furnishing privileges to include drugs or devices that are classified as Schedule II controlled substances under the California Uniform Controlled Substances Act. NPs are required to complete a continuing education course including Schedule II controlled substances. In 2004, the BRN developed standards that require NPs applying to furnish Schedule II controlled substances to complete a minimum of three hours in a BRN approved continuing education course or the required pharmacological content for Schedule II substances in a BRN approved NP educational program. Specific educational and application requirements are posted on the BRN Web site.

AB 2226 – Nurse Practitioners: Qualification Requirements (Stats. 2004, c. 344)--- Requires that on and after January 1, 2008, an applicant for initial certification as a nurse practitioner, who has never been certified as a nurse practitioner in California or any other state, meet the following requirements:

- Hold a valid and active registered nurse license.
- Possess a master’s or other graduate degree in nursing or a master’s degree in a clinical field related to nursing.
- Satisfactorily complete a nurse practitioner program approved by the board.

AB 2560 – Nurse Practitioners: Furnishing Drugs and Devices (Stats. 2004, c. 205)--- Authorizes a nurse practitioner to furnish drugs or devices, in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician, when the drugs or devices are consistent with the practitioner’s educational preparation or for which clinical competence has been established and maintained. It also expands the types of health facilities in which a nurse practitioner can furnish drugs and devices.

SB 614 – Certified Nurse-Midwives (Stats. 2005, c. 266)--- Deleted the requirement that Schedule II controlled substances, ordered by certified nurse-midwives, could only be ordered in a hospital setting. It authorizes a certified nurse-midwife to furnish or order Schedule II controlled substances under conditions applicable to Schedule III, IV, or V controlled substances.

AB 1591 – Medi-Cal: nurse practitioner (Stats. 2006, c. 719)---Requires the State Department of Health Services to allow any certified nurse practitioner to bill Medi-Cal independently for his or her services, and the Department to make payment directly to the certified nurse practitioner.

AB 2120 – Vehicles: disabled persons: disabled veterans: parking placards (Stats. 2006, c. 2120)---Authorizes certified nurse practitioners, certified nurse-midwives, and physician assistants to sign the required certificates substantiating an applicant’s disability, in order to receive a disabled parking placard from the Department of Motor Vehicles.

AB 139 – Vehicles: school bus drivers: Medical examiners (Stats. 2007, c. 158)---Authorizes a licensed advanced practice RN or a licensed physician assistant to perform a medical examination on applicants seeking an original or renewal certificate to drive a school bus, school activity bus, youth bus, general public paratransit, or farm labor vehicle.

SB 819 – Committee on Business, Professions, and Economic Development (Stats. 2009, c. 308)---Authorizes the implementation of standardized procedures that expand the duties of a nurse practitioner in the scope of his or her practice, as follows:

- Order durable medical equipment, subject to any limitations set forth in the standardized procedure.
- Certify a disability, after performance of a physical examination and collaboration with a physician.
- Approve, sign, modify, or add to a plan of treatment or care, after consultation with a treating physician, for individuals receiving home health or personal care services.

Nursing Education: Much of the legislation enacted since 2002 related to nursing education focused on removing barriers to nursing education and advanced nursing degrees, providing funding sources through scholarship or loan assumption programs, and creating availability of new types of programs:

AB 1241 – Nursing Education Scholarships (Stats. 2003, c. 396)---Requires the Office of Statewide Health Planning and Development (OSHPD) to adopt regulations establishing the Statewide Associate Degree Nursing Scholarship Pilot Program. A portion of the funds contained in the RN Education Fund are allocated to provide scholarships to associate degree nursing students in counties determined to have the most need based on designated criteria.

AB 2839 – Nursing Schools: Approval Requirements (Stats, 2004. c. 271)---Requires the BRN to establish a workgroup, or use an existing committee, to encourage and facilitate efficient transfer agreements or other enrollment models between associate degree nursing programs and baccalaureate degree nursing programs, so that students would be able to complete the baccalaureate program without unnecessary repetition of coursework. The BRN’s Education Advisory Committee has worked on this issue.

SB 1245 – California State University: Professional Nursing Programs (Stats. 2004, c. 718)---Established the Entry-Level Master’s Nursing Programs Act, until January 1, 2014, which requires the Chancellor of the California State University (CSU), in consultation with the

BRN, to determine which campuses would be eligible for supplemental funds for establishing entry-level master's programs. The Chancellor was required to, annually; establish the total amount of funding necessary to support four entry-level master's degree programs in nursing at the CSU. Currently there are 16 schools, seven of which are in the CSU system, that offer entry-level master's degree programs.

AB 702 – Nursing Education (Stats. 2005, c. 611)---Allows OSHPD to provide financial assistance to students who are seeking a master's or doctoral degree in nursing from funds in the RN Education Program within the Health Professions Education Foundation. It requires that a RN or student must commit to teaching nursing in a California nursing school for the equivalent of three full-time academic years in order to receive a scholarship or loan repayment for their educational program.

SB 68 – Human Services (Stats. 2005, c. 78)---Provided for the expansion of the Song-Brown Family Physician Training Act to include increasing the number of students receiving education as RNs, by establishing contracts with nursing education programs.

SB 1309 – Nursing education: grants, loan assumptions, and faculty recruiting and retention (Stats. 2006, c. 837)---Expanded the capacity of the state's institutions of higher education to prepare students for nursing careers by establishing the following:

- Health Science and Medical Technology Project to provide competitive grant funds to California public schools to enhance existing or establish new health-related career pathway programs.
- State Nursing Assumption Program of Loans for Education.
- California Community College Nursing Faculty Recruitment and Retention Program for the purpose of facilitating the recruitment and retention of qualified nursing faculty.
- Nursing Enrollment Growth and Retention program in the Chancellor's Office of the Community Colleges to facilitate the expansion of associate degree nursing programs and improve completion rates in those programs.
- Regional nursing resource center grants to develop clinical placement of students and clinical faculty resource systems.
- Expansion of future baccalaureate, accelerated master's degree, ADN transition to BSN, and MSN nursing enrollment with annual appropriations in the State Budget Act.

AB 1559 – Public Postsecondary Education: Degree Nursing Programs (Stats. 2007, c. 712)---Provides for a community college RN program that determines the number of applicants to the program exceeds its capacity to admit students by using a multicriteria or random selection process or a combination of both, and includes certain requirements be used when community colleges use a multicriteria screening process.

SB 139 – Nursing Education (Stats. 2007, c. 139)--- Prohibits a CSU or a California Community College that has an RN program from requiring a student who has been admitted to the nursing program, and who has already earned a baccalaureate or higher degree from a regionally accredited institution of higher education, to complete general education requirements. These nursing students would only be required to complete the course work necessary to prepare him or her for licensure as a RN.

SB 1393 – Nursing Programs (Stats. 2008, c. 175)---Prohibits a campus of the CSU or a California Community College that operates an RN program from requiring a student who holds a baccalaureate degree from a regionally accredited institution from having to complete coursework other than what is unique and exclusively required to earn a nursing degree from that institution. It also prohibits a community college district from:

- Excluding an applicant on the basis that the applicant is not a district resident or has not completed prerequisite courses in that district.
- Implementing policies, procedures and systems that have the effect of excluding an applicant or student who is not a resident of that district

AB 1295 – Postsecondary Education: Nursing degree programs (Stats. 2009, c. 283)---Required the Chancellor of the CSU to implement articulated nursing degree transfer pathways between the California Community Colleges and CSU prior to the commencement of the 2012–13 academic year. It required the articulated nursing degree transfer pathways to meet prescribed requirements and authorized the Chancellor of the CSU and the Chancellor of the California Community Colleges to appoint representatives from their respective institutions to work collaboratively to provide advice and assistance relating to prescribed topics. BRN staff is currently working on the AB 1295 Implementation Group on this issue.

Nursing Practice: Recent legislation in this area covered a variety of issues:

AB 1711 – Health Facilities: Immunizations (Stats. 2005, c. 58)---Authorizes an RN or a licensed pharmacist to administer, in skilled nursing facilities, influenza and pneumococcal immunizations to patients over 50 years of age pursuant to standing orders and without patient-specific orders.

SB 1423 – Laser procedures (Stats. 2006, c. 873)---Required the Medical Board of California, in conjunction with the BRN, and in consultation with the Physician Assistant Committee and professionals in the field, to evaluate and study issues surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by health care practitioners, and report to the Legislature by January 1, 2008. It also required each board to promulgate regulations to implement changes as a result of the evaluation and study.

The BRN and the Medical Board held three forums (August 30, 2007, October 3, 2007, and October 31, 2007) throughout the state to solicit input from RNs, physicians, physician assistants, professional organizations from the health care professions, laser industry, patients and the general public. The meetings were chaired by members from both Boards. Following the testimony at the three forums and analysis of existing related statutes and regulations, the BRN determined that there was no need to promulgate new regulations, but to enforce current regulations already in existence.

SB 1048 – Committee on Business, Professions and Economics (Stats. 2007, c. 588)---Requires, among other things, that every employer of, or agent for, a RN required to hold a license in obtaining employment, is required to ascertain that the nurse is currently authorized to practice as a RN, or as a temporary licensee or interim permittee. If board-issued certification

is required for employment, the employer is required to ascertain that the person has board-issued certification and is authorized to practice.

BRN: Legislation in this category relates to BRN processes:

SB 358 – Nursing (Stats. 2003, c. 234)---Extended the sunset date for the BRN to July 1, 2008, and also changed the following:

- Replaced the physician member of the Board with a public member and required one of the RN members be an advanced practice nurse.
- Provided that no state agency, other than the BRN, could define or interpret the practice of nursing, or develop standardized procedures or protocols, unless authorized or specifically required under state or federal statute.
- Increased the biennial licensure renewal assessment from \$5.00 to \$10.00 to be collected from licensees and deposited into the RN Education Fund.
- Defined the term “Advanced practice registered nurse.”

SB 1111 – Professions and Vocations (Stats. 2005, c. 621)---Changed the timeframe for an applicant who failed the NCLEX examination to be able to retake it every 45 days, instead of every 90 days.

SB 1476 – Professions and Vocations (Stats. 2006, c. 658)---Extended the Sunset provisions of the BRN, to become inoperative on July 1, 2010, and repeal them on January 1, 2011.

AB 1071 – Professions and Vocations (Stats. 2009, c. 270)---Extended the Sunset provisions of the BRN to January 1, 2013.

BRN ENFORCEMENT DIVISION

The Board of Registered Nursing (BRN) continuously seeks to improve the effectiveness and efficiency of its Enforcement Division. However, ongoing funding and staffing issues at the BRN and the other enforcement-related agencies on which the BRN depends as well as outdated technology have created challenges. This has become even more apparent in light of the recent media focus on the BRN, other health-related Boards, and the Department of Consumer Affairs (DCA). The main focus of the BRN Enforcement Division recently has been to work towards DCA's Consumer Protection Enforcement Initiative (CPEI) goal to improve discipline case processing timeframes so that cases are completed in an average of 12 to 18 months.

The BRN has been working closely with DCA as well as the three agencies that work with the Enforcement Division: the Division of Investigation (DOI) that conducts formal investigations; the Attorney General's (AG's) Office that provides legal services for disciplinary actions; and the Office of Administrative Hearing (OAH) that provides Administrative Law Judges (ALJs) to hear and rule on disciplinary cases. BRN Enforcement Division staff has worked with these and other agencies to improve coordination, communication, and processing time frames of cases. In addition the BRN has implemented many procedural changes, submitted Budget Change Proposals (BCPs) for additional resources, supported recent legislative efforts to provide the BRN with more authority when conducting investigations, and is in the process of amending regulations in an effort to decrease disciplinary time frames. These efforts are discussed in detail in Part 1 of this report.

A recent BCP (BCP 1A) was approved that provides the BRN Enforcement Division with 37 positions over the next two fiscal years. These positions and all of the BRN staffing are included on the organizational chart provided in Attachment 1. Following is more detailed information on the allocation of the Enforcement Division staffing and current workload:

Enforcement Division Staffing

Prior to the 37 positions approved by the BCP, there was 29.5 permanent full-time and 4.5 limited term staff allocated to the Enforcement, Probation, and Diversion Programs. Four of the limited term staff are being made permanent so the total new positions will be 33. These positions, in conjunction with the current Enforcement Division positions, will be used to create four new units as well as Diversion: Complaint Intake, Investigations, Nurse Investigators/Experts and Discipline/Probation.

The investigators are to be hired beginning October 2010. The BRN plans to hire five nurse investigators (Nursing Education Consultants) and 12 non-sworn special investigators. The special investigators will be the main field investigators. The plan for the nurse investigators is as follows:

1. One of the five nurse investigators will be a triage nurse to work in the complaint intake unit to review complaints and determine if they involve nursing practice and are under

BRN jurisdiction. If not, they will refer them to other agencies. If yes, they will identify documents, authorizations, and releases that need to be obtained and refer to the Supervising Investigator.

2. The Supervising Investigator will make assignments to the investigators. The investigators will also work with the Complaint/Investigation Manager to review the quality of reports, work with the Discipline/Probation Unit to recommend required coursework, and approve nurse employment for probationers. This requires work with employers and probationers on a regular basis.
3. The nurse investigators will review the complaints and documents received and create investigative case plans, which may include recommendations for complaint closure, referral for expert witness review, referral to the Investigation Manager for additional investigation, or referral for possible disciplinary action.
4. Nurse investigators may occasionally work in the field with other non-sworn investigators during complex investigations or as the workload demands. Nurse investigators will also provide information and outreach to a variety of outside entities.
5. For cases referred for investigation, once the investigations are complete, the case will be returned to the Lead Nurse Investigator for assignment to a nurse investigator to review and determine an outcome as described in #3, above.

Having a minimal number of nurse investigators will bring expertise that will increase the efficiency and quality of the investigations. The nurse investigator brings experience and expertise to identify what documents and witnesses would be necessary and where to locate them more efficiently, and thus provide guidance to the non-nurse investigators. Nurse investigators will also more readily identify, understand, and interpret nursing related documents and situations in the workplace to assess practice errors and non-practice errors and their causes. Nurse investigators will save time, money and effort on investigations, as well as improve the quality.

Workload

The BRN received 7,483 complaints in fiscal year 2009/10 – over 1,600 more complaints than that received in 2008/09 (5,794). As of June 30, 2010, there were 641 cases pending at DOI, 593 cases pending with non-sworn investigators at the BRN, and 1,887 BRN staff desk investigations pending for a total of 3,121 cases pending final disposition. It is apparent by the data presented in this report that the complaints, investigations, and disciplinary actions have and will continue to increase as the number of licensed RNs increases and new programs are put in place such as mandatory fingerprinting and impending reporting requirements.

Work with DOI---The BRN has met with DOI on a regular basis throughout 2009/10 to review pending cases and develop guidelines for determining case disposition for cases older than one year as well as those more recent. Some of the case reviews included those by the BRN's Nursing Education Consultants. DOI developed case criteria to keep only those cases that could result in a criminal case filing with allegations less than one year old even though the statute of limitations is three years. All other practice related cases, or those criminal cases that were past the statute of limitations, were returned to the BRN for investigation by staff. Approximately 195 cases were returned to the BRN for investigation by staff beginning in September 2009.

The BRN is still working with DOI to reach a mutual agreement on guidelines for case assignment between the BRN and DOI. The BRN has tentatively agreed to continue to assign any new cases using the DOI case criteria which results in approximately 40% of the new cases being assigned to DOI and the remaining 60% to BRN investigators. The department wide BCP 1A was approved to provide the BRN with 17 non-sworn investigative positions and is awaiting governor approval in the 2010/11 budget bill.

Work with the AG's Office---BRN staff has also been regularly meeting with AG's Office staff in an attempt to decrease the number of pending cases and establish and improve timeframes for drafting pleadings and completing disciplinary cases. While improvements have been made, it is apparent that the AG's Office is in need of additional staffing and resources to meet the CPEI goal of an average of 12 to 18 months to complete disciplinary cases.

Assessment of BRN Meeting Average Disciplinary Case Timeframe of 12-18 Months---At this time, it is premature to assess whether the amount of staff and resources that have been provided is sufficient to meet the average of 12 to 18 months to complete a disciplinary case. The BRN has not filled any of the approved positions at the time of writing this report, and estimates it will take at least 9 to 12 months to hire and train investigators and perhaps additional time for them to reach maximum proficiency.

The BRN originally requested 67 new positions and to convert four additional fingerprint positions from limited term to permanent. Thirty-seven positions were approved and four of them are being used to convert the limited term positions. This leaves the BRN with 33 new positions. The Enforcement Division is being re-organized to include a complaint intake unit, investigation unit, and discipline unit. Twelve non-sworn Special Investigators and five nurse investigators will be hired. It is unknown if 17 investigators will be enough to complete 600 to 900 cases per year, which would be necessary to meet the goal of an average of 12 to 18 months.. Also, unknown at this time is the number of investigations that will be identified for the non-sworn investigators and any new mandatory reporting requirements

The BRN is currently evaluating and creating the investigation process for the new BRN investigators. BRN staff will request any documents identified by the nurse investigators at the outset of the investigation process. If facilities are willing to comply with the requests in a timely manner (within 15-30 days), then that should reduce the investigation time immensely. However, if the facilities do not comply with the Board's requests, then the Board would need to seek statutory authority to mandate compliance with any Board record requests. In addition to mandated compliance with records requests, the Board requests cooperation by licensees in the interview process. Recently, legislation to assist with these issues was introduced in SB 1111. However, that bill has since become inactive. Unless the BRN can obtain similar statutory authority to that in SB 1111, then it will not be able to complete cases as efficiently as possible in areas such as obtaining documents, interviewing witnesses, and requiring mandatory reporting.



COMPLAINT DISCLOSURE POLICY

The Board of Registered Nursing (BRN) has established the following Complaint Disclosure Policy, as amended September 7, 2001.

The BRN releases complaint information once an accusation is prepared by the Attorney General's Office and filed by the Board, with certain exceptions. Following are exceptions to this policy, where complaint information is disclosed in lieu of or prior to the filing of an accusation.

1. Under Section 125.9 of the Business and Professions Code and Section 1435 et. seq. of the California Code of Regulations, the BRN may issue citations, fines, and orders of abatement in lieu of filing of an accusation. Information concerning the issuance of a citation, fine, and/or order of abatement may be disclosed after a final decision is reached.
2. Under Section 494 of the Business and Professions Code, an interim suspension order (ISO) may be issued in a case that is considered very recent, provable, shocking in nature, and posing an immediate threat, according to the Attorney General's (AG's) Office. After an order to suspend or restrict practice is issued pursuant to administrative hearing, this information may be disclosed to the public. ISOs may be issued in advance of the filing of an accusation.
3. Under Section 23 of the Penal Code, the BRN may obtain a court order to suspend or restrict a license in advance of the filing of an accusation. The AG's office joins a criminal proceeding on behalf of the Board to obtain this order. Such an order is disclosable.

The sections of law and constitutional provisions that must be considered when deciding when to disclose complaints include:

- ◆ Public Records Act (Government Code Section 6250 et. seq.)
- ◆ Information Practices Act (Civil Code Section 1798 et. seq.)
- ◆ California Constitutional Right to Privacy (Cal. Const., Article I, Section 1)

In general, the Public Records Act defines when documents may be withheld from public disclosure, and the Information Practices Act and Constitutional Right to Privacy define when an agency must keep "personal information" from public disclosure and when it is required to disclose information to the individual to whom the information pertains. (A summary of a complaint may be provided to the subject of the complaint or his/her attorney under Section 800(c) of the Business and Professions Code.) The Board may withhold from disclosure investigative files under Section 6254(f) of the Public Records Act, and Section 6254(c) exempts disclosure of certain personal information.

In summary, the Board has based its policy on legal advice and concerns about consumer protection, investigative integrity, as well as basic privacy issues.

REGISTERED NURSING WORKFORCE ISSUES

There are two pressing nursing workforce issue at this time: first is the unexpected difficulty new Registered Nurses (RNs) are having finding nursing employment in California and the impact this will have on the future RN workforce as these RNs leave nursing for employment outside of nursing or move out of state. Second is the imperative need to continue educating RNs at the present rate. With the current economic downturn, which includes a 12.5% unemployment rate in California, the fifth highest in the nation according to the California Employment Development Department Labor Market Information, current statistics 3/26/10, new RN graduates are having difficulty finding RN employment. Two significant issues identified are how to keep these RNs engaged in the profession and improve their employability and how to fund RN nursing programs to allow them to continue to educate nursing students at the same rate. These RNs will be needed in the future as the economy recovers and currently employed RNs reduce their hours or retire.

To repeat, the current economic recession is distorting or masking the long term nursing shortage. As the economy improves, and the current nursing workforce continues to age, there will be an exodus of the current RN workforce that expanded during the recession and took the jobs that the new graduates expected to fill. This will result in a major shortage of nurses, which will be further compounded by health care reform and expectations by the federal administration that nurses will help fill the gap for primary care and chronic care management as the population continues to age. As new RNs have difficulty finding employment, word will begin to spread and many students may begin to choose other career options.

A significant amount of money and resources has been invested in the schools to ensure the education of an adequate number of RNs to meet California's needs. Much of this funding has been through grants and short-term funding sources. With many of the grants ending in the near future, the numbers of RN graduates could reverse. Continued funding is necessary to enable the schools to continue to successfully educate the same number of RN students needed to help alleviate the oncoming nursing shortage.

It is anticipated that federal health care reform will significantly increase demand for health care-related professions. Increases in health care coverage and incentives created for patients to seek routine and preventative care will increase the need for RNs. As outlined in a memo for all Executive Officers of Healing Arts Boards from the Director of the DCA (memo dated June 23, 2010), the healing arts boards should prepare for increased activity over the next several years. An example of the federal reform encouraging and facilitating a better health care workforce will be increases in funds available for nursing program student loans.

BACKGROUND

In 1997, California was ending a period of time during which many analysts thought there was a surplus of nurses. In the previous five years, some employers had laid off workers or reduced hiring dramatically. By 2002 a severe nursing shortage was underway in California, and significant efforts and expense were invested to address the nursing shortage:

- Governor's Nursing Education Task Force led a \$165 million dollar initiative to build educational capacity over 10 years, anchored by public-private partnerships.
- Increase in RN renewal assessment fee to support the Health Professions Education Foundation scholarship and loan repayment program to assist in educating RNs to work in nursing education and underserved areas in California.
- Various legislation approved to increase funding and access to nursing education, development of retention programs, facilitate removal of barriers in education through more efficient transfer agreements, decreasing coursework repetition, and implementation of articulated nursing degree transfer pathways between California Community Colleges and California State Universities.
- Through the California Community College Chancellor's Office grants for Student Success and Retention, schools instituted remediation programs and hired retention specialist counselors. These efforts showed positive result on the graduation and retention rates. RN programs have seen a continual growth in student completions since 2000/01, with 10,570 graduates in 2008/09, more than double since 2000/01 (5,178). In addition, there has been a 9% increase in the student retention rate in the last nine years from 66% to 75%.

These efforts to build the RN workforce have led to significant results according to the *BRN 2008 Survey of Registered Nurses* and the *BRN 2008/09 Annual School Report*:

- RN nursing programs increased their educational capacity by 69% since 2002/03.
- 88% increase in student graduations from prelicensure RN programs in California, from 5,623 graduates in 2002/03 to 10,570 in 2008/09.
- 7% increase in student retention rates, from 68.5% in 2002/03 to 75.2% in 2009/10.
- BRN approved 42 new nursing programs from 2002/03 to 2008/09.
- Average age of working RNs residing in California has stabilized at 47 since 2004. Prior to that, the age had been increasing.

In addition, California has had an increase in the number of RNs per 100,000 population. At the time of the 2002 Sunset Report, California ranked 49th in RN population ratio with 544 registered nurses per 100,000 population; the national average at that time was 782. Currently, according to *HRSA Initial Findings from the 2008 National Sample Survey of RNs*, California has increased in ranking to 48th with 638 working registered nurses per 100,000 population; the current national average is 854. California has improved as a result of the significant efforts and expense invested to address the nursing shortage.

While the increase of RNs in the workforce is necessary, the expansion of nursing programs has also brought two major issues. The first issue relates to the significant increase in nursing students and the need for additional clinical spaces in a variety of settings for the RN students to complete their clinical training and experiences. As a result, many RN programs have had difficulty finding and/or maintaining clinical sites as they compete with other educational programs at a time when employers are downsizing and report they have less patients. Some RN programs have also reported students being denied access to medication administration and equipment necessary to complete their clinical education. The second issue is related to the proliferation of new nursing programs and ensuring the credibility of programs and the

identification of potential unaccredited programs. A recent BRN investigation led to closure of an unaccredited nursing school in August 2010. The owner was ordered to pay restitution to the students. A warning to students regarding unaccredited nursing schools in California is posted on the BRN Web site.

CURRENT STATUS OF THE NURSING SHORTAGE IN CALIFORNIA

In the 2002 Sunset Report, the increased demand and decreased supply of RNs was discussed in depth. Obviously some of these factors have changed, but others have not. There will continue to be an increased demand as baby boomers age, and hospitalized patients in acute care continue to be sicker. In addition, with the population aging there will be a greater need for nurses in long term care, home health, and assisted living care. Affecting the decreased supply of RNs is the aging of the current RN population as well as the potential lack of resources to continue to educate the current number or additional RNs. While enrollments in RN prelicensure programs have increased significantly since 2002/03, there are still more qualified applications being received by nursing programs than can be accommodated. In 2008/09, 62% (n=22,523) of qualified applications to California nursing education programs were not accepted for admission (*BRN 2008/09 Annual School Report*).

When considering supply and demand data in the *2009 BRN Forecasts of the RN Workforce in California*, using one estimate, it is reported that California faces a shortage of 30,276 full time equivalents (FTE) RNs at this time. California is not expected to reach the current national average of RN FTEs per 100,000 population (854) until 2025. This forecast is based on current data that includes maintaining the number of graduates and population growth. Many public nursing programs are projecting a decline in their new enrollments as budgets have tightened in the downturned economy. However, forecasts based on another estimate using Office of Statewide Health Planning and Development (OSHPD) data indicate that California presently has no shortage of RNs. This estimate may be appropriate for the present, when a recession is dampening demand, but is not likely to be accurate as the economy recovers.

Many job related factors in the nursing profession have improved since 2002. According to the *BRN 2008 Survey of RNs*, job satisfaction in almost every area has increased. Nurses continue to be most satisfied with their interaction with patients and their meaningful work. They are most dissatisfied with the amount of paperwork, performance of non-nursing tasks, and lack of involvement in policy decisions. In addition, RNs are much more satisfied with their income, which has increased significantly (55%), from \$45,073 in 1997 to 81,428 in 2008.

According to the *New Graduate Hiring Opportunity Survey Report 2009* by the California Institute of Nursing & Health Care (CINHC), there is not a shortage of nursing positions in California but a shortage of those hiring RNs. It is reported that 37% of California hospitals have 5,462 unfilled RN positions in hospitals, where new graduates most commonly work, but are only actively recruiting to fill fewer than half of these positions. It was estimated that 40% of new graduates would not be hired in hospitals in 2009. Hospitals also reported they are expecting to hire half as many RNs in 2009 and 2010 as were hired in 2008. Employers report the following reasons for not hiring new RN graduates:

- Less employee turnover
- Delayed retirements of existing RNs
- Hiring freeze or budget constraints
- Decrease in patient census
- Current staff working more shifts or converting from part time to full time

The high cost of hiring new graduates to prepare them to perform safely and competently after their academic studies, a cost which is absorbed by the employer, has further limited employment opportunities. Most California hospitals are recruiting experienced RNs. Employment in other settings may be an option for the new RN graduate as the majority of these employers who responded to the survey indicate that they hire new RN graduates; however, the majority also prefer minimum RN experience, especially in this economy. As a result, a number of new RNs are unemployed and are opting for non-nursing employment or moving to seek employment opportunities out of state. It is of benefit to California to consider alternatives for new graduates to keep them in the nursing profession in California. Some potential solutions/alternatives which have been discussed by professional nursing organizations, employers, educators, and state agencies include:

- Support non-acute settings in hiring new graduates.
- Encourage new graduates to continue their education.
- Identify where jobs are outside of the region (but still within California) and share this information with new graduates.
- Develop community-based “RN Transition Programs” (residencies).

CINHC, with a grant from the Gordon and Betty Moore Foundation in 2010, is beginning a residency program for 250 new graduates in the San Francisco Bay Area. The programs are offered through four separate partnerships, between schools of nursing and employers, to provide a 12 to 18 week post-licensure residency to provide skill training for an acute area specialty or in a non-acute health care setting, or focus on developing more advanced generalist skills. They will provide college credit, applicable toward a higher degree in nursing education, and an industry recognized certificate of completion. Not only will these programs provide additional clinical experience for the new RNs, increasing their marketability, they will also meet the needs of health care employers and the consumer by developing a better-prepared nursing workforce. BRN staff serve on a committee, along with members from other state agencies, education, nursing organizations, and employers that work with CINHC on this project and others related to nursing and health care.

Since 2002, great strides have been made in the RN workforce, but work is still needed. Continued concerted efforts by state and federal policy makers, employers, nursing programs, nursing organizations, and regulatory agencies are needed to address current and future registered nurse workforce needs to meet the health care needs of California residents.

2002 Joint Legislative Sunset Review Committee Issues (29)

BOARD ADMINISTRATION ISSUES

JLSRC ISSUE #1: The strategic plan for the Board may need to be updated to focus on the low level of satisfaction regarding consumer complaint handling.

Question #1 for the Board: *Based on the results of the Consumer Satisfaction Survey, does the Board believe that it is meeting the goals and objectives of their strategic plan? How does the Board annually update their strategic plan and does the Board believe that another in-depth strategic plan is now necessary based on the results of this survey? What immediate actions can the Board take to deal with this low level of consumer satisfaction regarding the handling of their complaints?*

JLSRC ISSUE #2: It is unclear when and if the Board believes that regulations will be necessary to deal with scope of practice issues for registered nurses.

Question #2 for the Board: *If questions arise regarding the practice of nurses or those certified in an advanced nursing field, how does the Board respond to these inquiries? At what point in time would regulations be appropriate to clarify or interpret a particular area of practice for nurses?*

BOARD COMPOSITION ISSUES

JLSRC ISSUE #3: The current composition of the Board is a 2 to 1 majority of **professional** members versus public member, with 5 nurses, 1 physician and 3 public members. Almost all health related consumer boards have no more than a **simple majority** of professional members.

Question #3 for the Board: *Would restructuring the composition of the board to achieve greater public representation by adding two public members affect the Board's mission in any way? Would the Board support legislative efforts to increase public membership?*

JLSRC ISSUE #4: The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

Question #4 for the Board: *Why would the Board not seek a statutory change to assure that at least one of the registered nurse members of the Board will include at least one direct-practice registered nurse who is an advanced practice nurse, so that it can continue to receive this level of expertise in the future?*

BUDGETARY ISSUES

JLSRC ISSUE #5: The Board had to suspend actions on disciplinary cases in fiscal year 2000/01 and again in January 2002 because of budget shortfalls.

Question #5 for the Board: *What actions did the Board take to resume appropriate funding levels for its enforcement program? What recommendations does the Board have to assure that action to be taken by the AG's Office on cases will not be suspended in the future? Are there currently any backlog of cases?*

JLSRC ISSUE #6: The Board projects that it will incur a deficit in its budget by fiscal year 2004/05, unless the Board begins to receive part of the payment on the loan made to the general fund.

Question #6 for the Board: *Does the Board have any indication of when the loan to the General Fund will be paid back and what the terms or time frame may be? At what time will the Board have to consider an increase in fees to assure that it can avoid a deficit and continue the level of funding necessary for its enforcement program? When was the last fee increase made by the Board?*

JLSRC ISSUE #7: The Board is developing backlogs in the licensing of nurses, in conducting school approval reviews, as well as in other program areas because of lack of staffing.

Question #7 for the Board: *What sort of backlogs are now occurring in the Board's licensing and nursing program approval services and what action does the Board believe is necessary to assure that both these services can be provided on a timely basis?*

NURSING PRACTICE ISSUES

JLSRC ISSUE #8: California is experiencing and will continue to experience a critical shortage of registered nurses.

Question #8 for the Board: *What specific efforts is the Board making to deal with this public health care crisis and what recommendations does the Board have to resolve the current, and prevent the future shortages of nurses in California?*

JLSRC ISSUE #9: It is unclear how well the Board's scholarship and loan repayment program is functioning and whether it may be under-funded.

Question #9 for the Board: *Please explain the current operation of this program and whether the \$5.00 assessment on license renewal fees is adequate.*

JLSRC ISSUE #10: It is unclear why the Board should still be involved in the collection of information regarding the practice of registered nursing, as required by Section 2786 of the Business and Professions Code, and how extensive this data collection be.

Question #10 for the Board: *Does the Board believe that it should still be mandated to collect information regarding the practice of nursing in California and that the current statutory mandate lacks some specifics in what data should be collected and how would a new statutory mandate resolve the funding problem with performing this survey? Does the Board currently collect information upon licensure (or upon renewal of a license) about the active status of the licensee and what area of nursing they practice or are employed?*

JLSRC ISSUE #11: The Board is concerned that school personnel may be providing nursing services that in other settings would be prohibited.

Question #11 for the Board: *What recommendations does the Board have to resolve the increasing number and complexity of school health-related issues and to ensure that pupils receive safe and appropriate care?*

JLSRC ISSUE #12: Should a separate statutory definition for “advanced practice nurse” be created?

Question #12 for the Board: *Why does the Board want to create a statutory definition for term “advanced practice nurse?” Will this possibly cause confusion regarding their particular special expertise and knowledge in one of the currently titled categories of practice?*

JLSRC ISSUE #13: Should the current terms “furnishing or ordering drugs or devices,” as authorized by Section 2746.51 of the Business and Professions Code for certified nurse-midwives and Section 2836.1 for nurse practitioners, be changed to “prescribing drugs or devices,” clarifying in effect the prescriptive authority for these advanced practice nurses?

Question #13 for the Board: *Why does the Board believe such changes in terms are necessary? What are the distinctions, if any, between the furnishing or ordering of drugs and devices and prescribing of drugs and devices?*

EDUCATION AND NURSING PROGRAM APPROVAL ISSUES

JLSRC ISSUE #14: Does the current education system for the nursing profession need to be reformed to increase student access and allow for timely completion of nursing programs?

Question #14 for the Board: *What specific reforms are necessary to the educational system and nursing programs and what are the best ways to bring this about?*

JLSRC ISSUE #15: Are there ways in which the Board could improve its approval process for pre-licensure nursing programs and thereby facilitate the approval of more programs?

Question #15 for the Board: *How many pre-licensure programs are rejected by the Board, and for those rejected, how many have received voluntary accreditation by the National League for Nursing (NLN) or the Commission on Collegiate Nursing Education (CCNE)? Are there reasons why accreditation by the NLN or the CCNE is not sufficient for purposes of approving a pre-licensure nursing program? What barriers do agencies generally face in attempting to implement a nursing program? Are there other strategies the Board could use to facilitate the approval process and expand the current number of nursing programs? Has the Board considered “provisional accreditation” for programs applying to the Board for approval, so they have time to meet all the requirements for full approval?*

JLSRC ISSUE #16: The number of applicants to pre-licensure nursing programs is declining and some programs are unable to accommodate the number of students who have applied.

Question #16 for the Board: *Does the Board have any recommendations about how admissions could be increased for pre-licensure programs and how the number of students graduating from nursing programs could be significantly increased? How many impacted programs are there where there are more applicants than slots available for students?*

EXAMINATION ISSUES

JLSRC ISSUE #17: The Board has been experiencing declining pass rates on its national licensing examination (NCLEX-RN) for candidates applying for licensure.

Question #17 for the Board: *What does the Board believe the problems are related to the declining pass rates for nursing candidates who sit for the NCLEX-RN and what recommendations does the Board have to assist both candidates and nursing programs to improve their pass rates?*

JLSRC ISSUE #18: The overall pass rate for international graduates in fiscal year 2000/01 was only 30.3%.

Question #18 for the Board: *Explain the reason for such a low pass rate for international graduates and what direction are these applicants given to improve their chances of passing the NCLEX-RN exam.*

JLSRC ISSUE #19: There are a substantial number of applications for licensure each year, but only about two-thirds of those actually receive a license.

Question #19 for the Board: *Please explain why out of 32,400 applications received, only about two-thirds of those who apply become licensed and only about 5,000 sit for the examination?*

LICENSURE ISSUES

JLSRC ISSUE #20: The Board is experiencing an increase in the amount of time it takes to process applications for the examination.

Question #20 for the Board: *Why will it now take longer for the Board to process the candidate's application and does the Board have any recommendations on the way this process could be more streamlined?*

JLSRC ISSUE #21: There has been a dramatic increase in the number of temporary licenses (out-of-state licensees) and interim permits (examination candidates) issued by the Board over the past five years.

Question #21 for the Board: *What are the reasons for this significant increase in both temporary licensees and interim permits issued and what portion of these pre-licensure candidates successfully complete all requirements for licensure?*

CONTINUING COMPETENCE ISSUES

JLSRC ISSUE #22: Not all nurses are audited for compliance with continuing education (CE) requirements, however for those audited and found in non-compliance, they could be required to stop practicing until they fulfill the CE requirement.

Question #22 for the Board: *How are nurses chosen to be audited and approximately how many licensed nurses per year do not meet their continuing education requirements and are directed to stop practicing? Under what circumstances would the nurse be cited and fined for not complying with the continuing education requirements? Are there other alternatives that could be used rather than requiring a nurse to stop practicing?*

JLSRC ISSUE #23: Are there improvements that could be made to the current continuing education program for nurses?

Question #23 for the Board: *Are there new approaches the Board is considering for the continuing education of nurses?*

ENFORCEMENT ISSUES

JLSRC ISSUE #24: It is taking on average about three years from the time a complaint is filed till final disciplinary action is taken against the licensee.

Question #24 for the Board: *Please explain why it is taking on average about three years to complete disciplinary action against a licensee and why the time frame for investigation of complaints has increased to almost 500 days on average and why it is taking on average 200 days from the completed investigation till formal charges are filed by the Attorney General? What is the current backlog of cases at the Attorney General's Office and how does the Board intend to address this backlog?*

JLSRC ISSUE #25: The Board still has difficulty in collecting cost recovery.

Question #25 for the Board: *What are the problems with collecting the amount of cost recovery ordered and does the Board have any recommendations how collection could be improved?*

JLSRC ISSUE #26: It is unclear how the Board monitors nurses who are participating in its Diversion Program to assure they are in compliance with their rehabilitation plan and what follow-up is done after they leave the program.

Question #26 for the Board: *How does the Board monitor nurses both participating in the diversion program and once they return to the workplace?*

DISCLOSURE POLICY ISSUE

JLSRC ISSUE #27: The Board's Complaint Disclosure Policy may need to be updated because of the Department's recently issued "Recommended Minimum Standards for Consumer Complaint Disclosure."

Question #27 for the Board: *Has the Board considered re-reviewing its Disclosure Policy in light of the Department's recently issued disclosure policy? When is disciplinary action taken by the Board finally disclosed to the public?*

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

JLSRC ISSUE #28: Are there other improvements the Board can make to enhance their Internet capabilities?

Question #28 for the Board: *What has the Board done to enhance its Internet capabilities so as to provide improved services and better information to consumers and licensees? What other improvements does the Board expect to make in the future?*

JLSRC ISSUE #29: The Board currently has a Web site housed at the Department of General Services.

Question #29 for the Board: *When will the Web site be transferred to the Board to maintain and update?*

2002 Draft Recommendations of the Department of Consumer Affairs (9)

DCA ISSUE #1: (CONTINUE REGULATION OF THE PROFESSION AND THE BOARD?) Should the licensing and regulation of nursing profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *The Department recommends that the nursing profession should continue to be regulated through the BRN in order to protect the interests of consumers and be reviewed once again in four years.*

DCA ISSUE #2: (REDUCE THE TIME IT TAKES TO PROCESS COMPLAINTS?) It is taking on average about three years from the time a complaint is filed till final disciplinary action is taken against the licensee.

Recommendation #2: *The Department recommends the BRN develop a plan to reduce the time it takes to process complaints.*

DCA ISSUE #3: (CHANGE THE COMPOSITION OF THE BOARD?) The current composition of the Board is a 2 to 1 majority of professional members versus public member, with 5 nurses, 1 physician and 3 public members. Almost all health related consumer boards have no more than a simple majority of professional members.

Recommendation #3: *The Department recommends replacing the physician member with a public member.*

DCA ISSUE #4: (ONE BOARD MEMBER TO BE ADVANCE PRACTICE NURSE?) The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

Recommendation #4: *The Department recommends that one of the professional members of the BRN be required to be an advanced practice nurse.*

DCA ISSUE #5: (BRN CONTINUE TO SURVEY & ANALYZE PRACTICE OF NURSING?) The BRN is involved in the collection of information regarding the practice of registered nursing as required by Section 2786 of the Business and Professions Code. The JLSRC questioned whether the Board should continue to be responsible for collecting this information and the extent to which it should collect this data.

Recommendation #5: *The Department recommends that the BRN continue to perform its analysis and survey of the registered nursing practice.*

DCA ISSUE #6: (WORK WITH K-12 SCHOOLS TO ASSURE APPROPRIATE NURSING CARE?) The Board is concerned that school personnel may be providing nursing services that in other settings would be prohibited.

Recommendation #6: *The Department recommends that the BRN continue its efforts to ensure that the health and safety of pupils are not placed at risk due to receiving health care services by unlicensed school personnel.*

DCA ISSUE #7: (REVIEW DECLINING PASS RATE OF NATIONAL EXAM?) The Board has been experiencing declining pass rates on its national licensing examination (NCLEX-RN) for candidates applying for licensure.

Recommendation #7: *The Department recommends that the BRN include the Chief of the Department's Office of Examination Resources on the NCLEX-RN Task Force, should the Task Force be reconvened.*

DCA ISSUE #8: (PLACE RNs ON INACTIVE STATUS IF CE IS NOT COMPLETED?)

Not all nurses are audited for compliance with continuing education (CE) requirements, however for those audited and found in non-compliance, they could be required to stop practicing and placed on inactive status until they fulfill the CE requirement.

Recommendation #8: *The Department recommends that registered nurses not be required to stop practicing due solely to the failure to meet continuing education requirements.*

DCA ISSUE #9: (IMPROVE COST RECOVERY EFFORTS?) The Board still has difficulty in collecting cost recovery.

Recommendation #9: *The Department recommends that the BRN improve the collection of cost recovery awards.*

2002 Additional Joint Committee Staff Recommendations (7)

JLSRC ADDITIONAL ISSUE #10: (CLARIFY AUTHORITY OF BRN TO ADOPT REGULATIONS REGARDING THE PRACTICE OF NURSING?) There may be situations in which the BRN should adopt regulations to more clearly define the scope of practice for nurses and to clarify that it is the BRN that has sole responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.

Recommendation #10: *The BRN should assure that any “advisory opinions” or statements issued by the Board regarding the scope of practice for nurses would not be considered as underground rule making, and should consider adopting regulations when there is serious controversy regarding any opinions or statements issued by the BRN regarding the scope of practice for nurses. Also, it should be clarified that no other agency other than the BRN should have responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.*

JLSRC ADDITIONAL ISSUE #11: (ALLOW FOR ONE-TIME EMERGENCY FUNDING?) The Board had to suspend actions on disciplinary cases in fiscal year 2000/01 and again in January 2002 because of budget shortfalls.

Recommendation #11: *A funding mechanism should be developed to permit the delegation to the Department of Finance of one-time, current year augmentation for a BRN’s Attorney General’s (AG’s) Office line item. Examples of such mechanisms can be found in the current budget act (Chapter 379, Statutes of 2002) in Budget Control Section 4.40 and 28.50. The BRN would be required to substantiate the public protection need for funding, and show that the funding, shortfall was not foreseeable and could not be addressed through the regular budget process. A cap could be placed on the maximum allowable, one-time augmentation and requests above the cap would require notification of the Legislature. Such an emergency mechanism could avoid restrictions on AG work due to an unforeseeable budget shortfall. It would provide oversight by a control agency and would be limited in duration and amount.*

JLSRC ADDITIONAL ISSUE #12: (PREVENT BUDGET SHORTFALL?) The Board projects that it will incur a deficit in its budget by fiscal year 2004/05, unless the Board begins to receive part of the payment on the loan made to the general fund.

Recommendation #12: *The Board should work in conjunction with the Department of Consumer Affairs Budget Office and the Department of Finance to assure that its fund condition will be sufficient to reconcile any deficit that may be created by the loan to the General Fund.*

JLSRC ADDITIONAL ISSUE #13: (BRN CONTINUE EFFORTS TO DEAL WITH NURSING SHORTAGE?) California is experiencing and will continue to experience a critical shortage of registered nurses.

Recommendation #13: *The BRN should continue to work with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges to reform the educational system to increase student access and shorten the time for completion of nursing programs. Prerequisite and co-requisite courses should be standardized and course requirements for nursing curricula should be aligned. (AB 2314 (Thomson) Chapter 1093, Statutes 2002) requires nursing education reform that should result in students completing their education in a more efficient manner and reasonable timeframe. The BRN should be actively involved in the implementation of the statute.*

JLSRC ADDITIONAL ISSUE #14: (BROADEN THE BRN'S FUNDING FOR NURSING STUDENTS AND PROGRAMS?) Funding for the BRN's scholarship and loan repayment program could possibly be increased and be broadened to include funding of nursing educational programs where lack of funding exists.

Recommendation #14: *The Board should work with the JLSRC and the Department to consider increasing the assessment for the scholarship and loan repayment program by \$5.00 and to also allow expenditure of those funds for expansion of pre-licensure nursing programs where needed.*

JLSRC ADDITIONAL ISSUE #15: (DEFINE "ADVANCED PRACTICE NURSE?") Should a separate statutory definition for "advanced practice nurse" be created?

Recommendation #15: *A separate statutory definition for "advanced practice nurse" should be created.*

JLSRC ADDITIONAL ISSUE #16: (IMPROVE THE BRN APPROVAL PROCESS FOR NURSING SCHOOLS?) There is some potential for improving BRN's approval process for pre-licensure nursing programs and thereby streamlining and facilitating the approval of programs.

Recommendation #16: *The BRN should continue looking for ways to identify strategies to enhance or streamline the nursing program approval process. Also, the BRN's Education Advisory Committee should explore acceptance of the National League for Nursing (NLN) or Commission on Collegiate Nursing Education (CCNE) accreditation and determine if this accreditation could substitute for BRN approval.*

2002 BRN Recommendations (5)

BRN 2002 Recommendation 1: There be a statutory mandate that the BRN conduct research related to nursing demographics, workforce, and education at least every three years with funding appropriated from the BRN special fund.

BRN 2002 Recommendation 2: The BRN should continue to work with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California and the President of the Association of Independent Colleges to reform the educational system to increase student access and shorten the time for completion of nursing programs. Prerequisite and co-requisite courses should be standardized and course requirements for nursing curricula should be aligned.

BRN 2002 Recommendation 3: DCA should assist the Division of Investigation in the development of strategies to expedite cases referred by the BRN.

BRN 2002 Recommendation 4: DCA should continue to make improvements and enhancements in the existing enforcement tracking system while working on the development and implementation of an integrated department-wide licensing and enforcement computer system.

BRN 2002 Recommendation 5: The CDE, in collaboration with the BRN and other interested organizations, should develop and implement strategies, including possible legislative remedies, to resolve the increasing number and complexity of school health related-issues and to ensure that pupils receive safe and appropriate care.